

SMOLENSKI & WOODDELL

ROBERT J. SMOLENSKI 1059-0  
1628 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawaii 96813  
Telephone No. (808) 524-5750

Attorneys for Petitioner

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII  
2015 SEP - 3 A 10:49

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

SECOND 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; CERTIFICATE  
OF SERVICE

SECOND SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF MOTION TO RELEASE CONDITIONS

McCLean Honokohau Properties ("MHP") submits this Second Supplemental Memorandum in response to certain issues raised by the Office of Planning ("OP") in its Response in Partial Support of MHP's Motion to Release Conditions, filed on August 27, 2015.

**1. The Existence and Enforceability of County of Hawaii Ordinance 99-89 ("Ordinance") Provisions Will Not Be Affected by the Release of LUC Conditions.**

MHP pointed out in paragraph 1 of its First Supplemental Memorandum that references in certain provisions of the County Ordinance to the LUC Conditions will not in any way lessen the County's ability to enforce the Ordinance provisions when the LUC Conditions are released. OP has expressed a contrary opinion in its Response, particularly with regard to Conditions 1, 2,

3 and 8. MHP states for the record that it has no intent to nullify any of the provisions of Ordinance 99-89. To allay any concerns, MHP requests that the eventual LUC order in this proceeding reflect that the release of LUC Conditions does not in any way affect the existence or enforceability of any Ordinance provisions that refer to the released LUC Conditions.

2. **Condition 2. (Transportation Improvements).** MHP requests that the Main Street construction requirement be transferred as a condition applicable to Increment II, as Main Street is part of Increment II, as indicated in MHP's Exhibit 18, and will be built in connection with the development of Increment II. Kamanu Street has been built and only awaits dedication and acceptance by the County, which in its Response the County does not see as a prerequisite to compliance with Condition 2, and Paragraph K of Ordinance 99-89 provides backup assurance. Based upon the foregoing, MHP believes that Condition 2 may be released without lessening MHP's responsibility to participate in transportation improvements.

3. **Condition 3. (Drainage and Erosion Control).** The January 9, 2001 letter from the Department of Health stating that MHP is allowed to operate the constructed drainage injection well system, which is included in MHP's Exhibit 8, indicates the approval by DOH of the drainage system in the Drainage Site Plan prepared by Belt Collins.

As set forth in the County's Response, the provisions of Chapter 10 of the Hawaii County Code relating to Erosion and Sedimentation Control apply and, as set forth above, the provisions of paragraphs H and I of Ordinance 99-89 relating to drainage and erosion control to maintain ocean water quality will continue to be applicable and enforceable by the County after the release of Condition 3.

4. **Condition 6. (Systems to Contain Spills).** As indicated in MHP's First Supplemental Memorandum, MHP's rules regarding the risk of pollutant spills were provided to the County and are set forth in Sections 4 and 7(a) of Exhibit 3 to MHP's Motion, and MHP also has included in its deeds the Covenants and Restrictions set forth in Exhibit C to Exhibit 3 of



MHP's Motion. As indicated in its Response, the County has the authority to enforce the control of drainage and to maintain ocean water quality pursuant to both Chapter 10 of the County Code (Erosion and Sedimentation Control) and paragraph I of Ordinance 99-89, which reflects the requirements of LUC Condition 6.

5. **Condition 8. (Archaeological Resources).** As pointed out in its Response, the County is a Certified Local Government and if any archaeological resources were discovered, it would notify the State Historic Preservation Office. In addition, paragraph M of Ordinance 99-89, also indicates the County's continuing jurisdiction over archaeological resources.

6. **Condition 11. (Soil Erosion and Dust Control).** MHP has indicated that it has completed all of its grading on increment I and has provided effective dust control and soil erosion procedures. Again, paragraph P of Ordinance 99-89 and Chapter 10 of the Hawaii County Code provide continuing County authority to enforce soil erosion and dust control issues.

7. **Condition 12. (Nearshore and Ocean Waters).** As recognized by OP, the LUC concluded in its Findings of Fact 83 that MHP's proposed development of Increment I was not anticipated to adversely affect the ocean or the shoreline. However, OP argues that since Condition 12 was imposed in allowing the development of Increment I, it should not be released. MHP has developed Increment I in compliance with Condition 12, and Condition 12 can be released, with the County having continuing authority for the protection of nearshore and ocean waters pursuant to Paragraph I of Ordinance 99-89 and Chapter 10 of the County Code.

8. **Condition 13. (Substantial Compliance in Development of Increment I).** MHP has developed Increment I as represented to the LUC as an industrial park, and, as indicated in the County's Response, the County Zoning Code and permitted uses within the General Industrial (MG) and Limited Industrial (ML) zoning districts will control on an ongoing basis.

DATED: September 3, 2015



---

ROBERT J. SMOLENSKI  
Attorney for Petitioner  
McClean Honokohau Properties

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 on the date hereof:

DUANE KANUHA, Director  
Planning Department  
County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

BRANDI BEAUDET, Chairman  
Leeward Planning Commission  
County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

MYLES MIYASATO, Vice Chair  
Windward Planning Commission  
County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

LEO ASUNCION, Acting Director  
Office of Planning  
P.O. Box 2359  
Honolulu, Hawaii 96804

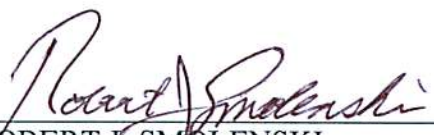
INTERVENORS:

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 3, 2015.

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