

## 1 LAND USE COMMISSION

2 STATE OF HAWAI'I

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4 PAGE

5 DELIBERATIONS &amp; ACTION )

6 A07-774 'O'OMA BEACHSIDE VILLAGES, LLC, ) 4  
7 (Hawai'i) )  
-----)8  
9  
10 TRANSCRIPT OF PROCEEDINGS11  
12  
13 The above-entitled matters came on for a Public  
14 Hearing at Ballroom #1 and 2, King Kamehameha's Kona  
15 Beach Hotel, 75-5660 Palani Road, Kailua-Kona, Hawai'i  
16 commencing at 8:35 a.m. on Friday, November 5, 2010  
17 pursuant to Notice.18  
19  
20  
21 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
22 Certified Shorthand Reporter  
23  
24  
25

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

RONALD HELLER

CHARLES JENCKS

LISA M. JUDGE

DUANE KANUHA

NORMAND LEZY

NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A07-774 NORTH KONA VILLAGE, LLC

For the Petitioner:

STEVEN LIM, ESQ.

JENNIFER BENCK, ESQ.

For the County:

WILLIAM BRILHANTE, ESQ.

Deputy Corporation Counsel

BOBBY JEAN LEITHEAD-TODD, ESQ.

Director, County Planning Dept.

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

ABBIE MAYER, Director

Office of Planning

For the Intervenor NPS: Superintendent KATHY BILLINGS,

SALLIE BUCHAL,

Kaloko-Honokohau National Historical Park

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1           CHAIRMAN DEVENS: Morning. This is a  
2 meeting of the State Land Use Commission today is  
3 November 5th, 2010. We are here in Kailua-Kona for  
4 this agenda hearing.

5           This is a deliberation and action meeting on  
6 Docket A07-774 'O'oma Beachside Village, LLC to  
7 consider the reclassification for approximately  
8 181.169 acres of land currently in the Conservation  
9 District into the Urban District at 'O'oma 2nd,  
10 Kaloko, North Kona, Hawai'i, Tax Map Key Nos.:  
11 (3)7-3-009:004 and 7-3-009 portion of state  
12 right-of-way for beachside residential community with  
13 mixed uses. Will the parties please identify  
14 themselves for the record.

15           MS. BENCK: Good morning, Chairman,  
16 Commissioners. This is Jennifer Benck representing  
17 Petitioner 'O'oma Beachside Village. To my right is  
18 Steve Lim also representing the Petitioner.

19           CHAIRMAN DEVENS: Good morning to you.

20           MR. BRILHANTE: Good morning, Chair,  
21 Commissioners. William Brilhante, county of Hawai'i  
22 office of the corporation counsel. Also present is  
23 Ms. Bobby Jean Leithead-Todd, planning director,  
24 county of Hawai'i.

25           CHAIRMAN DEVENS: Good morning to you.

1           MR. YEE: Good morning. Deputy Attorney  
2 General Bryan Yee on behalf of the Office of Planning.  
3 With me is Mr. Abbey Mayer from the Office of  
4 Planning.

5           CHAIRMAN DEVENS: Good morning, Mr. Yee.

6           MS. BILLINGS: Kathy Billings,  
7 superintendent of Kaloko-Honokohau and Sally Beavers,  
8 chief of resources at Kaloko-Honokohau.

9           CHAIRMAN DEVENS: Let me update the record.  
10 From November 1, 2010 to November 3rd, 2010 the  
11 Commission received various written correspondence via  
12 email and the names are available with our executive  
13 officer.

14           Before I call on public witnesses, let me  
15 remind you that all of the public testimony from  
16 previous hearings was transcribed and is part of the  
17 record. For those that are testifying again the  
18 Commission would appreciate it if you could confine  
19 your testimony to new information.

20           In addition, a 3-minute time limit on  
21 testimony will be enforced for those that are  
22 testifying for the first time on this matter. A  
23 2-minute time limit will be enforced for those that  
24 have testified previously.

25           We'll have our executive officer call those

1 who have signed up. If you want to testify and have  
2 not signed up, please come up and sign up on the list  
3 and we'll give you a chance to testify. Dan.

4 MR. DAVIDSON: Our first of seven sign-ups  
5 is Al Lardizabal followed by Mark Travalino.

6 CHAIRMAN DEVENS: If I can swear you in,  
7 sir.

8 AL LARDIZABAL  
9 being first duly sworn to tell the truth, was examined  
10 and testified as follows:

11 THE WITNESS: Yes, I do.

12 CHAIRMAN DEVENS: Tell us your name and  
13 address, please.

14 THE WITNESS: Good morning, Commissioners.  
15 My name is Al Lardizabal, the work of government  
16 relations for the Hawai'i Union and staff lobbyist.

17 CHAIRMAN DEVENS: Go ahead.

18 THE WITNESS: Thank you for the opportunity.  
19 I have a short statement to make. I know it's  
20 redundant. But in Hawai'i we have about 409 members,  
21 roughly 27 percent unemployed with 114.

22 In September we had eight job calls only.  
23 And October we had 10 job calls. So we're desperate  
24 for work. We fully support this Project. Thank you  
25 very.

1 CHAIRMAN DEVENS: Parties have any questions  
2 for this witness? Hearing none, next witness.

3 MR. DAVIDSON: Mark Travalino, followed by  
4 Brenda Ford.

5 MARK TRAVALINO,  
6 being first duly sworn to tell the truth, was examined  
7 and testified as follows:

8 THE WITNESS: I certainly do.

9 CHAIRMAN DEVENS: Tell us your name and  
10 address.

11 THE WITNESS: My name a Mark Travalino,  
12 73-1228 Iolani Street, Kailua-Kona, Hawai'i. Once  
13 again, I'm submittin' testimony for the 'O'oma  
14 Project. I an organizer for the Labor Union Local  
15 368. As I said --

16 CHAIRMAN DEVENS: Just slow down. The court  
17 reporter's going to have a hard time transcribing.

18 THE WITNESS: Work is extremely slow. I can  
19 talk a little slower. Real bad. Unemployment's  
20 running out for a lot of our members. As Al said it's  
21 bad, hardly any job calls.

22 We need some development in Kona in the  
23 private sector. We do have some federal jobs going,  
24 some highway work going on. The civic center is  
25 wrapping up. It's lookin' like the bench is gonna

1 fill up again. We're desperate. The projects look  
2 really good to us. Being a resident of Kona for over  
3 20 years, I believe that we need to get some  
4 development going again over here. Thank you.

5 CHAIRMAN DEVENS: Parties have any questions  
6 for this witness? Hearing none, Commissioners. None.  
7 Thank you for your testimony.

8 MR. DAVIDSON: Brenda Ford followed by  
9 Janice Palma-Glennie.

10 CHAIRMAN DEVENS: Brenda, if we can swear  
11 you in.

12 BRENDA FORD  
13 being first duly sworn to tell the truth, was examined  
14 and testified as follows:

15 THE WITNESS: Yes, sir.

16 CHAIRMAN DEVENS: State your name and  
17 address.

18 THE WITNESS: My name is Brenda Ford. Do  
19 you want my full address at home or work?

20 CHAIRMAN DEVENS: Whichever address you want  
21 to use.

22 THE WITNESS: My work is 75-5706 Hanauma  
23 Place, suite 109, Kailua-Kona.

24 CHAIRMAN DEVENS: Go ahead.

25 THE WITNESS: I'm a current councilmember



1 for Central Kona District 7. I've been here on island  
2 more than 15 years now. I come from the San Francisco  
3 Bay area. We have an airport San Jose International  
4 Airport which is a small regional airport when I was  
5 growing up. The powers that be in San Jose allowed  
6 subdivisions to be built around the ends of the  
7 runway. And from the minute people started moving  
8 into those houses the complaints to the airport and  
9 the police department became unbelievably high.

10 The police have no jurisdiction over an  
11 airport or the noise that the airport creates. So it  
12 was a lot of unnecessary calls coming in. Every time  
13 a plane took off the windows of all the houses rattled  
14 to the point people started complaining. It made  
15 their life, quality of life pretty unbearable. A lot  
16 of turnover in that subdivision.

17 When I first heard about this particular  
18 development I immediately called the airport manager  
19 here at Kona International Airport. And he was  
20 distraught to say the least at the time I talked to  
21 him about the fact that he would not be able to  
22 control the noise of the jets. You have to get the  
23 jets up to certain speed. And takeoffs are noisier  
24 than landings.

25 I also called the Kona Airport operations

1 manager. He was even more distraught over the  
2 situation. Then I called the Honolulu Airport manager  
3 asked all of them, "What do you think about putting a  
4 subdivision at the end of a runway?" Without  
5 exception they all said, "It's the craziest thing."  
6 Kona Airport is the only airport in the state that's  
7 in open land. And the only airport where we are not  
8 having this kind of problem. The minute we build a  
9 subdivision there the problem will start.

10 Plus there's going to be two more runways.  
11 I'm sure a lot of this you've heard before but this is  
12 the first time I've had a chance to testify in front  
13 of this group. Two more runways are going to be  
14 built.

15 As everyone here knows that during the  
16 daytime the winds run from the ocean up to the  
17 mountains. And the wind does carry sound. So the  
18 sound will be coming not over the path that's been  
19 delineated on some of your maps, it's going to go much  
20 farther inland as the wind pushes it inland.

21 The other problems tha I have are beach  
22 access. On this island we have a real problem with  
23 public access to shorelines. We have several hotels  
24 that have limited public parking for the public to get  
25 into the beaches.

1           We have very old, historic shoreline access  
2 along Ali'i Drive that you literally have to trespass  
3 on somebody's property to get to the beach in some  
4 cases.

5           When this proposal first came forward to  
6 myself, Mr. Greenwell and I, we were both on the  
7 county council, talked to Peter Young and suggested  
8 that we work with the state to do a land swap, get a  
9 much bigger piece of land which, of course, would be  
10 less expensive in the mauka region.

11           MR. DAVIDSON: Thirty seconds.

12           THE WITNESS: And we were turned down by  
13 Peter Young who said, "We have a more marketable  
14 product if we can use the word "beach development" or  
15 "shoreline development."

16           There's no guarantee that workers will be  
17 hired for this project will be hired here. And our  
18 workers are desperate people. We need to have  
19 development here. I'm not opposed to development.  
20 This one is bad.

21           With the land swap was in order to change  
22 this parcel of land into a park and put the  
23 development up mauka where we're going to have  
24 infrastructure to support it. Thank you.

25           CHAIRMAN DEVENS: Parties have any questions

1 for this witness? Hearing none, Commissioners?

2 THE WITNESS: Thank you.

3 CHAIRMAN DEVENS: None. Thank you.

4 MR. DAVIDSON: Janice Palma-Glennie followed  
5 by Marnie Herkes.

6 MS. PALMA-GLENNIE: I just wanted to say that  
7 I just got a call from a couple of other people who  
8 wanted to testify that are coming shortly. So people  
9 were under the misimpression it was at 9:00 o'clock.

10 CHAIRMAN DEVENS: Can we swear you in first,  
11 please.

12 THE WITNESS: Yes, my name's --

13 JANICE PALMA-GLENNIE  
14 being first duly sworn to tell the truth, was examined  
15 and testified as follows:

16 THE WITNESS: Yes.

17 CHAIRMAN DEVENS: State your name and  
18 address.

19 THE WITNESS: Janice Palma-Glennie, P. O.  
20 Box 4849, Kailua-Kona. Good morning.

21 CHAIRMAN DEVENS: Good morning.

22 THE WITNESS: Aloha. I'm speaking today on  
23 behalf of the Surfrider Foundation's Kona Kai Ea  
24 Chapter. Commissioners have heard and read over three  
25 years of testimony regarding this petition. Yet

1 despite testimony to the contrary by Petitioners and  
2 the development community there's still no solid proof  
3 that the reclassification of 'O'oma is necessary,  
4 timely, justified or even safe. Unrelenting public  
5 support for 'O'oma's conservation protection proves  
6 that there can be no realistic claims that  
7 reclassification would serve the public's best  
8 interest.

9           And no claim can be made that the owners of  
10 the property have entitlements or legal justification  
11 for demanding other than what they're allowed to use  
12 the property as they purchased it in the ways that  
13 conservation classification allows.

14           In fact Commissioners have even more reasons  
15 to uphold past 'O'oma reclassification denials than  
16 they did in the earlier 1990s.

17           Those reasons include limiting traditional  
18 public shoreline access, economic non-viability,  
19 threats to public safety, financial threat to  
20 government taxpayers and homeowners due to allowing  
21 urban development to be built next to an expanding  
22 airport, compromise the public trust resources, lack  
23 of definitively identified potable water sources and  
24 wastewater treatment, willful ignorance of county  
25 planning laws.

1           This is the end of an arduous planning road  
2 as you know. And we appreciate the time Commissioners  
3 have taken looking into their heart and the facts of  
4 this Petition and past reclassification denials.

5           We must assume that your goal and your  
6 kuleana would be the same as the community's. And  
7 that is to ensure that 'O'oma's rare, natural,  
8 cultural, recreational resources are protected from  
9 unnecessary, untimely destruction.

10           One final note: We've been told that the  
11 UWEA (sp) Charter School, which has been operating for  
12 over a decade on the land next to 'O'oma and the  
13 airport is being moved due to noise and safety  
14 reasons.

15           How ironic. The taxpayers will likely need  
16 to foot relocation and other significant costs due to  
17 an extremely poor decision made over 10 years ago  
18 which was ignoring the threat of expanding  
19 international airport. Added to this scenario --

20           MR. DAVIDSON: Thirty seconds.

21           THE WITNESS: -- is testimony by the current  
22 principle of WEA (sp) who believes for no other reason  
23 than blind faith, that there will be another third  
24 charter school built and paid for by 'O'oma Beachside  
25 Villages.

1           That school, again, would be threatened by  
2           its ill-conceived location as well as lacking a  
3           legally binding agreement that would require 'O'oma's  
4           owners to pay for that third school no mater what.

5           The larger question for the LUC is: Will an  
6           entire town need to be moved at taxpayer expense as  
7           well as possible legal costs incurred if the wrong  
8           decision is made here today. Mahalo so much for all  
9           your time. And I am really hoping that you see that  
10          we need for you to make the right decision here today.  
11          Aloha.

12           CHAIRMAN DEVENS: Parties have any questions  
13          for this witness? None. Commissioners? None. Thank  
14          you very much.

15           MR. DAVIDSON: Marnie Herkes followed by  
16          Cynthia Hope.

17                           MARNIE HERKES,  
18          being first duly sworn to tell the truth, was examined  
19          and testified as follows:

20           THE WITNESS: I do.

21           CHAIRMAN DEVENS: State your name and  
22          address.

23           THE WITNESS: Marnie Herkes, Post Office Box  
24          571, Holualoa, 96725. I'm on the advisory committee  
25          for 'O'oma. And I'm in support of the Project. The

1 developer has been very receptive to suggestions that  
2 advisory committee has given him. And it's been a  
3 really nice planning process.

4 This exemplified -- this village exemplifies  
5 the best practices of urban growth and Smart Growth  
6 which is density with open space. And the open space  
7 is from the Project to the beach. And that is in all  
8 of our best interests to have it that way.

9 I did at one time suggest that they should  
10 call this the 'O'oma Highway Village but that doesn't  
11 sell as well as Beachside Village. But I think  
12 they're going to have a problem because they are not  
13 beachside. They are a thousand, 1117 feet from the  
14 beach.

15 Thank you very much for your time. This has  
16 been a long process for all of us. We appreciate all  
17 of your attention and your good decision making.  
18 Thank you.

19 CHAIRMAN DEVENS: Any questions for this  
20 witness? None from the parties. Commissioners?  
21 None. Thank you.

22 MR. DAVIDSON: Cynthia Hope followed by  
23 Michelle Tomas.

24 CYNTHIA HOPE  
25 being first duly sworn to tell the truth, was examined



1 and testified as follows:

2 THE WITNESS: I do.

3 CHAIRMAN DEVENS: Tell us your name and  
4 address.

5 THE WITNESS: My name is Cynthia Hope,  
6 H-o-p-e. And I'm 76-426 Ali'i drive No. 365. I've  
7 been asked to present this Petition. It was going to  
8 be signed by more people but this started earlier so  
9 they haven't shown up. But I will present it to you  
10 anyway because we do have some signatures. It's new  
11 testimony for 'O'oma rezoning.

12 Approval of Hawai'i County Charter Amendment  
13 No. 6 on November 2nd, 2010 and the Kona Community  
14 Development Plan, LU-16 17-mile protected coastline.  
15 We the undersigned do not support the rezoning of  
16 'O'oma from conservation to urban.

17 With the overwhelming approval, 78 percent  
18 of the Hawai'i County Charter Amendment No. 6 relating  
19 to the preservation of natural and cultural resources  
20 on Tuesday, November 2nd, 2010, the citizens of  
21 Hawai'i have mandated that Hawai'i County shall  
22 conserve and protect Hawai'i's natural beauty and all  
23 natural and cultural resources and shall promote the  
24 development and utilization of these resources in a  
25 manner --

1 CHAIRMAN DEVENS: You'll have to slow down,  
2 ma'am, I'm sorry.

3 THE WITNESS: Oh. I'll give to this to you.

4 CHAIRMAN DEVENS: That's fine.

5 THE WITNESS: -- in a manner consistent with  
6 their conservation. This zoning proposal does not  
7 honor that mandate. In addition, this proposal does  
8 not honor the spirit and intention of the Kona  
9 Community Development policy LU-1.6, the 17-mile  
10 protected coastline nor the Kona Community Planning  
11 support of conservation of open space.

12 LU-1.6, the 17-mile protected coastline size  
13 is as follows: As part of any discretionary land use  
14 approvals such as SMA major permits, rezonings and  
15 State Land Use boundary amendments implement the  
16 vision of a 17-mile long protected stretch of open  
17 coastline from Makaweo to basically Kukio development.  
18 Most of this area is already publicly owned.

19 And much has already been set aside for  
20 public park purposes. This incorporates the  
21 Kaloko-Honokohau National Historical Park portions  
22 deed the county under terms of existing SMA permits  
23 for Kohanaiki and its specific, the mauka portion of  
24 'O'oma 2."

25 MR. DAVIDSON: Excuse me. 30 seconds.

1 THE WITNESS: "Meha, the state lands mauka  
2 of the airport runway to the extent that they can be  
3 used for public recreation consistent with the  
4 requirements of NELHA and the airport, Kaha Kai State  
5 Park and Makalawena." And you can have the Petition.

6 CHAIRMAN DEVENS: We'll be happy to make  
7 that part of the record. Parties have any questions  
8 for this witness? None. Commissioners. None. Thank  
9 you.

10 MR. DAVIDSON: Michelle Tomas followed by  
11 Diane Corcoran.

12 CHAIRMAN DEVENS: There's others that have  
13 come in since we have started, if you want to testify  
14 sign up and we will call you.

15 MICHELLE TOMAS  
16 being first duly sworn to tell the truth, was examined  
17 and testified as follows:

18 THE WITNESS: Yes.

19 CHAIRMAN DEVENS: State your name and  
20 address.

21 THE WITNESS: My name is Michelle Tomas, P.  
22 O. Box 337, Kailua-Kona 96745. I've testified before.  
23 What I'd like to say I don't think anyone's said  
24 before. We've had so much testimony from the unions  
25 saying that we need the jobs. Yeah, times are hard.

1 The economy has changed, but this Project's not gonna  
2 save our economy. It's not going to make anything  
3 better. I'd like to say to the union: Lai'opua,  
4 Hawaiian Homes Villages, the water project,  
5 Liliuokalani Subdivision, the brand new Jack 'n the  
6 Box right here on the corner of Henry Street and  
7 Kuakini. All new projects.

8 The mid-level road, Ane Keohokalole, all  
9 that, they didn't get the jobs because they're  
10 overbidding. It's not because we don't have enough  
11 projects. I know projects are down. But there are  
12 projects out there. They're just not bidding low  
13 enough. So to take away this conservation land under  
14 the guise of, "Oh, we need this project," is untrue.  
15 There's so many projects.

16 My husband is non-union. Their company just  
17 happens to bid lower. Probably when he was union we  
18 got paid less. We paid union dues, we have 401K. We  
19 have medical/dental we have everything. It's just the  
20 unions are over bidding. Don't tell me that there's  
21 no jobs out there. There's jobs out there. So I beg  
22 to differ on that.

23 This is the third time -- I know you guys  
24 all have limits on how long you guys can serve on the  
25 Land Use Commission Board. This is the third time

1 this has come up. Previous, when this came up  
2 previously twice before it was voted against  
3 reclassification.

4 Nothing's changed. The land is loved by all  
5 of the people in Kona. Across this whole Big Island  
6 people come over from everywhere to enjoy this area,  
7 surfers, especially surfers.

8 The last time in Waikoloa they said there  
9 would with be no runoff. I don't think so. There's  
10 gonna be runoff. This is going to impact all of us.  
11 Yeah, say you guys, you know, reclassify, they build  
12 all their buildings, all that land is gone, gone all  
13 the caves under there, the living caves, the dwelling  
14 caves. It's gonna be bulldozed. It's gonna be mass  
15 ex. It's gone.

16 Take the time, look into your heart and do  
17 what's best for the people of this whole state of  
18 Kona, of Hawai'i, everywhere. We don't want Waikiki  
19 here. People come here because they want the open  
20 space. They don't wanna see Maui where it's all built  
21 up and developed. They don't want that.

22 They come here because they know it's  
23 beautiful. They can go see the manta rays. They go  
24 underwater. They know it's clean and clear.

25 MR. DAVIDSON: Thirty seconds.

1 THE WITNESS: Thank you for your time.

2 CHAIRMAN DEVENS: Parties have any  
3 questions? None. Commissioners. None. Thank you.

4 THE WITNESS: Thank you.

5 MR. DAVIDSON: Diane Corcoran followed by  
6 Sammy Stanbro.

7 CHAIRMAN DEVENS: Can I swear you in?

8 DIANE CORCORAN

9 being first duly sworn to tell the truth, was examined  
10 and testified as follows:

11 THE WITNESS: I do.

12 CHAIRMAN DEVENS: Please state your name and  
13 address.

14 THE WITNESS: Diane Corcoran Kalani Way,  
15 Kailua-Kona. Good morning --

16 CHAIRMAN DEVENS: Good morning.

17 THE WITNESS: -- Land Use Commissioners  
18 again. I'm here to say basically what I have already  
19 said to restate what my heart feels so deeply. We  
20 need to save this land, keep open land. Sure, we need  
21 jobs. But if they were building this just for jobs we  
22 can build it elsewhere and have those jobs.

23 I heard the developer sit here a few minutes  
24 ago saying it's not really beachfront but we'll fib to  
25 our people and tell 'em it's beachfront to sell it. I

1 wonder if those same developers bring that "we'll fib"  
2 policy to us when they're presenting their plans.

3 I have a lot of fear of the unstated impact  
4 of these plans. They sound so good. Are they going  
5 to follow through? You know, we need to build it  
6 elsewhere. It's not the right place. I beg you not  
7 to let it go through.

8 I'm begging you for the people and the  
9 future of Kona. Once it's there it isn't going to go  
10 away. It's there forever, forever, forever. How many  
11 generations future is that will be impacted? We'll  
12 never have that back. Ever. Thank you for your time.  
13 Aloha.

14 CHAIRMAN DEVENS: Any questions for this  
15 party? None. Commissioners? Thank you very much.

16 MR. DAVIDSON: Sammy Stanbro.

17 THE WITNESS: Good morning ladies and  
18 gentlemen.

19 SAMMY STANBRO,  
20 being first duly sworn to tell the truth, was examined  
21 and testified as follows:

22 THE WITNESS: I do.

23 CHAIRMAN DEVENS: Please state your name and  
24 address.

25 THE WITNESS: My name is Sammy Stanbro. I

1 live in Holualoa. I first really, really want to tell  
2 you guys -- and I'm going to get teary for a minute  
3 here -- I'm going to tell you how much I appreciate  
4 you. I just got back from Haiti. I was there for  
5 three weeks. I saw what happens to land when they  
6 don't have people like you to help people make  
7 decisions.

8 I see what it's like not having a  
9 government. I'm glad I can complain about a  
10 government. Thank you very much for being here. It  
11 really make as big difference.

12 I wanna tell you something new that you  
13 haven't heard because I've been here for the last  
14 times you've been here and I've pleaded the case for  
15 keeping the conservation lands.

16 But I want to tell you something new that  
17 you haven't heard as of this voting date. The voters  
18 of this island reinstated the importance that comes up  
19 in every single poll we've taken as our open land on  
20 this island is the most thing to us.

21 It's the most important thing to the  
22 tourists that come here. In our voting, I know you  
23 guys are from O'ahu and you don't know what happens  
24 here in our voting, but we just voted to have one  
25 percent of our property taxes locked in in place. We



1 had 2 percent that wasn't locked in.

2 The voters came back again and said we want  
3 this locked in so that it can't be tampered with. So  
4 we really value our open space here.

5 With that money that we got from this last  
6 voting record we could actually purchase more  
7 properties that we didn't have when this property was  
8 for sale for \$2 million.

9 The gentleman that bought this for  
10 \$2 million bought it so he could take it and get a  
11 zone change. That was his only purpose. He put it on  
12 the market and he illegally, as far as I'm concerned,  
13 he advertised it as having a zone change and he was  
14 able to sell it so the gentleman that bought into it  
15 that that's trying to do this Project now.

16 When Mr. Clifto came through all this  
17 process before, we fought it.

18 MR. DAVIDSON: Excuse me, 30 seconds.

19 THE WITNESS: Okay. We fought it then. He  
20 did -- he did -- I mean he had it on the Internet  
21 saying that it had already passed the zoning. It did  
22 not. He raised the price to \$23 million.

23 So as community when we have people like  
24 that around and Mr. Clifto is still involved in  
25 ownership of this property or was the last I heard,

1 that's the type of people you don't really want for  
2 neighbors.

3           You've heard all the other reasons that are  
4 very good reasons for that Project not taking place.  
5 But the most important thing is to keep that  
6 conservation land conservation land. Thank you very  
7 much. And again I'm so glad you guys are here. Thank  
8 you.

9           CHAIRMAN DEVENS: Parties, Commissioners  
10 have any questions for this witness? None. Thank  
11 you.

12           MR. DAVIDSON: Chuck Flaherty followed by  
13 Wendy Hart.

14           THE WITNESS: Good morning, Mr. Chair.

15           CHAIRMAN DEVENS: Good morning.

16           THE WITNESS: Oh, that's right. (Raising  
17 hand)

18                           CHARLES FLAHERTY,  
19 being first duly sworn to tell the truth, was examined  
20 and testified as follows:

21           THE WITNESS: Yes, sir, I do.

22           CHAIRMAN DEVENS: Please state your name and  
23 address.

24           THE WITNESS: Charles Flaherty, P. O. Box  
25 992 Captain Cook, Hawai'i 96704.

1           CHAIRMAN DEVENS: Charles, just for the  
2 record we do have the testimony you gave us dated  
3 today. We'll make that part of the record.

4           THE WITNESS: Thank you very much. I also  
5 gave you something on Forest City but I just found out  
6 that's a moot point.

7           Anyway, good morning, Mr. Chair and members  
8 of the Land Use Commission. Again I would also like  
9 to thank you for coming here to Kona and also  
10 appreciate your volunteer service to our state.

11           Our organization has provided you with a  
12 large volume of documents, almost a thousand dollars'  
13 worth of printing costs. And I don't know if you've  
14 read them all. But they do provide a great deal of  
15 information as far as the reasons why this Petition  
16 should not be accepted.

17           As Sammy just said there were the people of  
18 this island did make it clear what their desires were.  
19 I'd like read to you the County of Hawai'i charter  
20 amendment that was passed on last Tuesday's ballot.

21           "Relating to preservation of natural and  
22 cultural resources: Shall the Charter of the County of  
23 Hawai'i be amended by adding a new section to Article  
24 XIII to recognize that the county shall conserve and  
25 protect Hawai'i's natural beauty and all natural and

1 cultural resources and shall promote the development  
2 and utilization of these resources in a manner  
3 consistent with their conservation and in furtherance  
4 of the self-sufficiency of the county?

5 "Charter commission summary: This proposal,  
6 which is based on a state constitutional provision,  
7 would put in the Charter an obligation on the county  
8 government to take into consideration the conservation  
9 and protection of Hawai'i's natural beauty and its  
10 natural and cultural resource when making decisions.

11 "The State provision does not include  
12 cultural resources, wahi pana, surf spots, historic  
13 sites, and historic structures. The proposal  
14 recognizes the county's public trust responsibility  
15 for all publicly owned natural resources and  
16 explicitly adds cultural resources as public trust  
17 resources."

18 This amendment passed by a vote of 37,659 to  
19 10,619. In other words, 8 of every 10 voters in our  
20 county voted to conserve Hawai'i's natural beauty and  
21 all natural and cultural resources. You the Land Use  
22 Commission has a clear mandate by the people of this  
23 island. There are no ifs, ands or buts. Please keep  
24 'O'oma in conservation. Thank you very much.

25 CHAIRMAN DEVENS: Parties, Commissioners

1 have any questions for this witness. Hearing none,  
2 thank you.

3 MR. DAVIDSON: Shannon Rudolph followed by  
4 Glennon Gingo.

5 SHANNON RUDOLPH  
6 being first duly sworn to tell the truth, was examined  
7 and testified as follows:

8 THE WITNESS: Yes.

9 CHAIRMAN DEVENS: Tell us your name and  
10 address.

11 THE WITNESS: My name is Shannon Rudolph.  
12 I live in Holualoa, Hawai'i.

13 CHAIRMAN DEVENS: Go ahead, Shannon.

14 THE WITNESS: It seems to me that since  
15 there was such a big take away for the residents  
16 yesterday, that you should give back something today  
17 for what is it 3500 houses we're talking here between  
18 the two projects? That's an awful lot of people that  
19 are gonna need recreational area close by. This beach  
20 is close by to both projects. And I ask that you give  
21 something back today. Thank you.

22 CHAIRMAN DEVENS: Any questions for this  
23 witness? Hearing none, thank you.

24 MR. DAVIDSON: Glennon Gingo.

25 THE WITNESS: Good morning.

1           CHAIRMAN DEVENS: Good morning. If we could  
2 swear you in, sir.

3                           GLENNON GINGO  
4 being first duly sworn to tell the truth, was examined  
5 and testified as follows:

6           THE WITNESS: Yes, I do.

7           CHAIRMAN DEVENS: State your name and  
8 address, please.

9           THE WITNESS: Glennon Gingo P. O. Box 396,  
10 Holualoa, Hawai'i.

11          CHAIRMAN DEVENS: Go ahead, sir.

12          THE WITNESS: Thank you. I've been at  
13 several of the meetings. I'm actually pleasantly  
14 surprised after looking into more of the attributes of  
15 this Project.

16                 And it's done nothing but give me a lot more  
17 confidence that these developers are doing the right  
18 thing for the community and taking the right approach  
19 to protecting the natural resources including our  
20 shoreline.

21                 I've spent about 20 years on our shoreline  
22 teaching diving, free driving, spearfishing, hunting.  
23 And I myself have a lot of concerns about the quality  
24 of water on our shoreline and how the developers take  
25 the steps to insure that we have a future for these

1 aquatic activities.

2 And because of all of that, including going  
3 out and parking along the runways at the airport  
4 listening to some of the C-117s make their landing  
5 pattern, that I'm very confident also the noise issues  
6 and especially the areas in and around the buffer zone  
7 to give people a chance to drive out to these areas  
8 and enjoy 'em without having 4-wheel drive trucks,  
9 without damaging their vehicles to enjoy the  
10 shoreline.

11 So with that I'm totally in support of  
12 Petitioner's request to reclassify the property in the  
13 State Land Use Urban District. And I thank you for  
14 your time.

15 CHAIRMAN DEVENS: Any questions for the  
16 witness? Hearing none, thank you. Are there any  
17 other witnesses that wish to give public testimony in  
18 this matter? If you want you can step forward.

19 MS. PALMA-GLENNIE: I had a call from our  
20 council person who's going to be late. Is the public  
21 going to be able to testify at any other time today or  
22 is that the close?

23 CHAIRMAN DEVENS: No. We are ready to  
24 deliberate on this matter. What we'll do, is we'll  
25 take a short 5 minute break and resume from there.

1 (Recess was held.)

2 CHAIRMAN DEVENS: (9:20) We're back on the  
3 record. There were a few more witnesses that have  
4 signed up.

5 MR. DAVIDSON: Angel Pilago.

6 CHAIRMAN DEVENS: If we can swear you in.

7 ANGEL PILAGO,  
8 being first duly sworn to tell the truth, was examined  
9 and testified as follows:

10 THE WITNESS: I do.

11 CHAIRMAN DEVENS: Please state your name and  
12 address.

13 THE WITNESS: My name is Angel Pilago. I  
14 live at 73-1224 Ka'iminani Drive. And that's in  
15 Kalaua here in Kailua.

16 CHAIRMAN DEVENS: Thank you, sir. Go ahead  
17 and testify.

18 THE WITNESS: That you, ladies and  
19 gentlemen, members of the Commission. Please I  
20 apologize. We just drove in from Hilo. As you know  
21 we were recently elected. I was one of those recently  
22 elected to the county council. One of the reasons for  
23 being in Hilo was to try and effect a good and  
24 compassionate county council.

25 And I'm going to use that as a preface to



1 part of our testimony today. Sometimes in your work  
2 and in your purview you're separated from these kinds  
3 of local feelings and the pulse of the community.

4 I'm one of those here that beg you to help  
5 also avoid any semblance of conflict and confrontation  
6 in the community in an issue as controversial as this  
7 one here.

8 As you can see and sense there's a  
9 divisiveness within the community in respect to  
10 projects like this and this Project in particular. We  
11 ask you to hold off and not give sway to the arguments  
12 that say in this economic downturn it's important that  
13 we approve any project whatever they provide for us.

14 I think we should keep the character of our  
15 community in place. And I think administrative  
16 agencies such as yourself should take into account the  
17 pulse, the feel, the character, the values of the  
18 community.

19 And this community certainly feels like we  
20 should maintain our rural character, and we should  
21 keep true to those values and beliefs. And we ask you  
22 to have compassion, caring and concern and respect to  
23 that belief.

24 This may and does not fall within your  
25 limited descriptions of our means of operations. But

1 I ask you to reach beyond yourselves to raise the bar  
2 and become what we all truly are and what you are  
3 truly are and what we see in you. And that's  
4 character as Hawaiians, as local and as dignity and  
5 respect for our community here.

6 In that sense we ask you, ladies and  
7 gentlemen, to take into account the human values and  
8 the human ethnics that lie beyond partisan politics  
9 and to not approve this Project because it is not a  
10 good Project in terms of character building, quality  
11 of life, wellness and health of the community.

12 We ask you to rise above yourselves and your  
13 duties and your purview as we talked about earlier,  
14 and to become what you truly are.

15 And that's members of a society here in  
16 Hawai'i and represent who you truly are, your friends  
17 and your family, who happen to reside here in  
18 proximity to this development.

19 Again, vote no to this development. We do  
20 not need it. We have other things we need to do to  
21 build character.

22 And you certainly need to help us in that to  
23 avoid the conflict and the confrontation that may be  
24 likely in this case.

25 In closing, this community has always been

1 successful in terms of the Waokele O Puna Supreme  
2 Court case. We've been successful in that. In terms  
3 of Kohanaiki Supreme Court case gathering the excise  
4 case --

5 MR. DAVIDSON: Excuse me, sir, 30 seconds.

6 THE WITNESS: Thank you. We've been  
7 successful in that. In terms of Kaupulehu Supreme  
8 Court case we have been successful at that. This is  
9 not a threat, ladies and gentlemen.

10 But it certainly shows the dignity and  
11 character of a community here on Hawai'i Island that  
12 had the forthright, the sense and resources to unify  
13 the island in the 1700s. We will do so again today.

14 Thank you, ladies and gentlemen for your  
15 courtesy, your time and your consideration. Again our  
16 apologies for being late. Thank you very much.

17 (Applause)

18 CHAIRMAN DEVENS: See if the parties have  
19 any questions for this witness. Hearing none,  
20 Commissioners? None. Thank you very much, sir.

21 THE WITNESS: Thank you, sir. Thank you,  
22 ladies and gentlemen.

23 MR. DAVIDSON: Winfield Chang followed by  
24 Kari Teshima.

25 xx

1 WINFIELD CHANG

2 being first duly sworn to tell the truth, was examined  
3 and testified as follows:

4 THE WITNESS: I do.

5 CHAIRMAN DEVENS: State your name and  
6 address.

7 THE WITNESS: My name is Winfield Chang. I  
8 live at 73-1432 Kaloko Drive here in Kailua-Kona.  
9 Good morning, Commissioners. You've been handed an  
10 opportunity to consider the community's overwhelming  
11 opposition to the development of one of West Hawai'i's  
12 last remaining pristine coastal areas over the current  
13 administration's support to reclassify the lands at  
14 'O'oma.

15 Your decision, which we assume has been made  
16 given the best information available and done in the  
17 interest of the people of Kona, will reflect the  
18 credibility of a governmental agency to protect and  
19 serve a specific population.

20 Given the Kenoi administration's blatant  
21 refusal to recognize the wishes of the people that it  
22 purports to represent, and the planning commissioner's  
23 power trip in her zeal to advance developers'  
24 profit-motivating objectives, it appears that the  
25 results of this public confrontation will be made

1 abundantly clear. Kona's desire to project its unique  
2 character and lifestyle is at stake.

3           While the Kenoi administration has far too  
4 long looked at Kona as its cash cow and in spite of  
5 Kona's inordinate burden with providing the county  
6 with the bulk of tax revenues there seems to be no end  
7 to the additional sacrifices this community has been  
8 asked to provide.

9           Chiefly among them is the preciously  
10 dwindling open space and particularly the unobstructed  
11 coastal view planes that made Kona one of the most  
12 desirable resort destinations in Hawai'i.

13           It appears that absent any concern over  
14 appropriate development, the mayor through his  
15 planning director, Ms. Bobby Jean Leithead-Todd, has  
16 abandoned future generations to the opportunity to  
17 enjoy what has heretofore been full access to one of  
18 our greatest privileges: Recreational beach  
19 activities unencumbered by needless and unwanted  
20 development.

21           With the assistance of a kama'aina law firm,  
22 the public relations firm of Current Events and under  
23 the dubiously responsible Leeward Planning Commission,  
24 the county is determined to forge ahead to alter the  
25 course of our community's future.

1           We will continue to preserve our way of live  
2 in face of the county's position and work to elect an  
3 administration more in tune with our wishes and  
4 desires, an administration that considers wisdom and  
5 planning development, high density, infrastructure  
6 deficiencies and respect for the legacy of ali'i  
7 trusts that provides for its beneficiaries, the keiki  
8 of Hawai'i. Thank you for your time.

9           CHAIRMAN DEVENS: Any questions for this  
10 witness. Hearing none, thank you very much.

11           MR. DAVIDSON: Kari Teshima.

12                   KARI TESHIMA,  
13 being first duly sworn to tell the truth, was examined  
14 and testified as follows:

15           THE WITNESS: Yes, I do.

16           CHAIRMAN DEVENS: Please state your name and  
17 address.

18           THE WITNESS: Kari Teshima, 77-6504 Leialoha  
19 Street, Kona. I'm a 30-year resident here. I've got  
20 five children. Up and down this coastline we've  
21 camped, we have harvested all the fish -- not all the  
22 fish. (Audience Laughter) That's you yolks with  
23 pesticides killing all our babies.

24           I'm just concerned, I've watched the  
25 exploitation of this coastline from Kua Bay all the

1 way to Kukio 2. And we have no access to these area.  
2 If there's 10 cars in those parkings stalls nobody can  
3 get in.

4 We have no parks here for our children. We  
5 have no parks here for us. When they open up Pine  
6 Trees or 'O'oma to our camping trips you'll plainly  
7 see there's 4- or 500 people camping. We do not have  
8 any other place to go.

9 There's obviously a demand for this. You  
10 cut us all off what are we going to do. Where are we  
11 going to go? Our kids are going to hit the streets.  
12 They're going to start getting involved in drugs and  
13 gangs. We need to allow all of us to have the access  
14 to all these places and stop exploiting our land.

15 It's like Hilo. We have nowhere to go here.  
16 We can't accommodate all of our needs at the old  
17 airport. There's no parking. There's no pools to  
18 swim in.

19 I understand they're already blocking off  
20 the whole coastline from Kua Bay to Kukio for fishing  
21 and diving allegedly because the fish are depleted.  
22 That's a reflection of the pesticides and all the  
23 runoff from all this development. Has nothing to do  
24 with the locals fishing out these coastlines.

25 So I believe so I'm speaking for everyone to

1 allow us to have our access and let our children grow  
2 up with the swimming, the surfing, the diving.

3 Stop exploiting Kona and let the people have  
4 what we deserve. I'm speaking for all of us, also my  
5 children and our grandchildren. Thank you.

6 CHAIRMAN DEVENS: (Applause) Parties,  
7 Commission have any questions for this witness? None.  
8 That was the last witness that has signed up. That  
9 will conclude the public testimony portion of this  
10 hearing.

11 (Audience member) I should be signed up:  
12 Rebecca Viegas.

13 CHAIRMAN DEVENS: If you want to.

14 THE WITNESS: (off mic) Aloha. My name's  
15 Rebecca Viegas.

16 CHAIRMAN DEVENS: If we can swear you in  
17 first.

18 REBECCA VIEGAS,  
19 being first duly sworn to tell the truth, was examined  
20 and testified as follows:

21 THE WITNESS: I do.

22 CHAIRMAN DEVENS: State your name and  
23 address please.

24 THE WITNESS: Aloha. My name is Rebecca  
25 Viegas. I live at 77-6639 Wailua Road, Kailua-Kona,



1     Hawai'i. Thank you for having me here again to speak  
2     to you. I'm speaking on behalf of myself and my  
3     family and Kohanaiki Ohana as president of that  
4     nonprofit organization.

5             I'm here again today. I've spoken before  
6     given written testimony and with the help of many  
7     members of our community we have submitted hundreds if  
8     not thousands of signatures from community members  
9     asking that the Land Use Commission continue to uphold  
10    the conservation zoning of the land parcel at 'O'oma.

11            Some of the statistics that I'd like to  
12    present to you again today relates to the  
13    already-zoned, already-approved and already-just  
14    waiting to be built developments that are in existence  
15    in Kailua-Kona.

16            We have thousands of homes slated to be  
17    built as soon as the economic times transition. In  
18    fact another development was just approved yesterday,  
19    if I understand you correctly. The need for another  
20    development with more homes is unnecessary at this  
21    time.

22            And I believe that's your responsibility of  
23    the Land Use Commission to weigh the need and the  
24    necessity for what the community and our economic  
25    structure needs at this time versus the needs of the

1 developer and their ideas nor this euphoric  
2 development. That I want to remind everybody in this  
3 room they are not any circumstance legally bound to  
4 build this development that's LEED Certified and what  
5 could be quite potentially would be, if God forbid  
6 this zoning is approved, a great development.  
7 However, they are not legally responsible to do that.  
8 And if the zoning is changed the property values  
9 change drastically at which point it's speculation.

10 MR. DAVIDSON: Excuse me, 30 seconds.

11 THE WITNESS: Great. And the zoning could  
12 be changed. So what I'd like to just point out and  
13 appeal to you in looking at statistics here, is that  
14 we have many jobs in the construction industry waiting  
15 to be reinstated as soon as the economic times change.  
16 We don't have a need to take away conservation  
17 property on our coastline for another development that  
18 would only add to what will end up being a glut of  
19 houses on the market. mahalo for your consideration.  
20 Aloha.

21 CHAIRMAN DEVENS: Parties, Commissioners,  
22 have any questions for this witness? None, thank you.

23 (Audience member) I also would like to  
24 testify.

25 CHAIRMAN DEVENS: Ma'am, if we can swear you

1 in.

2 JOY MILLS

3 being first duly sworn to tell the truth, was examined  
4 and testified as follows:

5 THE WITNESS: Aye.

6 CHAIRMAN DEVENS: State your name and  
7 address.

8 THE WITNESS: Owau Kuinoa Joy  
9 Keahipuakawikiweku Mills, P. O. Box 4273 Kailua-Kona,  
10 96745. Aloha kakou or kakou kakahiaaka. My mo'o  
11 ku'auhau is Ho'okano from Kohala, Miloli'i therefore I  
12 am given right to speak here on this island here on  
13 this mo'okua nui that I've love. From here to O'ahu  
14 to Kaua'i my family lineage stretches far. And I  
15 simply want to say I object to the rezoning of 'O'oma.

16 Please, there's other things that we can do  
17 with this land. There's other ways that we can malama  
18 this land. Our kanaka ma'oli, we speak, we are strong  
19 and we are backed by those who love this land who may  
20 not have the koko, but in their hearts, in their na'au  
21 they love this land.

22 And I just simply ask you reconsider. Don't  
23 give it all away. It's not necessary anymore. We  
24 live strong. We can live in peace without any more  
25 construction, without any more development. We can.

1 Our people can. We're coming back lipolipo. Our  
2 'olelo says lipolipo from the forest our people will  
3 come back. My queen, she stepped down. She stepped  
4 back from being taken because she knew the day would  
5 come when her people would rise. And this day is now.  
6 Our 'olelo is strong. I wasn't allowed to speak  
7 'olelo. My grandfather, he spoke but he didn't teach  
8 us because he knew I needed to speak English. He sent  
9 us to school so I could speak properly and I could  
10 communicate with all of you today and let you know  
11 that my people are strong, and we live through all of  
12 you.

13 Our koko may be a little bit in some people.  
14 They have blue eyes, they have blonde hair. My grand  
15 niece, blue eyes, brown hair, but she speaks. She  
16 'olelos Hawaiian. She's a kanaka maoli. And she  
17 passes on our lineage. And I'm proud to say I'm  
18 Hawaiian today. Before I couldn't say that because I  
19 don't speak but I'm learning.

20 MR. DAVIDSON: Thirty seconds.

21 THE WITNESS: Mahalo, sir. Mahalo. I  
22 simply ask you hold strong, hold the line. 'A'ole.  
23 'A'ole. Hold the line. Say no. We don't need to.  
24 Mahalo.

25 CHAIRMAN DEVENS: Any questions for this

1 witness? Hearing none, thank you very much.

2 (Applause).

3 MR. DAVIDSON: Misty Lambeth.

4 THE WITNESS: Aloha. Thank you for letting  
5 me speak.

6 CHAIRMAN DEVENS: I'll swear you in.

7 MISTY LAMBETH

8 being first duly sworn to tell the truth, was examined  
9 and testified as follows:

10 THE WITNESS: Yes, I do.

11 CHAIRMAN DEVENS: Tell us your name and  
12 address please.

13 THE WITNESS: Misty Lambeth, 73-1456 Hau  
14 Street Koloko, Kailua-Kona, Hawai'i 96740. I don't  
15 have any fancy facts or anything to give, but I'm just  
16 begging you guys please don't develop this area.

17 My son just turned one. He plays in the  
18 ponds all the time. We take him on the boogie board.  
19 He loves the water. I've grown up here my whole life.  
20 And Pine Trees is my favorite spot to be.

21 I'm just begging you guys, please, don't  
22 develop it. I would be so heartbroken if my son  
23 didn't get to experience it like I did. So just  
24 please don't develop it. This is conservation land  
25 for a reason. I believe the people who put that in

1 place did that 'cause they foresaw that this was gonna  
2 come. And it is conservation land. Please conserve  
3 it. Please don't take it away from these children,  
4 these keikis. Thank you.

5 CHAIRMAN DEVENS: Any questions for this  
6 witness? (Applause) None. Thank you.  
7 That was our last witness. That'll conclude the  
8 public testimony portion of this hearing.

9 We are now in formal deliberations  
10 concerning whether to grant or deny the Petition. If  
11 the Commission decides to grant the Petition, it needs  
12 to determine what conditions of approval to impose.

13 During the Commission's deliberations we  
14 will not entertain additional input from the parties  
15 or the public unless those individuals or entities are  
16 specifically requested to do so. If called upon we  
17 would ask that any comments be limited to the question  
18 at hand.

19 The Commission held hearings on the merits  
20 of this Petition in 2010 on March 3rd and 4th; May  
21 5th, June 16 and 17, and July 15. Oral argument was  
22 held on October 7.

23 Commissioners, let me first confirm that  
24 each of you have reviewed the record or read the  
25 transcripts for any meeting they may have missed and

1 are prepared to deliberate on the subject docket.  
2 After I call your name, please signify with a yes or  
3 no that you're prepared to deliberate on this matter.  
4 Commissioner Chock?

5 COMMISSIONER CHOCK: Yes.

6 CHAIRMAN DEVENS: Commissioner Contrades?

7 COMMISSIONER CONTRADES: Yes.

8 CHAIRMAN DEVENS: Commissioner Heller?

9 COMMISSIONER HELLER: Yes.

10 CHAIRMAN DEVENS: Commissioner Jencks?

11 COMMISSIONER JENCKS: Yes.

12 CHAIRMAN DEVENS: Commissioner Judge?

13 COMMISSIONER JUDGE: Yes.

14 CHAIRMAN DEVENS: Commissioner Kanuha?

15 COMMISSIONER KANUHA: Yes.

16 CHAIRMAN DEVENS: Commissioner Lezy?

17 COMMISSIONER LEZY: Yes.

18 CHAIRMAN DEVENS: Commissioner Teves?

19 COMMISSIONER TEVES: Yes.

20 CHAIRMAN DEVENS: I'm also prepared to  
21 deliberate on this matter. The goal today is to  
22 determine by way of motion the Commission's decision  
23 on whether to grant Petitioner's request to reclassify  
24 the subject property or to deny the Petition.

25 If a decision is reached today, and based

1 upon the Commission's guidance, staff will be directed  
2 to prepare Findings of Fact, Conclusions of Law and a  
3 Decision and Order reflecting the Commission's  
4 decision.

5 What is the Commission's pleasure?  
6 Commissioner Kanuha.

7 COMMISSIONER KANUHA: Mr. Chairman, for  
8 discussion purposes to move this along, in the matter  
9 of the Petition for North Kona Village, LLC to amend  
10 the Conservation Land Use District boundaries into the  
11 Urban Land Use District in Docket No. A07-774, I move  
12 to deny in part and approve in part the subject  
13 Petition.

14 COMMISSIONER LEZY: Second.

15 CHAIRMAN DEVENS: Did you want to specify  
16 what party you're moving to grant and what part you're  
17 moving to deny?

18 COMMISSIONER KANUHA: Thank you. I'll  
19 clarify that. My motion for denial is any of the  
20 Petition Area that's located within the 1100-foot  
21 buffer zone. There is a portion of it that's within  
22 there that's subject to state park, I mean to private  
23 park. But based on the testimony and everything else  
24 that has come before the Commission I feel that at  
25 least that 1100-foot area should remain in



1 conservation.

2 And I'm further prepared to provide  
3 additional language whereby declarations to that  
4 effect either via a conservation easement or  
5 recordation with the Bureau of Conveyances or whatever  
6 it takes to ensure that that stays there in  
7 perpetuity.

8 CHAIRMAN DEVENS: Was there a second on this  
9 motion to grant in part, deny in part the Petition?

10 COMMISSIONER LEZY: My second remains,  
11 Chair.

12 CHAIRMAN DEVENS: Discussion?

13 COMMISSIONER TEVES: Mr. Chairman.

14 CHAIRMAN DEVENS: Commissioner Teves.

15 COMMISSIONER TEVES: Yes. Thank you,  
16 Mr. Chairman, fellow Commissioners, after so much time  
17 spending on this Petition it's my feeling that there's  
18 a number of things. One is the airport noise would be  
19 an adverse effect on anyone who lived in the area.

20 This is unbearable and would only cost the  
21 state in the future countless time and money to  
22 relieve the people that live there.

23 Secondly, I think the people of Kona and the  
24 island have spoken against this Project, not only  
25 that, by their passing their latest law in the city.

1 And most of all know that this is conservation land.  
2 It was put there for a purpose. And not just a  
3 section of it but the whole Petition Area should be  
4 denied any development. And I would vote no against  
5 this Project. Thank you.

6 (Loud applause from audience)

7 CHAIRMAN DEVENS: Further discussion on this  
8 motion? Commissioner Heller.

9 COMMISSIONER HELLER: Yes. I find this a  
10 very difficult decision because there are a number of  
11 things that I do like about the Project as proposed,  
12 including the amount of conservation space and open  
13 land that's included in the plan; the developer's  
14 commitment. And I do respect the commitment to  
15 preserving beach access.

16 I appreciate the fact that they have gone to  
17 great lengths to promise and to ensure that there  
18 would be beach access even if the development goes  
19 forward.

20 However, for me the factor that I think tips  
21 the balance is the airport proximity issue. I think  
22 it is inevitable that if a number of homes are built  
23 that close to the airport, that it is going to lead to  
24 problems down the road.

25 And regardless of what language is put into

1 warnings to purchasers, regardless of what easements  
2 are put into deeds, I believe it's inevitable that  
3 there are going to be serious problems down the road  
4 as the airport expands and as that many people are  
5 living in close proximities is the airport.

6 Therefore, I'm voting sort of a reluctant  
7 no. I do like the Project, but I think it's just in  
8 the wrong place with respect to the airport.

9 (Applause).

10 CHAIRMAN DEVENS: Any further discussion on  
11 this motion? Commissioner Lezy.

12 COMMISSIONER LEZY: Thank you, Chair. I'd  
13 like to thank -- first before I make a couple comments  
14 I'd like to thank the parties for all their work on  
15 this Petition. Thank the staff as well for their hard  
16 work on this Petition.

17 I seconded this motion for purposes of  
18 discussion. Commissioners Teves and Heller have made  
19 their positions known. Obviously we don't know how  
20 this vote will ultimately turn out. I will say,  
21 though, that I am inclined to vote for this Project.  
22 I believe that there is merit to it.

23 And my principal concern, as I have  
24 expressed during the course of these proceedings, is  
25 that the concerns of the public are adequately

1 mitigated if this Project is to go forward.

2           And I do think that there has been a genuine  
3 effort on the part of the Petitioner to mitigate the  
4 effects that this development would have on the  
5 interest of the public.

6           And I thank the public as well for their  
7 obviously tireless effort in helping us understand  
8 what their concerns are, what their desires are, where  
9 they would like to see this portion of their community  
10 go.

11           But I do think that there can be appropriate  
12 safeguards put in place, I think as Commissioner  
13 Kanuha as offered, to make sure that the principal  
14 concern, and that it seems to me to be access to the  
15 beach, and to be able to enjoy the beach area, that  
16 those desires can be protected but at the same time  
17 allow the Project to go forward.

18           The one thing I would like to state for the  
19 record is that if this Project is approved, I would  
20 ask the County, because I believe that it is the  
21 County's obligation in this circumstance, to ensure  
22 that the beach access that is provided as part of any  
23 development is not, is not false basically. That  
24 there is adequate access provided and appropriate  
25 number of parking spaces, that the facilities that are

1 provided are adequate for the number of people that  
2 use the area.

3           What I would like to make sure that is  
4 avoided is a false promise that the public will be --  
5 the public's access to the beach area will be  
6 preserved by giving inadequate facilities, inadequate  
7 parking, inadequate access, time open/time close kind  
8 of thing.

9           So, again, with that it's not an easy  
10 decision to make. But we're bound as Commissioners to  
11 look at all of the criteria that are provided for  
12 under the law.

13           And although we may feel strongly personally  
14 about a Petition, we have to look at the criteria that  
15 are imposed on us. And for that reason with the  
16 protections in place that Commissioner Kanuha has  
17 offered I will vote up for this.

18           CHAIRMAN DEVENS: Further discussion?  
19 Commissioner Kanuha.

20           COMMISSIONER KANUHA: Thank you,  
21 Mr. Chairman. I think there's a lot of misconception  
22 in terms of what our role as a Commission is. If you  
23 look at that map on the wall, all of the red is in  
24 urban. When the State Land Use law was first created  
25 all of the red was green on both sides of the road.

1     Okay? This was, you know, even before the Queen  
2     Ka'ahumanu Highway came in.

3             So as you can see over time from the  
4     beginning of the State Land Use law this pattern of  
5     planning and urbanization has extended out there, and  
6     it actually began when the airport in Old Kona just  
7     became inadequate for the same reasons, for flights to  
8     go in and out. So the airport was one of the first  
9     components to move out to where it was. And that kind  
10    of set, you know, that boundary. And the infill  
11    that's happened since then has been going on.

12            So again, you know, our role is just to  
13    decide whether or not from a long-term planning  
14    perspective areas should go into urban or not. To a  
15    certain extent we're not voting for a specific  
16    project.

17            It doesn't make a difference who owns the  
18    land, what they're going to do with it. Our criteria  
19    is whether or not it fits the State Land Use law,  
20    whether or not it comports with the County General  
21    Plan, in this particular case whether it comports with  
22    the Kona Community Development Plan.

23            And once we make that decision to put it in  
24    one category or another, then it's out of our hands  
25    because the ultimate determination of the use of this

1 property passes on to the county.

2 And if you have a sentiment about where  
3 that's going to go based on the testimony of two  
4 council people, that is their prerogative. That's the  
5 legislative prerogative of the county itself. We  
6 can't legislate. We're quasi-judicial. We're kind of  
7 judge, jury. But we just cannot legislate. That is  
8 left up to the county.

9 So once we make these decisions then it's  
10 out of our hands. All we can do is to ensure that if  
11 we approve a redesignation that whatever conditions we  
12 have there represent the best interests of the state.

13 And after that it's up to the county.  
14 Because once things go into the Urban District it's no  
15 state agencies involved. It's clearly up to the  
16 county. And whether or not it goes further than that  
17 that's the legislative process. That's, you know,  
18 what finally makes it go. Thank you, Mr. Chairman.

19 CHAIRMAN DEVENS: Anything further?  
20 Commissioner Contrades.

21 COMMISSIONER CONTRADES: I just have a  
22 question. So under Duane's motion exactly what would  
23 we be approving and what would be denied?

24 CHAIRMAN DEVENS: As I understand everything  
25 would be granted except for this buffer zone that he

1 referred to, that that would remain in conservation.  
2 It would not be amended, the 1100-foot buffer zone, is  
3 that correct, Commissioner Kanuha? Does that make  
4 sense?

5 COMMISSIONER KANUHA: From the shoreline,  
6 correct.

7 CHAIRMAN DEVENS: So it's granted in part,  
8 denied in part. The only part that's being denied in  
9 this motion would be this buffer zone that would  
10 remain in conservation. It would not be amended.

11 COMMISSIONER CONTRADES: Thank you.

12 COMMISSIONER KANUHA: Mr. Chairman, can I  
13 add more?

14 CHAIRMAN DEVENS: Yes.

15 COMMISSIONER KANUHA: And in essence leaving  
16 it in the Conservation District it's not in our hands,  
17 it's not in the County's hands. It's in the hands of  
18 the DLNR.

19 So whatever they need to do is in their, you  
20 know, it's in the hands -- depending upon what kind of  
21 conditions we impose and my, my thoughts and my  
22 feelings on this is that I want it air tight. And  
23 these declarations, it doesn't matter who the owner is  
24 even if it is the state, ensure that the community has  
25 access to that whole area.



1           There's been a lot of talk about what we  
2   call mauka-makai because that's an issue. That's an  
3   issue in terms of how they go through the property, if  
4   they go through the property, if they go on the  
5   Kohanaiki side, if they go on the NELHA side.

6           And I want to make sure that's locked up as  
7   well no matter who owns the property, whether it's  
8   these guys, whoever they sell it to, whether it's  
9   to -- whether the county acquires it, same difference.  
10   So those are, you know -- that's the direction I want  
11   to go. Thank you.

12           COMMISSIONER TEVES: Mr. Chairman.

13           CHAIRMAN DEVENS: Commissioner Teves.

14           COMMISSIONER TEVES: I have something I'd  
15   like to say. Last year we had a docket on O'ahu  
16   called Hawaii Memorial Park. Thirty odd years ago  
17   they came to the Land Use Commission. And when they  
18   wanted that area rezoned for a cemetery, they agreed  
19   to let a certain portion of that remain in  
20   conservation. Well, 30 years later they came to us  
21   and they wanted it rezoned. And we turned them down.

22           Then they went to the city. Now they're  
23   going to get the city to change the zoning in that  
24   area. That could very well happen here.

25           Whenever we make a declaration in this one

1 it won't matter. At the city level they can do  
2 whatever they want. And I think one day they're going  
3 come back and they're gonna get that beach land.

4 And we're gonna be out of luck up here. I  
5 think we should stop it now. That's conservation  
6 land. Somebody put it conservation land for a reason,  
7 not because it was in the Kona Development.

8 (Applause)

9 If you look at the red up there it's going  
10 to become another Honolulu real fast. And I don't  
11 think the people here want that. Thank you.

12 (Applause).

13 CHAIRMAN DEVENS: Commissioner Judge.

14 COMMISSIONER JUDGE: Thank you. I'd just  
15 like to say, too, that we've gone through a lot  
16 listening to this Petition. And I appreciate the time  
17 and effort that the Petitioners made. It's a very  
18 well-designed development. But I'm going to have to  
19 concur with Commissioner Teves and Commissioner Heller  
20 that -- (applause) -- the airport issue just really  
21 bothers me.

22 I recall yesterday we had testimony from  
23 some high school students. And they made a very  
24 poignant point that the decisions we make here today  
25 not only affect us, our generation, but their

1 generation and all the generations to come.

2 And I think it may not be an issue in 10  
3 years. It may not be an issue in 20 years. But I  
4 think there's certainly a great potential for it to be  
5 an issue in the future. And I think that's -- I just  
6 can't get past that one. So I'm going to be also  
7 voting 'no' on this Petition.

8 (Applause)

9 CHAIRMAN DEVENS: Any further discussion on  
10 this? Commissioner Kanuha, you presented the motion  
11 for discussion. Do you want it to go to the vote?

12 COMMISSIONER KANUHA: Yes, Mr. Chairman.

13 CHAIRMAN DEVENS: Dan.

14 MR. DAVIDSON: This is a motion to deny in  
15 part and approve in part the Petition in A07-774.  
16 Commissioner Chock?

17 COMMISSIONER CHOCK: Yes.

18 MR. DAVIDSON: Commissioner Kanuha?

19 COMMISSIONER KANUHA: Yes.

20 MR. DAVIDSON: Commissioner Lezy?

21 COMMISSIONER LEZY: Yes.

22 MR. DAVIDSON: Commissioner Contrades?

23 COMMISSIONER CONTRADES: No.

24 MR. DAVIDSON: Commissioner Heller?

25 COMMISSIONER HELLER: No.

1 MR. DAVIDSON: Commissioner Jencks?

2 COMMISSIONER JENCKS: Yes.

3 MR. DAVIDSON: Commissioner Judge?

4 COMMISSIONER JUDGE: No.

5 MR. DAVIDSON: Commissioner Teves?

6 COMMISSIONER TEVES: No.

7 MR. DAVIDSON: Chair Devens?

8 CHAIRMAN DEVENS: No.

9 MR. DAVIDSON: The motion fails, Chair.

10 (Audience cheering and applause)

11 CHAIRMAN DEVENS: So that motion was to  
12 grant in part and deny in part. The motion has  
13 failed. The Chair will call for any additional  
14 motions on this Petition. Commissioner Teves, do you  
15 want to make a motion on this? What's happened is  
16 that the motion that was proposed was to grant in part  
17 and deny in part. It has now failed.

18 COMMISSIONER TEVES: Yes, Mr. Chairman.  
19 Regarding the docket A07-774 'O'oma Beachside Village,  
20 LLC, Hawai'i I make the motion to deny this Petition.

21 CHAIRMAN DEVENS: Is there a second?  
22 Commissioner Heller seconded the motion to deny. Is  
23 there sny discussion on this motion? Hearing none,  
24 Dan, call for the vote.

25 MR. DAVIDSON: Motion to deny A07-774.

1 Commissioner Teves?

2 COMMISSIONER TEVES: No.

3 CHAIRMAN DEVENS: This is your motion.

4 (Laughter)

5 CHAIRMAN DEVENS: That was a yes from

6 Commissioner Teves.

7 COMMISSIONER TEVES: Yes.

8 MR. DAVIDSON: Commissioner Heller?

9 COMMISSIONER HELLER: Yes.

10 MR. DAVIDSON: Commissioner Chock?

11 COMMISSIONER CHOCK: No.

12 MR. DAVIDSON: Commissioner Contrades?

13 COMMISSIONER CONTRADES: Yes.

14 MR. DAVIDSON: Commissioner Jencks?

15 COMMISSIONER JENCKS: No.

16 MR. DAVIDSON: Commissioner Judge?

17 COMMISSIONER JUDGE: Yes.

18 MR. DAVIDSON: Commissioner Kanuha?

19 COMMISSIONER KANUHA: No.

20 MR. DAVIDSON: Commissioner Lezy?

21 COMMISSIONER LEZY: No.

22 MR. DAVIDSON: Chair Devens?

23 CHAIRMAN DEVENS: Yes.

24 MR. DAVIDSON: The motion fails 5 to 4.

25 (Applause)

1           CHAIRMAN DEVENS: We're going to take a  
2 short break. Just so the public understands in order  
3 to carry the motion it has to be carried by 6 votes at  
4 a minimum. So this motion to deny the Petition was  
5 not passed because there were only 5 votes. So we're  
6 going to take a short break and we're still on this  
7 matter. Take a 5 minute break.

8                       (Recess was held. 10:10)

9           CHAIRMAN DEVENS: Back on the record. We're  
10 going to move to go into executive session. It  
11 shouldn't take too long. And we will leave the room.  
12 So I make that motion to discuss the Commission's  
13 powers and authorities.

14           COMMISSIONER JUDGE: Second.

15           CHAIRMAN DEVENS: All those in favor say aye  
16 (Commissioners voting: Aye)

17                       Unanimous.

18                       (Executive session)

19           CHAIRMAN DEVENS: We're back on the record.  
20 We had a chance to review the Hawai'i Revised Statute  
21 that applies to us and also our own administrative  
22 rules as it comes to voting and what carries a motion  
23 or what can deny a motion.

24                       And it appears that I was incorrect in that  
25 the motion to deny did pass because only a majority of

1 5 votes is required as opposed to the usual 6 votes.

2 (Audience loud applause)

3 So I wanted to state that on the record so  
4 the parties understand how we interpreted the rule in  
5 case this matter goes any further. I hope we didn't  
6 make a mistake on our interpretation, but that is our  
7 interpretation of the rule. Other than that,  
8 Commissioners want to add anything to what I've just  
9 concluded as far as the motion passing? Parties?  
10 Mr. Yee.

11 MR. YEE: Chair, I've always believed that  
12 you should decide issues on the substance rather than  
13 the procedures. So what I would request is to ask the  
14 Petitioner whether they would accept that legal  
15 decision that a 5 to 4 vote for denial constitutes  
16 denial under the rules. And if they don't then state  
17 for the record why not, and to allow the Commission an  
18 opportunity to fix, if they think it's appropriate,  
19 that issue.

20 MR. LIM: Thank you. Mr. Chairman, we were  
21 going to say that anyway, as the motion did not  
22 receive 6 affirmative votes either which way  
23 essentially. At least in our understanding the  
24 Commission and most administrative boards work like  
25 this, if you're unable to reach a decision either way

1 you continue it on to the next regularly scheduled  
2 meeting for another vote. If it fails at that point  
3 in time then the proposed action is denied.

4 MR. YEE: Chair, if I could just note  
5 15-15-13B states that, "If a Petition for district  
6 boundary amendment does not obtain 6 affirmative votes  
7 for approval, then the Commission shall prepare  
8 findings of fact, conclusions of law, and a decision  
9 and order to deny the Petition."

10 Now, technically the motion to approve in  
11 part and deny in part is not simply a motion to  
12 approve. But if there is a concern by Petitioner that  
13 you needed to, for some reason, continue this to  
14 another matter, if I understand it correctly, his  
15 argument correctly, I think that's wrong.

16 If -- again it's only because I think  
17 substantive issues should be -- if you appeal, appeal  
18 on the substance. Don't appeal on the process  
19 question. So just as a matter of a helpful  
20 suggestion, our suggestion -- and it's up to you, you  
21 can stand by your prior ruling. That's the LUC's  
22 call.

23 My suggestion is perhaps you could make a  
24 motion, someone could make a motion to approve  
25 straight up. It's unlikely to receive 6 affirmative



1 votes. And that would fall squarely within 15-15-13B.

2 CHAIRMAN DEVENS: Let me ask you what would  
3 happen if no further motions were made and it ended up  
4 the way it just ended up?

5 MR. YEE: The concern would be -- I mean if  
6 you're correct, and I think you very well may be, but  
7 if you're wrong, though, and no decision is made, then  
8 the Commission has a 365-day time limit to make a  
9 decision. And if you don't make any decision it is  
10 deemed approved subject to a variety of conditions.  
11 So that's the reason why I would suggest that this be  
12 clarified on the procedural issues.

13 CHAIRMAN DEVENS: Mr. Lim, do you want to  
14 respond to that?

15 MR. LIM: Yes. I guess the same thing what  
16 I basically said. I don't think there's an affirmative  
17 vote either which way. My understanding of Robert's  
18 Rules of Order, and the Commission follows those, is  
19 that the matter should be continued on to the next  
20 hearing for another vote either which way.

21 The reason for that is because there are  
22 often cases in which the Commissions all over the  
23 state fail to reach an affirmative vote either which  
24 way. And this is a procedure by which you get a final  
25 decision, is at the next regularly scheduled meeting

1 if we don't have an affirmative vote either which way,  
2 then the Petition is denied.

3 CHAIRMAN DEVENS: I appreciate the info.

4 MR. BRILHANTE: Mr. Chair.

5 CHAIRMAN DEVENS: Yes, sir.

6 MR. BRILHANTE: The county of Hawai'i agrees  
7 with the Office of Planning's interpretation of the  
8 rules. I think it's essential that we protect the  
9 record here. And in order to accomplish that I think  
10 the conservative approach would be to entertain a  
11 motion approving the permit. And if that fails, then  
12 we're at least clearly in the guide, we fall within  
13 the guide of the rules as they are stated.

14 CHAIRMAN DEVENS: Appreciate that. Well,  
15 we're definitely trying to do the correct thing in  
16 trying to follow the law and our rules and try to  
17 interpret it to the best of our ability. Given the  
18 input from the parties what I will do is ask the  
19 Commission if there are any further motions anyone  
20 would like to make. If not, then we're going to  
21 adjourn. Commissioner Heller.

22 COMMISSIONER HELLER: Yes. Without  
23 necessarily conceding that it's required, just for  
24 purposes of clarifying the record I'd like to make a  
25 motion that the Petition in A07-774 be approved. And

1 this is not a motion to approve in part, and deny in  
2 part. This is just a motion to approve period.

3 CHAIRMAN DEVENS: Is there a second?

4 COMMISSIONER JENCKS: Second.

5 CHAIRMAN DEVENS: Commissioner Jencks has  
6 seconded the motion to approve the Petition. Did I  
7 understand the motion correctly?

8 COMMISSIONER HELLER: Yes.

9 CHAIRMAN DEVENS: Discussion? Hearing none,  
10 roll call.

11 MR. DAVIDSON: This is a motion to approve  
12 the Petition in A07-774. Commissioner Heller?

13 COMMISSIONER HELLER: Vote no on my own  
14 motion.

15 MR. DAVIDSON: Commissioner Jencks?

16 COMMISSIONER JENCKS: Aye.

17 MR. DAVIDSON: Commissioner Chock?

18 COMMISSIONER CHOCK: Yes.

19 MR. DAVIDSON: Commissioner Contrades?

20 COMMISSIONER CONTRADES: No.

21 MR. DAVIDSON: Commissioner Judge?

22 COMMISSIONER JUDGE: No.

23 MR. DAVIDSON: Commissioner Kanuha?

24 COMMISSIONER KANUHA: Yes.

25 MR. DAVIDSON: Commissioner Lezy?

1 COMMISSIONER LEZY: Yes.

2 MR. DAVIDSON: Commissioner Teves?

3 COMMISSIONER TEVES: No.

4 MR. DAVIDSON: Chair Devens?

5 CHAIRMAN DEVENS: No.

6 MR. DAVIDSON: This motion fails, Chair.

7 (Applause)

8 CHAIRMAN DEVENS: Is there any other  
9 business? Commissioners wish to raise any other  
10 matters in this case? We're going to direct the staff  
11 to prepare the appropriate Findings of Fact and  
12 Conclusions of Law and Decision and Order in this  
13 matter based on the decision by this Commission. We  
14 stand adjourned.

15 (The proceedings were adjourned at 10:25 a.m.)

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## C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matter on the 5th day of November 2010

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2010

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HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand Reporter