



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,) ORDER GRANTING IN PART AND
a Hawai'i limited partnership) DENYING IN PART PETITIONER'S
) MOTION TO RELEASE, DISCHARGE,
) AND DELETE ALL CONDITIONS; AND
To Amend the Land Use District Boundary to) CERTIFICATE OF SERVICE
Reclassify Approximately 89.527 acres of)
land in the Conservation and Agricultural)
Districts to the Urban District at Honōkohau,)
North Kona, Island of Hawai'i, State of)
Hawai'i, Tax Map Key Nos.: 7-4-24:001,)
002, 004, 006 to 012.)
_____)

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

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. Orodener, Executive Officer



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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

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

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

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

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

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

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

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

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

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

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

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

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

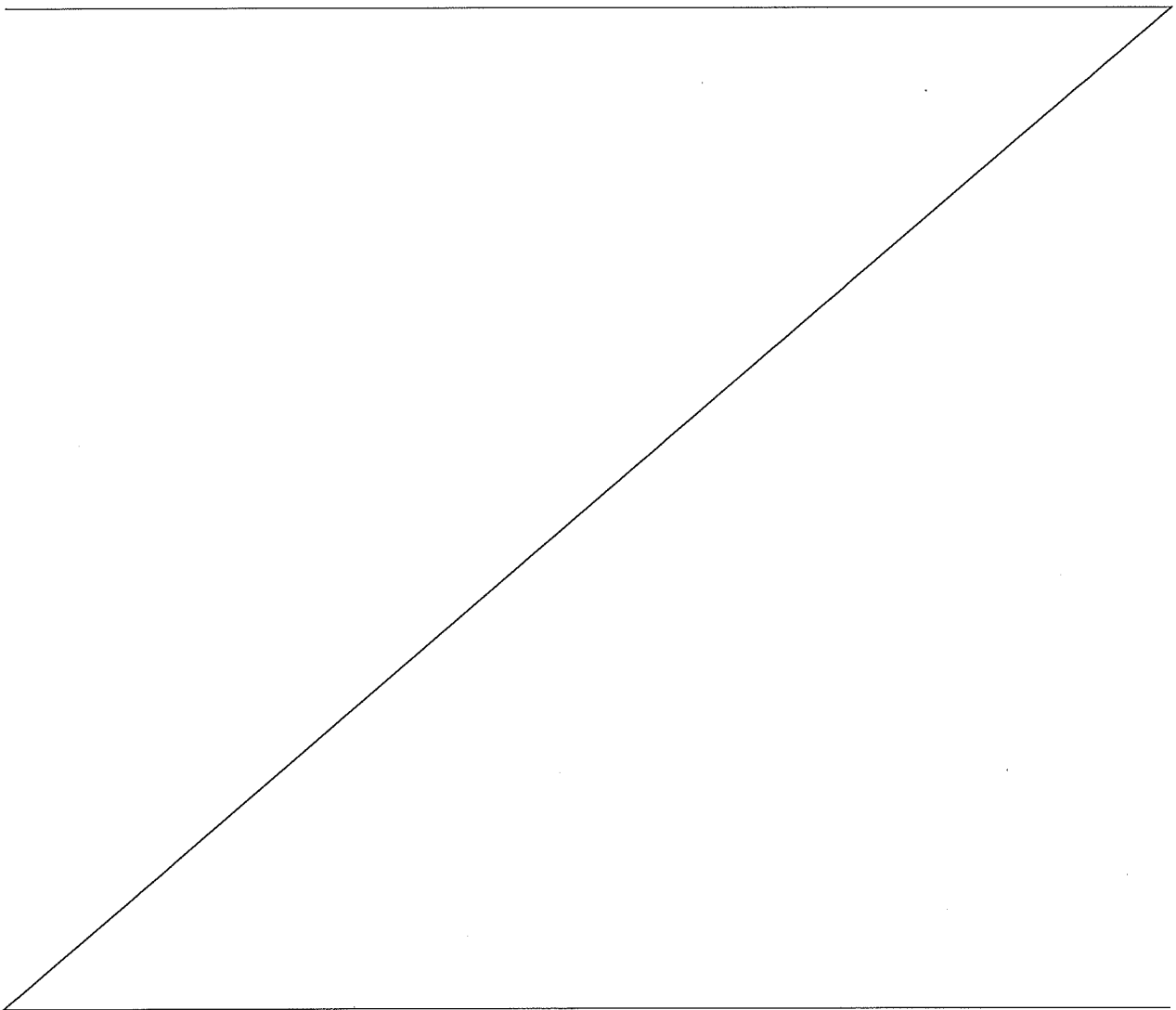
ORDER

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.



ADOPTION OF ORDER

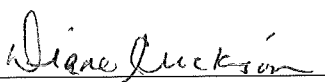
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

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 HAWAII


Diane Jackson
Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

3/28/16

Certified by:


DANIEL E. ORODENKER
Executive Officer



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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.
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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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

DANIEL E. ORODENKER
Executive Officer