

BEFORE THE LAND USE COMMISSION  
OF THE 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 77.233 Acres of Land )  
in the Conservation and the )  
Agricultural Districts to the Urban )  
District at Honokohau, North Kona, )  
Hawai'i, Tax Map Key Nos. 7-4-08: )  
por. 26 and 49 )  
\_\_\_\_\_ )

DOCKET NO. A89-643  
ORDER GRANTING MOTION  
FOR EXTENSION OF TIME TO  
SUBSTANTIALLY COMPLETE  
INCREMENT I

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, Hawaii.

MAY 01 1996

Date

by

*Robert L. ...*  
Executive Officer

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TO SUBSTANTIALLY COMPLETE INCREMENT I

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STATE OF HAWAII

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ORDER GRANTING MOTION FOR EXTENSION OF TIME  
TO SUBSTANTIALLY COMPLETE INCREMENT I

McClellan Honokohau Properties, a Hawai'i Limited Partnership ("Petitioner"), filed a Motion for Extension of Time to Substantially Complete Increment I ("Motion") on April 1, 1996, pursuant to section 15-15-70, Hawai'i Administrative Rules ("HAR"). Attached in support of Petitioner's Motion was an affidavit of Robert S. McClean, Trustee of the Robert S. McClean Trust, which is the general partner of Petitioner.

The Land Use Commission ("Commission"), having considered Petitioner's Motion, the affidavit of Robert S. McClean, and the testimony and the positions of the Office of State Planning ("OSP") and the County of Hawai'i Planning Department ("Planning Department"), hereby makes the following findings of fact, conclusions of law, and decision and order:

## Background

1. By Findings of Fact, Conclusions of Law, and Decision and Order issued April 16, 1991 ("Decision and Order"), the Commission reclassified approximately 45.500 acres from the State Land Use Conservation District to the State Land Use Urban District ("Increment I"), identified as Tax Map Key No. 7-4-08: por. 26 and por. 49, at Honokohau, North Kona, Hawai'i, for light industrial, commercial, and office uses.

2. The Commission also incrementally approved the remaining area of Petitioner's property, identified as Tax Map Key No. 7-4-08: por. 26 and por. 49, and consisting of approximately 26.900 acres in the State Land Use Conservation District and approximately 17.127 acres in the State Land Use Agricultural District (collectively referred to herein as "Increment II"), pursuant to section 15-15-78, HAR.

3. On April 5, 1995, Petitioner filed a Motion for Amendment to Findings of Fact, Conclusions of Law, and Decision and Order ("Motion for Amendment") to release a 12.294-acre parcel within Increment II from the Decision and Order. Petitioner planned to pursue a boundary amendment with the County of Hawai'i, pursuant to section 205-3.1, Hawai'i Revised Statutes, to develop an active adult residential community, instead of the light industrial, commercial, and office uses originally proposed for Increment II.

4. On August 10, 1995, and by Order Granting Motion for Amendment to Findings of Fact, Conclusions of Law, and

Decision and Order issued August 22, 1995, the Commission approved Petitioner's Motion for Amendment.

5. On April 1, 1996, Petitioner filed a Motion for Extension of Time to Substantially Complete Increment I. Petitioner requests a three-year extension to April 16, 1999, in which to substantially complete Increment I of its property, and upon motion request redistricting of Increment II.

6. Development of Increment I has not been substantially completed due to legal delays in constructing Road "G," a 60-foot paved road running through Petitioner's property to the Housing and Finance Development Corporation ("HFDC") property line. The County originally required Petitioner to construct Road "G" across HFDC's adjoining property as a condition of Petitioner's rezoning ordinance. Under the condition, Petitioner would not be granted an occupancy permit until such time Road "G" was completed.

7. After receiving State and County approvals for the construction of Road "G," Petitioner was unable to obtain permission from HFDC to construct the road on HFDC's property on the grounds that HFDC did not have clear legal title to ceded lands. HFDC's property is the site of its master-planned Villages of La'i'opua development.

8. By Ordinance No. 96-3, Petitioner obtained approval by the Hawai'i County Council to remove the condition requiring construction of Road "G" across HFDC's property.

Position of the Parties

9. The County of Hawai'i Planning Department and the Office of State Planning had no objections to Petitioner's Motion. Isemoto Contracting Co., Ltd.; SJA Partnership; and March E. Taylor (collectively referred to herein as "Intervenor") was served with a copy of the Motion and did not submit any written response to the Motion nor did Intervenor appear at the hearing on this matter.

Petitioner's Efforts Toward Development of Increment I

10. Petitioner's progress in development of Increment I includes (i) the grading of 85 percent of the accessible area of the property; (ii) development of plans for the construction of Road "A," an access connecting the new site of Petitioner's major tenant, West Hawaii Concrete ("WHC"), with the existing access to Queen Ka'ahumanu Highway, and acquisition of the necessary agency approvals to proceed with construction; (iii) development of plans at a cost of more than \$38,000 for the construction of Road "G," and acquisition of the necessary agency approvals to proceed with construction; (iv) expansion of Petitioner's Boat Park to accommodate 100 trailerable boats; (v) development of a landscape plan with a permanent irrigation system that will be submitted to HFDC for approval and the Planning Department for final approval; and, (vi) grading and expansion of the industrial area of which 60 percent is now occupied by industrial tenants.

11. Although Petitioner has made progress in the development of Increment I, it is only now able to proceed with substantially completing the on-site and off-site improvements in Increment I.

12. In order to proceed with the remaining development within Increment I, WHC must be relocated to another site, under the quarry cliff, within Increment I. This site required a substantial amount of grading. Since April 1991, Petitioner has proceeded with and substantially completed the grading plan. WHC will be relocated to its new site following the completion of Road "A" by June 1, 1996.

13. Following the completion of Road "A" and the relocation of WHC by December 31, 1996, as well as the completion of construction of the existing access road to Queen Ka'ahumanu Highway and Petitioner's on-site portion of Road "G" to the HFDC property line by December 31, 1998, Petitioner will consider Increment I substantially completed.

14. The Commission finds that Petitioner has demonstrated progress, and while not meeting the "substantial completion" requirement of the Commission's Decision and Order, Petitioner's efforts are nevertheless substantial in cost and scope and evidence a good faith effort towards compliance.

15. The Commission finds that unforeseen delays in matters, such as obtaining HFDC's authority to construct Road "G" which directly affected Petitioner's ability to obtain an occupancy permit, were not under the sole control of Petitioner,

and that an extension of time to substantially complete Increment I is justified.

CONCLUSIONS OF LAW

The Commission finds upon a preponderance of evidence that pursuant to chapter 205, HRS, and section 15-15-79, HAR, Petitioner has made a good faith effort towards development of Increment I, and that an extension of time of three years to substantially complete Increment I is reasonable and non-violative of section 205-2, HRS, and section 15-15-79, HAR.

ORDER

IT IS HEREBY ORDERED that Petitioner's Motion for a three-year extension to substantially complete Increment I of its property, and upon motion, request redistricting of Increment II is GRANTED, and Petitioner is GRANTED an extension of time to not later than April 16, 1999, to substantially complete Increment I and to apply for redistricting of Increment II.

DOCKET NO. A89-643 - McCLEAN HONOKOHAU PROPERTIES, a Hawaii Limited Partnership

Done at Honolulu, Hawaii, this 1st day of May 1996,  
per motion on April 11, 1996.

LAND USE COMMISSION  
STATE OF HAWAII

By Allen K. Hoe  
ALLEN K. HOE  
Chairperson and Commissioner

By (absent)  
TRUDY K. SENDA  
Vice Chairperson and Commissioner

By Rupert K. Chun  
RUPERT K. CHUN  
Commissioner

By M. Casey Jarmen  
M. CASEY JARMEN  
Commissioner

By (absent)  
LLOYD F. KAWAKAMI  
Commissioner

By M. Kelai  
MERLE A. K. KELAI  
Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

Filed and effective on  
May 1, 1996

Certified by:  
Esther Leal  
Executive Officer

By Joann N. Mattson  
JOANN N. MATTSON  
Commissioner

By (absent)  
ELTON WADA  
Commissioner

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A89-643
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McCLEAN HONOKOHAU PROPERTIES,	)	CERTIFICATE OF SERVICE
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	)	
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Boundary to Reclassify	)	
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Agricultural Districts to the Urban	)	
District at Honokohau, North Kona,	)	
Hawai'i, Tax Map Key Nos. 7-4-08:	)	
por. 26 and 49	)	
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Motion for Extension of Time to Substantially Complete Increment I was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT.           GREGORY G.Y. PAI, PH.D., Director  
Office of State Planning  
P. O. Box 3540  
Honolulu, Hawaii 96811-3540

CERT.           VIRGINIA GOLDSTEIN, Planning Director  
Planning Department, County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

CERT.           ROBERT J. SMOLENSKI, ESQ., Attorney for Petitioner  
1717 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawaii 96813-3970

CERT.           SANDRA PECHTER SCHUTTE, ESQ., Attorney for Intervenors  
101 Aupuni Street, Suite 1014A  
Hilo, Hawaii 96720

DATED:          Honolulu, Hawaii, this 1st day of May 1996.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer