SMOLENSKI & WOODDELL

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ROBERT J. SMOLENSKI*

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June 28, 2016

BY HAND DELIVERY

Daniel E. Orodenker
Executive Officer
State of Hawai'i Land Use Commission
Room 406
235 South Beretania Street
Honolulu, Hawai'i 96804-2359

Re: McClean Honokohau Properties; Docket No. A89-643

Dear Dan,

In connection with the Commission's Order Granting in Part and Denying in Part Petitioner's Motion to Release, Discharge, and Delete All Conditions, dated March 28, 2016, and pursuant to HAR Section 15-15-94(c), enclosed is a certified copy of Petitioner's Declaration of Release of Certain Increment I Conditions recorded with the Bureau of Conveyances of the State of Hawaii on May 27, 2016 as Doc A-59910923.

Very truly yours,

Robert J. Smolenski

Robert J. Smolenski

RJS:mas
Enclosure
cc w/encl. by e-mail:
Brian Yee (Bryan.C.Yee@hawaii.gov)
Duane Kanuha (Duane.Kanuha@hawaiicounty.gov)
Amy Self (Amy.Self@hawaiicounty.gov)
William Brilhante (william.brilhante@hawaiicounty.gov)
Daryn Arai (Daryn.Arai@hawaiicounty.gov)
Rodney Funakoshi (Rodney.Y.Funakoshi@dbedt.hawaii.gov)
Scott Derrickson (SDerrick@dbedt.hawaii.gov)
Diane Ericsson (Diane.Ericksson@hawaii.gov)

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

Doc A-59910923
May 27, 2016 3:29 PM

LAND COURT | REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ( )

SMOLENSKI & WOODDELL
1628 Davies Pacific Center
Honolulu, Hawaii 96813
Tel. No. 524-5750

DECLARATION OF RELEASE OF CERTAIN INCREMENT I CONDITIONS

KNOW ALL PERSONS BY THESE PRESENT THAT:

WHEREAS, McCLEAN HONOKOHAU PROPERTIES, a Hawaii limited partnership (the "Petitioner"), as the owner in fee simple of certain property located at Honokohau, District of North Kona, Island and County of Hawaii, State of Hawaii (the "Property"), is the Petitioner in Docket No. A89-643, as amended, before the Land Use Commission of the State of Hawaii (the "Commission"), seeking the reclassification of the Property from the Conservation and Agricultural Districts to the Urban District;

WHEREAS, pursuant to that certain Findings of Fact, Conclusions of Law, and Decision and Order dated April 16, 1991, filed in Docket No. A89-643, the lands within Increment I of the Petitioner's development plan for the Property, consisting of approximately 45.5 acres, situated at Honokohau, North Kona, Island and County of Hawaii, State of Hawaii, identified by Hawaii Tax Map Key Number: 7-4-08: portion of 26 and portion of 49, were reclassified from the Conservation District to the Urban District, subject to certain conditions, which conditions are set forth in that certain Declaration of Conditions recorded in the Bureau of Conveyances of the State of Hawaii on June 14, 1991, as Document No. 91-077403 (the "Increment I Conditions");

WHEREAS, pursuant to that certain Order Granting in Part and Denying in Part Petitioner's Motion to Release, Discharge, and Delete All Conditions dated March 28, 2016,

filed in Docket No. A89-643, a copy of the certified copy of which is attached hereto as Exhibit A, Conditions 4, 5, 7, 9 and 10 of the Increment I Conditions were released;

WHEREAS, the Petitioner desires to record this Declaration to reflect the release of Condtions 4, 5, 7, 9 and 10 of the Increment I Conditions;

NOW THEREFORE, the Petitioner does hereby enter into this Declaration to set forth the conditions released by the Commission in its March 28, 2016 Order.

IN WITNESS WHEREOF, the Petitioner has executed this Declaration as of May 23, 2016.

McCLEAN HONOKOHAU PROPERTIES

JAMES S. McCLEAN
GENERAL PARTNER

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 23rd day of May, 2016, before me personally appeared **JAMES S. McCLEAN**, to me known, who did say that he is the General Partner of McClean Honokohau Properties, a Hawaii Limited partnership, and he acknowledged that he executed the foregoing instrument as his free act and deed, as said General Partner.

MELANIE R. PIERSON NOTARY PUBLIC No. 12-211 STATE OF HAWAII

Signature: Melanie R. Pierson

Print Name: MELANIE R. PIERSON

Notary Public, State of Hawaii

(Official Stamp or Seal)

My commission expires: JUL 01 2016

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

Declaration of Release of Certain Increment I Conditions

☐ Doc. Date: _____ or ☒ Undated at time of notarization

No. of Pages: 13 Jurisdiction: Third Circuit (in which notarial act is performed)

Melanie R. Pierson MAY 23 2016

Signature of Notary Date of Notarization and Certification Statement

MELANIE R. PIERSON

Printed Name of Notary

MELANIE R. PIERSON NOTARY PUBLIC No. 12-211 STATE OF HAWAII

(Official Stamp or Seal)

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

2016 MAR 28 P 1: 52

LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of McCLEAN HONOKŌHAU PROPERTIES, a Hawai'i limited partnership To Amend the Land Use District Boundary to Reclassify Approximately 89.527 acres of land in the Conservation and Agricultural Districts to the Urban District at Honōkohau, North Kona, Island of Hawai'i, State of Hawai'i, Tax Map Key Nos.: 7-4-24:001, 002, 004, 006 to 012.	)	DOCKET NO. A89-643 ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION TO RELEASE, DISCHARGE, AND DELETE ALL CONDITIONS; AND CERTIFICATE OF SERVICE

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION TO RELEASE, DISCHARGE, AND DELETE ALL CONDITIONS

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

Daniel E. Orodenker, Executive Officer

EXHIBIT A

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

2016 MAR 28 P 1:52
LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-643
	)	
McCLEAN HONOKŌHAU PROPERTIES, a Hawai'i limited partnership	)	ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION TO RELEASE, DISCHARGE, AND DELETE ALL CONDITIONS; AND CERTIFICATE OF SERVICE
To Amend the Land Use District Boundary to Reclassify Approximately 89.527 acres of land in the Conservation and Agricultural Districts to the Urban District at Honōkohau, North Kona, Island of Hawai'i, State of Hawai'i, Tax Map Key Nos.: 7-4-24:001, 002, 004, 006 to 012.	)	

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION TO RELEASE, DISCHARGE, AND DELETE ALL CONDITIONS

AND

CERTIFICATE OF SERVICE

LAND USE COMMISSION
STATE OF HAWAII
2016 MAR 28 P 1:52

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of McCLEAN HONOKŌHAU PROPERTIES, a Hawai'i limited partnership To Amend the Land Use District Boundary to Reclassify Approximately 89.527 acres of land in the Conservation and Agricultural Districts to the Urban District at Honōkohau, North Kona, Island of Hawai'i, State of Hawai'i, Tax Map Key Nos.: 7-4-24:001, 002, 004, 006 to 012.	)	DOCKET NO. A89-643 ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION TO RELEASE, DISCHARGE, AND DELETE ALL CONDITIONS

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION TO RELEASE, DISCHARGE, AND DELETE ALL CONDITIONS

On December 23, 2014, McClean Honōkohau Properties ("Petitioner") filed Petitioner's Motion to Release, Discharge and Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Entered April 16, 1991 ("Motion"); Memorandum in Support of Motion; Verification of James S. McClean; and Exhibits 1 to 5.

The hearing on the Motion was originally, tenatively scheduled for late February, 2015. At the request of the Petitioner the hearing was rescheduled to May 28, 2015 and then rescheduled again to September 10, 2015.

On August 24, 2015, Petitioner filed Petitioner's First Supplemental Memorandum and Exhibits of McClean Honokōhau Properties in Support of Motion to Release, Discharge and

Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Entered April 16, 1991 ("Supplemental Memorandum"); Memorandum in Support of Motion; Verification of James S. McClean; and Exhibits 6 to 20.

On August 27, 2015, the State Office of Planning ("OP") filed OP's Response in Partial Support of Petitioner's Motion to Release, Discharge and Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Entered April 16, 1991; and Exhibits 1-9.

On August 31, 2015, the County of Hawai`i, Department of Planning ("County") filed the Department of Planning's Response to Petitioner's Motion to Release, Discharge and Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Entered April 16, 1991.

On September 1, 2015, the Commission mailed a meeting notice and agenda to all the parties, and the Statewide and Hawai`i Island mailing lists of its scheduled September 10, 2015 meeting.

On September 3, 2015, Petitioner submitted its Second Supplemental Memorandum of McClean Honokōhau Properties in Support of Motion to Release, Discharge and Delete All Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order, Entered April 16, 1991 ("Second Supplemental Memorandum").

On September 9, 2015, Petitioner submitted its Third Supplemental Memorandum of McClean Honokohau Properties in Support of Motion to Release Conditions in the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order entered April 16, 1991; Exhibits 21 and 22; and, Witness and Exhibit Lists.

On September 10, 2015, prior to the hearing, the Petitioner, OP, and County filed a Stipulation for Deletion of Certain Conditions 4, 5, 7, 9, 10, and 14.

On September 10, 2015, the Commission held a public meeting on Petitioner's Motion in Kona, island of Hawai`i, Hawai`i. The hearing was not completed, and the Commission continued the hearing on the Motion.

On October 28, 2015, the Commission mailed a meeting notice and agenda to all the parties, and the Statewide and Hawai`i Island mailing lists of its scheduled November 4, 2015 meeting.

On November 4, 2015, the Commission held a public meeting in Kona, island of Hawai`i, Hawai`i.

The Commission considered Petitioner's Motion at its meetings on September 10 and November 4, 2015, in Kona, island of Hawai`i, Hawai`i. Robert Smolenski, Esq., James McClean, and David Elbogan appeared on behalf of Petitioner. Amy Self, Esq., and Duane Kanuha appeared on behalf of the County. Bryan Yee, Esq., Rodney Funakoshi, and Lorene Maki appeared on behalf of OP. The following members of the public testified at the meeting on September 10, 2015: Dr. Jeff Zimpfer (Kaloko- Honōkohau National Historical Park) and Janice Palma-Glennie (Kona Kai Ea Chapter – Surfrider Foundation).

Mr. Smolenski presented argument on the reasons why Petitioner should be released from the conditions imposed in the Commission's 1991 Decision and Order. Petitioner's Exhibits 1 through 22 were admitted to the record. Petitioner requested the Commission to take notice of the stipulation filed prior to the start of the September 10, 2015 meeting; and the stipulation was admitted to the record. Petitioner then provided an overview of the Motion and other documents filed with the Commission, and called Mr. McClean and Mr. Albogan to provide information on provision of required infrastructure and compliance with conditions. Mr. Smolenksi voluntarily requested on behalf of the Petitioner that the release of Conditions 1, 2, 12, 15, and 16 be removed from Petitioner's Motion and be retained.

Ms. Self provided the position of the County and argued the reasons for supporting the release of certain conditions and retention of others. Specifically, the County supported the stipulation and the release of Conditions 6, 8, 11, and 13; in addition to Conditions 4, 5, 7, 9, 10, and 14.

Mr. Yee provided the position of OP and argued the reasons for supporting the release of certain conditions and retention of others. Specifically, OP supported the stipulation and the release of condition 14; and in addition to Conditions 4, 5, 7, 9, and 10.

On September 10, 2015, after the parties had an opportunity to present witness testimony and oral argument, and following discussion, a motion was made and seconded to release Conditions 4, 5, 7, 9, and 10 for Increment I only. There being a vote tally of 6 ayes, 0 nays[1], and 2 excused, the motion carried. The Petitioner requested the Commission to continue the hearing with an opportunity to resume rebuttal at that time.

On November 4, 2015, the Commission continued hearing testimony from the parties on those remaining conditions not released by the Commission's action on September 10, 2015. Robert Smolenski, Esq., James McClean, and David Elbogan appeared on behalf of Petitioner. Amy Self, Esq., and Duane Kanuha appeared on behalf of the County. Bryan Yee, Esq., and Lorene Maki appeared on behalf of OP. There was no public testimony. After the parties had an opportunity to present oral argument, and following discussion, a motion was made and seconded to deny the release of Conditions 3, 6, 11, 13, and 14. There being a vote tally of 7 ayes, 0 nays, and 1 excused, the motion carried.

ORDER

This Commission, having duly considered the pleadings, oral and written statements and testimony, oral arguments of the parties, and public testimony, and motions having been made and seconded at hearings on September 10, 2015 and November 4, 2015, in Kona, Hawai`i, and the motions having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motions,

[1] The Commission currently has one vacancy awaiting appointment.

HEREBY ORDERS:

That the Petitioner's Motion to Release, Discharge and Delete All Conditions contained in the Findings of Fact, Conclusions of Law, and Decision and Order entered by the State Land Use Commission on April 16, 1991, is GRANTED with respect to the release of Conditions 4, 5, 7, 9, and 10 relating to Increment I only, and is DENIED with respect to Conditions 1 to 3, 6, 8, and 11 to 16, which are retained and remain in full force.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

DATED: Honolulu, Hawai`i, this 28th day of March, 2016, per motions on September 10 and November 4, 2015 in Kona, Hawai`i.

LAND USE COMMISSION

STATE OF HAWAI`I

APPROVED AS TO FORM

Deputy Attorney General

By

EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

3/28/16

Certified by:

DANIEL E. ORODENKER
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A89-643
	)	
McCLEAN HONOKŌHAU PROPERTIES, a Hawai'i limited partnership	)	CERTIFICATE OF SERVICE
	)	
To Amend the Land Use District Boundary to Reclassify Approximately 89.527 acres of land in the Conservation and Agricultural Districts to the Urban District at Honōkohau, North Kona, Island of Hawai'i, State of Hawai'i, Tax Map Key Nos.: 7-4-24:001, 002, 004, 006 to 012.	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following by depositing the same in the **AS INDICATED BELOW** on March 28, 2016:

LEO R. ASUNCION, JR., AICP,
Director
Office of Planning, State of Hawai'i
235 South Beretania Street
6th Floor, Leiopapa A Kamehameha Bldg.
Honolulu, Hawai'i 96813

(HAND DELIVERY)

BRYAN C. YEE, ESQ.
Deputy Attorney General
Department of the Attorney General
425 Queen Street
Honolulu, Hawai'i 96813
Attorney for the Office of Planning

REGULAR MAIL

DUANE KANUHA, Planning Director
DARYN ARAI, Planning Program Manager
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

REGULAR MAIL

MOLLY A. STEBBINS, ESQ.
AMY SELF, ESQ.
Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, Hawai'i 96720
Attorney for Hawai'i County
Planning Department

REGULAR MAIL

ROBERT J. SMOLENSKI, Esq.
1628 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

(CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

DATED: March 28, 2016 Honolulu, Hawai'i

DANIEL E. ORODENKER
Executive Officer