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'O'OMA BEACHSIDE VILLAGE, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of
NORTH KONA VILLAGE, LLC

DOCKET NO. A07-774

To Amend the Conservation Land Use District
Boundaries into the Urban Land Use District
for certain lands situate at O'oma 2nd - Kaloko,
North Kona, Island of Hawaii, State of Hawaii;
consisting of approximately 181.169 acres, Tax
Map Key Nos. (3) 7-3-009: 004 (por.), and (3)
7-3-009: (portion of State Right-of-Way)

AMENDED PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT;

VERIFICATION

PETITIONER'S EXHIBITS 1 - 17

CERTIFICATE OF SERVICE

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Petitioner's Exhibit 1A	Certificate of Name Change (North Kona Village LLC to O'oma Beachside Village, LLC)
Petitioner's Exhibit 2A	Full Sized Tax Map
Petitioner's Exhibit 2B	11" x 17" Tax Map
Petitioner's Exhibit 3A	Final Environmental Impact Statement
Petitioner's Exhibit 4A	Metes and Bounds Description of the Petition Area
Petitioner's Exhibit 5A	Full Sized Petition Area Map
Petitioner's Exhibit 5B ²	11" x 17" Petition Area Map
Petitioner's Exhibit 7 ³	Limited Warranty Deed
Petitioner's Exhibit 7A	Revised Title Report
Petitioner's Exhibit 8A	Fee Owner Authorization from State of Hawaii Department of Land and Natural Resources
Petitioner's Exhibit 9A	Affidavit of Service of Petition for Land Use District Boundary Amendment
Petitioner's Exhibit 10A	Balance Sheet and Income Statement
Petitioner's Exhibit 11A	Notification of Petition Filing
Petitioner's Exhibit 12A	Affidavit of Service of Notification of Petition Filing

¹ Petitioner's Exhibit 1 was filed with the Petition for Land Use District Boundary Amendment, as Petitioner's Exhibit 1, filed with the Land Use Commission on April 3, 2007.

² Petitioner's Exhibit 6 was filed with the Petition for Land Use District Boundary Amendment that was filed with the Land Use Commission on April 3, 2007.

³ Petitioner's Exhibit 7 was filed with the Petition for Land Use District Boundary Amendment, as Petitioner's Exhibit 7, filed with the Land Use Commission on April 3, 2007.

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Petitioner's Exhibit 13	Market and Economic/Fiscal Impact Assessment Updates for 'O'oma (May 2009)
Petitioner's Exhibit 14	Review of 'O'oma Beachside Village Market Absorption Findings With a Phased Site Development (October 2009)
Petitioner's Exhibit 15	SHPD Letter dated December 17, 2008
Petitioner's Exhibit 16	Mayor H. Kim Letter dated September 2, 2008
Petitioner's Exhibit 17	List of Individuals Who Submitted Testimony to the Commission

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of
NORTH KONA VILLAGE, LLC

DOCKET NO. A 07-774

To Amend the Conservation Land Use District Boundaries into the Urban Land Use District for certain lands situate at O'oma 2nd - Kaloko, North Kona, Island of Hawaii, State of Hawaii; consisting of approximately 181.169 acres, Tax Map Key Nos. (3) 7-3-009: 004 (por.), and (3) 7-3-009: (portion of State Right-of-Way)

AMENDED PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

Petitioner, NORTH KONA VILLAGE, LLC, a Nevada limited liability company whose principal place of business is c/o Midland Pacific Homes, 7305 Morro Road, Suite 200, Atascadero, California 93422, now known as 'O'OMA BEACHSIDE VILLAGE, LLC ("**Petitioner**"), by and through its legal counsel CARLSMITH BALL LLP, hereby petitions the Land Use Commission (the "**Commission**") to amend the land use district classification of certain lands consisting of approximately 181.169 acres of land situate at O'oma 2nd, North Kona, Island and County of Hawaii, State of Hawaii (the "**Petition Area**"), from the State Land Use Conservation District ("**Conservation District**"), to the State Land Use Urban District ("**Urban District**"). The Petition Area is part of a master planned residential mixed-use community to be known as 'O'oma Beachside Village, consisting of approximately 302.38 acres of land situate at O'oma 2nd, North Kona, Island and County of Hawaii, State of Hawaii (the "**OBV Site**").

Petitioner respectfully submits this amendment to the Petition filed with the Commission on April 3, 2007 (the "**Original Petition**") pursuant to Hawaii Administrative Rules ("**HAR**") §

15-15-43, which provides that "[a]ll pleadings may be amended at any time until forty-five days prior to the hearing date set pursuant to section 15-15-51."

I. INTRODUCTION

On April 3, 2007, Petitioner filed the Original Petition to reclassify approximately 181.169 acres from the Conservation District to the Urban District. Included as Petitioner's Exhibit 3 was an Environmental Impact Statement Preparation Notice ("**EISPN**"). On April 13, 2007, Petitioner filed a revised EISPN as Petitioner's Exhibit 3A (to correct technical and typographical errors in EISPN). Also on April 13, 2007, by a Commission vote of 6 to 0, the Commission agreed that it was the appropriate accepting authority for Petitioner's Environmental Impact Statement ("**EIS**") under Hawaii Revised Statutes ("**HRS**") Chapter 343.⁴ On May 2, 2007, by facsimile, the Kaloko-Honokohau National Historical Park ("**NPS**") submitted its Notice of Intent to Intervene in this Docket.

Notice of the EISPN was published in *The Environmental Notice* on May 8, 2007. Notice of Petitioner's Draft EIS was published in *The Environmental Notice* on May 23, 2008. Petitioner voluntarily extended the 45-day public comment period for the Draft EIS from July 7, 2008 to September 8, 2008. On January 8, 2009, the Commission met in Waikoloa and voted 7 to 1 to accept Petitioner's Final EIS ("**FEIS**"), a copy of which is attached hereto as Petitioner's **Exhibit 3B** and incorporated herein by reference.⁵ Notice of the FEIS was published in *The Environmental Notice* on January 23, 2009, and no appeals to the FEIS were filed.

Petitioner is amending and supplementing the Original Petition as follows:

⁴ On May 1, 2007, the Commission filed its Order Determining: 1) That the Land Use Commission Agrees to be the Accepting Authority Pursuant to Chapter 343, Hawaii Revised Statutes; and 2) That the Proposed Action May Have a "Significant Impact" to Warrant the Preparation of an Environmental Impact Statement.

⁵ On January 27, 2009, the Commission filed its Findings of Fact, Conclusions of Law and Decision and Order Accepting a Final Environmental Impact Statement.

II. AUTHORITY FOR RELIEF SOUGHT - HAR §15-15-50(A)(1), (2)

§15-15-50(a)(1): State clearly and concisely the authorization or relief sought; and (2) Cite by appropriate reference the statutory provision or other authority under which commission authorization or relief is sought;

Petitioner alleges standing to file this Amended Petition for Land Use District Boundary Amendment (this "**Petition**") pursuant to HAR § 15-15-46(3) and HRS § 205-4(a), which entitles any person with a property interest in the land sought to be reclassified to petition the Commission for a District Boundary Amendment. The Commission is authorized to grant the relief sought pursuant to Chapter 205, HRS, as amended, all other statutes applicable to the Commission and rules promulgated thereby.

Petitioner reserves the right to further amend this Petition in response to any reports, pleadings, arguments, exhibits, issues and witnesses identified by any party.

1. IDENTIFICATION OF PETITIONER - HAR §15-15-50(C)(1)

§15-15-50(c)(1): The exact legal name of each petitioner and the location of the principal place of business and if applicant is a corporation, trust, or association, or other organized group, the state in which the petitioner was organized or incorporated;

Petitioner is a Nevada limited liability company with its principal place of business located at c/o Midland Pacific Homes, 7305 Morro Road, Suite 200, Atascadero, California 93422. On January 11, 2008, Petitioner filed a name change in the Hawaii State Department of Commerce and Consumer Affairs from North Kona Village, LLC, to 'O'oma Beachside Village, LLC. A copy of the Certificate of Name Change from the Secretary of State of Nevada, dated October 15, 2007, is attached hereto as Petitioner's **Exhibit 1A** and incorporated herein.⁶

⁶ The Grantee under the Limited Warranty Deed for the OBV Site was Clifto's Kona Coast LLC, a Nevada limited liability company. Clifto's Kona Coast LLC processed a Certificate of Name Change with the Secretary of State of the State of Nevada to North Kona Village LLC on June 10, 2005, copy attached hereto as Petitioner's **Exhibit 1**, and incorporated herein by reference.

2. **AUTHORIZED REPRESENTATIVE - HAR § 15-15-50(c)(2)**

§ 15-15-50(c)(2): The name, title, and address of the person to whom correspondence or communications in regard to the application are to be addressed;

The law firm of CARLSMITH BALL LLP has been appointed and is hereby authorized to represent Petitioner in its Petition and the proceedings thereon pursuant to HAR § 15-15-35(b). Pursuant to HAR § 15-15-50(c)(2), all correspondence and communications in regard to this Petition shall be addressed to:

1. CARLSMITH BALL LLP
Attention: Steven S.C. Lim, Esq.
121 Waianuenu Avenue
P.O. Box 686
Hilo, Hawaii 96721
Telephone: 808.935.6644
2. CARLSMITH BALL LLP
Attention: Jennifer A. Benck, Esq.
ASB Tower
1001 Bishop Street, Suite 2200
Honolulu, Hawaii 96813
Telephone: 808.523.2500
3. 'O'OMA BEACHSIDE VILLAGE, LLC
Attention: Dennis Moresco, CEO
c/o Midland Pacific Homes
7305 Morro Road, Suite 200
Atascadero, California 93422
Telephone: 805.466.5100
4. PBR HAWAII
Attention: Tom Schnell, AICP
1001 Bishop Street
ASB Tower, Suite 650
Honolulu, Hawaii 96813
Telephone: 808.521.5631

III. **IDENTIFICATION OF PETITION AREA - HAR § 15-15-50(C)(3)**

§ 15-15-50(c)(3): Description of the subject property, acreage, and tax map key number, with maps, including the tax map, that identify the area under petition. If the subject property is a portion of one

or more lots, or the petition proposes incremental development of the subject property on both increments of development, the petitioner shall include a map and description of the subject property and increments in metes and bounds prepared by a registered professional land surveyor;

The Petition Area is located within O'oma 2nd, North Kona, Island and County of Hawaii, State of Hawaii, and is comprised of approximately 181.169 acres of land. The Tax Map Key Nos. for the Petition Area are (3) 7-3-009: 004 (por.) ("**Parcel 4**"), and (3) 7-3-009: (portion of State Right-of-Way) (the "**State ROW**"⁷), as illustrated on the full sized tax map attached hereto as Petitioner's **Exhibit 2A**⁸ and incorporated herein by reference. Outside of the Petition Area, but part of the OBV Site, is another parcel, designated by Tax Map Key No. (3) 7-3-009: 022 ("**Parcel 22**"). A regional location map of the Petition Area is shown as Figure 2 of the FEIS.

The OBV Site is almost entirely designated as Urban Expansion on the County General Plan Land Use Pattern Allocation Guide ("**LUPAG**") Map, with the makai portion of Parcel 4 designated as Open on the LUPAG Map. The entire OBV Site is within the Kona Urban Area (the "**Kona UA**") designated on the Official Kona Land Use Map of the Kona Community Development Plan (the "**Kona CDP**"). Parcel 4 is in the Open Zoning District, and Parcel 22 is in the General Industrial (MG-3a) Zoning District. The entire OBV Site is within the Special Management Area ("**SMA**").

⁷ Petitioner notes that there is a question as to whether the State ROW was mistakenly created. South of the Petition Area and the OBV Site, the State ROW is aligned with the Mamalahoa Trail. However, at the southern boundaries of Parcels 4 and 22 the State ROW diverges from the Mamalahoa Trail, which runs through Parcel 22, and without apparent reason runs between the two Parcels only to dead-end slightly further north. The State ROW was probably intended to follow the Mamalahoa Trail, and the portion of the State ROW between Parcels 4 and 22 was most likely the result of a surveying error. Petitioner intends to seek resolution on this matter through consultation with the Commission and the DLNR - Na Ala Hele Trails Program. However, for purposes of this Petition the Petition will treat the State ROW as a separate TMK parcel to be reclassified from the State Land Use Conservation District to the State Land Use Urban District.

⁸ An 11" x 17" copy of the Tax Map with the Petition Area clearly identified is attached hereto as Petitioner's **Exhibit 2B** and incorporated herein by reference.

The metes and bounds of the Petition Area, signed by a registered professional surveyor, is attached hereto as Petitioner's **Exhibit 4A** and incorporated herein by reference. The metes and bounds of Parcel 22, Parcel 4 and the State ROW are shown on the full sized copy of the Petition Area Map, signed by a licensed professional surveyor, and attached hereto as Petitioner's **Exhibit 5A**⁹ and incorporated herein by reference.

1. **PETITIONER'S PROPERTY INTEREST IN THE SUBJECT PROPERTY - HAR § 15-15-50(c)(5)**

§ 15-15-50(c)(5): (A) A true copy of the deed, lease, option agreement, development agreement, or other document conveying to the petitioner a property interest in the subject property or a certified copy of a nonappealable final judgment of a court of competent jurisdiction quieting title in the petitioner; (B) If the petitioner is not the owner in fee simple of the subject property, or any part thereof, written authorization of all fee owners to file the petition and a true copy of the deed to the subject property; and (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48;

With the exception of the State ROW, Petitioner owns the Petition Area in fee simple. A true copy of the Limited Warranty Deed conveying a fee simple interest in the Petition Area is attached hereto as Petitioner's **Exhibit 7**, and incorporated herein by reference. The State of Hawaii owns the Mamalahoa Trail, portions of which are located within the State ROW and Parcel 22. The State of Hawaii through its Department of Land and Natural Resources ("DLNR") has consented to the inclusion of the State ROW and Mamalahoa Trail in this Petition. *See* Fee Owner Authorization from DLNR, attached hereto as Petitioner's **Exhibit 8A** and incorporated herein by reference.

⁹ An 11" x 17" copy of the Petition Area Map is attached hereto as Petitioner's **Exhibit 5B** and incorporated herein by reference.

2. **SERVICE AND NOTIFICATION OF PETITION FILING**

§ 15-15-50(c)(5): (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48;

§ 15-15-50(c)(23): A copy of the notification of petition filing pursuant to subsection (d).

Attached hereto as Petitioner's **Exhibit 9** and incorporated herein by reference is the affidavit of Petitioner's authorized agent attesting to its compliance with HAR § 15-15-48(a). Attached hereto as Petitioner's **Exhibits 11A** and **12A** respectively, and incorporated herein by reference, is a true and correct copy of the notification of the filing of this Petition, and the Affidavit of Jennifer A. Benck Attesting to the Service of the Notification of Petition Filing required under HAR § 15-15-50(d).

3. **FINANCIAL CONDITION AND FINANCING - HAR § 15-15-50(c)(8)**

§ 15-15-50(c)(8): A statement describing the financial condition together with a current balance sheet and income statement, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development.

Dennis Moresco of Moresco Properties - O'oma, LLC, a member of Petitioner, is an experienced builder and licensed architect, and is the founder and Chief Executive Officer of Midland Pacific Homes. Midland Pacific Homes, based in Atascadero, California, has developed several residential, commercial, industrial and medical projects over the past 30 years. Dennis Moresco has served as President of the Homebuilding Association of the Central Coast, and the Pacific Coast Builder's Conference, as well as a member of the California Building Industry Association. In 2005 he was inducted into the California Building Industry's "Hall of Fame."

Total development costs for 'O'oma Beachside Village, including construction costs for infrastructure (\$108,400,000¹⁰), constructed single and multi-family units (\$259,900,000¹¹), commercial facilities (\$32,000,000¹²), tenant improvements (\$14,000,000¹³), and professional services, such as planning, engineering and architecture (\$9,177,000¹⁴), are estimated to be \$454,067,700, inclusive of a ten percent (10%) contingency for residential and commercial construction costs (\$30,590,000¹⁵). See FEIS Appendix L (*Economic and Fiscal Impact Assessment for 'O'oma Beachside Village, April 2008*) (the "**Econ Assessment**").

Petitioner's financial condition is sound. Evidence of Petitioner's financial condition is reflected in the current balance sheet and income statement attached hereto as Petitioner's **Exhibit 10A** and incorporated herein by reference. Petitioner intends to use bank financing to fund the development and construction of the backbone infrastructure, and may join with equity partners in the development of the residential and mixed use portions of 'O'oma Beachside Village.

The three (3) Villages within 'O'oma Beachside Village will provide a variety of housing types as well as commercial uses, e.g., single-family Estate Lots, constructed single-family homes, multi-family and mixed-use units and commercial space. To best develop this unique product mix, Petitioner may enter into joint ventures with individuals or companies that are experienced in specific types of development, e.g., an experienced commercial developer could

¹⁰ Approximately \$65.1 Million in years 2010 - 2020, and \$43.4 Million in years 2021 - 2030.

¹¹ Approximately \$124.7 Million in years 2010 - 2020, and \$135.2 Million in years 2021 - 2030.

¹² Approximately \$16 Million in years 2010 - 2020, and 2021 - 2030.

¹³ Approximately \$7 Million in years 2010 - 2020, and 2021 - 2030.

¹⁴ Approximately \$4,431,000 in years 2010 - 2020, and \$4,746,000 in years 2021 - 2030, based on 3% of the estimated constructed costs, excluding infrastructure construction costs.

¹⁵ Approximately \$14.77 Million in years 2010 - 2020, and \$15.82 Million in years 2021 - 2030.

be a joint venture partner for the development of all or a portion of the Mauka Mixed Use Village, and an experienced custom home builder could partner for the development of the Estate Lots.

IV. RECLASSIFICATION SOUGHT/PRESENT USE OF PROPERTY - HAR § 15-15-50(C)(4)

§ 15-15-50(c)(4): The reclassification sought and present use of property, including an assessment of conformity of the reclassification to the standards for determining the requested district boundary amendment;

Petitioner seeks to have the Petition Area reclassified from the Conservation District to the Urban District in order to develop the Petition Area, along with the existing Urban District Parcel 22, as the master planned, beachside residential and mixed-use community to be known as 'O'oma Beachside Village. Petitioner is not requesting reclassification of approximately 38.211 acres of Conservation District land within Parcel 4, shown as "**Existing Conservation**" on Figure 10 of the FEIS. That portion of Parcel 4, along with an additional approximately 18.79 acres, will be set aside as a Coastal Preserve. The Coastal Preserve is planned to remain generally undisturbed, with development limited to trails that will connect the 'O'oma Beachside Village community to the shoreline. The Petition Area, as well the rest of the OBV Site, is currently vacant and undeveloped, and has been for years.

V. DESCRIPTION OF DEVELOPMENT PLAN - HAR § 15-15-50(C)(6)

§ 15-15-50(c)(6): Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial use;

'O'oma Beachside Village is intended to be a master planned beachside residential community, to include single- and multi-family housing options, along with live-work units, and a full range of mixed uses including general commercial uses, preserves, parks, trails and

shoreline access. A total of approximately 950 to 1,200 residential units, including affordable residential units, are planned for 'O'oma Beachside Village. No residences will be located within the shoreline setback area.

The current master plan for 'O'oma Beachside Village was developed as part of a collaborative effort that included Petitioner, land use planners, community members and County officials. The result is a unique, master-planned mixed use, primary-resident, community, which is in stark contrast to the luxury resort residential developments located along the Kona coast. Over the years, more traditional resort development proposals for the OBV Site have been presented by various developers, but all failed to get the necessary community support. 'O'oma Beachside Village, planned with many of the traditional neighborhood design concepts embodied in the Kona CDP, will meet the pressing need for a variety of housing options to be located close to areas of employment. *See Section XIII (Assessment of Need), infra*, for additional background on prior development proposals for the OBV Site.

The 5 areas within 'O'oma Beachside Village will include: (1) the Residential Village; (2) the Makai Mixed-Use Village; (3) the Mauka Mixed-Use Village; (4) the public shoreline park (the "**Shoreline Park**"); and (5) the Coastal Preserve. 'O'oma Beachside Village will also include a network of trails and pathways that will connect the Villages to the shoreline. In addition to the Shoreline Park and Coastal Preserve, open space within 'O'oma Beachside Village will be provided through 19 acres of park space (in the form of a community park and various neighborhood parks), the Mamalahoa Trail and buffer (approximately 16 acres), and a nine (9) acre buffer along Queen Kaahumanu Highway. In total, approximately 1/3 of the OBV Site (i.e., approximately 103 acres) will be provided as open space, in the form of community and pocket

parks, trails and buffers, a Coastal Preserve and Shoreline Park. The Conceptual Master Plan for 'O'oma Beachside Village is shown on Figure 1 of the FEIS.

1. **The Residential Village**

The Residential Village will cover approximately 148 acres within the Petition Area. A mix of 520 – 620 multi-family and single-family residential units are proposed for the Residential Village. Ten (10%) to 15% of the single-family units are planned to be larger "Estate Lots," which will range from 9,000 – 15,000⁺ square feet ("**sq. ft.**") each. The Estate Lots will be located along the southern and makai perimeter of the Petition Area. In addition to the Estate Lots, Petitioner proposes to develop 350 - 400 single-family, finished homes, on lots ranging from 5,000 – 6,000 sq. ft. Approximately 100 - 135 multi-family units are proposed for the Residential Village.

2. **The Makai Mixed-Use Village**

The approximately 15 acre Makai Mixed-Use Village will be located on a bluff overlooking the Coastal Preserve and Shoreline Park. Development within the Makai Mixed-Use Village will be setback at least 1,100 feet from the shoreline. Approximately 35 - 60 residences and 50,000 sq. ft. of commercial uses, including restaurants and retail uses, are planned for the Makai Mixed-Use Village. The Makai Mixed-Use Village should be a focal point of 'O'oma Beachside Village, as most of the trails and paths within the community will connect to the Makai Mixed-Use Village. People from surrounding communities will also have access to the Makai Mixed-Use Village, as its paths will run to the shoreline.

a. **'O'oma Canoe Club**

The 'O'oma Canoe Club, a membership leisure club, is planned to be developed within the two (2) acres adjacent to the makai edge of the Makai Mixed-Use Village. The 'O'oma

Canoe Club will provide social activities and programs, ocean equipment storage areas, bar/lounge and dining facilities for its members.

3. **The Mauka Mixed-Use Village**

The Mauka Mixed-Use Village will cover approximately 65 acres within the Urban District Parcel 22. This Village is planned to be a walkable, pedestrian-friendly community organized around a village green. In addition to 395 – 520 mixed-use commercial and multi-family units, approximately 150,000 sq. ft. of commercial space, and a three (3)-acre charter school site are planned for the Mauka Mixed-Use Village. It is anticipated that a full range of community services, including retail and office space, will be provided within the Mauka Mixed-Use Village.

4. **Public Shoreline Park**

Approximately 18 acres along the shoreline will be designated as the Shoreline Park. The Shoreline Park will include a parking area, comfort station and community pavilion or similar public-use facility. All improvements within the Shoreline Park will be located outside of the shoreline setback area. The Shoreline Park is intended to be an extension of the shoreline park areas planned at The Shores at Kohanaiki and NELHA.

5. **Coastal Preserve**

Approximately 57 acres within the OBV Site will be reserved for the Coastal Preserve. The Coastal Preserve will include the 38.211 acres within Parcel 4 that are not part of the Petition Area, plus 18 acres located mauka of the Shoreline Park. The Coastal Preserve contains archaeological and cultural sites, including burials. Therefore, the intent is to keep the lands within the Coastal Preserve undisturbed except for trails that may run between the Villages and the shoreline.

VI. DENSITY & PROJECTED MARKET - HAR § 15-15-50(C)(7)

§ 15-15-50(c)(7): A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;

Approximately 950 to 1,200 residential units are planned for the 303 acre 'O'oma Beachside Village. However, 103 acres of the OBV Site will be open space, including the Coastal Preserve, Shoreline Park, neighborhood parks, trails and buffers. Therefore, the overall residential density based on the 200 acres proposed for development is approximately 4.7 - 6 dwelling units ("**du**") per acre. Final density for the entire the OBV Site, and the Petition Area specifically, will be determined under the Project District Zoning Ordinance that Petitioner will seek from the County of Hawaii after the Commission grants the reclassification requested in this Petition.

At this time it is anticipated that the average sales price of built, market units at 'O'oma Beachside Village will be \$450,000, with prices ranging from \$375,000 - \$500,000.¹⁶ *See Market and Economic/Fiscal Impact Assessment Updates for 'O'oma* (May 2009), attached hereto and incorporated herein by reference as Petitioner's **Exhibit 13** (the "**Market Update**"). 'O'oma Beachside Village will not be a luxury, resort development. It is anticipated that the vast majority of homebuyers at 'O'oma Beachside Village (80% - 85%) will have their primary home at 'O'oma Beachside Village. Relatively few of the residences are expected to be purchased for use as second or vacation homes.

a. The Residential Village

The 148 acre Residential Village will contain both single and multi-family units, for a total of approximately 520 - 620 residential units. Overall density will be between 3.5 - 4.2

¹⁶ These prices have been revised downward from the sales prices provided in the *Market Assessment for 'O'oma Beachside Village* (Dec. 2007) (the "**OBV Market Assessment**"), which was provided as Appendix K to Petitioner's FEIS. This adjustment was made to reflect the recent softening in the residential real estate market.

du/acre. However, even excluding the 19 acres of open space planned for the Residential Village, residential density should be less than 5 du/acre.

Single-family lot sizes will range from 5,000 - 15,000⁺ sq. ft. Based on the 127 acres within the Residential Village that are planned for housing, it is estimated that the 70 - 85 Estate Lots (9,000 sq. ft. - 15,000⁺ sq. ft.) will be the least dense product type at 'O'oma Beachside Village, at 2.5 - 3 du/acre. The other 350 - 400 single-family units will be at a density of 4 - 5 du/acre, and the 100 - 135 multi-family units will be at 9 - 12 du/acre.

The most expensive product at 'O'oma Beachside Village will be the Estate Lots. These Lots will be placed in premium locations along the southern and makai perimeter of Parcel 4, allowing for ocean and golf course views, and will be used for the construction of custom homes. It is currently anticipated that Estate Lots will sell for \$500,000.¹⁷ At this time it is anticipated that the average sales price for the constructed, single-family homes in the Residential Village will be \$500,000.¹⁸ The average price for the multi-family units at the Residential Village is anticipated to be \$375,000.¹⁹

b. The Makai Mixed-Use Village

The 15 acre Makai Mixed-Use Village will contain approximately 35 - 60 residential units and 50,000 sq. ft. of commercial uses, including restaurants and retail uses, and the 2-acre 'O'oma Canoe Club. Residential density will be approximately 3 - 4.5 du/acre based on the 13-

¹⁷ This has been revised downward from the \$650,000 sales price provided in the OBV Market Assessment to reflect the recent softening in the residential real estate market.

¹⁸ This has been revised downward from the \$650,000 sales price provided in the OBV Market Assessment to reflect the recent softening in the residential real estate market.

¹⁹ This has been revised downward from the \$425,000 sales price provided in the OBV Market Assessment to reflect the recent softening in the residential real estate market.

acres planned for residential uses. The sales price of units within the Makai Mixed-Use Village is estimated to be \$500,000.²⁰

c. The Mauka Mixed-Use Village

The 65 acre Mauka Mixed-Use Village is planned to contain between 395 - 520 residential units and 150,000 sq. ft. of commercial space. Average density based on the 53 acres to be used for residential purposes will be approximately 7.5 - 10 du/acre. Market rate units in the Mauka Mixed-Use Village are planned to be offered at \$400,000.²¹

VII. DEVELOPMENT TIMETABLE - HAR § 15-15-50(C)(19)

§ 15-15-50(c)(19): Petitioners submitting applications for reclassification to the urban district shall also represent that development of the subject property in accordance with the demonstrated need therefor will be accomplished before ten years after the date of commission approval. In the event full urban development cannot substantially be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period;

Full urban development of the Petition Area is anticipated to be complete well within ten years of the Commission's reclassification. Development activities are planned to begin upon receipt of all necessary land use entitlements and permits. Assuming timely receipt of necessary land use entitlements and permits, and depending upon market conditions, unit sales at 'O'oma Beachside Village should begin between 2012 - 2013. The overall average annual absorption rate for all residential product types at 'O'oma Beachside Village is expected to be 70 units/year, resulting in full absorption, i.e., sell out of all residential and commercial product within the Residential Village, Makai Mixed-Use Village and Mauka Mixed-Use Village, by 2030. *See*

²⁰ This has been revised downward from the \$525,000 sales price presented in the OBV Market Assessment to reflect the recent softening in the residential real estate market.

²¹ This has been revised downward from the \$425,000 sales price provided in the OBV Market Assessment to reflect the recent softening in the residential real estate market.

Review of 'O'oma Beachside Village Market Absorption Findings With a Phased Site

Development (October 2009) attached hereto and incorporated herein by reference as Petitioner's

Exhibit 14.

This anticipated absorption schedule results in 97% of the maximum total of residential and commercial units within the Makai Mixed Use Village and the Residential Village (555 - 680 residential units and 50,000 sq. ft. of commercial space) being sold by 2020. This absorption schedule assumes that the Commission grants the requested reclassification in 2011, followed by the County rezoning, special management area permit and subdivision process, in order for Petitioner to offer the first units for sale in 2013. In other words, full urban development within the Petition Area should be complete, and almost completely sold out, well within 10 years of the Commission's reclassification of the Petition Area.

'O'oma Beachside Village has been planned as an integrated, master planned, residential community with a full range of mixed uses. Therefore, Petitioner intends to construct the necessary infrastructure for the entire project, even though the initial sales focus will be directed toward the Petition Area.

VIII. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA - HAR § 15-15-50(C)(9)

§ 15-15-50(c)(9): Description of the subject property and surrounding areas, including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawaii classification (ALISH), the Land Study Bureau productivity rating, the flood and drainage conditions, and the topography of the subject property;

The Petition Area is comprised of approximately 181.169 acres of vacant, undeveloped land. The area consists of lava rock, sparsely covered in vegetation such as fountain grass, kiawe trees, noni plants and maiapilo. The OBV Site is bordered by the Pacific Ocean on the west, and Queen Kaahumanu Highway to the east. Some sandy beaches are located along the makai edge

of the Petition Area and the Coastal Preserve, although much of the coastline is rugged and comprised of lava rock.

Urban District lands surround the Petition Area to the east (i.e. Parcel 22) and south, at TMK No. (3) 7-3-009-003, which is being developed as The Shores at Kohanaiki, a 500-600 home golf course community. South of The Shores at Kohanaiki, approximately 0.5 miles from the Petition Area, is the Kaloko-Honokohau National Park (the "**National Park**"), a 1,160 acre national historic landmark with extensive natural and cultural resources, including archaeological sites, wetlands and fishponds.

The NELHA and HOST properties are located to the north of 'O'oma Beachside Village. The NELHA and HOST properties are owned by the State of Hawaii and are leased to tenants who engage in research, commercial and educational activities that support sustainable development and make use of deep seawater resources. North of the NELHA/HOST property is KOA, which occupies approximately 3,450 acres of land.

The new West Hawaii Civic Center will be located approximately 3.5 miles south east of 'O'oma Beachside Village. The Civic Center will include a community center and pavilion, as well as an 85,000 sq. ft. complex that will house 22 County agencies and 1 State agency. Groundbreaking was in October 2008, and construction of the Civic Center should be completed within 2 years.

1. Soil Classification

According to the U.S. Department of Agriculture Soil Conservation Service ("SCS"), the OBV Site contains mostly soil from pahoehoe lava flow (rLW), with some soil near the southwestern shoreline being 'a'a lava flow (rLV). The shoreline area soil is designated as beaches (BH). Parcel 22 consists mostly of pahoehoe lava flow (rLW), with a small portion of 'a'a lava flow (rLV).

The SCS Land Capability Grouping, which rates soil types based upon suitability for field crop cultivation, provides eight (8) rating levels, from I (the highest rating), to VIII (the lowest rating). The soils at the OBV Site are VIII non-irrigated, meaning that the soils are not suitable for commercial plants, and should be used for recreation, wildlife or water supply or aesthetic purposes.

None of the soils within the Petition Area or the entire OBV Site are classified under the State of Hawaii Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii ("ALISH") system because the soils are not considered important agricultural lands. The productivity of the soil within the OBV Site is poor. *See University of Hawaii Land Study Bureau Detailed Land Classification, Island of Hawaii (1965)*. Soil within the Petition Area is classified as E, under an A to E rating system,²² and the rest of the OBV Site does not have any soil classification.

2. Flood and Drainage

The OBV Site is not susceptible to flooding. Most of the OBV Site is in FIRM Zone X, meaning that it is located outside of the 500-year flood plain and in an area of minimal flooding. A small portion of the southern shoreline area is in FIRM Zone A, meaning that it is within the 100 year flood plain. *See FEIS Figure 15.*

²² With A being the highest and E being the lowest class of productivity.

Annual rainfall in the region is approximately 25 inches, and approximately 2 inches per month. Due to the high permeability of the natural ground surface, even the most intense rainfall does not result in surface runoff. About half of the annual rainfall percolates into the underlying groundwater, and the other half evaporates.

3. **Topography**

The land within the OBV Site slopes in an east to west direction. Average slopes range from 0% to 5%. The eastern boundary of Parcel 22 is 110 feet above mean sea level, and the lowest elevation is at the western boundary of Parcel 4, which is at sea level.

IX. ADJACENT USES/LAND USE DISTRICTS - HAR § 15-15-50(C)(12)

§ 15-15-50(c)(12): Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;

'O'oma Beachside Village will be located near existing and future centers of trading and employment, such as KOA, Kailua-Kona, Kaloko Industrial Park, Kohanaiki Industrial Park, the West Hawaii Civic Center and the resort developments along the Kona Coast. In addition, as a mixed-use development, 'O'oma Beachside Village will include commercial uses that result in new trading and employment opportunities.

Urban District land is located immediately mauka of the Petition Area at Parcel 22, which is zoned General Industrial (MG-3a), designated as Urban Expansion on the LUPAG Map, and within the Kona CDP Kona Urban Area. Parcel 22 was reclassified to the Urban District by Commission Decision and Order dated February 6, 1986, in Docket No. A85-592. The petitioner in Docket A85-592 was the State of Hawaii through the Department of Planning and Economic Development ("**DPED**"). DPED had proposed to develop a research and technology industrial park on the reclassified land. After reclassification the State of Hawaii, pursuant to an Exchange Deed and Agreement, exchanged an 83.00 acre portion of the reclassified land (current Parcel

22), for 83.00 acres of oceanfront property. On May 19, 1992, the Commission issued an Order Granting Motion to Delete or Modify Condition of the Decision and Order Dated February 6, 1986, in recognition of the changed development plans for Parcel 22. Petitioner's proposed land uses for Parcel 22 are substantially different from the uses proposed by DPED. Therefore, Petitioner intends to file a *Motion to Delete or Amend Conditions Imposed by the Land Use Commission on Land at O'oma, North Kona, Hawaii*, under Docket No. A86-592, to request the Commission to modify the conditions on Parcel 22 to be consistent with the conditions to be imposed on Parcel 4.

NELHA, which is immediately to the north of the Petition Area, is in the Conservation District and zoned Open by the County of Hawaii. However, the LUPAG Map designation for the NELHA property is Industrial. The HOST property, adjacent to the NELHA property, and located north of Parcel 22, is within the Urban District, has a LUPAG designation of Industrial and is zoned General Industrial (MG-3a). The NELHA and HOST properties consist of a mix of commercial, public, quasi-public and industrial uses.

The Shores at Kohanaiki, located to the south of the Petition Area, is in the Urban District and shown as Open, Medium Density Urban, Resort and Low Density Urban on the LUPAG Map. Zoning within The Shores at Kohanaiki is mixed, including Open, Limited Industrial (ML-10), Multiple-Family Residential (RM-3), Single Family Residential (RS-10), Resort-Hotel (V-1.25) and Village Commercial (CV-10).

X. ASSESSMENT OF CONFORMITY WITH BOUNDARY AMENDMENT STANDARDS - HAR § 15-15-18

HAR § 15-15-18 sets forth standards used by the Commission for determining Urban District boundaries. The proposed reclassification conforms to those standards, as described below:

§ 15-15-18(1): It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

§ 15-15-18(2): It shall take into consideration the following specific factors: (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment; (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and (C) Sufficient reserve area for foreseeable urban growth.

The Petition Area is located close to Kailua-Kona, approximately 5 miles north of the Queen Kaahumanu Highway/Palani Road Junction. The area around the Petition Area is well developed and/or slated for future development, especially along Queen Kaahumanu Highway, positioning 'O'oma Beachside Village as a natural location for urban in-fill development. The OBV Site is located within Census Tract 215.01 (North Kona-North). Census Tract 215.01, together with the coastal portion of Census Tract 217.01 (South Kohala-Waikoloa), was estimated to provide 21% of the Island's employment in 2006. The Kona International Airport at Keahole ("KOA"), which is located to the north of the Petition Area, will ensure the area's continued reputation as the commercial and employment center of West Hawaii.

§ 15-15-18(3): It shall include lands with satisfactory topography, drainage, reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;

Topography, drainage and other natural, environmental factors make the OBV Site suitable for development. Average slopes within the OBV Site range from 0% to 5%.

According to the Federal Emergency Management Agency ("**FEMA**") Flood Insurance Rate Map ("**FIRM**"), the OBV Site is in Zone X, meaning that it is outside of the 500 year flood plain, and in an area of minimal flooding; a small portion of the Petition Area, at the southern makai boundary, is in the FIRM Zone A.

The area proposed for mixed use, residential and commercial development within the OBV Site is not within the Tsunami Evacuation Zone. However, the shoreline area is designated as a Tsunami Evacuation Zone by the County of Hawaii Civil Defense Agency. *See* Figure 16 of the FEIS. The OBV Site is within volcanic hazard Zone 4,²³ which includes the entire slope of Hualalai, which has less frequent eruptions than Kilauea and Mauna Loa. Zone 4 indicates that only 5% of the area has been covered in lava since 1800, and less than 15% of the area has been covered in lava in the last 750 years.

Due to a history of seismic events, the County of Hawaii upgraded its seismic hazard rank from 3 to 4 based on the 1997 Uniform Building Code, which was adopted as Chapter 5 of the Hawaii County Code ("**Haw. Ct. Code**"). Zone 4 indicates that the area could experience severe seismic activity between 0.3 and 0.4 of the earth's gravitational acceleration (g-force) causing severe damage to poorly designed/built structures. The seismic hazard risk will be addressed by requiring all buildings within 'O'oma Beachside Village to be constructed in compliance with the Uniform Building Code, as incorporated into Chapter 5 of the Haw. Ct. Code.

Invasive fountain grass (e.g., *pennisetum setaceum*) growing on the OBV Site creates some risk for wildfires. The development of 'O'oma Beachside Village should reduce this risk as the existing, scattered vegetation will be replaced by buildings and a landscaped environment. The landscaping at 'O'oma Beachside Village will include native plant species that are less likely

²³ Volcanic hazard zones range on a scale of 1 - 9, with 1 being the highest hazard area.

to catch fire. In addition, the development of 'O'oma Beachside Village will allow the Coastal Preserve, which will be left in its natural state, to be more easily managed and monitored than at present.

§ 15-15-18(4): Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, particularly when indicated for future urban use on state or county general plans or county community plans or development plans;

The Petition Area is contiguous with Urban District land to the east and south. Parcel 22, located east of the Petition Area, is already in the Urban District and is planned to be developed as part of 'O'oma Beachside Village. The approximately 470-acre Urban District land to the south of the Petition Area is being developed as a 500-home, golf course community called The Shores at Kohanaiki. The Natural Energy Laboratory of Hawaii Authority ("NELHA") occupies the Conservation District land located immediately north of the Petition Area, and the Hawaii Ocean Science and Technology Park ("HOST"), occupies the Urban District land located immediately north of Parcel 22. The NELHA and HOST properties consist of a mix of commercial, public, quasi-public and industrial uses. Directly north of NELHA and HOST is KOA, which is primarily within the Urban District. The Petition Area is designed for Urban Expansion on the LUPAG Map, and is within the Kona UA.

§ 15-15-18(5): It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans or county community plans or development plans;

Reclassification of the Petition Area, and a subsequent change of zone by the County of Hawaii, will permit the Petition Area to be developed in conformity with the surrounding Urban land uses. The majority of the OBV Site is designated for Urban Expansion on the LUPAG Map, and the entire OBV Site is within the Kona UA.

§ 15-15-18(7): It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services;

Urbanization of the Petition Area will not contribute to scattered spot urban development. As mentioned above, the Petition Area is surrounded by Urban District lands and has been designated for additional urban growth under the County General Plan and Kona CDP. Development of 'O'oma Beachside Village is in keeping with proposed public infrastructure improvements, such as the expansion of Queen Kaahumanu Highway and the proposed development of the parallel frontage road. The development of 'O'oma Beachside Village will not necessitate an unreasonable investment in public infrastructure or support services.

§ 15-15-18(8): It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

Average slopes within the OBV Site range from 0 to 5%. The lowest elevation for any habitable structure within 'O'oma Beachside Village will be located approximately 20 feet above mean sea level, in the southwest corner of the Makai Mixed-Use Village.

XI. ASSESSMENT OF IMPACTS UPON RESOURCES - HAR § 15-15-50(C)(10)

HAR § 15-15-50(c)(10) specifies certain resources that must be considered by the Commission prior to granting a reclassification. The development of 'O'oma Beachside Village is not expected to result in any significant, long-term negative impacts to natural or cultural resources. In fact, the development of 'O'oma Beachside Village should enhance recreational resources in the area. An assessment of the impacts to various resources from the development of 'O'oma Beachside Village is provided below.

1. **Environmental Resources**

Based upon the historical uses of the land within the Petition Area, development of 'O'oma Beachside Village and the reclassification of the Petition Area from the Conservation District to the Urban District, is not expected to have a significant adverse affect on the environment.

a. **Air**

Construction at 'O'oma Beachside Village should result in short-term impacts from fugitive dust, and possibly from exhaust emissions from construction vehicles. However, all construction activities will be conducted in accordance with the fugitive dust measures required under HAR § 11-60.1-33.

Long-term impacts to air quality could arise from an increase in auto emissions as a result of there being more cars traveling to and from 'O'oma Beachside Village. However, even under worse case conditions, anticipated impacts to air quality will not exceed State or Federal standards. At full build out, the development of 'O'oma Beachside Village could increase the amount of carbon monoxide concentration in the area by 10% - 20%, which would still be within the State and Federal air quality standards. *See FEIS Appendix I (Air Quality Study for O'oma Beachside Village, May 2008).*

b. **Noise**

The development of 'O'oma Beachside Village is not expected to result in any long-term negative impacts on noise levels in the area. During construction, noise impacts are expected from the operation of construction machinery, paving equipment and other construction vehicles. However, all construction activity will be conducted in accordance with Title 11, Chapter 46, HAR. At full build out, the noised generated from the increased traffic at 'O'oma Beachside

Village will be insignificant. *See* FEIS Appendix H (*Acoustic Study for the Proposed 'O'oma Beachside Village Project, April 2008*) (the "**Acoustic Study**").

In addition to the noise impacts expected due to the construction of 'O'oma Beachside Village, the Acoustic Study also analyzed potential impacts to 'O'oma Beachside Village due to its proximity to KOA, Queen Kaahumanu Highway and the proposed frontage road. KOA aircraft noise contours published in 2001 show that portions of Parcel 4 are within the 60 Day-Night Average Sound Level ("**DNL**") noise contour. *See* FEIS, Figure 19. However, no residential uses are planned for any portion of the OBV Site located within the 60 DNL noise contour. Even with projected increases in KOA noise based on operational forecasts, existing flight tracks and assumed future flight tracks for a proposed new runway, and potential impacts from additional military operations at KOA, by 2030 only a small portion of the commercial area within the Makai Mixed-Use Village is expected to be within the 60 DNL noise contour. *See* FEIS, Figure 21.

2. **Agriculture Resources**

Based upon the historical uses of the land within the Petition Area, the development of 'O'oma Beachside Village is not expected to have an adverse impact on agriculture. Neither the Petition Area, nor the entire OBV Site, contain soils well suited for agricultural production, or considered to be lands of agricultural importance to the State of Hawaii.

3. **Recreational Resources**

Development of 'O'oma Beachside Village will enhance recreational resources in the area by providing approximately 75 acres of public open space in the form of an 18-acre Shoreline Park and 57-acre Coastal Preserve. The Shoreline Park will include parking, a comfort station and a public-use community pavilion. In addition, preservation of the Mamalahoa Trail has been incorporated into the concept plan for 'O'oma Beachside Village. Preservation of the Mamalahoa

Trail, with a 50 foot wide buffer on both sides, will result in an additional 7 acres being provided as recreational open space. A large community park is planned for 'O'oma Beachside Village, as well as numerous, small neighborhood parks. Petitioner will coordinate with the County of Hawaii Department of Parks and Recreation to ensure that community park requirements are met.

4. **Cultural Resources**

Petitioner's cultural impact assessment, provided as Appendix K to the FEIS (*Cultural Impact Assessment for the 'O'oma Beachside Village Project Area*, April 2007, revised October 2008) (the "CIA"), concluded that there are no specific ongoing traditional cultural practices being exercised at the OBV Site. Therefore, the development of 'O'oma Beachside Village is not expected to have an adverse impact on the current exercise of traditional cultural practices. Although 'O'oma Beachside Village, as a coastal development, has the potential to impact coastal-related subsistence and recreational activities, the development plan for 'O'oma Beachside Village will enhance coastal access, and therefore should have either no impact, or a positive impact, on such cultural practices.

All residences at 'O'oma Beachside Village will be set back a minimum of 1,100 feet from the shoreline, which will encourage traditional and cultural uses at the shoreline area. In addition, the 18 acre Shoreline Park will provide greater public access to the coastline, which should enhance the opportunities to engage in traditional cultural practices such as fishing and gathering. The known archaeological and cultural sites within the OBV Site are located within the Coastal Preserve, which will remain in the Conservation District and will be left undisturbed.

Preservation and protection of the historic Mamalahoa Trail is incorporated into the design of 'O'oma Beachside Village. Petitioner will provide a 50-foot buffer on both sides of the Mamalahoa Trail, creating a 110-foot wide open space corridor that will span the length of

'O'oma Beachside Village. Petitioner will also propose a 60-foot building setback on either side of the Mamalahoa Trail buffers.

Throughout the planning process for 'O'oma Beachside Village, Petitioner and its representatives have consulted with lineal and cultural descendants to discuss the proposed development and measures to minimize potentially adverse impacts arising from the increased use of the shoreline area at 'O'oma Beachside Village. Throughout the development of 'O'oma Beachside Village, Petitioner will continue to work closely with the appropriate agencies and the community, including recognized descendants of any native Hawaiian burials identified within the OBV Site, to address issues of concern. Petitioner will also follow the recommendation in the CIA to explore conservation of the *pilo* (*Capparis sandwichiana*) habitat within the OBV Site, in the event that cultural practitioners may wish to make use of this plant for traditional practices.

5. **Historic Resources**

Development of 'O'oma Beachside Village should not result in adverse impacts to historic resources in the area. Petitioner will comply with all State and County laws and rules regarding the preservation of archaeological and historic sites, and ground altering activities at the OBV Site will not begin until the State Historic Preservation Department ("**SHPD**") has approved interim and long-term preservation plans and burial treatment plans for all sites located within the OBV Site.

Over the years, the OBV Site has been the subject of numerous archaeological surveys. However, in light of the sensitive nature of archaeological resources in the vicinity, and in response to the recent inadvertent discoveries at The Shores at Kohanaiki, Petitioner had the entire OBV Site re-examined in order to assess the condition of the previously identified sites, and to identify any sites that may not have been documented in prior surveys. *See* FEIS

Appendix E (*Archaeological Inventory Survey Update for the 'O'oma Beachside Village Project Area, June 2007, revised October 2008*) (the "**Inventory Survey Update**"). SHPD approved the Inventory Survey Update by letter dated December 17, 2008, a copy of which is attached hereto as Petitioner's **Exhibit 15**.

The SHPD-approved Inventory Survey Update confirmed the status of 13 of the previously identified 15 sites.²⁴ The Inventory Survey Update also identified 2 additional burial sites²⁵ that had not been previously documented. In total, the approved Inventory Survey Update recommended the preparation of a burial treatment plan and monitoring plan for the 3 burial sites, and the preparation of an interim and long-term preservation plan for the other 12 sites. With these measures in place, it is expected that the development of 'O'oma Beachside Village will not result in any negative impacts on historic resources in the area.

6. **Scenic Resources**

Most of the coastline fronting the OBV Site is not currently visible from Queen Kaahumanu Highway. Views to the shoreline are obscured by the existing terrain and vegetation. Therefore, although the development of 'O'oma Beachside Village will change the OBV Site from vacant land to a built environment, it will not alter the visibility of the shoreline from that portion of Queen Kaahumanu Highway fronting the OBV Site. The development of 'O'oma Beachside Village will not impact existing views of Hualalai from Queen Kaahumanu Highway. *See* FEIS Figure 22 for an analysis of the visual impacts from the development of 'O'oma Beachside Village.

²⁴ The SHPD-approved Inventory Survey Update determined that Site 18774 is outside of the OBV Site and is entirely within the property boundaries of The Shores at Kohanaiki. The approved Inventory Survey Update also concluded that Site 18831 is not significant under the criteria set forth in HAR § 13-284-6. Site 18831 was previously identified as a footpath, but upon closer examination, it was determined that Site 18831 is actually a collection and sorting location for modern quarrying activities associated with rock wall building.

²⁵ Sites 25932 and 26678.

7. **Flora and Fauna Resources.**

The botanical survey of the OBV Site concluded that no threatened or endangered plant species would be impacted by development of 'O'oma Beachside Village, as no such species are located within the OBV Site. See Appendix C of the FEIS (*Botanical Survey TMKs 7-3-09: 04 and 22, December 2006*) (the "**Botanical Survey**"). The Botanical Survey identified a greater diversity of plant species located within the makai portion of the OBV Site, including the presence of *pilo*, which is considered a species of concern by the U.S. Fish and Wildlife Service ("**USF&WS**").

The Botanical Survey concluded that the development of 'O'oma Beachside Village should not negatively impact flora resources in the area, as the establishment of the 57-acre Coastal Preserve will protect the existing plant species diversity. Petitioner will follow the recommendation in the Botanical Survey to include native plant species in the landscaping of 'O'oma Beachside Village. Petitioner will also landscape with drought tolerant hardy plants and grasses to minimize the need to irrigation.

No endangered or threatened avifaunal, feral mammal or invertebrate species are located within the OBV Site. See FEIS Appendix D (*Avifaunal and Feral Mammal Survey for the Proposed O'oma, Seaside Village, 27 November 2006 and Survey of Terrestrial Invertebrate Resources at 'O'oma, North Kona, Hawaii Island, November 11, 2008*).

Five (5) species of avifauna were seen at the OBV Site: (i) the Pacific Golden-Plover or *Kolea (Pluvialis fulva)*; (ii) the Wandering Tattler or *Ulili (Heteroscelus incanus)*; (iii) the Ruddy Turnstone or *Akekeke (Arenaria interprese)*; (iv) the Sanderling or *Hunakai (Calidris alba)*; and (v) the House Finch (*Carpodacus mexicanus*). Bats are sometimes seen along the Kona coast, but no bats were detected during an evening search using an ultrasound detector, nor where any bats detected during a 2002 survey at the OBV Site.

The Small Indian Mongoose (*Herpestes auropunctatus*), and the feral cat (*Felis catus*) were seen at the OBV Site, but no feral goats (*Capra hircus*) were seen. A native bee colony (*Hylaeus sp*), as well as non-native and indigenous dragonflies, were found in the shoreline area. The anchialine pond in the shoreline area contains native preying shrimp (*Metabetaeus Iohena*).

The development of 'O'oma Beachside Village will not result in any negative impacts to the avifauna, feral mammal or invertebrate species in the area. The Coastal Preserve and Shoreline Park, including the anchialine pond within the Coastal Preserve, will continue to provide natural areas for the species currently found at the OBV Site. Petitioner will take care to landscape 'O'oma Beachside Village so as not to attract new bird species to the area in order to avoid encouraging new bird species that could interfere with aircraft flight to come to the area. In addition, Petitioner will follow the recommendations of the USF&WS with respect to discouraging the feeding of feral animals and implementing predator control measures at 'O'oma Beachside Village.

8. **Groundwater Resources**

The development of 'O'oma Beachside Village is not expected to have any significant effect on groundwater resources in the area. Potential impacts to groundwater may arise from three sources: (i) disposal of saltwater concentrate from the planned reverse osmosis desalination plant ("**RO Plant**"); (ii) disposal of excess effluent treated to the R-1 standard at Petitioner's private, on-site wastewater treatment plant; and (iii) stormwater collection and disposal. However, the development of 'O'oma Beachside Village is not expected to have a significant impact on area groundwater resources. See FEIS Appendix A (*Assessment of the Potential Impact on Water Resources of the Proposed O'oma Beachside Village in North Kona, Hawaii, April 2008, Revised December 2008*) (the "**Groundwater Assessment**").

Petitioner intends to obtain potable and irrigation water for 'O'oma Beachside Village from a reverse osmosis desalination plant ("**RO Plant**"),²⁶ located within the OBV Site or elsewhere.²⁷ The Water Board of the County of Hawaii has expressed its support for the development of the RO Plant and dedication of the RO Plant and related facilities to the Department of Water Supply ("**DWS**"). *See* Water Board Resolution No. 08-08, a copy of which is provided as Appendix N to the FEIS.

The Groundwater Assessment assumes that the feedwater for the RO Plant will come from NELHA (either from the deep seawater, surface seawater, or seawater supply), or groundwater production wells. The RO concentrate (the reject water from the RO Plant) will be disposed of in 2 injection wells, each drilled to a depth that is sufficient such that the RO concentrate will be more dense than the groundwater at the point of entry.

Additional irrigation water will be derived from effluent treated to the R-1 standard at the on-site private, wastewater treatment plant. *See also* Section XIV.3 (Wastewater), *infra*. Excess R-1 quality effluent, which will be used as irrigation purposes at 'O'oma Beachside Village, will also be disposed of in injection wells. Some stormwater at the OBV Site will continue to percolate directly into the ground, but Petitioner will also create a system of catch basins and drain lines to carry the stormwater to drywells located throughout the OBV Site.

The natural rate of groundwater flow beneath the OBV Site is estimated to be 1.5 million gallons a day ("**MGD**"). Post development, the groundwater flow is expected to increase 0.087 MGD, which is an amount too small to be detected by water level monitoring. *See* Groundwater

²⁶ If the RO Plant proves infeasible, Petitioner shall explore other sources of water, including connection to the County of Hawaii potable water system, partnership with private water system owners, or utilization of independent wells.

²⁷ Petitioner intends to construct the RO Plant at one of the following locations: (i) within the OBV Site or directly mauka, at TMK (3) 7-3-009: 005 (por.); (ii) the existing DWS Keahole Tank site, located at TMK (3) 7-3-010: 043; (iii) on, or in the vicinity of, the land for the future 1.0 million gallon Palamanui reservoir site, located at TMK (3) 7-3-010: 044 (por.); or (iv) on other land mauka of the OBV Site.

Assessment at 17. The anticipated increases to the groundwater levels of nitrogen, from 19.8 lbs/day to 20.99 lbs/day, and phosphorus, from 1.67 lbs/day to 1.738 lbs/day, as result of the development of 'O'oma Beachside Village, are well within the natural variabilities of these nutrients within the groundwater.

9. **Marine Resources**

The development of 'O'oma Beachside Village is not expected to have any significant effect on area marine resources (water chemistry, coral and fish populations, Hawaiian Monk Seals) in the area. See FEIS Appendix B (*Marine Environmental Assessment, 'O'oma Beachside Village, North Kona, Hawaii, May 2008; Assessment of Marine Water Chemistry, 'O'oma Beachside Village, North Kona, Hawaii, April 2008*) (the "**Marine Assessment**"). This conclusion is based on the understanding that Petitioner does not intend to alter the existing shoreline to develop 'O'oma Beachside Village. In addition, the minor anticipated changes to the groundwater chemistry are not expected to result in secondary impacts to the marine environment.

XII. ASSESSMENT OF ECONOMIC IMPACTS - HAR § 15-15-50(C)(13)

§ 15-15-50(c)(13): Economic impacts of the proposed reclassification, use, or development including, without limitation, the provisions of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county and State;

The development of 'O'oma Beachside Village should result in significant, on-going economic and fiscal benefits for County residents, as well as State and County governments. Positive fiscal impacts will come from new jobs, additional residents, and an increase in the income and real property tax bases. None of the Petition Area, nor Parcel 22, is in agricultural production or viewed as suitable for agricultural uses. Therefore, the development of 'O'oma Beachside Village is not expected to impact agricultural production.

'O'oma Beachside Village is estimated to directly support approximately 140 full-time equivalent ("FTE")²⁸ jobs per year over the approximately 20-year planning, build-out and sale period. Including indirect and induced impacts Statewide, 'O'oma Beachside Village could be expected to support up to 330 total (direct, indirect and induced) FTE positions per year. These employment figures are estimated to support some \$18.9 Million per year (in 2007 dollars) in development related earnings, or about \$57,000 per each FTE position.

Upon completion of development activities, 'O'oma Beachside Village is expected to support approximately 480, direct, permanent FTE jobs. Most of these positions will be at the commercial, retail and office facilities planned to be developed at 'O'oma Beachside Village. While it is anticipated that many of these 480 FTE jobs would exist elsewhere on the Island, irrespective of the development of 'O'oma Beachside Village, it is expected that 90 direct, permanent FTE jobs will result directly from the development of 'O'oma Beachside Village. Taking into account the indirect and induced impacts of this economic activity, the State could see some 200 total (meaning direct, indirect and induced) net additional FTE positions at completion of 'O'oma Beachside Village and beyond. This net additional total employment is estimated to support approximately \$10.6 Million per year (in 2007 dollars) in operations-related earnings on an ongoing basis, or about \$53,000 per each FTE position.

The development of 'O'oma Beachside Village will generate new County government revenues, primarily in the form of real property taxes on the residences and commercial facilities, but also from taxes and other revenues from individuals who move to the County in order to live at 'O'oma Beachside Village e.g., Big Island natives returning home. Tax revenues from non-real property sources include fuel taxes, licenses, permits and various charges for County

²⁸ As used herein, a FTE job is defined as 2,080 hours of employment per year; 2 half-time jobs represent 1 FTE job.

services. The County will incur additional expenses in supporting the new residents who move into 'O'oma Beachside Village. Subtracting the net operating expenses from the new operating revenues, 'O'oma Beachside Village is estimated to support approximately \$2.7 Million (in 2007 dollars) per year in net additional County revenues.²⁹

The development of 'O'oma Beachside Village will generate new State government revenues and expenses. The main source of the revenues will be general excise taxes and individual income taxes related to development expenditures. During the first half of development, when major infrastructure costs are anticipated to be incurred, 'O'oma Beachside Village is projected to support approximately \$1.9 Million per year in net additional State government operating revenues, which is then expected to be reduced to approximately \$1.5 Million per year as the development nears completion.³⁰

XIII. ASSESSMENT OF NEED - HAR § 15-15-50(C)(15)

§ 15-15-50(c)(15): An assessment of need for the reclassification based upon the relationship between the use or development proposed and other projects existing or proposed for the area and consideration of other similarly designated land in the area;

Reclassification of the Petition Area to the Urban District is necessary in order for Petitioner to develop 'O'oma Beachside Village. The need for the residential and commercial-mixed-use product to be developed at 'O'oma Beachside Village has been shown in the OBV Market Assessment. The concept behind 'O'oma Beachside Village began to be formulated in 2005, and evolved over time as Petitioner and its representatives met with community members

²⁹ It is estimated that the County spends approximately \$1,490 per year, to support government operations on behalf of each FTE resident.

³⁰ It is estimated that the State spends approximately \$4,600 per year to support government operations on behalf of each FTE resident.

and then-Mayor, Harry Kim, to discuss a the development of a community unlike anything seen on the resort-dominated Kona coast.³¹

Petitioner is not the first developer interested in developing the OBV Site. In 1986, Kahala Capital Corporation ("KCC") sought to reclassify the Petition Area in order to develop a project consisting of a 600 room hotel, 300 condominium units, 18-hole golf course, ocean theme park and ocean science center.³² The Commission denied that request, in part because KCC failed to substantiate a need for the proposed hotel units.

KCC sought Commission reclassification again in 1991.³³ The 1991 plan for the OBV site included a Marine Exploratorium, Water Recreational Park, Professional Conference Center, 18-hole golf course and clubhouse, 50 - 60 room inn, 70 - 100 residential lots, 130 - 230 condominiums, 35,000 sq ft of commercial space, and a first class, oceanfront, 550-room hotel. The Commission denied the request for reclassification, in part based on KCC's failure to substantiate the need for such a project. The Commission also expressed concern over the federal grand jury indictment on fraud charges of Norbert A. Schlei, the chairman of KCC, and the effects of that indictment on KCC's ability to develop the project.

More recently, Clifto's Kona Coast sought to rezone Urban District Parcel 22 from Industrial to Project District to allow for the development of a 250 room hotel, 390 condominiums and 392,000 sq. ft of commercial space. Although the rezoning received County

³¹ On August 3, 2009, Petitioner's representatives met with the 'O'oma Beachside Village Citizens' Advisory Group and members of the Hui O Na Kupuna to discuss the upcoming land use entitlements process. Representatives also met with members of the Surfrider Foundation to discuss sound environmental approaches for water quality monitoring.

³² LUC Docket A86-602, Findings of Fact, Conclusions of Law and Decision and Order filed on September 18, 1987.

³³ LUC Docket A91-666, Findings of Fact, Conclusions of Law and Decision and Order filed on September 22, 1993.

Council approval, Mayor Kim vetoed the rezoning bill because occupancy of the proposed development was not tied infrastructure improvements.

In contrast to the Cliffo's Kona Coast project, 'O'oma Beachside Village has former Mayor Kim's full appreciation and support. In a September 2, 2008 letter Mayor Kim stated his appreciation of Petitioner's work with the County and the community in creating the development proposal for 'O'oma Beachside Village. "I can honestly say that this developer has worked with the community to make sure the proposal is consistent with what is included in the Kona CDP." See H. Kim letter, copy attached hereto as Petitioner's **Exhibit 16** and incorporated herein by reference.

Mayor Kim expressed his support for 'O'oma Beachside Village, as a project that would incorporate the goals of community collaboration in the planning process, energy efficiency, provision of affordable housing and open space, as well as consistency with the Kona CDP. "In summary, the County has looked for developers who truly reflected an attitude of wanting to build something compatible with the community. I truly believe that 'O'oma committed to that goal and has confirmed to work toward achieving that goal in the development of this property." *Id.*

The development of 'O'oma Beachside Village will meet demands for both market and affordable housing in West Hawaii. As an urban in-fill development, master planned with the concepts of Traditional Neighborhood Design, 'O'oma Beachside Village will provide Hawaii residents with opportunities to live and work within a shoreline community designed to foster a sense of community that works in harmony with the existing natural resources. The Petition Area must be reclassified to the Urban District so that, together with Urban District Parcel 22, it may be developed as 'O'oma Beachside Village.

XIV. AVAILABILITY OF PUBLIC SERVICES AND FACILITIES - HAR § 15-15-50(C)(11)

§ 15-15-50(c)(11): Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or reclassification;

The development of 'O'oma Beachside Village will require improvements to certain existing public services.

1. **Schools**

There are five (5) State of Hawaii Department of Education (the "**DOE**") public schools in the vicinity of 'O'oma Beachside Village (three (3) elementary, one (1) intermediate and one (1) high school), and three (3) public charter schools.³⁴ The development of 'O'oma Beachside Village should result in an increase in enrollments at area schools.

Petitioner has met with representatives from the DOE to discuss the educational "fair share" assessment for 'O'oma Beachside Village and will be entering an agreement with the DOE to ensure that all applicable requirements are met. In conjunction with its DOE meetings, Petitioner has designated three (3) acres on Parcel 22 for a school site.

2. **Parks**

Numerous parks are located in the vicinity of 'O'oma Beachside Village. To the northwest is Wawaloli Beach Park, a white sand beach with children's swimming area and large tide pool, picnic tables, barbecue pits, showers and other public facilities. Pole fishing along the cliffs at the southern shore is also available.

³⁴ Innovations Public Charter School serves grades 1 - 6; Kanu o ka 'Aina New Century Public Charter School services grades K - 12; and West Hawaii Explorations Academy Public Charter School services grades 7 - 12.

Kekaha Kai State Park (formerly known as the Kona Coast State Park), is a 1,700 acre park and wildlife sanctuary located approximately four (4) miles north of 'O'oma Beachside Village. The Park offers only minimal facilities, such as portable toilets and an unpaved parking area. There are more public facilities located at the northern, Kua Bay, section of the Park.

South of 'O'oma Beachside Village, at The Shores at Kohanaiki, there are four (4) open campground areas, trails and a popular surf spot known as Pine Trees. South of The Shores at Kohanaiki, approximately 0.5 miles south of 'O'oma Beachside Village, is the National Park, covering approximately 1,160 acres and containing extensive natural and cultural resources. Even further south (approximately three (3) miles from 'O'oma Beachside Village) is the Old Kona Airport State Recreation Area, an 84 acre coastal park with sites for picnicking, sunbathing, fishing, wading, tidepooling and surfing. There is also a gymnasium with basketball courts, five (5) baseball fields, two (2) soccer fields, two (2) football fields and four (4) tennis courts.

3. Wastewater

Based on current projections on capacity, Petitioner does not anticipate utilizing the County's wastewater treatment facility at Kealakehe. Instead, Petitioner intends to construct a private wastewater treatment plant at 'O'oma Beachside Village (the "**Private WWTP**"). However, if additional capacity is made available at the County facility within a reasonable timeframe prior to Petitioner's development of 'O'oma Beachside Village, Petitioner will work with the County on the possibility of connecting the Kealakehe facility.

Should Petitioner proceed with the construction of the Private WWTP, it intends to construct a system utilizing a membrane bioreactor in order to produce R-1 quality effluent, which could be used for irrigation purposes within 'O'oma Beachside Village. In addition to the water savings derived from the use of R-1 water, and additional advantage to the construction of

the Private WWTP is that plants using the membrane bioreactor technology can be built with a smaller footprint than other wastewater plants. Use of the R-1 effluent from a Private WWTP is not expected to have any adverse effect on the groundwater or other natural resources in the area.

See Section XI.8 (Groundwater Resources) supra.

4. **Solid Waste**

The existing landfill at Pu'uanahulu has adequate capacity to support 'O'oma Beachside Village. In addition, Petitioner will take steps to reduce the amount of solid waste generated during construction, by implementing a waste reduction and recycling program to reduce the overall amount of construction waste. It is anticipated that green waste from grubbing will either be used on site as mulch, or taken to a green recycling center, such as the green waste operation near the Kealakehe Solid Waste Transfer Station, located approximately 3.75 miles from 'O'oma Beachside Village.

Provisions for recycling will be included in the development of 'O'oma Beachside Village. Collection systems and spaces for recycling bins will be provided, and architects for the commercial buildings will be required to set aside space for individual dumpsters so that the building occupants may separate recyclable materials. Petitioner will also work with the County on developing feasible alternatives to residential curbside waste collection.

5. **Drainage**

Once developed, it is anticipated that approximately 36% of the OBV Site will consist of impervious surface, with the remainder either landscaped and irrigated, or left in a natural state. Petitioner will address the anticipated increase in stormwater by constructing a stormwater drainage system consisting of catch basins in the roadways, drain lines and drywells distributed throughout developed areas of 'O'oma Beachside Village. All drainage improvements will be

constructed in accordance with the applicable State Department of Health and County Department of Public Works requirements.

6. **Water**

As discussed in Section XI.8 (Groundwater Resources) *supra*, Petitioner intends to obtain potable and irrigation water for 'O'oma Beachside Village through the development of a reverse osmosis desalinization plant. The Water Board of the County of Hawaii has expressed its support for the development of the RO Plant, and for the dedication of the RO Plant and related facilities to the DWS. Additional irrigation water is planned to be obtained from the use of R-1 quality effluent processed at the Private WWTP.

Development of the RO Plant and Private WWTP should make 'O'oma Beachside Village self-sufficient in terms of potable and irrigation water needs, which should have a positive impact on the availability of water within the region. The proposed dedication of the RO Plant to the DWS may further enhance the availability and adequacy of the water system in the region.

7. **Transportation Systems**

One objective in the development of 'O'oma Beachside Village is to provide homes that are close to workplaces, thereby decreasing the need for long automobile commutes between home to work. Another objective is to encourage residents to walk or bike to locations within 'O'oma Beachside Village, rather than relying on their cars to travel within the community. The traditional neighborhood design planning strategy used in the design of 'O'oma Beachside Village should encourage residents to replace auto-dependence with walking and biking as a way of life. One result of this planning strategy is anticipated to be reduction in the number and use of cars in comparison to a typical, single-purpose, residential developments. However, to be conservative, Petitioner's Traffic Impact Analysis Report ("**TIAR**") did not take the anticipated reductions from the normal flow of traffic into account when analyzing anticipated impacts from

the development of 'O'oma Beachside Village. *See* FEIS Appendix G (*'O'oma Beachside Village Traffic Impact Analysis Report, TMK (3) 7-3-9: 004 and 022, May 7, 2008*).

In light of the current widening of Queen Kaahumanu Highway, the planned parallel frontage road, and the development of the mauka roadway network, including the Ane Keohokalole Mid-Level Highway, the development of 'O'oma Beachside Village should not require significant, additional improvements to existing transportation systems.

The TIAR provided traffic forecasts for three (3) Queen Kaahumanu Highway intersections; Ka'iminani Drive, Huliko'a Drive and Hina Lani Street. The Ka'imanani Drive intersection is expected to operate at an acceptable level of service ("**LOS**"), e.g., LOS A - D, through 2029 with the addition of double left turn lanes on the Ka'iminani Drive westbound approach by 2015, and double left turn lanes on the Queen Kaahumanu Highway southbound approach, and double right turn lanes on the Queen Kaahumanu Highway northbound approach by 2020.

It is anticipated that the Huliko'a Drive intersection will need to be improved with a double left turn lane on the northbound Queen Kaahumanu Highway approach by 2015, and double left turn lanes on the Huliko'a Drive westbound approach by 2029, to maintain an acceptable LOS.

The development of 'O'oma Beachside Village is not expected to alter the LOS at the Hina Lani Street/Queen Kaahumanu Highway intersection until after 2020. By 2029, it is anticipated that a double left turn lane on the southbound Queen Kaahumanu Highway approach would bring the intersection into LOS C.

8. **Public Utilities**

Electrical service in the vicinity of 'O'oma Beachside Village is provided by Hawaii Electric Light Company, Inc. ("**HELCO**"). Petitioner intends to incorporate energy conservation

measures in the development of 'O'oma Beachside Village, such as the standards and guidelines promulgated by the United States Environmental Protection Agency ENERGY STAR Program. However, without any energy reduction measures, at full build out 'O'oma Beachside Village is expected to create an annual electrical energy demand of approximately 71 million kilowatt-hours. HELCO will need to construct a new substation to serve this demand.

Petitioner shall implement, to the extent feasible and practicable, measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawaii, the U.S. Green Building Council, the Hawaii Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of 'O'oma Beachside Village. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowner.

It is anticipated that telephone service will be provided by Hawaiian Telcom. In order to provide the service, Hawaiian Telecom will construct a new "pair-gain" at 'O'oma Beachside Village.³⁵ There are no telephone ductlines running across Queen Kaahumanu Highway near the OBV Site, so new ductlines will be added at the Highway intersection. Telephone lines within 'O'oma Beachside Village will be installed underground.

It is anticipated that cable services will be provided by Oceanic/Time-Warner Cable. To provide the cable service, Oceanic/Time-Warner Cable will require several nodes (a free-standing cabinet) to be located within 'O'oma Beachside Village, and ductlines will have to be installed across Queen Kaahumanu Highway. Cable lines will be installed underground within 'O'oma Beachside Village.

³⁵ A pair-gain is a packaged, self-contained equipment rack fed with fiber optic lines.

9. **Police and Fire Protection and Medical Services**

The development of 'O'oma Beachside Village should not require an expansion of existing service areas for police and fire protection, but may cause a need for additional personnel. The County of Hawaii Police Department's Kealakehe Station is approximately 2 miles south of 'O'oma Beachside Village. Police substations are located in Keauhou and Captain Cook, and a mini-substation is in Kailua Village. The Kailua-Kona Fire Station is located approximately 4 miles south of 'O'oma Beachside Village. In addition to fire equipment, the Station is equipped with a rescue boat and Emergency Medical Service ambulance.

The closest health care facility is Kona Community Hospital, located approximately 17 miles southeast, on Haukapila Street in Kealakekua. Other private medical and dental service providers, including Kaiser Permanente, are located in the Kailua-Kona region. It is anticipated that some medical services may be provided within the Mauka Mixed-Use Village.

XV. **LOW INCOME HOUSING - HAR § 15-15-50(C)(14)**

§ 15-15-50(c)(14): A description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups;

Petitioner will provide affordable housing units as required by the County of Hawaii. Based on current guidelines, approximately 20% of the residential units at 'O'oma Beachside Village will be provided as affordable units under Chapter 11 of the Haw. Ct. Code.

XVI. **CONFORMITY TO GOALS, OBJECTIVES AND POLICIES OF THE HAWAII STATE PLAN, PRIORITY GUIDELINES AND FUNCTIONAL PLANS - HAR § 15-15-50 (C)(16)**

§ 15-15-50 (c)(16): An assessment of conformity of the reclassification to applicable goals, objectives, and policies of the Hawaii state plan, chapter 226, HRS, and applicable priority guidelines and functional plan policies.

The proposed reclassification is consistent with the goals, objectives and policies of the Hawaii State Planning Act, HRS Chapter 226 ("**HSP**"). The three (3) themes underlying the HSP are: (1) individual and family self-sufficiency; (2) social and economic mobility; and (3) community or social well-being. *See* HRS § 226-3. The HSP also provides numerous State goals, and specific objectives and policies to achieve those goals. The State goals include a strong, viable, stable and diverse economy, the development of physical environments that are beautiful, clean and unique, and that enhance the mental and physical well-being of the residents, and the physical, social, and economic well-being for the people of Hawaii that nourishes a sense of community responsibility and participation. *See* HRS § 226-4.

The development of 'O'oma Beachside Village will further these goals. During the development and sales stages, 'O'oma Beachside Village will provide direct employment opportunities in the fields of construction, land-use related professional services, sales, and related services. Once developed, as a mixed-use, residential development located near Kailua-Kona, KOA and other active business areas, 'O'oma Beachside Village will provide business and employment opportunities on-site.

The design of 'O'oma Beachside Village as a pedestrian friendly, interconnected, shoreline community with over 100 acres of open space, will further the desired physical environment goals for the State. Protection of the archaeological sites within the Coastal Preserve, and Mamalahoa Trail and buffer, will also further the State's goals with respect to sound physical and social environments.

A point by point analysis of O'oma Beachside Village's conformance with the numerous objectives, policies, priority guidelines and functional plans of the HSP, is provided in Chapter 5

of the Final EIS. A more targeted analysis of the project's conformance with specific HSP objectives and policies is provided below.

1. **HRS § 226-5 - Population**

Among the State's populations policies that will be supported by the development of 'O'oma Beachside Village is to:

- (1) Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.*
- (7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.*

As an urban in-fill development, 'O'oma Beachside Village will guide population growth toward areas of the County that are already developed, thereby encouraging population growth near existing and future employment opportunities.

2. **HRS § 226-6 - Economy In General**

Among the State's policies for achieving its economic objectives, are the following:

- (6) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.*
- (14) Promote and protect intangible resources in Hawaii, such as scenic beauty and the aloha spirit, which are vital to a healthy economy*

The development of 'O'oma Beachside Village will encourage the economy related objectives and policies of the HSP. Both during development, and upon full build-out, 'O'oma Beachside Village will generate significant economic benefits to the State and County through income and property taxes. The construction of residential units at 'O'oma Beachside Village is expected to help meet the demand for housing that is centrally located and offered at a wide range of prices. As a master planned, shoreline, residential, mixed-use community with

considerable amounts of open space, 'O'oma Beachside Village will enhance the natural scenic beauty of the area. The Traditional Neighborhood Design planning concepts within the 3 Villages, and the proposed school site, will encourage the aloha spirit to flourish within 'O'oma Beachside Village.

3. **HRS § 226-11 - Physical Environment (Land-Based, Shoreline, and Marine Resources)**

Among the State's policies for achieving the objective of the prudent use of Hawaii's land-based, shoreline, and marine resources, are the following:

(a)(2) Effective protection of Hawaii's unique and fragile environmental resources

(b)(1) Exercise an overall conservation ethic in the use of Hawaii's natural resources.

(b)(9) Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes

The physical environment objective and policies of the HSP will be promoted through the development of 'O'oma Beachside Village. Petitioner's development plan for 'O'oma Beachside Village includes retaining approximately 38 acres in the Conservation District, to be used as part of the 57 acre Coastal Preserve, which also contains a dense concentration of *pilo*. The 18 acre Shoreline Park is intended to connect to the shoreline parks to be provided at NELHA and The Shores at Kohanaiki. Outside of the Shoreline Park, all residences within 'O'oma Beachside Village will be setback at least 1,100 feet from the shoreline, providing ample protection of the marine-based natural resources within the OBV Site.

4. **HRS § 226-12 - Physical Environment (Scenic, Natural Beauty and Historic Resources)**

Among the State's policies for achieving the objective of the enhancement of Hawaii's scenic assets, natural beauty, and multi-cultural/historical resources, is to "Protect those special

areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage." HRS § 226-12(b)(4).

Petitioner has already demonstrated a commitment to promoting the historic resources objectives and policies. As described in Section XI.4 (Cultural Resources) and Section XI.5 (Historic Resources), *supra*, Petitioner had an archaeological survey of the entire OBV Site prepared, which has been accepted by SHPD. Petitioner also had a cultural impact assessment prepared in order to become familiar with cultural practices conducted at the OBV Site. In developing 'O'oma Beachside Village, Petitioner will conform to all State and County regulations regarding the preservation of historic sites and appropriate treatment of burials within the OBV Site.

5. **HRS § 226-13 - Physical Environment (Land, Air and Water Quality)**

Among the State's policies for achieving the objectives of maintaining and improving Hawaii's land, air and water resources, and increasing the public's awareness of Hawaii's environmental resources, is the policy to "Encourage urban developments in close proximity to existing services and facilities." The policies supported by the development of 'O'oma Beachside Village include the following:

(b)(2) Promote the proper management of Hawaii's land and water resources.

(b)(3) Promote effective measures to achieve desired quality in Hawaii's surface, ground, and coastal waters.

(b)(7) Encourage urban developments in close proximity to existing services and facilities

Petitioner's preferred alternative for the development of a potable water source for 'O'oma Beachside Village is desalinization, which will not deplete the existing groundwater resources. In addition, the proposed Private WWTP is planned to produce R-1 quality water for reuse as irrigation water within 'O'oma Beachside Village. These utility systems will improve the quality

of water and land resources. As an urban in-fill development located within the Kona UA, 'O'oma Beachside Village will support the Objectives and Policies of HSP.

6. **HRS § 226-15 - Facility Systems - Solid and Liquid Wastes**

Among the State's objectives related to facility systems is to allow for the "Provision of adequate sewerage facilities for physical and economic activities that alleviate problems in housing, employment, mobility, and other areas." HRS § 226-15(a)(2). The development of 'O'oma Beachside Village is consistent with this objective and the State's policy to "Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic."

The proposed Private WWTP for 'O'oma Beachside Village will encourage these Facility Systems Objectives and Policies. The Private WWTP will have a membrane bioreactor system which will produce R-1 quality effluent. The R-1 effluent will be used for irrigation purposes within 'O'oma Beachside Village, thereby reducing the amount of potable water used within the project.

7. **HRS § 226-16 - Facility Systems - Water**

Development of 'O'oma Beachside Village is consistent with the objective to provide for water "to adequately accommodate domestic, agricultural, commercial, industrial, recreational, and other needs within resource capacities." HRS § 226-16(a). This objective will be supported by the following policies:

(b)(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.

(b)(6) Promote water conservation programs and practices in government, private industry, and the general public to help ensure adequate water to meet long-term needs

Petitioner's preferred alternative for obtaining water for 'O'oma Beachside Village is through the development of a desalinization system and RO Plant. The Water Board of the County of Hawaii has expressed its support for the development of the RO Plant and dedication

of the RO Plant and related facilities to the DWS. Additional water conservation measures proposed are the use of R-1 effluent for irrigation purposes, and landscaping with native and drought tolerant plants and grasses to minimize the need to irrigation.

8. **HRS § 226-19 - Socio - Cultural Advancement - Housing**

The development of 'O'oma Beachside Village supports the following objectives and policies related to Housing.

(a)(2) The orderly development of residential areas sensitive to community needs and other land uses.

(b)(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

(b)(6) Facilitate the use of available vacant, developable, and underutilized urban lands for housing.

'O'oma Beachside Village is located within the Kona UA and primarily designated as Urban Expansion on the LUPAG Map. Reclassification of the Petition Area will allow for the joint development of the vacant, but already urbanized, Parcel 22. A wide range of housing options will be provided at 'O'oma Beachside Village, which will help meet the current housing shortage, and will encourage the objectives and policies of the HSP.

9. **HRS § 226-21 - Socio-Cultural Advancement - Education**

The State's objective with respect to socio-cultural advancement in education is the provision of a variety of educational opportunities to enable individuals to fulfill their needs, responsibilities, and aspirations. *See* HRS § 226-21. Among the policies to achieve this objective is to "Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs." The design of 'O'oma Beachside Village includes a three (3) acre school site. Petitioner also intends to work with the DOE to determine 'O'oma Beachside Village's fair share contribution to the DOE.

10. **HRS § 226-23 - Socio - Cultural Advancement - Leisure**

The State's objectives for socio-cultural advancement in the area of leisure include the "adequate provision of resources to accommodate diverse cultural, artistic, and recreational needs for present and future generations." Among the State's policies to achieve this objective are the following:

(b)(4) Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.

(b)(5) Ensure opportunities for everyone to use and enjoy Hawaii's recreational resources.

'O'oma Beachside Village will enhance the existing recreational resources available to the community. The proposed public Shoreline Park will include a parking area and comfort station, as well as a community pavilion or similar public-use facility. All improvements within the Shoreline Park will be located outside of the shoreline setback area. The trail system that will loop through 'O'oma Beachside Village, connecting the Villages to the shoreline, will provide residents with easy access to the beach as well as opportunities to bike, walk, hike and run through the community.

11. **HRS § 226-25 - Socio - Cultural Advancement - Culture**

The State's objective with respect to socio-cultural advancement in the area of culture is to enhance the "cultural identities, traditions, values, customs, and arts of Hawaii's people." Development of 'O'oma Beachside Village supports this objective, and the State's policy to "Foster increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii." HRS § 226-25(b)(1).

In planning the development of 'O'oma Beachside Village, Petitioner has provided for the preservation and protection of the historic Mamalahoa Trail. All known archaeological and

cultural sites within the OBV Site are located within the Coastal Preserve, which will remain in the Conservation District and will be left undisturbed. Petitioner will continue to work closely with the appropriate agencies and the community, including recognized descendants of any native Hawaiian burials identified within the OBV Site, to address issues of concern.

12. **Assessment of Conformity With Priority Guidelines**

The priority guidelines in the HSP identify five (5) major areas of statewide concern which merit priority attention: economic development, population growth and land resource management, affordable housing, crime and criminal justice, and quality education. *See* HRS § 226-102. The development of 'O'oma Beachside Village conforms to certain of the priority guidelines related to economic development, population growth and land resource management and affordable housing.

a. **HRS § 226-103 - Economic Priority Guidelines**

In terms of economic development, the State's priorities include stimulating economic growth and business expansion and development to provide needed jobs. The development of 'O'oma Beachside Village is in keeping with the following priority guidelines:

(e)(1) Maintain and improve water conservation programs to reduce the overall water consumption rate.

(e)(2) Encourage the improvement of irrigation technology and promote the use of nonpotable water for agricultural and landscaping purposes.

(e)(4) Explore alternative funding sources and approaches to support future water development programs and water system improvements.

The proposed development of a water desalinization system and RO Plant for the provision of potable water at 'O'oma Beachside Village will reduce the area groundwater demand. The Private WWTP and use of R-1 treated effluent for irrigation water within 'O'oma

Beachside Village will reduce the overall water consumption rate is in keeping with the HSP Priority Guidelines.

b. HRS § 226-104 - Population Growth and Land Resources Priority Guidelines -

The population growth and land resources priority guidelines are intended to effect desired Statewide growth and distribution of various resources. The development of 'O'oma Beachside Village is in keeping with the following population growth and land resources priority guidelines:

- (a)(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people.*
- (a)(3) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State.*

Due to its location within the Kona UA, the development of 'O'oma Beachside Village will be consistent with available and planned resources and will reflect the needs and desires of many in the Kona area. The following priority guidelines for regional growth distribution and land resource utilization are also supported by the development of 'O'oma Beachside Village:

- (b)(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.*
- (b)(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.*
- (b)(12) Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.*
- (b)(13) Protect and enhance Hawaii's shoreline, open spaces, and scenic resources.*

'O'oma Beachside Village's location within the Kona UA and the Urban Expansion LUPAG designation indicates that it is within an area with adequate public facilities, some of which Petitioner may contribute to the construction of. As an urban in-fill development located on lands not suitable for agricultural production, 'O'oma Beachside Village will encourage future residential and commercial development away from areas better suited for agricultural production. The ample open space and shoreline setback to be provided at 'O'oma Beachside Village is consistent with the Priority Guidelines under the HSP.

c. HRS § 226-106 - Affordable Housing Priority Guidelines -

The affordable housing priority guidelines include the following:

- (1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.*
- (8) Give higher priority to the provision of quality housing that is affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii.*

The OBV Site contains marginal agricultural soil at best. Therefore, the proposed residential mixed-use development, which will meet all affordable housing requirements under Chapter 11 of the Haw. Ct. Code, will concentrate housing close to existing and future centers of employment, and allow other, better suited, agricultural lands to be used for production. 'O'oma Beachside Village is unique within the Kona coast, as it is designed primarily for full-time Hawaii residents and not for the second homeowner market.

13. Assessment of Conformity with Hawaii State Functional Plans

The HSP called for the creation of functional plans to further define and implement the Statewide goals, objectives, policies set forth under the HSP. See HRS § 226-56. Developed in the late 1980s and early 1990s, the State Functional Plans ("SFP") are the primary guidance tools for implementing the HSP. While the HSP establishes long-term objectives for Hawaii, the SFP

are intended to identify major statewide concerns, define current strategies, identify major relationships and provide strategies for departmental policies, programs, and priorities. The SFP that are relevant to the development of 'O'oma Beachside Village include the State Employment Functional Plan and the State Housing Functional.

a. State Employment Functional Plan

The State Employment Functional Plan's objectives, policies, and implementing actions address four major issue areas: (1) education and preparation services for employment; (2) job placement; (3) quality of work life; and (4) employment planning information and coordination.

The development of 'O'oma Beachside Village will generate development-related jobs, as well as numerous long-term positions. During build out, 'O'oma Beachside Village should create approximately 3,000 person years of work. The total (meaning direct and indirect employment opportunities) number of jobs generated by the development is anticipated to be approximately 7,200 FTE jobs from 2010 - 2030. Once developed, operations-related work at 'O'oma Beachside Village could create a demand for 480 FTE jobs.

b. State Housing Functional Plan

The State Housing Functional Plan identified a need to develop affordable housing throughout the State, and found that the housing needs of lower income households would not be adequately met in future residential developments. Obstacles identified to the development of affordable housing include the high cost of zoned land, high development costs, and the regulatory system and government policies that have created a shortage of urban land zoned for housing. The Housing Functional Plan recommended increased densities in residential developments where feasible.

Petitioner will meet all affordable housing requirements imposed by the County of Hawaii. 'O'oma Beachside Village is within the Urban Area as designated by the Kona CDP.

However, the current Conservation District classification prohibits the proposed development. Reclassification of the Petition Area to the Urban District, to be followed by a County rezoning, will add to the amount of Urban land available for development, and reduce the call for the urbanization of other lands that are outside of the UA.

XVII. ASSESSMENT OF CONFORMITY WITH CZMA - HAR § 15-15-50(C)(17)

§ 15-15-50(c)(17): An assessment of the conformity of the reclassification to objectives and policies of the coastal zone management program, chapter 205A, HRS

Hawaii's Coastal Zone Management Program ("CZM"), found in HRS Chapter 205A, establishes ten (10) objectives with related policies and standards, to guide and regulate public and private uses in the coastal zone management area. The development of 'O'oma Beachside Village is consistent with the Objectives and Policies of the CZM. A point by point analysis of 'O'oma Beachside Village's conformance to the numerous objectives and policies of the CZM is provided in Chapter 5 of the FEIS; a more targeted analysis of certain provisions of the CZM is provided below.

1. **Recreational Resources Objective & Policies - HRS § 205A-2(b)(1), (c)(1)**
 - a. Provide coastal recreational opportunities accessible to the public.
 - b. Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area

The development of 'O'oma Beachside Village will enhance public accessibility to the shoreline through the development of the Shoreline Park, which will increase recreational opportunities within the coastal zone management area. The development of 'O'oma Beachside Village is not expected to have any significant impact on the marine environment or groundwater resources. *See* Marine Assessment and Groundwater Assessment, discussed in Section XI.8 (Groundwater Resources) and Section XI.9 (Marine Resources), *supra*.

2. **Historic Resources Objectives & Policies - HRS § 205A-2(b)(2), (c) (2)**
 - a. Protect, preserve and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture
 - b. Identify and analyze significant archaeological resources

The proposed development conforms to the Historic Resources Objectives and Policies of the CZM. As described in Section XI.5 (Historic Resources) supra, SHPD has approved Petitioner's Inventory Survey Update. Petitioner will comply with all State and County laws regarding the preservation and treatment of archaeological and historic sites in the development of 'O'oma Beachside Village.

3. **Scenic and Open Space Resources Objectives & Policies - HRS § 205A-2(b)(3), (c) (3)**
 - a. Protect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources.
 - b. Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline
 - c. Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources

The proposed development conforms to the Scenic and Open Space Resources Objectives and Policies of the CZM. Over one third of the OBV Site is planned to remain as open space, and all development will be setback at least 1,100 feet from the shoreline. In addition, 'O'oma Beachside Village will be developed in conformity with all County ordinances regarding building heights and setbacks. The design of 'O'oma Beachside Village is intended to foster a Hawaiian sense of place, meaning that it will incorporate appropriate design, materials, colors and landscaping, in keeping with the character of the surrounding areas.

4. **Coastal Ecosystems Objectives & Policies - HRS § 205A-2(b)(4), (c) (4)**
- a. Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.
 - b. Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards

Petitioner will ensure that appropriate erosion control measures are implemented during construction of 'O'oma Beachside Village to prevent significant impacts upon coastal water ecosystems. As discussed in Section XI.8 (Groundwater Resources) and Section XI.9 (Marine Resources), *supra*, the proposed development of a Private WWTP and desalinization RO Plant at the OBV Site is not expected to have any significant impact on coastal ecosystems. Petitioner will adhere to all applicable State water quality standards.

5. **Economic Uses Objectives & Policies - HRS § 205A-2(b)(5), (c) (5)**
- a. Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - b. Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long term growth at such areas, and permit coastal dependent development outside of presently designated areas when: (i) Use of presently designated locations is not feasible; (ii) Adverse environmental effects are minimized; and (iii) The development is important to the State's economy

'O'oma Beachside Village is an urban in fill development identified for future growth, located within the Kona UA and designated as Urban Expansion on the LUPAG Map. Therefore it is an appropriate location for the proposed mixed use development. No adverse economic impacts will be generated as a result of the development of 'O'oma Beachside Village. Rather, the development of 'O'oma Beachside Village will benefit the local economy by creating construction, sales and other development-related employment, which are anticipated to generate approximately \$1.7 Million in State income taxes. At full build out, 'O'oma Beachside Village is

anticipated to provide net revenues to the County and State of \$3.2 Million and \$1.4 Million per year respectively.

6. **Coastal Hazards Objectives & Policies - HRS § 205A-2(b)(6), (c) (6)**
 - a. Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution
 - b. Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint pollution hazards

As previously stated, most of the OBV Site is in FIRM Zone X, meaning that it is outside of the 500-year flood plain and in an area of minimal flooding. The area proposed for residential and commercial development within the OBV Site is not within the Tsunami Evacuation Zone. However, the shoreline area is designated as a Tsunami Evacuation Zone by the County of Hawaii Civil Defense Agency. See Figure 16 of Petitioner's FEIS. The OBV Site is within volcanic hazard Zone 4, on a scale of 1 - 9, with 1 being the highest hazard area. The Zone 4 area includes the entire slope of Hualalai, which has less frequent eruptions than Kilauea and Mauna Loa. Zone 4 indicates that only 5% of the area has been covered in lava since 1800, and less than 15% of the area has been covered in lava in the last 750 years.

7. **Managing Development Objectives & Policies - HRS § 205A-2(b)(7), (c) (7)**
 - a. Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - b. Communicate the potential short and long term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

Through the Commission, Petitioner processed a full Environmental Impact Statement under HRS Chapter 343. The processing of the FEIS and this Petition, as well as the future

Change of Zone and SMA Permit for 'O'oma Beachside Village, involves a comprehensive review by various governmental agencies, as well as public hearings.

8. **Public Participation Objectives & Policies - HRS § 205A-2(b)(8), (c) (8)**
 - a. Stimulate public awareness, education, and participation in coastal management.
 - b. Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal related issues, developments, and government activities
 - c. Organize workshops, policy dialogues and site-specific mediations to respond to coastal issues and conflicts

As noted above, ample opportunity for agency and public review of the proposed development is provided through the various processes that are required before it can proceed. In addition, information regarding the development of 'O'oma Beachside Village has been made available to the public through community meetings and presentations, printed handouts and an informational website.

9. **Beach Protection Objectives & Policies - HRS § 205A-2(b)(9), (c) (9)**
 - a. Protect beaches for public use and recreation.
 - b. Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion
 - c. Minimize the construction of public erosion protection structures seaward of the shoreline.

The development of 'O'oma Beachside Village will enhance public access to the beach through the development of the Shoreline Park and numerous trails within the project that will lead to the Shoreline Park. With the exception of any structures within the Shoreline Park, all structures within 'O'oma Beachside Village will be setback at least 1,100 feet from the shoreline, and the Coastal Preserve will preserve a significant amount of the existing open space at the OBV Site.

10. **Marine Resources Objectives & Policies - HRS § 205A-2(b)(10), (c) (10)**
 - a. Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
 - b. Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial

Both the Groundwater Assessment and Marine Assessment concluded that the development of 'O'oma Beachside Village will not have any adverse effects upon marine and coastal resources.

Based on the foregoing analysis, the development of 'O'oma Beachside Village is consistent with the Objectives and Policies of the CZM.

XVIII. ASSESSMENT OF CONFORMITY WITH COUNTY AND COMMUNITY PLANS - HAR § 15-15-50(C)(18)

§ 15-15-50(c)(18): An assessment of conformity of the reclassification to applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required;

1. County of Hawaii General Plan

The General Plan of the County of Hawaii, amended in 2005, is the policy document for the long range comprehensive development of the County of Hawaii. Fourteen elements to guide the long range comprehensive development within the County of Hawaii are assessed under the General Plan. A point by point analysis is provided in Chapter 5 of the FEIS. A more targeted analysis of certain goals and policies is provided below:

a. Economic Element

(a) Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.

(b) Economic development and improvement shall be in balance with the physical, social, and cultural environments of the island of Hawaii

General Plan § 2.2.

(d) Require a study of significant cultural, social and physical impacts of large developments prior to approval.

General Plan § 2.3.

The development of 'O'oma Beachside Village conforms to the Economic Goals and Policies of the General Plan. The development activity generated during the construction phases of 'O'oma Beachside Village will stimulate the local economy, and the housing opportunities to be provided at 'O'oma Beachside Village are expected to attract new, and returning, residents to the County. Petitioner's FEIS provides a study of significant cultural, social and physical impacts expected from the development of 'O'oma Beachside Village.

b. Energy

(a) Strive towards energy self-sufficiency.

(d) Strive to educate the public on new energy technologies and foster attitudes and activities conducive to energy conservation.

(n) Encourage energy-saving design in the construction of buildings.

General Plan § 3.3.

Petitioner intends to implement to the extent feasible and practicable, measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawaii, the U.S. Green Building Council, the Hawaii Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of the Project and the structures within the Petition Area. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by the individual homeowner.

c. Flooding and Other Natural Hazards

(a) Protect human life.

(f) Maximize soil and water conservation.

General Plan § 5.2.

(g) Development related runoff shall be disposed of in a manner acceptable to the Department of Public Works.

(m) Encourage grassed shoulder and swale roadway design where climate and grade are conducive.

(r) Discourage intensive development in areas of high volcanic hazard.

General Plan § 5.3.

The OBV Site is not susceptible to flooding. Most of the OBV Site is in FIRM Zone X, meaning that it is located outside of the 500-year flood plain and in an area of minimal flooding. The area proposed for residential and commercial development within the OBV Site is not within the Tsunami Evacuation Zone. The OBV Site is within volcanic hazard Zone 4.

Petitioner will utilize grassed shoulder and swale roadway design where feasible, and all development related runoff will be disposed of in a manner acceptable to the Department of Public Works.

d. Historic Sites

Among the goals and policies for historic sites are the following:

(a) Protect, restore, and enhance the sites, buildings, and objects of significant historical and cultural importance to Hawaii.

(b) Appropriate access to significant historic sites, buildings, and objects of public interest should be made available.

General Plan § 6.2.

(c) Require both public and private developers of land to provide historical and archaeological surveys and cultural assessments, where appropriate, prior to the clearing or development of land

when there are indications that the land under consideration has historical significance.

General Plan § 6.3.

SHPD approved the Inventory Survey Update that Petitioner had prepared for the OBV Site. Petitioner will comply with the recommendations (preparation of a burial treatment plan and monitoring plan for the three (3) burial sites, and the preparation of an interim and long-term preservation plan for the other 12 sites) of the Inventory Survey Update in the development of 'O'oma Beachside Village.

e. Natural Beauty

(a)Protect, preserve and enhance the quality of areas endowed with natural beauty, including the quality of coastal scenic resources.

(c)Maximize opportunities for present and future generations to appreciate and enjoy natural and scenic beauty.

General Plan § 7.2.

Increase public pedestrian access opportunities to scenic places and vistas.

General Plan § 7.3.

The development of 'O'oma Beachside Village will increase pedestrian access opportunities to the shoreline by the development of the Shoreline Park and numerous trails within 'O'oma Beachside Village that will lead to the shoreline. These components, and the Coastal Preserve, will enhance opportunities for present and future generations to appreciate and enjoy the natural and scenic beauty around the OBV Site.

f. Natural Resources & Shoreline

(a)Protect and conserve the natural resources from undue exploitation, encroachment and damage.

(b) Provide opportunities for recreational, economic, and educational needs without despoiling or endangering natural resources.

General Plan § 8.2.

(d) Protect the shoreline from the encroachment of man-made improvements and structures.

(s) Establish a system of pedestrian access trails to places of scenic, historic, cultural, natural, or recreational values.

General Plan § 8.3.

As stated above, the development of 'O'oma Beachside Village will enhance access to the shoreline while maintaining existing natural resources within the Coastal Preserve. All structures within 'O'oma Beachside Village (except for those within the Shoreline Park) will be set back at least 1,100 feet from the shoreline. The pedestrian/bike trails within 'O'oma Beachside Village, as well as the preservation of the Mamalahoa Trail, and the development of the Shoreline Park, will provide a network of pedestrian access trails to places of scenic, historic, cultural, natural, and recreational value.

g. Housing Goals & Policies

The development of 'O'oma Beachside Village is consistent with numerous goals and policies related to the housing element of the General Plan. Specific goals and policies supported by the development of 'O'oma Beachside Village include the following:

(a) Attain safe, sanitary and livable housing for the residents of the County of Hawaii.

(c) Maintain a housing supply that allows a variety of choice.

(h) Make affordable housing available in reasonable proximity to employment centers.

General Plan § 9.2.

(y)Aid and encourage the development of a wide variety of housing to achieve a diversity of socio-economic housing mix.

General Plan § 9.3.

'O'oma Beachside Village is planned to include a diversity of housing options at a range of prices. The OBV Site is in reasonable proximity to existing employment centers, and additional employment opportunities will be provided within the 200,000 sq. ft. of commercial space planned for 'O'oma Beachside Village.

h. Recreation

The General Plan's goals for recreation include the provision of various recreational opportunities for residents and visitors, and a diversity of environments for active and passive pursuits. Among the recreation policies that will be furthered by the development of 'O'oma Beachside Village are the following:

(a)Provide a wide variety of recreational opportunities for the residents and visitors of the County.

General Plan § 12.2.

(c)Recreational facilities shall reflect the natural, historic and cultural character of the area.

(o) Develop facilities and safe pathway systems for walking, jogging, and biking activities.

General Plan § 12.3.

Approximately 103 acres (1/3 of the OBV Site) within 'O'oma Beachside Village is planned to remain as open space, which will provide a range of recreational opportunities for residents and visitors. The network of pedestrian/bike trails within 'O'oma Beachside Village will provide opportunities for walking, jogging and biking activities.

i. Land Use

The development of 'O'oma Beachside Village is consistent with the General Plan's land use goals and policies. Specific policies supported by the proposed development include the following:

(a) Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.

General Plan § 14.1.2.

(j) Encourage urban development within existing zoned areas already served by basic infrastructure, or close to such areas, instead of scattered development.

General Plan § 14.1.3.

'O'oma Beachside Village is unique for a coastal development in the Kona area because it is being developed for the primary homeowner market, not the second homeowner, resort-residential market. Therefore, the development of 'O'oma Beachside Village will encourage a social, cultural and physical mix more in keeping with the rest of the County. One (1) parcel within 'O'oma Beachside Village is already within the Urban District and zoned for General Industrial uses. The requested reclassification and subsequent development of 'O'oma Beachside Village is consistent with the LUPAG Map and Kona CDP designations for the area, and will not contribute to scattered urban development.

i. Land Use - Commercial Development

Among the GP's goals for commercial development is to provide commercial development that maximizes convenience for users, and compliments the overall pattern of transportation and land use within the Island and community. The policies that are supported by the development of 'O'oma Beachside Village include the following:

(a) Provide for commercial development that maximizes convenience to users.

General Plan § 14.3.2.

(c) Distribution of commercial areas shall meet the demands of neighborhood, community and regional needs.

(e) Encourage the concentration of commercial uses within and surrounding a central core area.

General Plan § 14.3.3.

Commercial uses for 'O'oma Beachside Village will be convenient for community residents as well as other area residents. The OBV Site is near existing and future commercial cores such as KOA, Kailua-Kona, Kaloko Industrial Park, Kohanaiki Industrial Park, the West Hawaii Civic Center and the resort developments along the Kona Coast.

ii. Land Use – Multiple Residential

Among the General Plan's goals for the multiple residential district is to "provide for suitable living environments that accommodate the physical, social and economic needs of the island residents." General Plan § 14.5.2. North Kona has been identified in the General Plan as an area suitable for additional multiple-family zoned land. See General Plan § 14.5.5.7.2.

Additional policies that will be supported by the development of 'O'oma Beachside Villages include the following:

(a) Appropriately zoned lands shall be allocated as the demand for multiple residential dwellings increases. These areas shall be allocated with respect to places of employment, shopping facilities, educational, recreational and cultural facilities, and public facilities and utilities.

(c) Encourage flexibility in the design of residential sites, buildings and related facilities to achieve a diversity of socio-economic housing mix and innovative means of meeting the market requirements.

General Plan § 14.5.3.

Approximately 530 - 715 multi-family homes are planned for 'O'oma Beachside Village, a portion of which are intended to be provided as affordable housing units under Haw. Ct. Code, Chapter 11. All homes within 'O'oma Beachside Village will be located within an area close to existing and future places of employment, as well as shopping, education, recreational and cultural facilities and public facilities.

j. Land Use - Single-Family Residential

The development of 'O'oma Beachside Village supports the various goals and policies related to single-family residential development, including the goal to "provide single-family residential areas conveniently located to public and private services, shopping, other community activities and convenient access to employment centers that takes natural beauty into consideration." General Plan § 14.6.2(d). The General Plan also calls for the County to "Encourage the concentration of residential structures to avoid strip residential development." General Plan § 14.6.5.7.2.

Approximately 420 - 485 single-family homes and lots will be provided within 'O'oma Beachside Village. The single-family product will include large Estate Lots (ranging from 9,000 - 15,000⁺ sq. ft) for the construction of custom homes, as well as finished homes to be constructed on smaller lots (ranging from 5,000 - 6,000 sq. ft). All homes within 'O'oma Beachside Village will have convenient access to employment centers and will be conveniently located near public and private services, shopping, and other community activities.

k. Land Use - Open Space

(a) Provide and protect open space for the social, environmental, and economic wellbeing of the County of Hawaii and its residents.

General Plan § 14.8.2.

(a) Open space shall reflect and be in keeping with the goals, policies, and standards set forth in the other elements of the General Plan.

General Plan § 14.8.3.

The development of 'O'oma Beachside Village will enhance access to open space resources in the area. Approximately one-third (1/3) of the OBV Site is planned to remain as open space. This will include the Shoreline Park (18 acres), the Coastal Preserve (57 acres), a community park (7 acres), the Mamalahoa Trail and buffer (16 acres) and various smaller neighborhood parks (5 acres).

1. Land Use Pattern Allocation Guide

The development of 'O'oma Beachside Village is consistent with the current LUPAG designations for the Subject Property. Most of the Subject Property is LUPAG designated for Urban Expansion. The Urban Expansion Area allows for a mix of high, medium and low density, along with industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where specific settlement patterns and mixes of uses have not yet been determined. A small portion of the Subject Property is designated as Open.

2. Kona Community Development Plan

The Kona CDP is intended to guide regional development in accordance with the vision articulated by Kona residents. Under the Kona CDP, growth and development is to be accommodated and directed to appropriate areas, such as the Kona UA, in the form of compact, village-style developments. The development of 'O'oma Beachside Village is consistent with the 8 Principles and Elements of the Kona CDP.

a. Principle 1 - Protect Kona's Natural Resources and Culture

All residential and commercial development within 'O'oma Beachside Village will be set back at least 1,100 feet from the shoreline. 'O'oma Beachside Village will include a 57 acre

Coastal Preserve and an 18 acre Shoreline Park, both of which should protect the natural and cultural resources within the OBV Site.

At no cost to the County or the public, approximately one-third of 'O'oma Beachside Village will be open space in the form of parks, preserves and landscape buffers. The 1,100 foot coastal setback is unprecedented for development proposals in the State of Hawaii. The Shoreline Park (with parking, pavilion and restrooms) will connect to neighboring shoreline parks at The Shores at Kohanaiki and NELHA to form a continuous public shoreline recreation area. The development of 'O'oma Beachside Village will not inhibit coastal access; there is protection and preservation of the 'O'oma shoreline and no traditional and customary practices will be impacted.

b. Principle 2 - Provide Connectivity and Transportation Choices

'O'oma Beachside Village will be developed with a network of interconnected streets that will disperse vehicular traffic throughout the community and connect residential areas to the Mauka and Makai Mixed-Use Villages. In addition, 'O'oma Beachside Village has a second circulation system of linked pedestrian/bike trails that will provide another option for traveling through the community (mauka-makai and lateral). The Traditional Neighborhood Design of 'O'oma Beachside Village is aimed at encouraging residents to rely less on cars for transportation and more on walking and bicycling.

c. Principle 3 - Provide Housing Choices

'O'oma Beachside Village will include 950 to 1,200 homes, including affordable homes, multi-family homes, "live-work" units and single-family homes and lots. The residential development will provide a broad range of mixed housing choices with a variety of types and price ranges, i.e., market rate, "gap," workforce, affordable. The Mixed-Use Villages are

intended to provide for the commercial and business needs of the community, and will provide a variety of housing options in close proximity to places of employment.

d. Principle 4 - Provide Recreation Opportunities

Approximately 103 acres within 'O'oma Beachside Village will be left in open space, including the public Shoreline Park, which is envisioned as an extension of the beach parks planned immediately to the north and south of the OBV Site. The Shoreline Park is planned to include parking, a comfort station, and a public-use facilities. Community and neighborhood parks with recreational facilities, such as soccer fields, will also be included as part of 'O'oma Beachside Village.

e. Principle 5 - Direct Future Growth Patterns Toward Compact Villages, Preserving Kona's Rural, Diverse, and Historical Character

'O'oma Beachside Village is located within the Kona UA, and is planned to consist of three (3) Villages: (i) the Residential Village; (ii) the Mauka Mixed-Use Village; and (iii) the Makai Mixed-Use Village. The higher density Mixed-Use Villages will provide a variety of housing choices, as well as shops and places of employment, all within an interconnected, pedestrian and bike friendly setting. As an in-fill development in the Kona UA, 'O'oma Beachside Village will reduce the pressure to develop rural land for housing.

Kona's historical character and host culture will be preserved and celebrated within 'O'oma Beachside Village. Archaeological sites located within the Coastal Preserve will be protected and the Mamalahoa Trail will be preserved in place with buffers on either side, resulting in a 110-foot wide open space corridor. Lineal descendants have been, and will continue to be, consulted in the planning and design process at 'O'oma Beachside Village.

f. Principle 6 - Provide Infrastructure and Essential Facilities Concurrent with Growth

Development of 'O'oma Beachside Village will require some expansion of existing infrastructure and facilities. Some infrastructure expansion, such as the widening of the adjacent Queen Ka'ahumanu Highway, is already underway and would be required irrespective of the development of 'O'oma Beachside Village. The State Department of Transportation is widening Queen Ka'ahumanu Highway from 2 lanes to 4, running from Henry Street to Kealakehe Parkway (2008) and Kealakehe Parkway to Keahole Airport Road (2011).

The development of 'O'oma Beachside Village will not require an expansion of existing fire and police services. Additional school facilities may be required, and Petitioner has identified a three (3) acre site within 'O'oma Beachside Village for the construction of a school.

g. Principle 7 - Encourage a Diverse and Vibrant Economy Emphasizing Agriculture and Sustainable Economies

The OBV Site is not appropriate for agricultural production. Therefore, the development of 'O'oma Beachside Village will neither support nor detract from the agricultural interests under this Principle. 'O'oma Beachside Village will be developed with mixed-use villages; buildings along the "main street" will primarily contain commercial uses on the ground floor, and may contain commercial uses, office or residences on upper floors. Commercial uses may include general stores, restaurants, coffee shops, bakeries, professional offices, drugstores and other neighborhood-serving uses.

h. Principle 8 - Promote Effective Governances.

As evidenced by collaborative planning process in effect since 2005, Petitioner is committed to working in with public, private and civic partners in the planning and development of 'O'oma Beachside Village.

i. Element 1 - Transportation

The Transportation Element under the Kona CDP is to have an efficient, safe and attractive multi-modal transportation system integrated with land use planning that allows movement around and through Kona with minimal reliance on the automobile. 'O'oma Beachside Village is planned to include 2 Mixed-Use Villages that will provide residential, commercial and other business related services to support the residents at 'O'oma Beachside Village and the surrounding areas. In addition, 'O'oma Beachside Village is planned to be a walkable, interconnected, pedestrian and bike friendly community where residents can live, work and recreate without reliance on automobiles.

The proposed frontage road makai of Queen Ka'ahumanu Highway is shown on the Kona CDP Official Transportation Network Map - Proposed Roads and Transit. Petitioner is willing to participate with the State, County and adjoining landowners in the planning, design and construction of its portion of the frontage road.

The Kona CDP Official Transportation Network Map - Pedestrian and Bike Paths shows a path along the shore at the OBV Site, which is not an area proposed for development.

j. Element 2 - Land Use

The Land Use Element under the Kona CDP includes setting a framework for the community and private sector to work collaboratively toward a shared vision of concentrating growth within urban villages in North Kona, protecting significant natural and cultural resources, and providing a range of housing opportunities. The Kona CDP calls for the majority of growth to be directed to the Kona UA. 'O'oma Beachside Village is consistent with the policy.

The Kona CDP also encourages new developments to be in the form of compact villages that support public transit. 'O'oma Beachside Village, as a community of higher-density, mixed-use villages, supports this objective.

k. Element 3 - Environmental Resources

The Environmental Resources Element under the Kona CDP includes promoting development that is in harmony with ecological principles and where residents and visitors enjoy and interact with nature through a networked system that promotes a healthy active lifestyle. 'O'oma Beachside Village will help support this goal by voluntarily providing public open space along the shoreline, thus leaving public funds available for purchase of properties identified as high priority for public acquisition.

l. Element 4 - Cultural Resources

The Cultural Resources Element under the Kona CDP is to preserve, protect and restore the multi-ethnic cultures of Kona in a way that perpetuates those cultures and all aspects of the Aloha Spirit. The development of 'O'oma Beachside Village will be consistent with the Cultural Resources Goal. Petitioner intends to preserve the historic Mamalahoa Trail in place, and to work closely with appropriate agencies and individuals on the preservation and treatment of archaeological and cultural sites within the OBV Site.

m. Element 5 - Housing

The Housing Element under the Kona CDP is to provide a diversity of housing choices for all segments of the population close to places of employment and/or daily needs. Development of 'O'oma Beachside Village will support the Housing Goal under the Kona CDP by providing a variety of housing choices, including affordable homes, multi-family homes, "live-work" units, mixed-use homes and single-family home lots.

n. Element 6 - Public Facilities, Infrastructure and Services

The Public Facilities, Infrastructure and Services Element under the Kona CDP is to develop a community where public infrastructure and facilities are sustainably built and maintained with innovation and private, and that promote a sense of community, and support a

safe, healthy and inspired quality of life. The only Public Facility to be located within 'O'oma Beachside Village under any of the Official Public Facilities and Service maps is the proposed frontage road, and Petitioner has indicated its willingness to participate in the development of its portion of the frontage road. The Mixed-Use Villages and proposed school site will provide community gathering places to encourage a sense of community and enhance residents' quality of life.

o. Element 7 - Energy

The Energy Element under the Kona CDP is to establish Kona as a model for sustainability and energy self sufficiency. The compact, walkable/bikable scale of 'O'oma Beachside Village supports this goal by decreasing reliance on automobiles, and therefore decreasing the demand for fossil fuels.

p. Element 8 - Economic Development

The Economic Development Element under the Kona CDP is to foster economic diversification, reduce import dependence, and increase employment opportunities that pay living wages. Development of the Mixed-Use Villages at 'O'oma Beachside Village should encourage new employment and housing opportunities within a growing commercial area.

3. County Zoning

The Hawaii County zoning designation for the Petition Area is Open (O). The zoning designation for Parcel 22 is General Industrial (MG-3a). The development of 'O'oma Beachside Village includes land uses that are not permitted under these zoning designations. Subsequent to final action by the Commission in this Docket, Petitioner will seek to process a Change of Zone with the County to have the OBV Site rezoned to Project District (PD).

XIX. HAWAIIAN CUSTOMARY AND TRADITION RIGHTS - HAR § 15-15-50(C)(20)

§ 15-15-50(c)(20): A statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawaii State Constitution;

Petitioner is aware of, and sensitive to, the protections afforded to native Hawaiian customary and traditional rights under Article XII, section 7 of the Hawaii State Constitution.³⁶

There are no native Hawaiian traditional and customary practices currently being practiced at the OBV Site. Petitioner intends to follow the recommendations provided in the Inventory Survey Update and the CIA in the development of 'O'oma Beachside Village.

XX. WRITTEN COMMENTS - HAR § 15-15-50(C)(21)

§ 15-15-50(c)(21): Any written comments received by the petitioner from governmental, non-governmental agencies, organizations, or individuals in regards to the proposed reclassification;

Written comments from various agencies, organizations and individuals, and responses thereto, are included in Chapters 11 and 12 of the FEIS. In addition, as the accepting authority for the FEIS, the Commission received public testimony related to the environmental review process for 'O'oma Beachside Village. In addition, a list of individuals who submitted written testimony to the Commission in this Docket is provided here as Petitioner's **Exhibit 17**, attached hereto and incorporated herein by reference.

In addition to its community outreach, Petitioner has been in discussions with NPS regarding practices to be put into place during and after the development of 'O'oma Beachside Village to protect water quality in the vicinity of the OBV Site and the National Park.

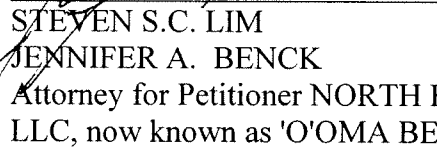
³⁶ "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights." Article XII, § 7, Haw. Constitution.

XXI. CONCLUSION

'O'oma Beachside Village will be an attractive master-planned beachside residential community with a variety of housing opportunities and mixed uses, as well as abundant recreational resources. Given the location of the Petition Area with respect to Kailua-Kona, the resort-residential development at The Shores at Kohanaiki, and the commercial and research uses underway at NELHA, HOST and KOA, development of 'O'oma Beachside Village is a reasonable and appropriate use of land.

Based on the foregoing, Petitioner respectfully requests that the Commission find that the Petition complies with the necessary requirements of a petition for boundary amendment pursuant to HAR § 15-15-50. Petitioner also respectfully requests that the Commission find that the proposed development of the Petition Area meets with the standard for determining the Urban District boundaries pursuant to HAR § 15-15-18, and therefore grant the reclassification of the Petition Area from the Conservation District to the Urban District.

DATED: Honolulu, Hawaii, November 23, 2009.



STEVEN S.C. LIM
JENNIFER A. BENCK
Attorney for Petitioner NORTH KONA VILLAGE,
LLC, now known as 'O'OMA BEACHSIDE
VILLAGE, LLC

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of
NORTH KONA VILLAGE, LLC

To Amend the Conservation Land Use District
Boundaries into the Urban Land Use District
for certain lands situate at O'oma 2nd - Kaloko,
North Kona, Island of Hawaii, State of Hawaii;
consisting of approximately 181.169 acres, Tax
Map Key Nos. (3) 7-3-009: 004 (por.), and (3)
7-3-009: (portion of State Right-of-Way)

DOCKET NO. A07-774

VERIFICATION OF JENNIFER A. BENCK

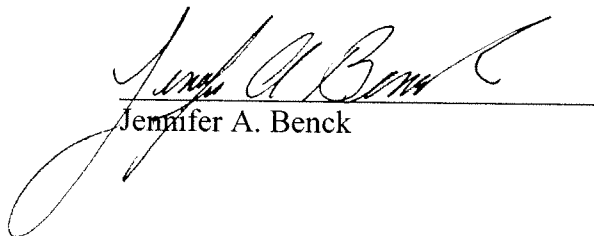
I, JENNIFER A. BENCK declare that:

1. I am the attorney for the applicant in the above captioned matter;
2. I have read the Amended Petition for Land Use District Boundary

Amendment Dated November 23, 2009, know the contents thereof, and that the contents therein contained are true to the best of my knowledge, information and belief;

3. I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, November 23, 2009.



Jennifer A. Benck

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7-3-009: (portion of State Right-of-Way)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was
duly served personally or by Certified Mail, Return Receipt Requested by depositing same at the
United States Post Office, postage prepaid, upon the parties listed below at their last known
addresses on November 23, 2009:

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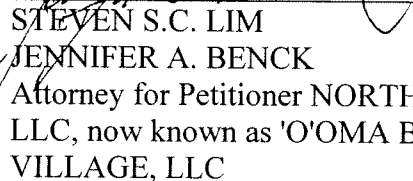
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