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LAND USE COMMISSION  
STATE OF HAWAII

2015 SEP -9 A 11: 59

Attorneys for Petitioner

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  
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; CERTIFICATE OF SERVICE

THIRD SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF MOTION TO RELEASE CONDITIONS

McClearn Honokohau Properties ("MHP") submits this Third Supplemental Memorandum and expert testimony of Cheryl M. Palesh in further response to certain issues raised by the Office of Planning ("OP") regarding Condition 3 of the LUC Conditions.

1. **Expert Testimony of Cheryl M. Palesh.**

Exhibit 21 is the September 9, 2015 written expert testimony and CV of Cheryl M. Palesh, Belt Collins Vice President and Director of Engineering, addressing concerns expressed by OP regarding MHP's satisfaction of Condition 3, and indicating compliance with Condition 3.

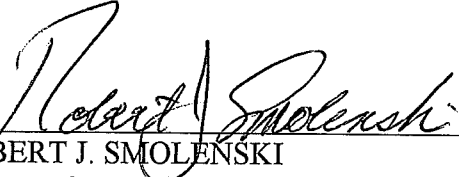
2      **List of Conditions.**

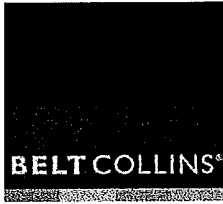
Exhibit 22 is the list of the LUC Conditions applicable to Increment I of MRP's property, and is included so that all of the Conditions can be easily viewed on one document.

3.      **Conditions as to Which There is No Opposition.**

OP and the County of Hawaii have expressed no objection to the release of Conditions 4, 5, 7, 9, 10 and 14. MHP has submitted to them a form of Stipulation regarding these Conditions, and anticipates submitting the signed Stipulation at the beginning of the September 10, 2015 hearing.

DATED: Honolulu, Hawaii, September 9, 2015.

  
\_\_\_\_\_  
ROBERT J. SMOLENSKI  
Attorney for Petitioner  
McClean Honokohau Properties



September 9, 2015  
15E-303

via e-mail: [smolenski@icloud.com](mailto:smolenski@icloud.com)

State of Hawai'i Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, Hawai'i 96804

**Petition of McClean Honokohau Properties  
Docket A89-643  
Testimony in Support of  
Motion to Release Condition 3  
Tax Map Keys Nos.: 7-4-024: 001, 002, 004 and 006 through 012  
North Kona, Hawai'i**

As the civil engineers for the subdivision of the McClean Honokohau Properties, the following written testimony is offered for consideration in support of the motion to release the Petitioner from Condition No. 3 of Docket A89-643.

*Condition 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.*

The construction documents for the initial subdivision improvements made prior to 1993 were prepared in accordance with the requirements of the State Department of Health (DOH) Underground Injection Control (UIC), Hawai'i Administrative Rules Title 11, and of the County of Hawai'i Code Chapter 10, Erosion and Sedimentation Control, and Chapter 23, Subdivisions, for drainage and storm water runoff disposal. The submittal made to the DOH Safe Drinking Water Branch (SDWB), was considered as addressing the portion of the condition, "...to maintain ocean water quality to the satisfaction of the State Department of Health", because the DOH-SDWB's stated mission is to, "...safeguard public health by protecting Hawaii's drinking water sources (surface water and groundwater) from contamination...accomplished through the administration of the Safe Drinking Water Program, Underground Injection Control Program (UIC)...".

With the Petitioner's property discharging no direct runoff to the ocean, any water quality impacts were considered as being through underground injection. With the review of the construction documents by the DOH-SDWB and determination that no UIC permit was needed it was understood that the, "...maintain ocean water quality to the satisfaction of the State Department of Health..." was met. Similarly, the County of Hawaii Department of Public Works

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approved the property's grading plan and drainage report, and issued the grading permit for the construction of improvements.

In 1993, Act 345 established the authority for a Nonpoint Source Pollution Program in the DOH through Hawai'i Revised Statutes, Chapter 342E, Non Point Source Management and Control, and subsequent implementation of the State's National Pollutant Discharge Elimination System (NPDES) permit program. Under Hawai'i Administrative Rules, Chapter 11-55, Water Pollution Control, the DOH Clean Water Branch (DOH-CWB) administers the NPDES permit program for discharges of storm water from municipal systems and industrial facilities, along with discharges of storm water associated with construction activities, and discharges of treated effluent, cooling water, hydrotest waters, and treated process waters to the receiving water of the State. For any such activity, NPDES permit coverage is required. With regard to construction activities, any work that disturbs one (1) acre or more of total land area is required to obtain NPDES permit coverage from the DOH-CWB. NPDES permit coverage is also required for activities that disturb less than one (1) acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more of total land area. The DOH-CWB NPDES permit requirements thus apply to the Petitioner's property.

The DOH-CWB NPDES Notice of Intent (NOI) Form C for NPDES General Permit authorizing discharges of storm water associated with construction activities requires submittal of a County-approved Erosion and Sediment Control Plan and/or Grading Permit, at least 30 calendar days before the start of construction activities. A County grading permit is required for any earthwork moving more than 100 cubic yards of material or involving elevation changes greater than 5 feet. Alternatively, the documentation to demonstrate that a County-approved Erosion and Sediment Control Plan and/or Grading Permit is not required needs to be submitted. As such, any development disturbing over one acre within the Petitioner's property is required to submit a County-approved Erosion and Sediment Control Plan and/or Grading Permit and storm water runoff calculations to obtain NPDES permit coverage.

As set forth in Exhibit 8 of the First Supplemental Memorandum and Exhibits submitted by the Petitioner on August 24, 2015, Belt Collins prepared the Drainage Site Plan Application and, after reviewing the Final Report for Drywells dated 11/28/00, the State Department of Health issued its January 9, 2001 letter stating that MHP was allowed to operate the constructed drainage well injection system. In May 2004, Belt Collins prepared the Erosion Control Plan for the MHP Lot 3 Warehouse site preparation set forth in Exhibit 9, with the construction plans for the MHP Lot 6 Warehouse site having similar requirements as presented in the BMP Notes, SWPPP Plan, and SWPPP Details included in the Riehm Owensby documents dated October 14, 2005 set forth in Exhibit 10. Belt Collins also processed a NPDES permit for the work, DOH File No. HIR10B708.

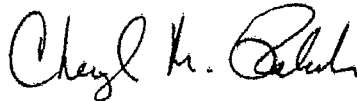
The requirements of the condition to control drainage within the property and to maintain ocean water quality to the satisfaction of the State Department of Health have been, and will continue to be, met under current State and County regulations and having the LUC condition is no longer necessary based on implementation of the State's NPDES permit program.

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Your consideration of this testimony is appreciated. Please direct any questions regarding it to the undersigned at (808) 846-3330, or by e-mail me to [cpalesh@bchdesign.com](mailto:cpalesh@bchdesign.com). Thank you.

Very truly yours,

BELT COLLINS HAWAII LLC

A handwritten signature in black ink, appearing to read "Cheryl M. Palesh". The signature is fluid and cursive, with the first name "Cheryl" being the most prominent.

Cheryl M. Palesh, P.E., LEED AP  
Vice President / Director of Engineering

CMP:ajk



# CHERYL M. PALESH, PE, LEED AP

## CIVIL/SANITARY ENGINEER

### VICE PRESIDENT / DIRECTOR OF ENGINEERING

Ms. Palesh has extensive experience in civil and environmental engineering. She has served as principal-in-charge, project manager, project civil engineer, and designer on a wide variety of site development, infrastructure design and environmental projects. She also has extensive experience in infrastructure master planning, residential and industrial subdivision development and building site design. Project responsibilities have included site investigations, facilities layout and design, permit processing, management, and design team coordination.

She is a Certified Qualified Storm Water Compliance Manager, with over 40 years of civil and environmental engineering experience. Project experience includes National Pollutant Discharge Elimination System (NPDES) permitting and quality assurance/quality control reviews, design of best management practices (BMPs) for construction and industrial sites, and storm water quality monitoring.

As Director of Engineering, Ms. Palesh is responsible for the engineering functions for Belt Collins Hawaii, providing technical guidance, quality reviews, project scheduling, mentoring, and marketing support.

EDUCATION	Professional Development Degree, Civil Engineering, University of Wisconsin – Madison, 1980 M.S., Environmental Engineering, Illinois Institute of Technology, 1973 B.S., Chemistry/Psychology, Roosevelt University, 1971
REGISTRATION	Civil Engineer – Hawaii, No. 5952, 1986 Civil Engineer – Guam, No. 582, 1983 Sanitary Engineer – Virginia, No. 11903, 1980 Leadership in Energy and Environmental Design (LEED®) 2.0 Accredited Professional, 2004 Certified Storm Water Compliance Manager, 2004
PRESENTATIONS/ AFFILIATIONS	Member and Vice-Chair, City and County of Honolulu Building Board of Appeals, (2012 to date) Member Society of American Military Engineers (SAME), Honolulu Post (2009 to date) Guest Lecturer, University of Hawaii, School of Travel Industry Management, (2008 – 2009) Member and past-Chairman, City and County of Honolulu Committee, American Council of Engineering Companies – Hawaii (2004 -2005)
EMPLOYMENT	Belt Collins Hawaii LLC, Honolulu, Hawaii, 1989 - present Sam O. Hirota, Inc., Honolulu, Hawaii, 1984- 1989 Maguire Group, Honolulu, Hawaii, 1982 -1984 Maguire Group, Providence, Rhode Island, 1980 -1982 Engineering Science, Inc., McLean, Virginia, 1979 -1980 U.S. Agency for International Development, Port-au-Prince, Haiti, 1978 -1979 U.S. Agency for International Development, Washington, D.C., 1976 -1978 Ministry of Water Development, Nairobi, Kenya (U.S. Peace Corps), 1974 -1976 Illinois Water Treatment Company, Rockford, Illinois, 1973 - 1974



SELECTED PROJECTS

COMMUNITY/INFRASTRUCTURE DESIGN

Villages of La'i 'Opua, Kealahou Parkway & Mid-Level Roadway, Kealahou, Island of Hawaii  
Villages of La'i 'Opua Backbone Infrastructure Phases 1 and 2A, Kealahou, Island of Hawaii  
Honokohau Properties Makai Infrastructure, Kona, Island of Hawaii  
Ane Keohokālole Highway, Palani Road Improvements, North Kona, Island of Hawaii  
Luhia Street Extension, Kahumanu Highway and Palani Road Improvements, Kailua-Kona, Island of Hawaii  
Makala Blvd. Extension, Keahuolu, Kona, Island of Hawaii  
The Bluffs at Mauna Kea Subdivision, Island of Hawaii  
Apa'apa'a Heights, Uplands at Mauna Kea, Island of Hawaii  
The Kumulani, Uplands at Mauna Kea, Island of Hawaii  
Moani Heights Subdivision, Uplands at Mauna Kea, Island of Hawaii  
Wai'ula'ula, Uplands at Mauna Kea, Island of Hawaii  
Hali'i Kai, Waikoloa Resort, Island of Hawaii  
Hilton Grand Vacations Club Kings' Land, Waikoloa Resort, Island of Hawaii  
Kolea Subdivision, Waikoloa Resort, Island of Hawaii  
Naupaka Place, Waikoloa, Island of Hawaii  
Queen Ka'ahumanu Highway and Waikoloa Road Intersection, Island of Hawaii

NPDES PERMITTING/COMPLIANCE

NPDES Permit Best Management Practices Plans for State Department of Transportation Highways Municipal Separate Storm Sewer System (MS4), O'ahu  
NPDES Reapplication, Storm Water Management Plan and Database Update for State Department of Transportation Highways MS4, Army Corps of Engineers, O'ahu  
Storm Water Management Plan Kalihi & He'eia Baseyards, Honolulu Board of Water Supply and Honolulu Fire Department, NPDES Small MS4 Program, O'ahu  
Honolulu Fire Department NPDES, Small MS4 Program Development and Implementation Designs for 'Aiea, Central and Kahala'u Fire Stations, O'ahu, HI  
City and County of Honolulu NPDES Storm Water Public Education and Outreach Program, O'ahu

SITE DEVELOPMENT/REDEVELOPMENT – DESIGN & NPDES PERMITTING

Mauna Kea Golf Course Renovation, Mauna Kea Resort, Island of Hawaii  
Outrigger Waikoloa Hotel Renovations, Island of Hawaii  
Queens' MarketPlace and Cultural Gardens, Waikoloa Resort, Island of Hawaii  
Kings' Shops Renovation, Waikoloa, Island of Hawaii  
Kapolei Business Park Phase 2 Subdivision, Kapolei, O'ahu  
Shriners Hospital Redevelopment, O'ahu  
Uluwehi Apartments Demolition, Wai'anana, O'ahu  
Olomana Heights, Kailua, O'ahu  
Capitol Place, Honolulu, O'ahu  
2100 Kalākaua Avenue, Commercial Center, Honolulu, O'ahu  
Hokua at 1288 Ala Moana, Residential Tower, Kaka'ako, O'ahu  
Moanalua Shopping Center, O'ahu  
Syngenta Parent Seed Facility, Kunia, O'ahu

## 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.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following by e-mailing a pdf copy and by depositing a copy in the U.S. Postal Service on the date hereof:

DUANE KANUHA, Director  
Planning Department  
County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720  
[Duane.Kanuha@hawaiiicounty.gov](mailto:Duane.Kanuha@hawaiiicounty.gov)

LEO ASUNCION, Acting Director  
Office of Planning  
P.O. Box 2359  
Honolulu, Hawaii 96804  
[Leo.Asuncion@dbet.hawaii.gov](mailto:Leo.Asuncion@dbet.hawaii.gov)

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 on the date hereof:


INTERVENORS:

Isemoto Contracting Co., Ltd.  
648 Piilani Street  
Hilo, Hawaii 96720

SJA Partnership  
P.O. Box 429  
Captain Cook, Hawaii 96704

Tiffany Taylor  
Taylor Family Limited Partnership  
73-5601 Maiau Street  
Kailua-Kona, Hawaii 96740

DATED: Honolulu, Hawaii, September 9, 2015.

  
ROBERT J. SMOLENSKI  
Attorney for Petitioner  
McClean Honokohau Properties