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BEFORE THE LAND USE COMMISSION  
STATE OF HAWAI'I

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LAND USE COMMISSION  
STATE OF HAWAI'I

In the Matter of the Petition of

MCCLEAN HONOKOHAU PROPERTIES, a  
Hawai'i Limited Partnership,

To Amend the Land Use District Boundary to  
Reclassify Approximately 89.527 Acres of Land  
In the Conservation and the Agricultural  
Districts to the Urban District at Honokōhau,  
North Kona, Hawai'i, Tax Map Key Nos.:  
7-4-24:1,2,4,6,7,8,9,10,11 and 12.

DOCKET NO. A89-643

COUNTY OF HAWAI'I PLANNING  
DEPARTMENT'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;  
CERTIFICATE OF SERVICE

**COUNTY OF HAWAI'I PLANNING DEPARTMENT'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**

The County of Hawai'i Planning Department ("Department") by and through its undersigned counsel, pursuant to Hawai'i Administrative Rules, Section 15-15-37, hereby offers its response to Petitioner McClean Honokohau Properties' 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, filed December 23, 2014.

The Department offers the following information regarding the status of compliance with each of the sixteen (16) conditions relative to Increment I based on its records and information provided by the Petitioner:

**LUC Condition No. 1: (Buffer Landscaping):** This LUC condition is similar to Conditions D, E and F in Change of Zone Ordinance No. 99-89, which are enforced through the Plan Approval review process in the Zoning Code, including the installation and maintenance of the landscaping buffer and requirements. However, the County was not able to locate a copy of the approved Landscaping Plan dated March 1996 and to date, the Petitioner similarly was not able to locate a copy. The County is working to resolve this situation. The County agrees with the State Office of Planning ("OP") that the change of zone ordinance conditions, alone, do not clearly convey all of the requirements for the landscaping plan as articulated in the LUC Decision and Order and recommends that LUC Condition No. 1 not be released. The applicable change of zone conditions referenced in this discussion are provided below:

- D. A comprehensive landscaping/buffer plan, including visual analysis from the Queen Kaahumanu Highway and surrounding properties, shall be submitted to the Planning Department for review and approval prior to submittal of plans for plan approval review. The plan shall include, but not be limited to, landscaping improvements along the zoned area's western, northern and southern boundaries, interior landscaping, and provisions for maintenance. Identified priority landscaped areas shall be established prior to issuance of a certificate of occupancy for any portion of the development.
- E. As required by the State Land Use Commission's Decision and Order, a plan for a buffer and its maintenance along the southern boundary with the Kealakehe lands shall be submitted to and approved by the Housing Finance and Development Corporation or its successors prior to submittal of plans for plan approval review.
- F. In the design and review of any improvements, due consideration shall be given to the minimization of noise and adverse visual impacts through appropriate siting, height, bulk, color schemes, signage, and landscaping.

**LUC Condition No. 2: (Pro-rata share of transportation improvements):**

Petitioner's agreement with the State Department of Transportation (DOT) dated February 28, 2001 details the improvements to be performed by the Petitioner and satisfies the requirements of Condition K of the Change of Zone Ordinance No. 99-89. The Planning Department confirmed with the Department of Public Works that Road G (Kamanu Street) and the Mid-Level Road (Ane Keohokalole Highway) have been constructed with Road G not yet dedicated to the County. We do not see dedication of this roadway to the County as a prerequisite to compliance with LUC Condition No. 2. Main Street has yet to be constructed as it remains a part of the second increment of this project.

Satisfaction of Condition K of the Change of Zone Ordinance No. 99-89 is on-going as it also specifies Petitioner's participation in funding and construction of these improvements as the development progresses. Since Condition K references the LUC Condition No. 2 as its basis, the County is concerned that release of LUC Condition No. 2 will render Change of Zone Ordinance No. 99-89 Condition K meaningless. Condition K is provided below:

- K. As required by the State Land Use Commission's Decision and Order, the applicant 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. A letter of compliance with this condition shall be submitted prior to issuance of Final Subdivision Approval or a certificate of occupancy for any portion of this development, whichever occurs first.

**LUC Condition No. 3: (Drainage/Erosion):** Civil drawings for the construction of subdivision-related and on-site improvements are reviewed and approved by the State Department of Health and the Department of Public Works, as appropriate, in accordance with both State and County laws regarding drainage and erosion control measures. LUC Condition No. 3 basically recites what is currently provided for in both State and County laws. The County Department of Public Works (DPW) is charged with the review of required drainage and erosion

control measures with additional review by DOH, as appropriate. Chapter 10 (Erosion and Sedimentation Control) of the Hawaii County Code and DOH NPDES requirements apply. We have no objections to the release of LUC Condition No. 3 based on existing governmental regulations that address erosion and sedimentation. Related conditions within the Change of Zone Ordinance No. 99-89, which also recite compliance with drainage requirements, are provided below:

- H. A drainage system shall be installed meeting with the approval of the Department of Public Works.
- I. As required by the State Land Use Commission's Decision and Order, a drainage and erosion control plan shall be prepared to control drainage within the property and to maintain ocean water quality. Said plan and construction of the drainage improvements shall meet with the approval of the Department of Health and/or the Department of Public Works, as appropriate.

**LUC Condition No. 4: (Pro rata share of water improvements):** The Department of Water Supply has indicated that the Petitioner has satisfied the requirements of LUC Condition No. 4 through the payment of Facilities Charge (FC) in the amount of \$43,500 (with an initial payment of \$1,800 and a final payment of \$41,700) for 10 additional units of water as well as a payment of a Capital Assessment Fee of \$5,000 for those 10 additional units. A 12-inch pipeline was installed in Kamanu Street from Kealakehe Parkway to the subject properties. The County has no objections to the release of this condition.

**LUC Condition No. 5: (Wastewater disposal improvements):** Condition G of the Change of Zone Ordinance No. 99-89 requires interim wastewater disposal system and installation of sewer lines for eventual hookup to a municipal sewer system, similar to LUC Condition No. 5. Petitioner has coordinated with DOH regarding the use of individual wastewater systems (IWS) and has completed the installation of the sewer system for future hookup within Increment I subdivision. The County has no objections to the release of LUC

Condition No. 5 since Change of Zone Ordinance No. 99-89 Condition G, as provided below, further supports the requirements of LUC Condition No. 5:

- G. An interim method of sewage disposal shall meet with the approval of the appropriate governmental agencies. Sewer lines shall be installed within the project site for eventual hookup to the municipal sewer system.

**LUC Condition No. 6: (Prevention of hazardous spills):** This LUC condition is articulated within Change of Zone Ordinance No. 99-89 as Condition I which states:

- I. As required by the State Land Use Commission's Decision and Order, a drainage and erosion control plan shall be prepared to control drainage within the property and to maintain ocean water quality. Said plan and construction of the drainage improvements shall meet with the approval of the Department of Health and/or the Department of Public Works, as appropriate.

The Petitioner has adopted rules for all tenants to eliminate the risk of spills of petroleum products, chemicals, solvents or other pollutant, which is part of covenants that are then conveyed with the individual lots and licensing agreements with tenants. Site development of individual lots require individual design review to ensure protective measures are in place depending on actual uses established which are then reviewed by DOH and DPW, as appropriate. Existing State (DOH NPDES requirements) and County (Chapter 10-Erosion and Sedimentation Control of the Hawaii County Code) govern drainage and erosion control. For these reasons, the County has no objection to the release of LUC Condition No. 6.

**LUC Condition No. 7: (HELCO pro-rata share):** Petitioner states they have paid HELCO for all electrical facilities for which HELCO has since installed. This is a matter of providing necessary facilities to support electrical service to the Petition area, and will be self-regulating as HELCO determines what is necessary on the part of the Petitioner to provide such service to their project. Therefore, the County has no objection to the release of LUC Condition No. 7.

**LUC Condition No. 8: (Inadvertent archaeological discovery):** LUC Condition No. 8 closely resembles Condition M of the Change of Zone Ordinance No. 99-89, with the only difference being that Condition M requires that the Planning Department be notified of inadvertent discovery versus the LUC Condition No. 8 specifying that the State Historic Preservation Office (“SHPD”) shall be contacted. This is immaterial since the County is a Certified Local Government (CLG) maintaining a historic preservation commission and program meeting Federal and State Standards. Once notified, the County will immediately inform SHPD and coordinate a proper mitigative response. Accordingly, the County has no objection to the release of LUC Condition No. 8, since the existing Change of Zone Ordinance No. 99-89 Condition M provides the mechanism to ensure that inadvertent discoveries are properly addressed as stated below:

- M. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

**LUC Condition No. 9: (Fair share):** Fair share contributions, as typically defined by the County, apply only to residential dwelling units, which are prohibited within the Industrial zoning district. Therefore, the County has no objection to the release of LUC Condition No. 9 due to inapplicability based on zoning district classification.

**LUC Condition No. 10: (Air quality monitoring):** Condition L of the Change of Zone Ordinance No. 99-89 is based on LUC Condition No. 10. However, Petitioner has verified compliance through a letter from DOH confirming completion of an air quality study that satisfies the requirements of LUC Condition No. 10. Therefore, the County has no objection to the release of LUC Condition No. 10. Change of Zone Condition L is provided below:

- L. As required by the State Land Use Commission's Decision and Order, a letter from the Department of Health shall be submitted prior to the issuance of Final subdivision approval or a certificate of occupancy for any portion of the development, whichever occurs first, indicating that participation with the air quality monitoring program has been executed.

**LUC Condition No. 11: (Soil erosion and dust control):** Condition P in Change of Zone Ordinance No. 99-89 requires appropriate measures to mitigate odor, dust, noise and nuisances, but this only applies to the MG-5a zoned area for the concrete batching plant and not the remainder of the project site. However, we are aware of air and noise quality regulations administered by the DOH to mitigate odor, dust, and noise in accordance with DOH regulations. Requirements to minimize soil erosion is administered through the DPW via Chapter 10 of the Hawaii County Code regarding Erosion and Sedimentation Control. We have no objection to the release of LUC Condition No. 11 due to existing governmental regulations which control soil erosion and air quality.

Change of Zone Ordinance No. 99-89 Condition P is provided below:

- P. The applicants, its successors, or assigns of the development on the above described Parcel 2, designated in the MG-5 zoned district, shall be required to take appropriate measures as required by the State Land Use Commission's Decision and Order to control and minimize any environmental conditions which include, but are not limited to odor, dust, noise, and nuisances caused by the operation of a ready-mix concrete batching plant.

**LUC Condition No. 12: (Water quality monitoring system):** There is no condition within Change of Zone Ordinance No. 99-89 that replicates the requirements of LUC Condition No. 12; however, Change of Zone Ordinance No. 99-89 Condition I, provided below, relates to ocean water quality:

- I. As required by the State Land Use Commission's Decision and Order, a drainage and erosion control plan shall be prepared to control drainage within the property and to maintain ocean water quality. Said plan and construction of the drainage improvements shall meet with the approval of the Department of Health and/or the Department of Public Works, as appropriate.

The County is also unaware of any agency that will be able to adequately administer a water quality monitoring system for this particular area of Kona. The County must rely on existing governmental regulations, such as Chapter 10 of the Hawaii County Code regarding Erosion and Sedimentation Control and DOH NPDES requirements to manage on-site drainage and erosion to protect coastal waters. For this reason, the County has no objection to the release of LUC Condition No. 12 since there are no guidelines, processes or standards in place beyond existing governmental regulations administered by the DPW and DOH.

**LUC Condition No. 13: (Substantial compliance):** This project was represented as an industrial subdivision, for which it is now zoned. The Zoning Code and the uses permitted within the General Industrial (MG) and Limited Industrial (ML) zoning districts will dictate what use may be permitted within the project site. Therefore, the County has no objection to the release of LUC Condition No. 13.

**LUC Condition No. 14: (Notice to Commission of intent to sell, lease, etc.):** There is no similar condition within Change of Zone Ordinance No. 99-89. However, the County will formally communicate with the landowner or its successors or assigns to enforce the annual reporting requirements and on-going performance conditions within Change of Zone Ordinance No. 99-89. Based on the foregoing, the County has no objection to the release of LUC Condition No. 14.

**LUC Condition No. 15: (Annual reports):** The County defers to the LUC on whether the Petitioner should be released from this reporting requirement. Change of Zone Ordinance No. 99-89 Condition Q is similar to LUC Condition No. 15, but applies only to the conditions contained in the change of zone ordinance. Change of Zone Ordinance No. 99-89 Condition Q is provided below:

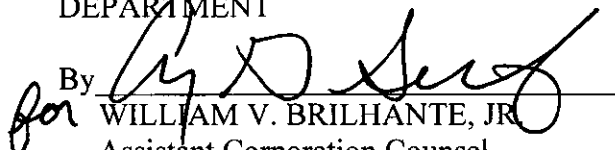


- Q. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of this Change of Zone. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

**LUC Condition No. 16: (Release of conditions):** This LUC condition provides the authority for which conditions may be fully or partially released. The County would support the release of this condition only if and when the LUC contemplates releasing the Petitioner from all conditions within the LUC's Decision and Order.

DATED: Hilo, Hawai'i, August 28, 2015.

COUNTY OF HAWAI'I PLANNING  
DEPARTMENT

By   
for WILLIAM V. BRILHANTE, JR.  
Assistant Corporation Counsel.  
Its Attorney

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STATE OF HAWAI'I

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CERTIFICATE OF SERVICE

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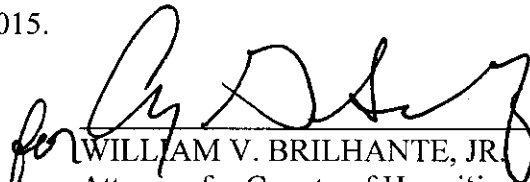
I hereby certify that a true and correct copy of the foregoing document was duly served  
upon the following in the manner indicated below:

	<u>Hand Delivery</u>	<u>U.S. Mail</u>
Robert J. Smolenski, Esq. 1628 Davies Pacific Center 841 Bishop Street Honolulu, HI 96813 Attorney for Petitioner	( )	(X)
Brandi Beaudet, Chairman Leeward Planning Commission County of Hawai'i 101 Pauahi Street, Suite 3 Hilo, HI 96720	( )	(X)
Myles Miyasato, Chairman Windward Planning Commission County of Hawai'i 101 Pauahi Street, Suite 3 Hilo, HI 96720	(X)	( )
Leo R. Asuncion, Jr., Acting Director State Office of Planning P.O. Box 2359 Honolulu, HI 96804	( )	(X)

Intervenors:

	<u>Hand Delivery</u>	<u>U.S. Mail</u>
Isemoto Contracting Co., Ltd. 648 Pi'ilani Street Hilo, HI 96720	( )	(X)
SJA Partnership P.O. Box 429 Captain Cook, HI 96704	( )	(X)
Tiffany Taylor Taylor Family Limited Partnership 73-5601 Maiiau Street Kailua-Kona, HI 96740	( )	(X)

DATED: Hilo, Hawai'i, August 28, 2015.

  
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WILLIAM V. BRILHANTE, JR.  
Attorney for County of Hawai'i  
Planning Department