

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
McCLEAN HONOKOHAU PROPERTIES,)
a Hawaii Limited Partnership)
)
To Amend the Land Use District)
Boundary to Reclassify Approxi-)
mately 89.527 acres of land in the)
Conservation and the Agricultural)
Districts to the Urban District)
at Honokohau, North Kona, Hawaii,)
Tax Map Key Nos.: 7-4-08: 26 and)
49)
_____)

DOCKET NO. A89-643

MCCLEAN HONOKOHAU
PROPERTIES, a Hawaii
Limited Partnership

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

APR 16 1991

Date

by

Esther Lunde
Executive Officer

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

APR 16 8 59 AM '91
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-643
)	
MCCLEAN HONOKOHAU PROPERTIES,	)	MCCLEAN HONOKOHAU
a Hawaii Limited Partnership	)	PROPERTIES, a Hawaii
	)	Limited Partnership
To Amend the Land Use District)	
Boundary to Reclassify Approxi-)	
mately 89.527 acres of land in the)	
Conservation and the Agricultural)	
Districts to the Urban District)	
at Honokohau, North Kona, Hawaii,)	
Tax Map Key Nos.: 7-4-08: 26 and)	
49)	
<hr/>		

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

Robert S. McClean as Trustee of the Robert S. McClean Trust ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on June 13, 1989, and an amendment to Petition for Land Use District Boundary Amendment on January 23, 1991, (hereinafter collectively referred to as "Petition"), pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended ("HRS"), and the Hawaii Land Use Commission Rules, Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"), to amend the land use district boundary to reclassify approximately 89.527 acres of land, situate at Honokohau, North Kona, Hawaii, identified by Tax Map Key Nos. 7-4-08:26 and 49 (hereinafter "Property"), from the Conservation and the Agricultural Districts to the Urban District.

The Petition was submitted in compliance with a condition imposed by the Board of Land and Natural Resources in its approval of Conservation District Use Permit Number HA-12/18/85-1873, which required the submission of a petition to the Land Use Commission (hereinafter "Commission") to redesignate a 3.5 acre facility on the Property "to another zoning district more appropriate for the type of use."

The Commission, having heard and examined the testimony, evidence and argument of counsel presented at the hearings, and the parties' Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and exceptions filed thereto, hereby makes the following findings of fact:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner filed a Petition for Land Use District Boundary Amendment on June 13, 1989. The Petition included an environmental assessment as required by Section 343-5(a)(7), HRS.

2. On July 13, 1989, and by Order filed on August 3, 1989, the Commission required Petitioner to prepare an Environmental Impact Statement, pursuant to Chapter 343, HRS.

3. By Order dated May 10, 1990, the Commission accepted Petitioner's Final Environmental Impact Statement and accepted Petitioner's Petition for Land Use District boundary Amendment for filing as of April 23, 1990.

4. On September 5, 1990, a petition to Intervene was filed by Isemoto Contracting Co. Ltd., SJA Partnership, and March E. Taylor (hereinafter "Intervenor"). On September 27, 1990 and by Order filed on October 17, 1990, the Commission granted the Petition to Intervene.

5. A prehearing conference was held on September 25, 1990, at the Commission's office, Room 104, Old Federal Building, 335 Merchant Street, Honolulu, Hawaii.

6. The Commission held a public hearing on the Petition at the Kahaluu Room, Keauhou Beach Hotel, 78-6740 Alii Drive, Kailua-Kona, Hawaii on October 11, 1990. The hearing was held pursuant to notices published on August 21, 1990, in the Honolulu Advertiser and the Hawaii Tribune Herald. James S. Greenwell, President of Lanihau Management Corporation and Vice President of Palani Ranch Company, Inc., testified as a public witness. Upon Petitioner's motion, the hearing was continued to the first available date after the Commission's hearing on the Petition of the Housing Finance and Development Corporation, State of Hawaii (hereinafter "HFDC") (LUC Docket No. A90-660).

The Commission continued its public hearing on the Petition at the Kamehameha Ballrooms, Kona Surf and Country Club, 78-128 Ehukai Street, Kailua-Kona, Hawaii, on January 24 and 25, 1991. The Commission admitted an untimely written statement received on October 22, 1990, from Elizabeth Ann Stone.

7. On January 23, 1991, Petitioner filed a motion to amend the Petition to change the name of the Petitioner from Robert S. McClean, as Trustee of the Robert S. McClean Trust, to McClean Honokohau Properties, a Hawaii Limited Partnership; and to correct the acreage of the Property being requested to be redistricted from the Conservation to the Urban District, from 74.605 acres to 72.40 acres, and from the Agricultural to the Urban District from 14.922 acres to 17.127 acres. Petitioner's motion to amend the Petition was granted by the Commission at the hearing on January 24, 1991 by order issued on March 27, 1991.

DESCRIPTION OF THE PROPERTY

8. The Property is located at Honokohau, District of North Kona, Island of Hawaii, approximately three miles north of Kailua-Kona, four miles south of Keahole Airport, and approximately 1,000 feet mauka of the Queen Kaahumanu Highway and is east-northeast of the Honokohau Small Boat Harbor.

9. The Property is bounded on the north by vacant land in the Conservation and Agricultural Districts owned by Lanihau Partners, and on the south by land in the Urban District owned by HFDC, which is proposed to be developed for the Kealakehe Planned Community (Lai'opua). The adjacent 9.9 acre parcel of land owned by Intervenors, is in the Urban District and is being developed for light industrial use.

10. Existing uses on the Property are a ready-mix plant, quarry, rock crushing plant, aggregate storage and

repair facilities operated by West Hawaii concrete; equipment storage and parking; a concrete testing lab; office parking; and boat storage and repair. These uses are pursuant to two Conservation District Use Permits from the Department of Land and Natural resources. Approximately 30 acres of the Property have been heavily graded or excavated. The remainder is in its natural state, covered by a'a and pahoehoe lava flows.

11. The Property is owned by Petitioner, McClean Honokohau properties, a Hawaii limited partnership, of which the Robert S. McClean Trust is the general partner, and trusts for Robert S. McClean and his family members are the limited partners.

12. The Property ranges in elevation from approximately 85 feet at the makai boundary, to 350 feet at the mauka property line. Average slope is 7.0 percent with a range of 0 to 25 percent. The average annual rainfall is 25 inches.

13. The Soil Survey Report published by the United States Department of Agriculture Soil Conservation Service ("SCS") designates the Property as Pahoehoe and A'a lava flows.

14. According to the Flood Insurance Rate Map (FIRM) prepared by the U.S. Army Corps of Engineers, the Property is located within Zone X (areas outside of the 500-year floodplain).

15. Access to the Property is from Queen Kaahumanu Highway by a road on a 60-foot wide easement, half of which is

on the Intervenor's property and half on the Lanihau Partner's property.

PROPOSAL FOR RECLASSIFICATION

16. Petitioner proposes to develop the Property in two phases. Increment I, consisting of approximately 45.5 acres, is proposed to be developed as follows:

<u>Use</u>	<u>Acreage</u>
Production and sale of concrete products and aggregates.	4 Acres
Production of quarry products on an interim basis, to be replaced with light industrial uses, such as equipment storage, light manufacturing, contractor storage, and similar light industrial uses.	7 Acres
Equipment, truck and bus storage, sale and repair.	3 Acres
Automotive center with automotive sales, service and repair.	6 Acres
Nursery, if effluent from the new sewer treatment plant is available and feasible; otherwise light industrial uses such as warehouses; equipment sales, storage.	5 Acres
Retail lumber sales, hardware, light manufacturing of lumber products.	8.5 Acres
Boat storage, construction, repair, sales.	5 Acres
Self-storage.	2 Acres
Office and contractor storage.	3 Acres
Roads and utilities.	<u>2 Acres</u>
Total	45.5 Acres

17. Increment II, consisting of approximately 44 acres, is proposed for light industrial uses, and some commercial and office uses. Approximately 30 acres is proposed to be developed for office and commercial uses such as fast food, gas station, neighborhood commercial center, financial services and professional offices. The balance of Increment II is proposed to be developed for light industrial uses similar to those of Phase I.

18. Petitioner is requesting that the Commission approve the boundary amendment of the Property on an incremental basis, with the second increment being subject to performance on the first increment.

19. Petitioner projects development costs for on-site road, water, sewer, electrical, telephone, cable TV and street lighting of approximately \$4,967,000 for Increment I and approximately \$2,022,000 for Increment II.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

20. Petitioner submitted a balance sheet as of May 1, 1990, listing total assets of \$2,120,952, total liabilities of \$826,991, and a net worth of \$1,293,961.

21. Petitioner estimates that the cash flow generated from three family corporations and from the project itself will be sufficient to pay for the infrastructure on the Property without outside financing and without encumbering the Property.

Petitioner proposes to use the Property to finance the construction of buildings and to pay any impact fees.

STATE AND COUNTY PLANS AND PROGRAMS

22. The makai 72.40 acres of the Property is located within the State Land Use Conservation District and the mauka 17.127 acres is located in the State Land Use Agricultural District, as reflected on Land Use District Boundary Map H-2 (Keahole Point).

23. The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the area in which the Property is located as "Urban Expansion." The Urban Expansion designation "Allows for a mix of high density, medium density, low density, industrial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined."

24. The Property is zoned Open and Unplanned by the County of Hawaii.

25. The Property is not within the Special Management Area ("SMA") of the County of Hawaii.

26. The County's proposed Keahole to Kailua Development Plan (hereinafter "K to K Plan") designates the Property for Limited Industrial and Urban Expansion uses. Urban expansion areas include sites suitable for urban uses although the exact nature of these uses cannot be determined at this time. The K to K Plan calls for the urbanization of

substantial portions of the area in which the Property is located, including the Property itself, and the installation of infrastructure to support this level of development.

27. The Office of State Planning's (hereinafter "OSP") West Hawaii Regional Plan proposes two sub-regional planning areas, one of which is generally consistent with the K to K Plan area.

NEED FOR THE PROPOSED DEVELOPMENT

28. The market study, prepared by Petitioner's consultant, The Hallstrom Appraisal Group, Inc., in December, 1990, concludes that Increment I of the proposed development should be absorbed within three years of initial offering, and Increment II should be absorbed in up to eight years if the K to K Plan is implemented. The market study also states that the increase in population and economic activity in West Hawaii will create substantial demand for industrial and commercial uses during the coming decade.

ECONOMIC AND SOCIAL IMPACTS

29. Development of the Property will be complementary to and provide services for the urban expansion in the area between Kailua-Kona and Keahole Airport, new employment opportunities will be created as development occurs on the Property, and the proposed development is viewed as part of the growth that will occur in response to the expansion of tourism in the area.

30. The proposed development will respond to increases in population and will have an insignificant impact on population. The use of the Property for light industrial and commercial and service-related purposes will contribute to the diversification of the economic base and will provide needed space in the short-term for light industrial operations which require larger parcels of land and open storage areas.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

31. The Land Study Bureau's (LSB) Overall Master Productivity Rating for the agricultural use of the soil on the Property is Class "E" or very poor.

32. The Property is not classified on the State Department of Agriculture's Lands of Importance to the State of Hawaii (ALISH) system.

Flora and Fauna

33. On 29 October 1990, a botanical survey of the Property was conducted by Petitioner's botanical consultant, Kenneth M. Nagata, to determine whether any native plant communities or endangered plant species existed on the Property. The general vegetation on the Property consists of grass and scrublands dominated by fountain grass and koa-haole. These two species comprise more than 80% of the total vegetational cover. No native plant communities are found on the Property. The few native species that are present occur as widely scattered individuals in moderate to very small

numbers. All are common lowland species which can be found in similar habitats throughout the State. Native species represent an insignificant component of the vegetation on the Property. No official or unofficial endangered plant species were found on the Property.

34. The presence on the Property of mammals such as the mongoose, house mouse, black rat, polynesian rat, and feral cat is possible. Bird surveys conducted in the area have indicated the presence of at least two endangered species, including the Hawaiian stilt, which is known to be present in the pond areas along the Koloko and Honokohau coastline, and the Hawaiian owl, which is known to be present in upland areas such as those of the Property. Because the Property is arid with no bodies of water and few trees, development of the Property will not impose a significant impact to the endangered bird populations in this region.

Archaeological/Historic Resources

35. Petitioner's archaeological consultant, Paul H. Rosendahl, Ph.D., Inc., conducted an archaeological inventory survey of the Property in late 1989. During the survey, 54 sites were newly identified, and eight previously identified sites were relocated and were redesignated as six sites, for a total of 60 identified sites. One of the previously identified sites (Site 13181) was listed on the State Inventory of Historic Places ("SIHP"). All other sites (59) were assigned SIHP numbers during this survey.

Among the 60 sites identified on the Property, 14 are assessed as having information value that has been mitigated during the survey, and no further work is determined necessary. Further data collection only is recommended for 36 sites, which appear to have value only for information content. Further data collection and a provisional recommendation of preservation "as is" are recommended for nine sites to determine whether they are burial sites. One site is assessed as significant for information content and for cultural value as a transportation route. Further data collection is recommended for this site.

Ground Water Resources

36. Petitioner's consultant, Belt Collins & Associates, in its Hydro-Geologic Impact Assessment dated January 19, 1990, states that the wastewater discharged from cesspools and disposal wells on the Property will influence the receiving groundwater's chemistry, particularly with localized increases in the concentration of certain inorganic constituents. However, the concentrations of contaminants in groundwater near the shoreline will be relatively low, and the contaminants will be rapidly dissipated after mixing into nearshore waters. The Hydro-Geologic Impact Assessment concludes that contaminants from the wastewater on the Property are likely to be discharged into Honokohau Harbor, but are unlikely to travel as far enough north to reach Aimakapa Fishpond.

37. OSP is concerned that the wastewater and industrial waste disposal may adversely affect groundwater and coastal water quality, especially at the Honokohau Harbor, and may act as a sink point into which most introduced contaminants are likely to be discharged. OSP is also concerned about the impact of the proposed project upon the Kaloko-Honokohau National Historical Park.

Recreational, Scenic, Cultural Resources

38. The continuation of the storage, construction, repair and maintenance of boats and other marine-related activities, and the potential sale of boats and related marine products, will support opportunities for ocean recreation activities.

39. The Property is situated 1,000 feet mauka of the Queen Kaahumanu Highway. Development within the Property will be lowrise in character, and is not expected to interfere substantially with existing views from the highway corridor or from mauka residential areas. The industrial park project will be fully landscaped, particularly on the Kealakehe side to eliminate and/or mitigate any visual impact on the Kealakehe residential areas as they are developed.

40. Petitioner is willing to work with HFDC to provide a landscaping buffer between the Property and the Kealakehe Planned Community in order to mitigate the visual impacts of the proposed development.

41. The National Park Service has acquired 650 acres of land directly makai and to the northwest of the Property with the intent of developing a National Historic Park, the primary purpose of which would be the preservation of the Hawaiian culture. Petitioner states that its proposed development is consistent with the overall development pattern of the region if views, air, aural and ground water quality are maintained.

Coastal/Aquatic Resources

42. Petitioner's water quality, marine ecology and anchialine pond ecology consultant, Dr. David A. Ziemann, prepared an Anchialine Pond Impact Assessment and testified that ponds located in the Kaloko and Honokohau areas, including both Kaloko and Aimakapa fishpond, are outside the region of potential impact of sanitary wastes and surface runoff. Only Honokohau Small Boat Harbor and anchialine ponds in the Maliu and Kealakehe areas are located within the envelope of potential impact from the proposed light industrial development project. Petitioner states that there is little likelihood of significant environmental impact on the nearshore marine waters or anchialine ponds within the envelope as long as facilities to handle and collect industrial waste are properly maintained according to Federal, State and County regulations, and the area is ultimately hooked into a municipal sewage system.

ENVIRONMENTAL QUALITY

Noise

43. Noise generated from the project will primarily result from truck and heavy equipment activity. This will be mitigated by landscaping and other buffering. Petitioner's conceptual plan is to locate the mauka-makai road on the Kealakehe side of the Property with smaller parcels of approximately one acre adjacent to Kealakehe. The small parcels will be developed to minimize any noise generation. Heavier industrial uses will be located on the north side of the Property on the larger size lots.

Air Quality

44. According to Petitioner's EIS, a limited amount of air pollution is generated by quarrying activities and vehicular traffic associated with operations of West Hawaii Concrete. Blasting at the quarry site, which occurs about once a week when operations are underway, creates dust pollution for brief periods. Cement dust at the batching plant is controlled at the point of transfer from the trucks to a hopper within a bag house which is regulated by a permit from the State Department of Health. Other potential sources of pollution are controlled by frequent spraying.

45. The impact from dust created by the quarry operation will be incompatible with the residential use on the neighboring Kealakehe Planned Community, and Petitioner will

phase out the quarry use within an appropriate time table established by the Office of State Planning and the County.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

46. The major public roadway serving the Property is the Queen Kaahumanu Highway, which is a two lane state arterial highway approximately 1,000 feet west of the Property. The Queen Kaahumanu Highway has a 300-foot wide right-of-way in this area. There is an existing two-lane paved quarry access road from Queen Kaahumanu Highway over an easement, which serves as the only access to the Property at this time.

47. The proposed Kealakehe Parkway is being planned on the adjacent HFDC Kealakehe lands and is expected to connect the Queen Kaahumanu Highway and the Mamalahoa Highway (or Palani Road). This proposed road is currently in the preliminary design stage.

48. It is anticipated that the Kealakehe Parkway will tie into the Queen Kaahumanu Highway via a grade separated interchange and will be one of the primary access focal points for this region. A mid-level arterial is proposed to run parallel to the Queen Kaahumanu Highway. This roadway would be an integral part of the circulation system within the proposed K to K Plan area. The exact alignment of the proposed mid-level arterial is not yet determined but is anticipated to run in the vicinity of the upper portions of the Property.

49. According to preliminary plans submitted with HFDC's Kealakehe Planned Community State Land Use Boundary Amendment request (LUC Docket A90-660), the Kealakehe Parkway would lie approximately 800 feet south of the Property.

50. Petitioner proposes to initially maintain the current access from Queen Kaahumanu Highway and to later connect with the Kealakehe Parkway when that road is constructed. Petitioner also proposes to construct a north-south road segment which is identified as the Mid-Level road through the upper portion of the Property.

51. Petitioner's transportation engineering consultant, Bryant Terry Brothers, conducted a traffic study for Petitioner's project and found, that presently, an estimated 150 vehicles use the access road on a weekday, with approximately 40 to 45 vehicles using the access road during the morning and afternoon peak hours.

52. Petitioner's consultant projected that by 1995, without Petitioner's project, but including Intervenors' project, traffic volume on the access road would increase to 76 and 81 vehicles during the morning and afternoon peak hours, respectively.

53. Petitioner's consultant estimated that full development of Increment I in 1995 would generate a total of 2,285 vehicle trips on a typical weekday and development of Increment II would generate a total of 9,335 vehicle trips on a typical weekday.

54. Petitioner's consultant concluded that the existing 20-foot wide paved access road to the property provides sufficient capacity for Petitioner's Increment I, and the planned roadways within Petitioner's proposed development, and the planned regional roadways in the vicinity, should be sufficient to provide the capacity needs through 2010.

Water Service

55. The Property is presently provided with water from a 12-inch water main along Queen Kaahumanu Highway, by means of a two-inch meter and a two-inch service lateral line extending from the Highway along the quarry access road mauka to the Property. Petitioner's current water consumption is approximately 33,000 gallons per day.

56. Projected water requirements for Increment I are approximately 55,000 gallons per day and for Increment II approximately 126,000 gallons per day.

57. Petitioner's consultant, Donald Chung stated that the existing two inch water line will provide more than sufficient water for development of Increment I of the project, subject only to any valid limitation on water use that may be applied by the Department of Water Supply. Eventually, Petitioner intends to connect to the waterline coming down Kealakehe Parkway on the adjacent HFDC Kealakehe Planned Community project.

58. The County Department of Water Supply has stated that ". . .the Department's existing water system facilities

cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities must be constructed. Currently, sufficient funding is not available and no time schedule is set."

59. Petitioner proposes to continue to utilize the existing two-inch water line to provide water to Increment I until such time that a reservoir, being constructed by the State Department of Transportation at the 325 foot elevation, is available for use as part of the County water system.

60. The Department of Transportation reservoir is being constructed primarily for fire protection purposes and secondarily to provide domestic water for the Honokohau Harbor, which is makai of the Property. Petitioner's consultant stated there is no confirmation that the reservoir would either be conveyed to the County or that it would be available to provide water to the Property.

61. Development of Increment II is dependent upon the construction of a reservoir by the State at the 595-foot elevation. This reservoir has not yet been designed or planned for the development.

62. Petitioner has discussed future water resources and requirements with the Department of Water Supply, and Petitioner was told the Department is in the process of drilling three new wells, and the State is drilling two new wells, mauka of the Property. Petitioner has confirmed to the

Department of Water Supply that Petitioner is willing to pay its fair share of the cost to develop and distribute water for the Honokohau area.

Wastewater Disposal

63. There is presently no municipal sewer system in the vicinity of the Property. The proposed Kealakehe Sewage Treatment Plant ("Kealakehe STP") is now under construction to the south and makai of the Property. The adjacent Kealakehe Planned Community will be installing sewer lines for that development which will tie into the Kealakehe STP.

64. The proposed development on the Property will generate approximately 5,000 to 6,000 gallons of wastewater per day for Increment I and 148,000 gallons of wastewater per day for Increment II.

65. The State Department of Health ("DOH") recommends "that the project connect to or have provisions to connect to the new Kealakehe STP. Although there are other wastewater disposal alternatives, the Department of Health advocates connection to a regional municipal wastewater system. This recommendation is made in light of the Department requesting the Kealakehe Planned Community to also sewer its development and connect to the Kealakehe STP."

66. Petitioner proposes to install cesspools for the initial development with eventual hookup to the Kealakehe STP. Petitioner has indicated that dry sewer lines will be installed within the Property at the appropriate time.

Drainage

67. The Property is not within a designated flood plain or coastal high hazard area shown on the Flood Insurance Rate Map (FIRM).

68. Petitioner proposes to install a series of drywells to handle on-site drainage in accordance with the requirements of the County of Hawaii Department of Public Works.

Solid Waste Disposal

69. The existing Kealakehe landfill serving North and South Kona is nearing capacity and is planned to be closed in 1992. The proposed West Hawaii landfill would have to be completed and ready for operation before the closing of the Kealakehe landfill.

70. A transfer station is located at the Kealakehe landfill site and is approximately 4,000 feet south of the Property.

Schools

71. Due to the nature of Petitioner's proposed development, it is not expected to have any requirement for public school services.

Police and Fire Protection

72. Police protection is available from the Kealakehe Police Station, located 4,000 feet south of the Property.

73. The Kailua-Kona fire station is located on Palani Road above the Queen Kaahumanu Highway intersection, approximately 2.3 miles from the Property.

Emergency Services

74. Emergency ambulance services are provided by DOH. Advanced life support ambulance units are located at the Lucy Henriques Medical Center in Waimea, the Kailua-Kona Fire Station and at the Captain Cook Fire Station. The Kona Hospital houses a basic life support ambulance unit and the Kailua-Kona Fire Station is equipped for offshore emergencies.

Electricity and Telephone Service

75. Hawaii Electric Light Company (HELCO) maintains a 69 KV transmission line with a power line corridor paralleling the mauka side of the Queen Kaahumanu Highway. At the present time, HELCO does not service the Property. All electricity on the Property is supplied by generators. Petitioner anticipates that electricity will be available to the Property within the next year.

76. Telephone service is presently available to the Property.

COMMITMENT OF STATE FUNDS AND RESOURCES

77. Given Petitioner's commitment to pay its fair share of various off-site infrastructure facilities for the proposed development, it does not appear that the proposed development will result in any unreasonable commitment of State funds or resources.

CONFORMANCE TO APPLICABLE URBAN DISTRICT STANDARDS

78. Based on the findings previously stated, and the evidence and testimony adduced at the hearing, the Property

meets the standards applicable in establishing boundaries of the Urban District as set forth in Section 15-15-18 of the Commission Rules and the decision-making criteria for boundary amendments as set forth in Section 15-15-77 of the Commission Rules.

79. Lands surrounding the Property to the west (Intervenors' property), and to the south (HFDC Kealakehe Planned Community) are in the Urban Land Use District. The 130-acre Urban Land Use District containing the Kaloko Light Industrial Subdivision is within a mile north of the Property. The Honokohau area, makai of Queen Kaahumanu Highway is also in the Urban Land Use District.

CONFORMANCE WITH THE HAWAII STATE PLAN

80. The proposed reclassification is generally consistent with the objectives and policies of the Hawaii State Plan, Chapter 226, HRS, for the economy in general. The relevant objectives are as follows:

- Sec. 226-6(a) Planning for the State's economy in general shall be directed toward achievement of the following objectives:
- Sec. 226-6(a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.
- Sec. 226-6(a)(2) A steadily growing and diversified economic base that is not overly dependent on a few industries.

81. The Petition is generally consistent with the objectives and policies of the Hawaii State Plan for population. The relevant policies are as follows:

- Sec. 226-5(b)(2) Encourage an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires.
- Sec. 226-5(b)(3) Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.

82. The proposed reclassification would provide a location for business enterprise and employment which should offer diversity to the residents of West Hawaii in terms of jobs and services.

CONFORMANCE TO COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

83. The proposed development of the Property is not anticipated to adversely affect the ocean or the shoreline, and the proposed reclassification of the Property is consistent with the objectives and policies of the Coastal Zone Management Program, Chapter 205A, HRS.

INCREMENTAL DISTRICTING

84. Full development of the Property cannot reasonably be completed within five years after the date of the final County zoning approval for the Property. However, Petitioner's proposed schedule of development in two increments, each encompassing a five-year period, appears reasonable and feasible.

85. Petitioner will substantially complete development of Increment I, consisting of approximately 45.5 acres within five years, and Increment II, consisting of approximately 44.02 acres within five years thereafter.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or other parties to this proceeding not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact shall be deemed and construed as a conclusion of law; and any finding of fact herein improperly designated as a conclusion of law shall be deemed and construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Commission Rules, the Commission finds upon a clear preponderance of the evidence that the reclassification of Increment I consisting of approximately 45.5 acres of land within the Property, situated at Honokohau, North Kona, Island and County of Hawaii, State of Hawaii, from the Conservation District to the Urban District to permit the development of Increment I, conforms to the standards for establishing Urban Boundaries, is reasonable, non-violative of Section 205-2, HRS, and is consistent with the policies and criteria established

pursuant to Sections 205-16, 205-17 and 205A-2, HRS, and the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission further concludes that although full development of the lands within Increment II cannot be reasonably completed within five years from the date of final County zoning approval for the Property, reclassification of the lands within Increment II consisting of approximately 44.02 acres of land from the Conservation and the Agricultural Districts to the Urban District to permit the development of Increment II, conforms to the standards for establishing Urban Boundaries, is reasonable, non-violative of Section 205-2, HRS, and the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended, and is consistent with the policies and criteria established pursuant to Sections 205-16, 205-17 and 205A-2, HRS. Therefore, incremental redistricting of the lands within Increment II of the Petitioner's development is reasonable and warranted.

ORDER

IT IS HEREBY ORDERED that 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, as approximately shown in Exhibit "A" attached hereto and incorporated herein by reference, shall be

and hereby is reclassified from the Conservation District to the Urban District and the State Land Use District Boundaries are amended accordingly.

IT IS FURTHER ORDERED that the lands within Increment II of the Petitioner's development plan of the Property, consisting of approximately 44.02 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, as approximately shown in Exhibit "A" attached hereto and incorporated herein by reference, shall be and the same are hereby approved for incremental development pursuant to Commission Rule 15-15-78, and that redistricting from the Conservation and the Agricultural Districts to the Urban District will be granted upon receipt of an application by Petitioner for redistricting of this second increment upon a prima facie showing that Petitioner has made substantial completion of the onsite and offsite improvements within Increment I, in accordance with the Petitioner's development plan as indicated above, within five years from the date of this Order.

IT IS FURTHER ORDERED that the reclassification and incremental districting of the Property shall be subject to the following conditions:

1. Petitioner shall ensure that a buffer area along the boundary of the Property be constructed to maintain the visual integrity from the Queen Kaahumanu Highway. Petitioner

shall further ensure that the proposed light industrial uses be screened from passing motorists, the Kaloko-Honokohau National Historic Park, and the adjacent Kealakehe lands, by landscaping improvements along the petition area's western, northern and southern boundaries. Petitioner shall prepare a plan for a buffer along the southern boundary with the Kealakehe lands, which shall be submitted to and approved by the Housing Finance Development Corporation. Petitioner shall properly maintain the approved landscaping improvements.

2. Petitioner shall participate in the funding and construction of local and regional transportation improvements on a pro rata basis as determined by the State Department of Transportation.

3. Petitioner shall prepare a drainage and erosion control plan and shall fund and construct the necessary drainage improvements to control drainage within the Property and to maintain ocean water quality to the satisfaction of the State Department of Health.

4. Petitioner shall contribute its pro rata share of the cost to develop and distribute water to Petitioner's proposed project, together with other public and private property owners in the area.

5. Petitioner shall fund and construct the necessary waste-water disposal improvements on the subject property for eventual hook-up to a municipal sewer system as determined by the State Department of Health.

6. Petitioner shall coordinate with the County of Hawaii and the State Department of Health to establish appropriate systems to contain spills and prevent material associated with light industrial uses, such as petroleum products, chemicals, solvents or other pollutants, from leaching into the storm drainage systems and adversely affecting the groundwater and coastal waters.

7. Petitioner shall fund its pro rata share for electrical facilities as determined by the Hawaii Electric Light Company (HELCO).

8. Petitioner shall immediately stop work on the impacted area and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, paving or walls be encountered during the project's development.

9. Petitioner shall provide its pro rata share for police, fire, park, and solid waste disposal as may be required by and to the satisfaction of the County of Hawaii.

10. The Petitioner shall participate in an air quality monitoring program as specified by the State Department of Health.

11. The Petitioner shall implement effective soil erosion and dust control measures during all phases of the development.

12. Petitioner shall develop and maintain on-site facilities to insure that the nearshore, offshore and deep ocean waters remain in pristine condition. Petitioner shall also participate in a water quality monitoring system as may be required by the State Department of Health.

13. Petitioner shall develop the Property in substantial compliance with representations made to the Commission in obtaining the reclassification of the Property. Failure to so develop may result in reclassification of the property to its former land use classification.

14. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the subject property covered by the approved petition, prior to development of the Property.

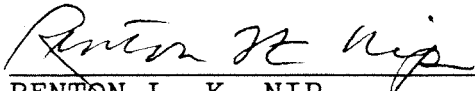
15. Petitioner shall provide annual reports to the Commission, the Office of State Planning and the County of Hawaii Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

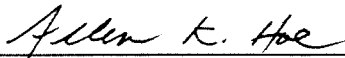
16. The Land Use Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

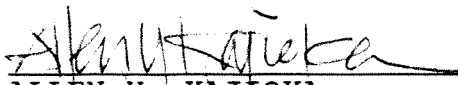
DOCKET NO. A89-643 - McCLEAN HONOKOHAU PROPERTIES, A HAWAII
LIMITED PARTNERSHIP, FKA ROBERT S. McCLEAN
AS TRUSTEE OF THE ROBERT S. McCLEAN TRUST

Done at Honolulu, Hawaii, this 16th day of April 1991,
per motion on April 11, 1991.

LAND USE COMMISSION
STATE OF HAWAII

By 
RENTON L. K. NIP
Chairman and Commissioner


By 
ALLEN K. HOE
Vice Chairman and Commissioner

By 
ALLEN Y. KAJIOKA
Vice Chairman and Commissioner

By 
KAREN S. AHN
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

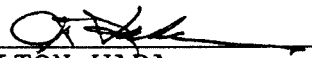
By 
JOANN N. MATTSON
Commissioner

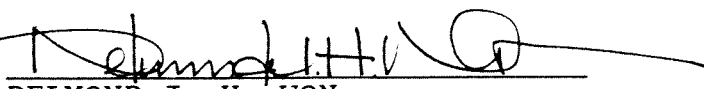
By 
JAMES M. SHINNO
Commissioner

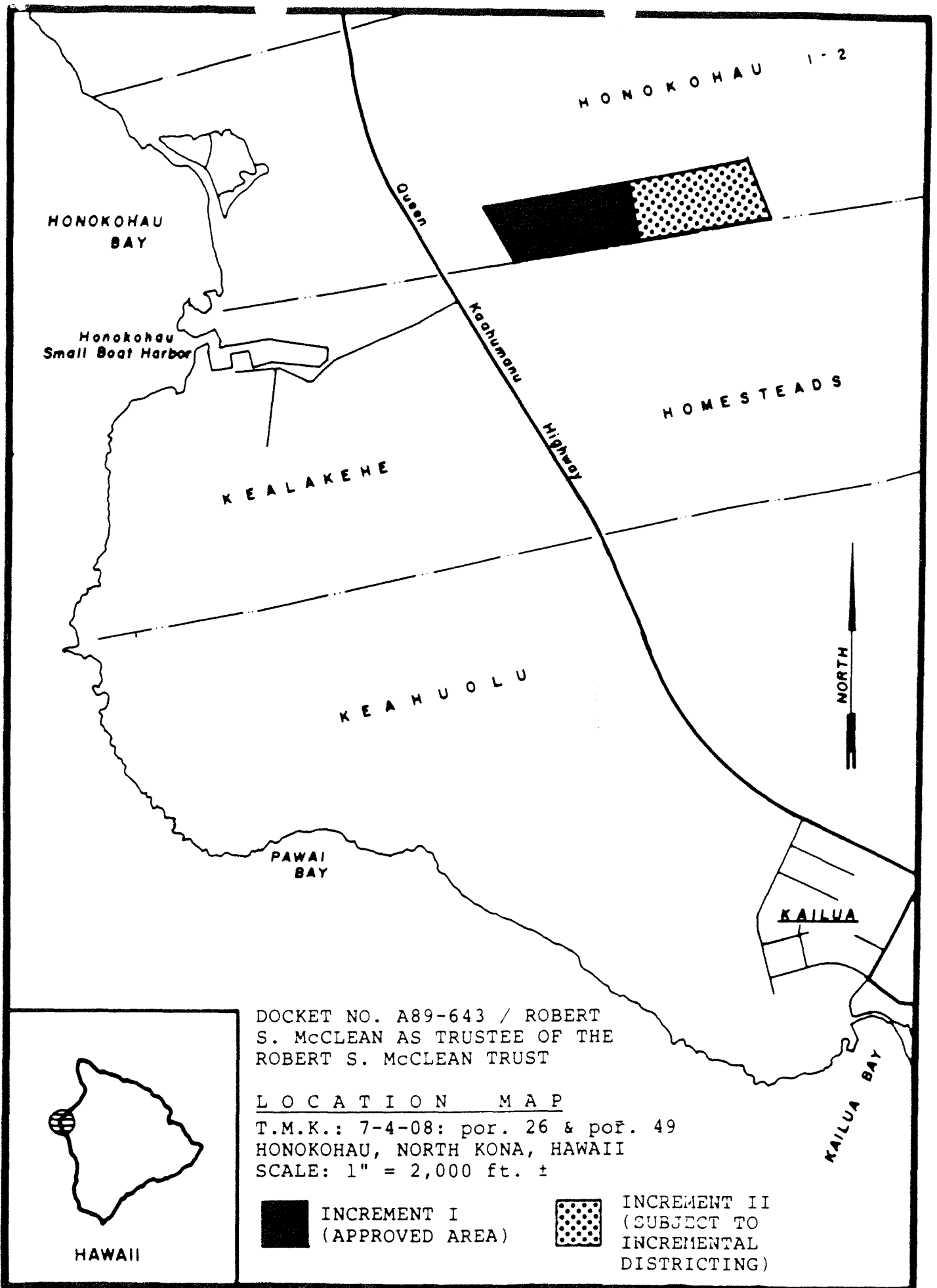
Filed and effective on
April 11, 1991

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner




DOCKET NO. A89-643 / ROBERT
 S. McCLEAN AS TRUSTEE OF THE
 ROBERT S. McCLEAN TRUST

LOCATION MAP

T.M.K.: 7-4-08: por. 26 & por. 49
 HONOKOHAU, NORTH KONA, HAWAII
 SCALE: 1" = 2,000 ft. ±

 INCREMENT I
 (APPROVED AREA)

 INCREMENT II
 (SUBJECT TO
 INCREMENTAL
 DISTRICTING)

HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A89-643
))
McCLEAN HONOKOHAU PROPERTIES,)	McCLEAN HONOKOHAU
a Hawaii Limited Partnership)	PROPERTIES, a Hawaii
)	Limited Partnership
To Amend the Land Use District)	
Boundary to reclassify approxi-)	
mately 89.527 acres of land in the)	
Conservation and the Agricultural)	
Districts to the Urban District)	
at Honokohau, North Kona, Hawaii,)	
Tax Map Key Nos.: 7-4-08: 26 and)	
49)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

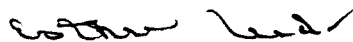
HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

CERT. NORMAN K. HAYASHI, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. ROBERT J. SMOLENSKI, ESQ., Attorney for Petitioner
1717 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813-3970

CERT. SANDRA PECHTER SCHUTTE, ESQ., Attorney for Intervenor
101 Aupuni Street, Suite 124
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 16th day of April 1991.



ESTHER UEDA
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition	)	DOCKET NO. A89-643
)	
of	)	DECISION AND ORDER
	)	APPROVING APPLICATION
McCLEAN HONOKOHAU	)	FOR INCREMENT II FOR
PROPERTIES, a Hawaii Limited	)	INCREMENTAL
Partnership	)	REDISTRICTING FROM
	)	CONSERVATION AND
To Amend the Land Use District	)	AGRICULTURAL TO URBAN
Boundary of Reclassify Approximately	)	CLASSIFICATION;
89.527 acres of land in the Conservation)	
and Agricultural Districts to the Urban	)	EXHIBIT A
District at Honokohau, North Kona,)	
Hawaii, Tax Map Key: 7-4-08: 26 and 49	)	This is to certify that this is a true and correct

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, Hawaii.

JUN 27 2002 by *Anthony J. Kelly*
Date Executive Officer

DECISION AND ORDER APPROVING APPLICATION FOR INCREMENT II FOR INCREMENTAL REDISTRICTING FROM CONSERVATION AND AGRICULTURAL TO URBAN CLASSIFICATION

LAND USE COMMISSION
HONOLULU, HAWAII
2002 JUN 27 4 11 PM

situated at Honokohau, North Kona, Island of Hawaii, County of Hawaii, and State of Hawaii, and designated by Tax Map Key No:(3) 7-4-08: portions of 26 and 49 ("Increment II"), from the Conservation and Agricultural Land Use Districts to the Urban Land Use District for the development of the Honokohau Mauka Industrial Subdivision ("Project").

PROCEDURAL MATTERS

On June 13, 1989, Petitioner filed a petition for District Boundary Amendment to reclassify approximately 89.527 acres of land situated at Honokohau, North Kona, Hawaii, identified as Tax Map Key Nos. (3) 7-4-08:26 and 49 ("Petition Area" or "Property") from the State Land Use Conservation and Agricultural Districts to the Urban District ("Petition"). Petitioner proposed to develop the Property in two Project phases, including quarrying and related activities, light industrial and commercial activities.

On July 13, 1989, and by Order filed August 3, 1989, the Commission required Petitioner to prepare an Environmental Impact Statement for the Petition Area, pursuant to Chapter 343, Hawaii Revised Statutes ("HRS").

On May 10, 1990, the Commission issued its Order accepting Petitioner's Final Environmental Impact Statement ("FEIS").

On April 16, 1991, the Commission approved the reclassification of Increment I, consisting of approximately 45.5 acres, pursuant to the Findings of Fact,

Conclusions of Law, and Decision and Order issued on April 16, 1991 (“Decision and Order”). The Decision and Order allowed incremental districting of the Petition Area and ordered that the future reclassification of Increment II would be based upon prima facie proof that Petitioner has made substantial completion of the onsite and offsite improvements within Increment I, in accordance with Petitioner’s development plan within five years from the date of the Decision and Order.

On April 5, 1995, Petitioner filed a Motion for Amendment to Findings of Fact, Conclusions of Law, and Decision and Order to release a portion of the Petition Area in the Agricultural District consisting of approximately 12.3 acres (“Motion Area”) to develop an active adult residential community. Petitioner proposed to seek reclassification through the County of Hawaii Planning Commission and Hawaii County Council pursuant to Section 205-3.1 (c), HRS.

On August 22, 1995, the Commission issued its Order Granting Motion for Amendment to Findings of Fact, Conclusions of Law, and Decision and Order, which granted the release of the Motion Area from the Decision and Order, and amended the Increment II acreage to approximately 31.7 acres.

On April 10, 1996, by Motion for Extension of Time to Substantially Complete Increment I, Petitioner requested a three-year extension to April 16, 1999. Petitioner stated it was not able to “substantially complete” the following for Increment I: construction of Road “G”, a north-south mid-lateral road traversing through

adjoining Housing Finance and Development Corporation ("HFDC") land, subject of A90-660/Housing Finance and Development Corporation (Villages of La`i`opua)¹; relocation of West Hawaii Concrete ("WHC") and construction of its access Road "A"; and other road system improvements. Petitioner stated it expected to complete the relocation of WHC; complete the construction of the access Road "A"; and complete the onsite portion of Road "G" to the HFDC property line by April 16, 1999.

On May 1, 1996, the Commission issued its Order Granting Motion For Extension Of Time To Substantially Complete Increment I granting Petitioner a time extension to April 16, 1999, to substantially complete onsite and offsite improvements specified in the First Time Extension.

On July 26, 1996, the Hawaii County Council passed Ordinance No. 98-85 granting the redistricting of the Motion Area from the Agricultural to the Urban District to develop an active adult residential community.

On April 14, 1999, Petitioner requested a two-year extension to April 16, 2001, to substantially complete Increment I. Petitioner noted:

- The grading of 95 percent of the accessible area of Increment I;

¹ The completion of Road "G" was required by the County prior to the granting of an occupancy permit pursuant to Condition "J" of Ordinance 93-38 approved by the Hawaii County Council on April 27, 1993. HFDC did not authorize the construction of the road on its property because it did not have clear title of ceded lands on its property and the issue was in litigation with the Office of Hawaiian Affairs. Petitioner submitted an application to the County to remove Condition "J" in which the Hawaii County Council approved pursuant to Ordinance 96-3 on January 3, 1996.

- The completion of a portion of Road "A;"
- Expansion of Petitioner's Boat Park;
- Approval of Petitioner's landscaping plan by the Housing and Community Development Corporation of Hawaii and the County;
- 75 percent occupancy of Increment I; and
- Plan approval for road construction work on Road "G" and related infrastructure.

On June 8, 1999, the Commission issued its Order Granting Motion For Extension Of Time To Substantially Complete Increment I granting Petitioner a second time extension to April 16, 2001 to complete improvements specified in the second time extension.

On April 16, 2001, Petitioner filed the Application, which included Affidavit of Robert S. McClean ("Affidavit"); metes and bounds description of Increment II; and a project layout of the Petition Area.

On March 22, 2002, the Commission conducted a site visit to the Property with a brief orientation from Petitioner.

On March 25, 2002, the Notice of Hearing was published in the Midweek, Star Bulletin, and West Hawaii Today. The deadline for petitions to intervene was April 9, 2002.

On April 11, 2002, the LUC received the County of Hawaii's Testimony of the County of Hawaii Planning Department in Support of McClean Honokohau Properties' Application for Reclassification of the Second Increment.

On April 15, 2002, the National Park Service, U.S. Department of Interior ("NPS") filed the Kaloko-Honokohau National Historical Park's Application to Intervene ("Intervenor Application").

On April 23, 2002, Petitioner filed its Supplement. The Supplement included updated information to its May 1990 FEIS, its 2002 Annual Report, and proposed additional conditions of approval.

On April 26, 2002, the Office of Planning ("OP") filed its Statement of Position in Support of the Application to Approve Increment II for Incremental Districting.

On April 30, 2002 Petitioner filed its Second Supplement. The Second Supplement included correspondence verifying its completion of required improvements and a revised set of proposed conditions of approval consistent with discussions and negotiations held with the NPS.

On May 2, 2002, the Executive Officer issued his Prehearing Conference Order, allowing the parties to submit final Witness and Exhibit Lists and exhibits on May 2, 2002.

On May 2, 2002, the Commission held its meeting in Hilo, Hawaii, to act upon the Intervenor Application; and conduct a hearing on the Application as supplemented.

At the Commission's May 2, 2002 hearing, the NPS withdrew its application to intervene and expressed support for the Commission's approval of the Petitioner's proposed additional conditions of approval.

During the hearing, Petitioner, County, and OP filed their respective Witness and Exhibit Lists pursuant to the Prehearing Conference Order.

Petitioner stated that the Commission should favorably consider the Application given the presentation of prima facie evidence of the completion of onsite and offsite improvements as specified in the Commission's April 16, 1991 Decision and Order. Petitioner through the Application, Affidavit, and oral testimony, described the completion of the following improvements:

- The roadway access from Queen Kaahumanu Highway with a permanent 12-inch waterline installed; and
- Road G (Kamanu Street) from Kealakehe Parkway to the Petition Area, including the installation of a 12-inch waterline and an 8-inch sewer line.

Petitioner has entered into an agreement with the State Department of Transportation with regard to:

- Extension of Main Street, a north-south lateral road running along the makai boundary of Increment II, from the Housing and Community Development Corporation of Hawaii, formerly known as the Housing Finance and Development Corporation, property along Kealakehe Parkway to Petitioner's north property line abutting the Lanihau property; and
- Extension of the Mid-Level Road from Petitioner's south boundary line traversing across the Petition Area to its north boundary line abutting the Lanihau property.

Petitioner proposed additional conditions on Increment II to address the concerns about potential impacts to the Kaloko-Honokohau National Historical Park, such as potential contamination from surface water runoff and surface spills. The proposed conditions for Increment II included the installation of dry sewer lines and mandatory hook-up to the municipal wastewater treatment plant; containment of storm and surface water runoff on premises; covenants, conditions, and restrictions for spill containment and pollution prevention; compliance with relevant State and County regulations; the utilization of Best Management Practices and waste treatment efforts; and grass and vegetative swales to capture drainage from parking areas.

OP recommended the inclusion of an additional condition addressing impacts to cultural resources in the area, which was agreed to by Petitioner.

The LUC, having considered the entire record on this matter, hereby makes the following decision and order.

DECISION AND ORDER

IT IS HEREBY ORDERED that Increment II being the subject of Docket No. A89-643, filed by Petitioner, McClean Honokohau Properties, consisting of approximately 31.7 acres of land in the State Land Use Conservation and Agricultural Districts at Honokohau, North Kona, Island of Hawaii, County of Hawaii, State of Hawaii, identified as Tax Map Key No. 7-4-08: portions of 26 and 49 (refer to Exhibit A), is hereby reclassified into the State Land Use Urban District, and the State land use district boundaries are amended accordingly, subject to the conditions of approval set forth herein, which are applicable only to Increment II, except for Condition 1b, which is also applicable to Increment I.

Wastewater

- 1a. Increment II shall be developed with dry sewer lines for eventual connection to the Kealakehe Wastewater Treatment Plant (WWTP).
- 1b. Increment II, together with Increment I, shall be required to connect to the WWTP, when such connection is available.
- 1c. Except for the existing quarry operation, which utilizes portable toilets, and the construction of the roads and utilities, the Petitioner and/or any future owner(s) in Increment II shall refrain from constructing upon or occupying any portion of Increment II until such time as the portion (e.g., lot) to be constructed upon or occupied is connected to the WWTP.

Storm and Surface Water Runoff

2a. To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all runoff from industrial lots shall be directed to a catch basin or otherwise treated, before entering the ground, to remove all industrial waste so that no industrial pollutants will reach the Kaloko-Honokohau National Park or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions applicable to each lot in Increment II to contain spills and prevent materials associated with light industrial uses attributable to the operations of property (including petroleum products, chemicals, or other pollutants) from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants shall run with the land and shall be subject to the approval of the Hawaii State Department of Health and the County of Hawaii, with prior notice to the National Park Service. The Petitioner, tenant and/or subsequent owner shall obtain all required permits and construct required improvements for storm water discharge on and from the property. These conditions shall include the following:

2b. The Petitioner shall engineer, construct and maintain (or require to be constructed and maintained) surface water/storm water containment systems that ensure no State water quality standards will be violated.

2c. No injection well shall be constructed as an element of a surface water/storm water containment system in Increment II unless, prior to the start of any

construction, appropriate requirements of HAR Chapter 11-23 are satisfied and the Hawaii State Department of Health issues an UIC (Underground Injection Control) permit. Contaminants shall be monitored and removed with best efforts prior to entering injection wells.

2d. If a large void, such as a lava tube or solution cavity, is encountered during drilling, where the drill rod drops more than three feet, measures shall be taken to prevent migration of the injected fluids to the Kaloko-Honokohau National Park to the satisfaction of the Hawaii State Department of Health as described in HAR §11-23-09(f).

2e. All injection wells established in Increment II shall be operated in such a manner that they do not violate any of the Hawaii State Department of Health's administrative rules under title 11 HAR, regulating various aspects of water quality and pollution, and chapters 342-B, 342-D, 342-F, 342-H, 342-J, 342-L, and 342-N, Hawaii Revised Statutes (HRS). Relevant HAR include but, are not limited to:

- i. Chapter 11-20, "Rules Relating to Potable Water Systems";
- ii. Chapter 11-62, "Wastewater Systems"; and
- iii. Chapter 11-55, "Water Pollution Control".

2f. The operator of any injection well or wells in Increment II shall keep detailed records of the operation of the well or wells, including, but not limited to, the type and quantity of injected fluids, and the method and rate of injection for each

well. Such records will be available for inspection or review by the Hawaii State Department of Health as specified under appropriate sections of HAR Chapter 11-28.

2g. Any person who violates any of these conditions shall be subject to penalties as prescribed in appropriate chapters of HRS and HAR as they relate to (but are not limited to): Potable Water Systems; Wastewater Systems; Water Pollution Control; Safe Drinking Water; and Underground Injection Control.

2h. The Petitioner, successors and/or individual lot owners in Increment II shall ensure that all drainage injection wells or subsurface drainage structures be designed with an appropriate sized debris catch basin to allow the detention and periodic removal of rubbish and sediments deposited by runoff. Storm water runoff shall first enter the debris catch basin before flowing into the drainage well. The debris catch basin shall be periodically inspected and cleaned accordingly. Oil/water separators shall be utilized where petroleum products are used.

Pollution Prevention

3a. Petitioner currently operates a quarry in Increment II. Any further public or private industrial development within Increment II, which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

3b. Except for the existing quarry operation and the construction of roads and utilities, before constructing upon or occupying an industrial lot in Increment II, Petitioner's waste treatment efforts shall be supplemented with Best Management Practices (BMPs), as appropriate, to address the uses of such lot. The waste treatment efforts shall include but not be limited to:

i. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc. shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged. An exception to this requirement may be considered, for example where equipment may break the concrete floors, provided the BMPs (structural or otherwise) are utilized for containment.

ii. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titled, "Housekeeping

Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)

iii. All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and shall be instructed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial spill onto the bare ground.

3c. The Petitioner, its successors or individual lot owners shall provide signage for all drainage/injection wells in Increment II with warnings such as the following: DUMP NO WASTES. GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT. Signage shall be either stand-up (legible from at least 30 feet, permanently posted at an effective and safe height) or painted on the ground next to the drainage well's inlet.

3d. For parking areas, BMPs will be established which emphasize pollution prevention rather than treatment. All parking areas for large vehicles such as buses, trucks, or construction equipment shall utilize grassed or vegetative swales to capture drainage from such parking areas. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup of oil or other automotive fluids. Maintenance work other than emergency work on vehicles will be banned in parking areas.

3e. Where site geometry permits, the Petitioner, its successors or individual lot owners shall design and construct (or require to be constructed) landscaped areas, including grassed or vegetative swales to capture storm water drainage from all perimeter lots, facilities, and parking areas of Increment II.

3f. Owner or operator covenants developed for Increment II shall expressly disclose to all future individual lot owner(s) the existence of the National Park System Resource Protection Act, 16 U.S.C. Sections 19jj-19jj-4, and the consequences of violation of such act. In particular, future land owners shall be made aware that any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury.

3g. The requirements of conditions 3b through 3f shall be set forth in conditions, covenants and restrictions that will apply to future owners and tenants in Increment II, and shall be enforced by Petitioner.

3h. The Petitioner shall participate and collaborate in a regional (Kaloko-Honokohau) pollution prevention forum to be convened by the Commission within one year from the issuance of this decision and order. The National Park Service shall be invited as well. Topics to be discussed include: pollution prevention planning; best available control technologies (BACT); structural and operation BMPs addressed to the type of uses permissible in the light industrial park, and formulas for determining

fair and reasonable pro-rata share costs relating to any ground water monitoring program. Participants in this forum should include but not necessarily be limited to individuals or entities with property or development interests impacting the Queen Kaahumanu Highway corridor extending from the Kona International Airport to the Palani Road intersection.

Affordable Housing

4. The Petitioner shall comply with the County of Hawaii affordable housing policy.

Archaeological/Historical Sites

5. Should any previously unidentified burial, archaeological or historical sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, the Petitioner, developer(s) and/or landowners of the affected properties shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD) shall be notified immediately. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to its satisfaction.

Cultural Resources

6. Petitioner shall address impacts to cultural resources in Increment II as recommended by the Office of Environmental Quality Control, State Department of Health.

Landscaping

7a. Petitioner shall develop a landscaping plan for Increment II that can be followed by each subsequent lot owner/tenant.

7b. Petitioner, where feasible, shall use indigenous and water conserving plants such as the papyrus (native paper plant).

Soil Erosion and Dust Control

8. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the Hawaii State Department of Health.

9. Petitioner shall provide its pro rata share for police, fire, park, and solid waste disposal as may be required by and to the satisfaction of the County of Hawaii.

10. Petitioner shall develop Increment II in full compliance with all material representations made by the Petitioner to the Commission. Failure to do so for any reason, including but not limited to, economic feasibility, may result in the imposition of fines as provided by law for each and every separate violation, reversion

of Increment II to its former condition by Petitioner at Petitioner's own expense, reversion of Increment II to its former classification or a change to a more appropriate classification and/or any other legal remedies, including but not limited to suit for actual and punitive damages under Federal or State law or suit for injunctive relief that requires the developer to restore Increment II to its former condition.

11. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in Increment II, prior to development of Increment II.

12. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Hawaii Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

13. Petitioner shall request from the Commission full or partial release of the conditions provided herein as to all or any portion of Increment II upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions.

14. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that Increment II is subject to conditions imposed by the Land

Use Commission in the reclassification of Increment II, and (b) shall file such copy of such recorded statement with the Commission.


Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules. All such conditions shall run with the land.

ADOPTION OF ORDER

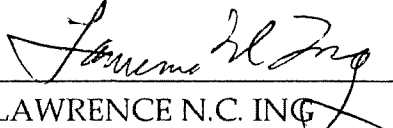
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 27th day of June, 2002. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

LAND USE COMMISSION
STATE OF HAWAII

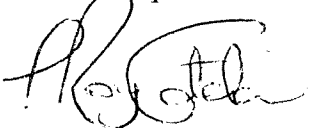
By

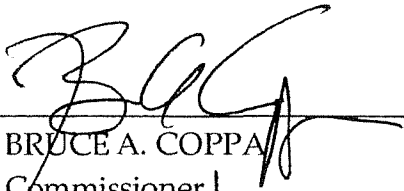

MERLE A. K. KELAI
Chairperson and Commissioner

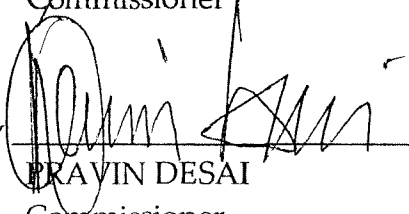
By


LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By


P. ROY CATALANI
Commissioner

By 
BRUCE A. COPPA
Commissioner

By 
PRAVIN DESAI
Commissioner

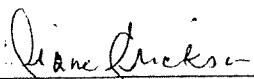
By ABSENT
ISAAC FIESTA, JR.
Commissioner

By 
M. CASEY JARMAN
Commissioner

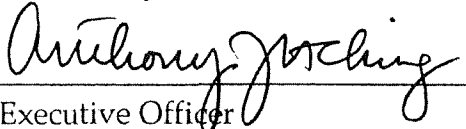
By ABSENT
STANLEY ROEHRIG
Commissioner

By ABSENT
PETER YUKIMURA
Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
June 27 _____, 2002

Certified by:

Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A89-643
)
McClellan Honokohau Properties) CERTIFICATE OF SERVICE
)
To Amend the Land Use District Boundary)
to Reclassify Approximately 89.527 acres of)
land in the Conservation and the)
Agricultural Districts into the Urban Land)
Use District at Honokohau, North Kona,)
Hawaii, TMK 7-4-08: 26 and 49)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order Approving Application for Increment II for Incremental Redistricting from Conservation and Agricultural to Urban Classification was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

DEL. JOHN CHANG, ESQ.
Deputy Attorney General
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

CERT. ROBERT J. SMOLENSKI, ESQ.
1717 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

CERT. CHRISTOPHER J. YUEN, DIRECTOR
Planning Department
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

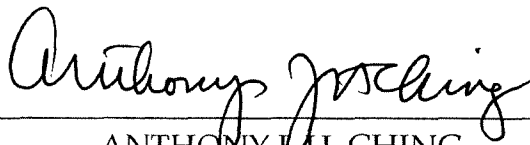
CERT. LINCOLN ASHIDA, ESQ.
Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720-4262

CERT. ISEMOTO CONTRACTING CO., LTD.
648 Piilani Street
Hilo, Hawaii 96720

CERT. SJA PARTNERSHIP
P. O. Box 429
Captain Cook, Hawaii 96720

CERT. MARCH E. TAYLOR
Taylor Family Limited Partnership
74-5598 Alapa Street
Kailua-Kona, Hawaii 96740

DATED: Honolulu, Hawaii, this 27th day of June, 2002.



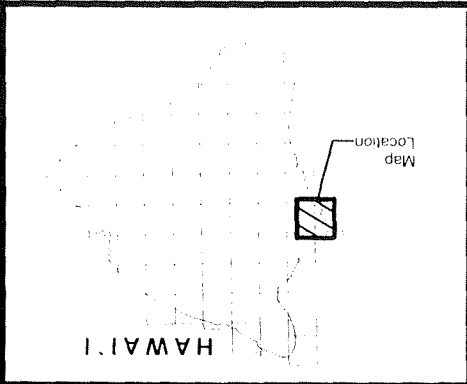
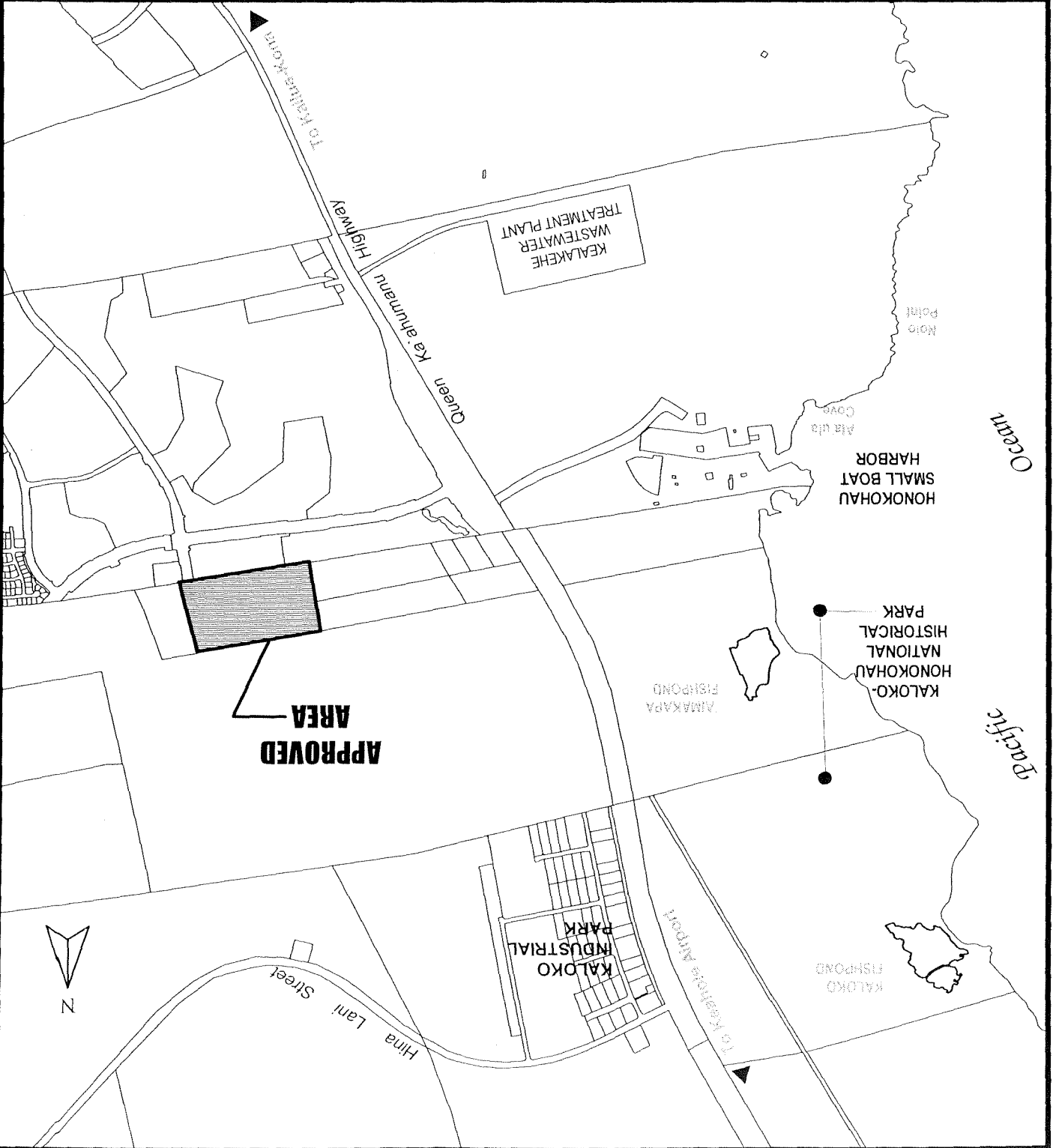
ANTHONY J. H. CHING
Executive Officer

A89-643 McCLEAN HONOKOHAU PROPERTIES

LOCATION MAP

TAX MAP KEY: 7-4-08: portions of 26 & 49
Honokohau, North Kona, Hawaii
Scale: 1" = 2,000 ft.

EXHIBIT "A"



SMOLENSKI & WOODDELL

ROBERT J. SMOLENSKI*

*A LAW CORPORATION

ATTORNEYS AT LAW

1628 DAVIES PACIFIC CENTER
841 BISHOP STREET
HONOLULU, HAWAII 96813-3921
TELEPHONE (808) 524-5750
TELECOPIER (808) 537-4576

June 28, 2016

BY HAND DELIVERY

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

Re: McClellan 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

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 Brillhante (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.Erickson@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

LAND COURT

RECORDED AS FOLLOWS:
DATE OF HAWAII
BUREAU OF CONVEYANCES

Doc A - 59910923

May 27, 2016 3:29 PM

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 Conditions 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.

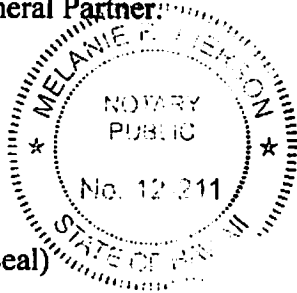
McCLEAN HONOKOHAU PROPERTIES



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.



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

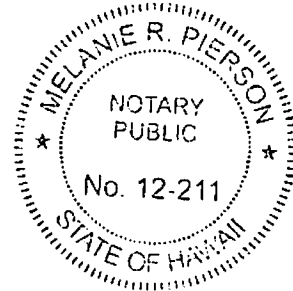
MAY 23 2016

Signature of Notary

Date of Notarization and
Certification Statement

MELANIE R. PIERSON

Printed Name of Notary



(Official Stamp or Seal)



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

In the Matter of the Petition of	)	DOCKET NO. A89-643
)	
McCLEAN HONOKŌHAU PROPERTIES,	)	<u>ORDER GRANTING IN PART AND</u>
a Hawai'i limited partnership	)	<u>DENYING IN PART PETITIONER'S</u>
	)	<u>MOTION TO RELEASE, DISCHARGE,</u>
To Amend the Land Use District Boundary to	)	<u>AND DELETE ALL CONDITIONS; AND</u>
Reclassify Approximately 89.527 acres of	)	<u>CERTIFICATE OF SERVICE</u>
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

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. Oordenker, Executive Officer

EXHIBIT A



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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,
To Amend the Land Use District Boundary to) AND DELETE ALL CONDITIONS; AND
Reclassify Approximately 89.527 acres of) CERTIFICATE OF SERVICE
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



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

In the Matter of the Petition of	)	DOCKET NO. A89-643
)	
McCLEAN HONOKŌHAU PROPERTIES,	)	<u>ORDER GRANTING IN PART AND</u>
a Hawai'i limited partnership	)	<u>DENYING IN PART PETITIONER'S</u>
	)	<u>MOTION TO RELEASE, DISCHARGE,</u>
To Amend the Land Use District Boundary to	)	<u>AND DELETE ALL CONDITIONS</u>
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

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, tentatively 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

NO
REC
N
1

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. Elbogan to provide information on provision of required infrastructure and compliance with conditions. Mr. Smolenski 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 nays¹, 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.

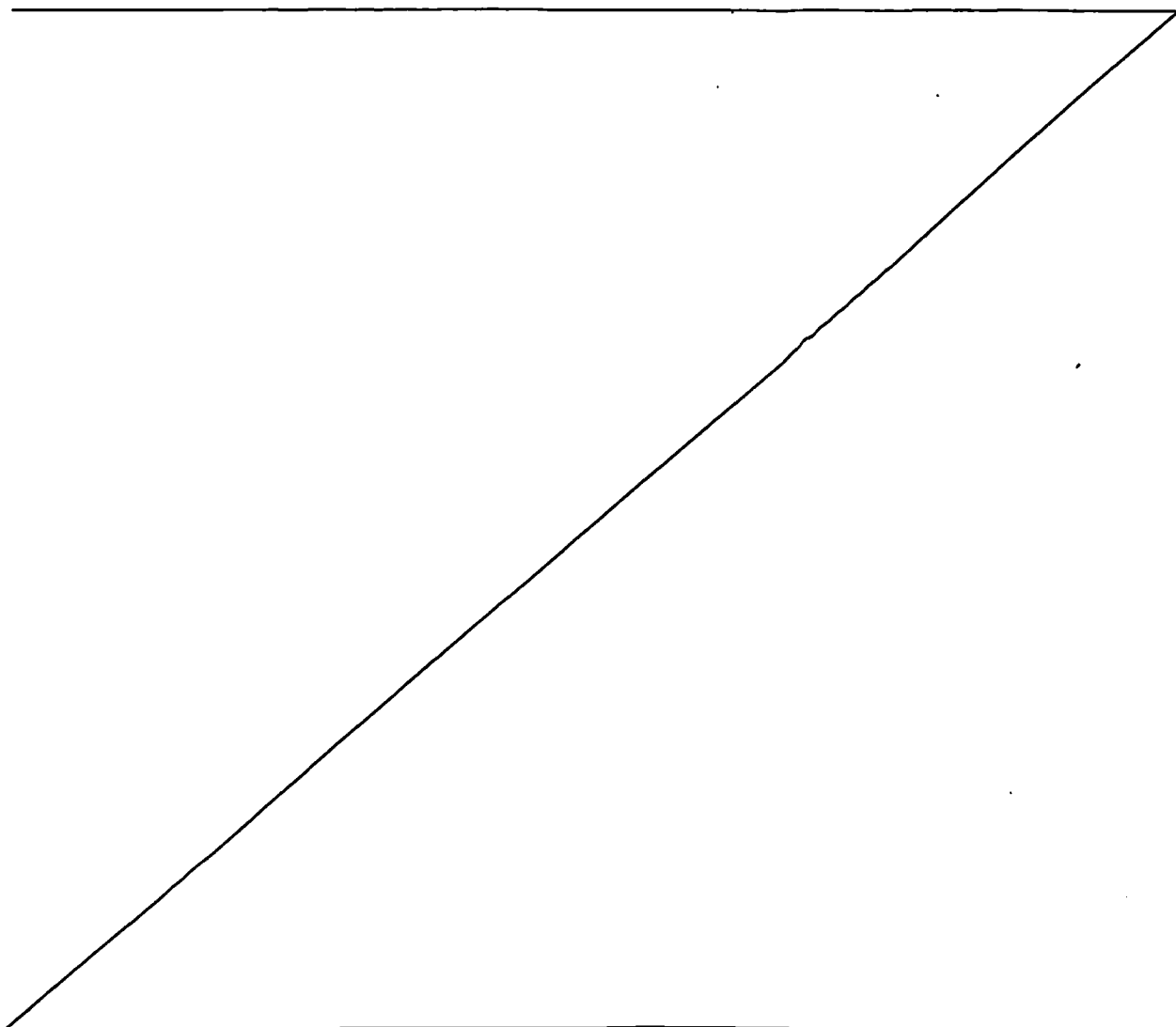
ORDER

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.



BC
*
...
OURF

ADOPTION OF ORDER

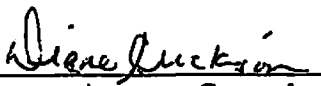
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

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

APPROVED AS TO FORM

STATE OF HAWAI'I


Diane Buckson
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,) CERTIFICATE OF SERVICE
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.)
_____)

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