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County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

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Deputy Director

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LAND USE COMM
STATE OF HA
2021 AUG -2 P 2:45

July 27, 2021

Daniel E. Orodenker, Executive Officer
Department of Business, Economic Development & Tourism
Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

Dear Mr. Orodenker:

LUC Docket No. A89-643 for McClean Honokōhau Properties (LUC 774)
Subject: 2021 Annual Progress Report
Tax Map Keys: (3) 7-4-024:001; 002; 004; and 006-012

This is to acknowledge receipt of the *Annual Progress Report Pursuant to Condition No. 15 of the Findings of Fact, Conclusions of Law, and Decision and Order approving application for Increment II for incremental redistricting from Conservation and Agricultural to Urban Classification dated June 27, 2002,* submitted to the Planning Department on June 25, 2021. We have reviewed the 2021 Annual Progress Report submitted in compliance with the above noted conditions. We find the report is acceptable and have no further comments.

Thank you for your compliance in these matters. If you have any questions, please feel free to contact Tracie-Lee Camero at (808) 961-8166.

Sincerely,

for ZENDO KERN
Planning Director

TC:jaa
\\coh01\planning\public\wpwin60\tracie\letters\annual reports\lorodenker-2021apr-luc774.doc

Enclosure: Copy of Annual Progress Report

cc (ltr. only): Robert J. Smolenski, Esq.
James S. McClean, McClean Honokōhau Properties

COH PLANNING DEPT
JUN 25 2021 PM2:16
REC'D BY MAIL

ROBERT J. SMOLENSKI 1059-0
Attorney At Law, A Law Corporation
P.O. Box 161207
Honolulu, Hawaii 96816-0926
Telephone No. (808) 524-5750

Attorney for Petitioner

RECEIVED
06/22/2021
1:29 pm
STATE OF HAWAII
LAND USE COMMISSION

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; EXHIBIT A; 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. On September 14, 2016, Petitioner gave notice to the Commission of its intent to sell its remaining lots in Increments I and II. Since then, nine lots have been sold, all in Increment I. The deed for each sale explicitly obligates the buyer, its successors, and assigns to abide by these LUC Conditions, County of Hawaii Ordinance 99 89, and the Honokohau Industrial Park Covenants and Restrictions. The remaining Increment I and II parcels continue to be marketed for sale.

142659

There have been no further project developments or changes in status. For your convenience, prior years' detailed status and developments are recapped below.

B. Petitioner has dedicated Kamanu Street and Honokohau Street to the County of Hawaii. The County of Hawaii accepted the roadway dedications under Resolution 691-18 on October 17, 2018. The dedication deed was recorded November 15, 2018.

C. As previously reported, Petitioner has cooperated with the County of Hawaii for several years in their efforts to establish Increment II of Petitioner's property and the immediate surrounding area as the Honokohau Village Regional Center, the first major regional center under the Kona Community Development Plan (CDP).

Petitioner supported development and implementation of the Kona CDP, including direct participation in the charrette planning of Honokohau Village. Petitioner provided construction staging space on its property at no cost to the County to support construction of the West Hawaii Civic Center adjacent to Increment II. With $35 million of federal stimulus funding, the County of Hawaii constructed Ane Keohokalole Highway from Palani Road to Hina Lani Street, bisecting Increment II. Petitioner supported the County's efforts to secure the funding for this project, including conveying title to the required right-of-way. Petitioner relocated water and sewer lines in the highway right-of-way to preserve access, with the County's approval and at Petitioner's expense. Petitioner had already excavated and graded the portion of the highway crossing Increment II, at Petitioner's expense.

D. Recent activity has focused on planning and entitlements for the development of Increment II, with water commitments being a critical requirement and prerequisite for obtaining zoning and other entitlements from the County of Hawaii. The Department of Water

Supply has informed the Petitioner that no additional water is available for allocation to Increment II without the development of new water sources and/or transmission systems.

In 2013, Petitioner became party to an agreement with the Water Board of the County of Hawaii to develop the Waiaha Water System. The System was completed in late 2014, entitling Petitioner to 120 Equivalent Units ("EU") of water over the next five years. Petitioner received formal confirmation of these fully paid water commitments from the Department of Water Supply in January 2016. These bring the total water units available for Increment II to 192 EU. While this will enable significant development, it is still not sufficient to fully develop Increment II as envisioned by the Kona CDP and Honokohau Village concept.

E. Petitioner has begun master planning for development of Increment II as the core of the Honokohau Village Regional Center, per the Kona CDP. Petitioner has been working with the County of Hawaii Planning Department and the Kona CDP Action Committee to reconcile inconsistencies between the Kona CDP, the County General Plan, and County zoning ordinances. Resolution of these issues is necessary before Petitioner can complete master planning and prepare a Change of Zone application.

With much of the excavation and grading complete, and in anticipation of future development of Increment II, quarry operations have been terminated.

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 prepared landscape planting and irrigation plans which were submitted to and approved by the Housing Finance and Development Corporation ("HFDC").

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. Petitioner continues to maintain the installed landscaping.

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:

Petitioner entered into an agreement with the Department of Transportation on February 28, 2001 with respect to Petitioner's fulfillment of this condition by accomplishing the following:

a. Construction of Road G (now Kamanu Street) between the Petitioner's project area and Kealakehe Parkway and the extension of the road to Petitioner's northern property line, which Petitioner has done. Dedication of Kamanu Street to the County of Hawaii was completed November 15, 2018.

b. Extending the Mid-Level Road (now Ane Keohokalole Highway) to Petitioner's north property line as part of any development of the surrounding lands, which has been completed as described in the General Progress section of this report; and

c. Extending Main Street from Kealakehe Parkway to Petitioner's north property line as part of any development of the surrounding area, which will be completed as part of any development of the surrounding area (Increment II).

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's engineers, Belt Collins Hawaii, prepared a plan for drainage and erosion control, which was approved by the County of Hawaii and the State Department of Health. 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:

The Commission released conditions 4, 5, 7, 9 and 10 of the Increment I conditions in its Order Granting in Part and Denying in Part Petitioner's Motion to Release, Discharge, and Delete All Conditions, dated March 28, 2016 (the "Commission's March 28, 2016 Order").

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:

The Commission released this condition in the Commission's March 28, 2016 Order.

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 has included these rules in the Honokohau Industrial Park License Agreement Standard Terms for all leases, as well as in all deeds of sale. Petitioner actively monitors to ensure compliance with these rules. Petitioner complements tenant compliance activities with its own proactive controls, such as installing additional drainage filters in common areas.

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

EFFORTS MADE/PLANNED:

The Commission released this condition in the Commission's March 28, 2016 Order.

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, a burial site, in its natural state. The survey and all mitigations were approved by the State Historic Preservation Division. No further archeological resource has been uncovered. Since Increment I has already been excavated to a significant depth, there is little likelihood of additional archeological resources being unearthed through any future construction activity.

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:

The Commission released this condition in the Commission's March 28, 2016 Order.

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

EFFORTS MADE/PLANNED:

The Commission released this condition in the Commission's March 28, 2016 Order.

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

EFFORTS MADE/PLANNED:

Petitioner drilled a water well and created a reservoir to provide an adequate supply of water for dust control and irrigation, and subsequently converted to water supplied by the County of Hawaii Department of Water Supply. Petitioner has provided and will continue to provide effective dust control and soil erosion procedures, and requires its tenants to do so as specified in its License Agreement Standard Terms.

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 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.

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 the Property 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:

On September 14, 2016, Petitioner gave notice to the Commission of its intent to sell its remaining lots in Increments I and II. The lots sold to date and those currently in escrow are listed in Exhibit A to this report.

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 provided to the Commission in accordance with Condition 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 Commission released conditions 4, 5, 7, 9 and 10 of the Increment I conditions in the Commission's March 28, 2016 Order. A certified copy of Petitioner's Declaration of Release of Certain Increment I Conditions, dated May 23, 2016, was recorded in the Bureau of Conveyances of the State of Hawaii on May 27, 2016 as Document A – 59910923. Petitioner will submit motions for release of remaining conditions at the appropriate times.

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:

There is currently no activity on Increment II. No wastewater is being produced. As stated in Section I.B of this Annual Report, Petitioner has taken steps to ensure future access to the sewer line under Ane Keohokalole Highway.

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, and all storm and water runoff is absorbed into the surface on the property. Engineering of a surface water and storm water containment system will be part of the planning process for the development of Increment II. No injection wells are contemplated at this time.

Pollution Prevention

3a. Petitioner has terminated quarry operations on 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:

There is currently no activity on Increment II.

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 impact 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 will be the nature of the permanent development. As stated in Section I.A of this Annual Report, the Planning Department has prepared an initial zoning plan for Honokohau Village which will include Increment II of Petitioner's property. Once Petitioner determines planned permanent uses to be developed on Increment II, based on the Kona CDP and Honokohau Village Plans, Petitioner 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..

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 will plan and implement efficient soil erosion and dust control measures during and after the development process as required by the Hawaii State Department of Health and the County of Hawaii.

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:

On September 14, 2016, Petitioner gave notice to the Commission of its intent to sell its remaining lots in Increments I and II.

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: San Ramon, California, June 18, 2021.

McCLEAN HONOKOHAU PROPERTIES

By DME-HP, LLC
Its General Partner

By David M Elbogen

David M. Elbogen
Its Sole Member

LOT SALES

A. LOTS SOLD TO DATE SINCE APRIL 16, 1991 DECISION AND ORDER:

Lot 3A	TMK 3-7-4-024-001
Lot 3B	TMK 3-7-4-024-014
Lot 4A	TMK 3-7-4-024-002
Lot 4B	TMK 3-7-4-024-015
Lot 5	TMK 3-7-4-024-003
Lot 6	TMK 3-7-4-024-004
Lot 7	TMK 3-7-4-024-005
Lot 8	TMK 3-7-4-024-006
Lot 9	TMK 3-7-4-024-007
Lot 10	TMK 3-7-4-024-009
Lot 11	TMK 3-7-4-024-009
Lot 12	TMK 3-7-4-024-010

EXHIBIT A

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:

ZENDO KERN, Director
Planning Department
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

MICHAEL VITOUSEK, Chairman
Leeward Planning Commission
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

JOHN REPLOGLE, Chairman
Windward Planning Commission
County of Hawaii
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

MARY ALICE EVANS, Director
Office of Planning
P.O. Box 2359
Honolulu, Hawaii 96804

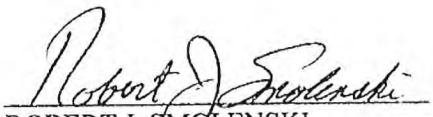
INTERVENORS:

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
P.O. Box 128
Kamuela, Hawaii 96743

DATED: Honolulu, Hawaii, June 22, 2021.



ROBERT J. SMOLENSKI
Attorney for Petitioner