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COPY
LAND USE COMMISSION
STATE OF HAWAII

2009 JUN -1 P 12: 50

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 Approximately 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.: 7-4-24: 1, 2, 4, 6, 7, 8, 9, 10, 11 and 12	DOCKET NO. A89-643 ANNUAL REPORT PURSUANT TO (1) CONDITION NO. 15 OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED APRIL 16, 1991 AND (2) CONDITION NO. 12 OF THE DECISION AND ORDER [APPROVING APPLICATION FOR INCREMENT II FOR INCREMENTAL REDISTRICTING FROM CONSERVATION AND AGRICULTURAL TO URBAN CLASSIFICATION] DATED JUNE 27, 2002; CERTIFICATE OF SERVICE

ANNUAL REPORT PURSUANT TO (1) CONDITION NO. 15
OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER DATED APRIL 16, 1991 AND (2) CONDITION NO. 12 OF THE
DECISION AND ORDER APPROVING APPLICATION FOR INCREMENT II FOR
INCREMENTAL REDISTRICTING FROM CONSERVATION AND AGRICULTURAL TO
URBAN CLASSIFICATION DATED JUNE 27, 2002

I. GENERAL PROGRESS OF THE PROJECT.

The primary developments with respect to the project are:

A. In 2008, the County of Hawaii started construction of the West Hawaii Civic Center ("WHCC") adjacent to Increment II of Petitioner's property. The construction is well underway and is expected to be completed in 2010.

B. In 2008, the County of Hawaii County Council adopted the "Kona Development Plan" ("KDP"). This plan defines the future development of the Kona District, including

Petitioner's property. Under the KDP, the County will construct Ane Keahokalole Highway, formerly called Mid-Level Road, and provide zoning for "villages" at points along the highway. A major proposed village, designated "Honokohau Village" is around the WHCC and includes Increment II of Petitioner's property.

Since the concept of villages is new to Hawaii, the County Planning Department is retaining a consulting firm from the mainland familiar with development of areas based upon the village concept. Petitioner has expressed support for this approach to rezoning.

C. In 2008, when the economy of the whole nation (and world) dropped to new lows, the federal government adopted various stimulus measures to provide jobs for the growing number of unemployed. The County of Hawaii has obtained $35 million under the stimulus program for the construction of Ane Keahokalole Highway from Palani Road to Hina Lani Street. Petition's understanding is that the funds are available provided the County can clear all obstacles, including title to the right-of-way across Increment II of Petitioner's property, an approved EIS and clearance from the Hawaiian community regarding cultural and gravesite issues.

The County must be ready to submit plans for bids, select a contractor and start construction by January 2010. Petitioner is supporting the County in this effort. The new highway will intersect Increment II of Petitioner's property and provide full intersection access for Petitioner's mauka and makai projects on Increment II.

The quarry will continue to operate as it has for more than 30 years.

II. EFFORTS MADE/PLANNED TOWARD COMPLIANCE WITH CONDITIONS.

A. **INCREMENT I (April 16, 1991 Decision and Order)**

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.

EFFORTS MADE/PLANNED:

Petitioner has continued with its landscape program with the approval of the County of Hawaii. As each parcel is developed with a permanent planned use, the landscaping is included as an important part thereof.

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.

EFFORTS MADE/PLANNED:

The status of Ane Keohokalole Highway is discussed above. Petitioner's engineers, Belt Collins Hawaii, are seeking approval of plans for Main Street.

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.

EFFORTS MADE/PLANNED:

Petitioner has developed a full-scale Drainage Plan which has been approved by the County, and the drainage improvements have been installed.

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.

EFFORTS MADE/PLANNED:

Petitioner has contributed its "fair share" for development of water and sewer as outlined in Petitioner's 2002 Annual Report. Petitioner has agreed with the Department of Water Supply on an allocation of water to each lot of the project.

Petitioner requests that this condition be released.

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.

EFFORTS MADE/PLANNED:

Petitioner has constructed the required 8" sewer line in both streets on the project and the project will be connected to the sewer treatment plant as soon as the County builds its pending sewer extension north along Queen Kaahumanu Highway.

Petitioner requests that this condition be released.

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 leaking into the storm drainage systems and adversely affecting the groundwater and coastal waters.

EFFORTS MADE/PLANNED:

Petitioner has adopted rules for all tenants to eliminate the risk of spills of petroleum products, chemicals, solvents or other pollutants and the tenants have been very cooperative in this effort.

Petitioner requests that this condition be released.

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

EFFORTS MADE/PLANNED:

Petitioner has paid HELCO for all of the electrical facilities, which HELCO has installed on the project.

Petitioner requests that this condition be released.

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.

EFFORTS MADE/PLANNED:

Petitioner funded a complete study of the archeological inventory on the project and has preserved the one site of significance in its natural state. No further archeological resource has been uncovered.

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.

EFFORTS MADE/PLANNED:

Petitioner has not received any request from the County of Hawaii for police, fire, and solid waste disposal.

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

EFFORTS MADE/PLANNED:

Petitioner funded an Air Quality Study prepared by B.D. Neal & Associates as requested by Department of Health. DOH determined that the study met the requirements of this condition as outlined in Petitioner's 2002 Annual Report.

Petitioner requests that this condition be released.

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

EFFORTS MADE/PLANNED:

Petitioner has provided and will continue to provide effective dust control and soil erosion procedures.

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.

EFFORTS MADE/PLANNED:

Petitioner has not developed any activity that will impact nearshore, offshore or deep ocean waters. Petitioner's operations on the property are substantially unchanged.

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.

EFFORTS MADE/PLANNED:

Petitioner has developed and will continue to develop the subject project in full compliance with the representations made to the Commission.

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.

EFFORTS MADE/PLANNED:

Petitioner has no current plans to sell any of its 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.

EFFORTS MADE/PLANNED:

This report is to comply with condition no. 15.

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.

EFFORTS MADE/PLANNED:

The development of Increment I of Petitioner's property is substantially complete, and Petitioner will be requesting the release of certain of the foregoing conditions relating to Increment I that are no longer applicable.

B. **INCREMENT II (June 27, 2002 Decision and Order)**

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.

EFFORTS MADE/PLANNED:

The only activity on Increment II is the operation of a quarry as allowed in Condition 1c. No wastewater is being produced.

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.

EFFORTS MADE/PLANNED:

There is no activity on Increment II except for a quarry and all storm and water runoff is absorbed into the surface on the property. Petitioner is planning the development of Increment II with the assistance of Belt Collins Hawaii. Engineering of a surface water and storm water containment system will be part of that planning process. No injection wells are contemplated at this time.

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.

EFFORTS MADE/PLANNED:

The only activity on Increment II is the operation of a quarry, which is allowed by Condition 3a and 3b. The quarry operation creates some dust, but water spray is applied to the crushing area to minimize the dust. Additionally, the quarry operation is isolated from any developed area and does not negatively affect any other property.

Petitioner participated in the pollution prevention forum sponsored by the Commission on November 4, 2002 and will participate in any future activities aimed at prevention of pollution.

Affordable Housing

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

EFFORTS MADE/PLANNED:

Petitioner has not, so far, engaged in any activities that impacts 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.

EFFORTS MADE/PLANNED:

Petitioner's quarry area was very carefully examined for archaeological and historical sites before quarry operations were undertaken. No previously unidentified burial, archaeological or historical sites have been found.

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.

EFFORTS MADE/PLANNED:

Petitioner has not yet completed addressing the impact of its development upon the cultural resources. The primary factor is the nature of the permanent development. As stated in Section I.B of this Annual Report, the Planning Department is going to prepare a zoning plan for Honokohau Village which will include Increment II of Petitioner's property. Petitioner is advised that the village plan will define what Petitioner can develop on Increment II. Petitioner then will address the impact that Petitioner's development plan will have, if any, on the cultural resources.

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).

EFFORTS MADE/PLANNED:

Petitioner will develop a landscaping plan for Increment II as part of its overall development plan in consultation with Belt Collins Hawaii.

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.

EFFORTS MADE/PLANNED:

Petitioner's quarry operator is using efficient soil erosion and dust control measures in its quarry operations under a permit from the 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.

EFFORTS MADE/PLANNED:

Petitioner will provide its pro rata share for police, fire, park and solid waste disposal as required by 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.

EFFORTS MADE/PLANNED:

Petitioner is developing Increment II in full compliance with all material representations made to the Commission.

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.

EFFORTS MADE/PLANNED:

Petitioner does not intend to sell lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in Increment II at this time.

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.

EFFORTS MADE/PLANNED:

This report is provided to the Commission in accordance with Condition 12.

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.

EFFORTS MADE/PLANNED:

Petitioner is not requesting release of any conditions relating to Increment II at this time.

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.

EFFORTS MADE/PLANNED:

Petitioner has recorded a Declaration of Conditions with the Bureau of Conveyances and has filed a copy of the recorded Declaration of Conditions with the Commission.

DATED: Kailua-Kona, Hawaii, May 22, 2009.

McCLEAN HONOKOHAU PROPERTIES

By _____
Robert S. McClean, as Trustee of the
Robert S. McClean Trust
General Partner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following by depositing the same in the U.S. Postal Service by certified mail, return receipt requested, on the date hereof:

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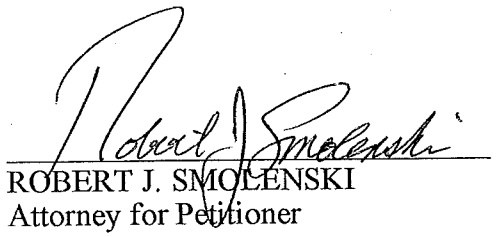
DATED: Honolulu, Hawaii, June 1, 2009.



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