

SMOLENSKI & WOODDELL

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841 Bishop Street  
Honolulu, Hawaii 96813  
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Attorneys for Petitioner

LAND USE COMMISSION  
STATE OF HAWAII  
2014 DEC 23 P 2: 21

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

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; MEMORANDUM IN  
SUPPORT OF MOTION; VERIFICATION  
OF JAMES S. McCLEAN; EXHIBITS 1  
THROUGH 5; CERTIFICATE OF SERVICE

MOTION TO RELEASE CONDITIONS

Petitioner McClean Honokohau Properties, a Hawaii Limited Partnership, pursuant to Section 15-15-94 of the State of Hawaii Land Use Commission Rules, and in accordance with Section 15-15-70 of said Rules, moves for the release, discharge and deletion of all conditions (the "Conditions") imposed by the Land Use Commission in the above-entitled proceeding upon the change in the State Land Use District Boundaries for Increment I of the subject Property, entered on April 16, 1991, on the ground that such Conditions have been satisfied, and requests a hearing on this Motion.

This Motion is based upon the records and files in this proceeding, the Memorandum in Support of Motion, the Verification of James S. McClean, and Exhibits 1 through 5 attached.

DATED: December 23, 2014.

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

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

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MEMORANDUM IN SUPPORT OF  
MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. PRIOR PROCEEDINGS.

On April 16, 1991, the Commission by its Findings of Fact, Conclusions of Law, and Decision and Order (the "1991 Decision and Order"), reclassified Increment I of Petitioner's property, consisting of approximately 45.5 acres, from the Conservation District to the Urban District, subject to the imposition of certain conditions upon Increment I. These conditions (the "Conditions") are set forth in the 1991 Decision and Order and in the Declaration of Conditions dated May 28, 1991, and recorded by Petitioner on June 14, 1991 as Document No. 91-077403 in the Bureau of Conveyances of the State of Hawaii.

Condition 16 provides that the Commission may release the conditions upon Petitioner's motion and the provision of adequate assurance of satisfaction of the Conditions.

The 1991 Decision and Order also approved Increment II of the Property, consisting of approximately 44.02 acres, for incremental development upon a subsequent application by Petitioner showing substantial completion of onsite and offsite improvements for Increment I. On August 22, 1995, the Commission, pursuant to Petitioner's motion, issued its Order Granting Motion for Amendment to Findings of Fact, Conclusions of Law, and Decision and Order,

releasing 12.294 acres from the 1991 Decision and Order, and the 12.294 acres were subsequently reclassified to the Urban District by the County of Hawaii pursuant to Section 205-3.1(c) of the Hawaii Revised Statutes.

On April 16, 2001, Petitioner filed it's Application to Approve Increment II for Incremental Redistricting from Conservation and Agricultural to Urban Classification. On June 27, 2002, the Commission approved the Increment II redistricting, subject to conditions applicable to Increment II, which are set forth in Petitioner's Declaration of Conditions dated December 2, 2003 and recorded on December 4, 2003 as Documents No. 2003-268040 in the Bureau of Conveyances. Petitioner is not requesting the release of the Increment II conditions at this time.

## II. SATISFACTION OF INCREMENT I CONDITIONS.

**CONDITION 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."**

Petitioner prepared landscape planting and irrigation plans which were submitted to and approved by the Housing Finance and Development Corporation ("HFDC") in HFDC's November 19, 1996 letter to the Director of the County of Hawaii Planning Department, a copy of which is attached as Exhibit 1.

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.

**CONDITION 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.”**

Petitioner entered into an agreement with the Department of Transportation on February 28, 2001, a copy of which is attached hereto as Exhibit “2”, 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.
- b. Extending the Mid-Level Road (now Ane Keahokalole Highway) to Petitioner’s north property line as part of any development of the surrounding lands, which has been completed as described below; 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.

In 2008, the County of Hawaii County Council adopted the “Kona Community Development Plan” (“Kona CDP”). This plan defines the future development of the Kona District, including Petitioner’s property. Under the Kona CDP, the County was to construct Ane Keohokalole Highway, formerly called Mid-Level Road, and will provide zoning for “villages” at points along the highway.

The County of Hawaii obtained \$35 million of federal stimulus funding for the construction of Ane Keohokalole Highway from Palani Road to Hina Lani Street. Petitioner supported the County's efforts to secure the funding for this project, including conveying title to the required right-of-way across Increment II of Petitioner's property. Construction of Ane Keohokalole Highway began in early 2010 and was completed in mid 2012. The new highway intersects Increment II of Petitioner's property and will provide full intersection access for Petitioner's mauka and makai projects on Increment II. 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. Prior to the County undertaking this highway project, Petitioner had already excavated and graded the portion of the highway crossing Increment II, at Petitioner's expense.

**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."**

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.

**CONDITION 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."**

Petitioner has contributed its share for development and distribution of water by installing the 12" water line in the present access road improvement and in Kamanu Street out to the

Kealakehe Parkway, to serve HCDCH's future development. Petitioner also has paid a \$40,500 facilities charge and a \$6,000 capital assessment fee to the County of Hawaii Department of Water Supply. Petitioner has agreed with the Department of Water Supply on an allocation of water to each lot of the project.

**CONDITION 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."**

Petitioner has constructed the required 8" sewer line in both streets on the project and the project will be connected to the sewer treatment plant with the installed connection pipes as soon as the County builds its pending sewer extension north along Queen Kaahumanu Highway.

**CONDITION 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."**

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. Exhibit 3 hereto is a redacted copy of Petitioner's Honokohau Industrial Park License Agreement Standard Terms in which the applicable rules appear in Sections 4 and 7(a) and Exhibit C.

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

Petitioner has paid HELCO for all of the electrical facilities, which HELCO has installed on the project.

**CONDITION 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.”**

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. No further archeological resource has been uncovered. A copy of the November 29, 2001 letter from Don Hibbard, Administrator of the State Historic Preservation Division, is attached hereto as Exhibit 4, indicating that the historic preservation review process has been concluded.

**CONDITION 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.”**

Petitioner has not received any request from the County of Hawaii for police, fire, park, or solid waste disposal.

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

Petitioner had an Air Quality Study of the surrounding area prepared by B.D. Neal & Associates, at the request of the Department of Health, to establish the current air quality and to estimate the impact of increased traffic and property development in the whole area on air quality in the future. The Department of Health reviewed the Air Quality Study and determined that Petitioner had met the requirements of this condition, as indicated in the Department of Health’s November 29, 2000 letter to Petitioner’s consultant, William L. Moore, a copy of which is attached hereto as Exhibit 5.



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

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 indicated in Section 7(a) and Exhibit C of its License Agreement Standard Terms attached hereto as Exhibit 3.

**CONDITION 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.”**

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.

**CONDITION 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.”**

Petitioner has developed the Property in full compliance with the representations made to the Commission.

**CONDITION 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.”**

Petitioner has no current plans to sell any of its property.

**CONDITION 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.”**

Petitioner has filed its annual reports to the Commission each year beginning in 1992 and served copies on the County of Hawaii, the State Office of Planning, and the intervenors in this proceeding, and has never received any objections or comments from anyone relating to the 23 annual reports.

**CONDITION 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.”**

The development of Increment I of Petitioner's property is substantially complete, and Petitioner has satisfied the foregoing conditions relating to Increment I as indicated above and in its annual reports to the Commission.

DATED: Honolulu, Hawaii, December 23 2014.


  
ROBERT J. SMOLENSKI  
Attorney for Petitioner  
McClellan Honokohau Properties

1. I am a General Partner of McClean Honokohau Properties, a Hawaii limited partnership.
2. I have read the foregoing 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; the Memorandum in Support of Motion; and the Exhibits, know the contents thereof, and the contents therein contained are true to the best of my knowledge, information and belief.

3. I have personal knowledge of the matters set forth in the foregoing Motion and related documents, am qualified and competent to make this verification, and I make this verification under Hawaii Administrative Rules, § 15-15-39.

Further affiant sayeth naught.

DATED: December 19, 2014.

  
JAMES S. McCLEAN  
General Partner of  
McCLEAN HONOKOHAU PROPERTIES

The attached document: Verification of  
James S. McClean which consists of 2 pages  
including this page), was executed by James  
S. McClean who was subscribed and sworn  
to before me this 19<sup>th</sup> day of December, 2014,  
in the Third Judicial Circuit of the State of Hawai'i.

  
[Notary Signature]

Printed  
Name: \_\_\_\_\_

My commission expires: 07-03-2015



Lei T. Cablin  
Notary Public, Third Judicial Circuit  
State of Hawaii  
Commission expires 7/03/2015

RECEIVED

STATE OF HAWAII

1996 NOV 25 : P 1: 33

IN REPLY REFER TO:

DEPARTMENT OF BUDGET AND FINANCE

**HOUSING FINANCE AND DEVELOPMENT CORPORATION**

677 QUEEN STREET, SUITE 300

HONOLULU, HAWAII 96813

**FAX (808) 587-0600**

96:DEV/4148

**EXHIBIT 1**

*J.L.*

*133.1300*

CL: BOB MULLAN

BENJAMIN J. CAYETANO  
GOVERNORSTATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
889 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-6007

DEC 11 2000

KAZU HAYASHIDA  
DIRECTORDEPUTY DIRECTORS  
BRIAN K. MINAII  
GLENN M. OKIMOTO

IN REPLY REFER TO:

HWY-PS  
2.0929Mr. William L. Moore  
William L. Moore Planning  
159 Hala Street  
Hilo, Hawaii 96720

Dear Mr. Moore:

Subject: McClean Honokohau Properties, L. P., Compliance with LUC A89-643  
Condition No. 2, TMK: (3)7-4-08: 26 and 49

This is in response to McClean Honokohau Properties' proposal to address its condition of approval for its State Land Use Boundary Amendment related transportation improvements. More specifically, Condition No. 2 of State Land Use Commission (LUC) Docket No. A89-643 requires that the:

"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."

We do not want the lack of a uniform statewide method of determining this "pro rata basis" to delay development. Therefore, we accept McClean's following proposal as a reasonable compromise in satisfying the LUC's Condition No. 2:

1. That Road "G" be constructed between the project area and Kealahou Parkway. This road will be extended to the northern property line and shall be dedicated to the County upon its completion;
2. That the "Mid-Level Road", which consists of a 2-lane roadway within a 120-foot right-of-way, shall be extended to the northern property line as part of any development of the surrounding lands; and

**EXHIBIT 2**

Mr. William L. Moore  
Page 2

HWY-PS 2.0929

Dr:

3. That "Main Street" shall be extended from Kealakehe Parkway to the northern property boundary as part of any development of the surrounding area. This construction is conditioned upon receipt of appropriate zoning of the lands from the County of Hawaii and securing a construction right-of-entry for the road improvements from the Housing and Community Development Corporation of Hawaii.

We concur that the construction of the above cited road improvements will result in an improved roadway circulation network in the Keahole to Kailua-Kona region. Therefore, we agree that the construction of these improvements will address McClean pro rata share of local and regional highway improvements required pursuant to Condition No. 2 of LUC Docket No. A89-643. Please have McClean Honokohau Properties, L. P. send us written confirmation that it is committed to construct these three roadway improvements at its expense.

Thank you for your cooperation on this matter.

Very truly yours,



KAZU HAYASHIDA  
Director of Transportation

McClean Honokohau Properties, L. P. is committed and hereby agrees to construct the above identified roadway improvements at its own expense.



Robert S. McClean  
General Partner

2/28/01  
Date

**HONOKOHAU INDUSTRIAL PARK  
LICENSE AGREEMENT**

**STANDARD TERMS**

In consideration of the attached License Agreement, the Licensors and Licensee named in the License Agreement hereby mutually agree as follows:

**4. Hazardous Wastes.**

(a) Licensee shall not violate any Environmental Laws (as defined below). Licensee shall not use, generate, manufacture, store or dispose of on, under, or about the Premises (including the groundwater under the Premises) or transport to or from the Premises any Hazardous Materials (as defined below) except in strict compliance with the applicable Environmental Laws. Licensee acknowledges that as the occupier of the Premises, it is directly responsible to Licensors for the action and inaction (as the case may be) of Licensee's employees and others occupying or using the Premises and the Common Areas with Licensee's permission with respect to the prevention, removal and clean-up of any Hazardous Materials conditions. Under no circumstances shall any underground storage tanks be installed in any portion of the Premises.

(b) Licensee shall immediately advise Licensors in writing of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to the Environmental Laws affecting the Premises or the Common Areas, and (ii) all claims made or threatened by any third party against Licensee in regard to the Premises or the Common Areas relating to damage, contribution, cost recovery compensation, loss, or injury resulting from any Hazardous Materials.

(c) Licensee shall permit Licensors and its agents to enter into and upon the Premises at all reasonable times to inspect and examine the same to determine whether Licensee is in compliance with the requirements of this Section 4.

(d) Licensee shall indemnify Licensors, directors, officers, employees, agents, successors and assigns, from and against, any loss, damage, cost, expense, responsibility or liability directly or indirectly arising out of or attributable to (i) Licensee's breach of its agreements as set forth in the License Agreement including the provisions of this Section 4; or (ii) the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, or discharge or disposal of Hazardous Materials on, under or about the Premises which shall occur during the term of the License Agreement; or (iii) the use, manufacture, handling, storage, release, threatened release, or discharge or disposal of Hazardous Materials on, under or about the Common Areas by any of Licensee's tenants, employees, agents, invitees, permittees or contractors; including, without limitation: (A) all foreseeable and unforeseeable consequential damages; (B) the costs of any required or necessary repair, clean up or detoxification of the Premises, and the preparation and implementation of any closure, remedial or other required plans; (C) the costs related to any lawsuits or administrative actions brought or threatened, settlement reached or government order relating to the Hazardous Materials; and (D) all reasonable costs and expenses incurred by Licensors

in connection with clauses (A) to (C), including, without limitation, reasonable attorneys' fees. The provisions of this Section 4 shall survive the termination or expiration of the License Agreement.

(e) Upon the expiration or earlier termination of the term of the License Agreement, Licensee shall (i) cause all Hazardous Materials previously owned, stored or used by Licensee to be removed from the Premises and disposed of in accordance with applicable provisions of Environmental Laws; (ii) remove any storage tanks or other containers installed or used by Licensee to store any Hazardous Materials on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil or other portion of the Premises or the Common Areas which have become contaminated by any Hazardous Materials stored, transported or used by Licensee on the Premises or the Common Areas to be decontaminated, detoxified or otherwise cleaned up in accordance with the requirements of governmental authorities; and (iv) surrender possession of the Premises to Licensors free of contamination attributable to Hazardous Materials generated or used by Licensee or stored or disposed of by any party other than Licensors in or on the Premises during the term of the License Agreement. Licensee shall provide Licensors with complete copies of any environmental study or audit of the Premises conducted by Licensee. Licensee shall be deemed the owner of any storage tanks or other containers installed or used by Licensee or its permittees on the Premises.



(f) As used herein, the term "Hazardous Materials" shall mean collectively, hydrocarbon, diesel fuel, petroleum or petroleum products, oil, flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under any Environmental Laws. The term "Environmental Laws" shall mean any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene, underground storage tanks or Hazardous Materials.

7. Use of Premises. Licensee will use the Premises solely for the purpose set forth in the License Agreement and for no other purposes without the prior written consent of Licensor, which consent may be given or withheld in Licensor's sole discretion. Licensor makes no representations or warranties that the Licensee's use of the Premises as set forth in the License Agreement is permitted by any law, ordinance, permit, rule or regulation applicable to the Premises. Licensee acknowledges that it has made its own investigation of the same.

In addition to the limitations on Licensee's use as set above, Licensee will comply with the following provisions limiting the use of the Premises:

(a) Nuisance; Dust. Licensee will conduct its operations so as not to create a nuisance to areas adjacent to and surrounding the Premises and will comply with all applicable Federal, State and local environmental laws and regulations. Licensee will, at all times during the term, take all reasonable practical steps to minimize and control dust from its operations on the Premises.

(b) Parking; Loading and Unloading. All parking must be on the site, as no on-street parking is permitted. All on-site parking will be permitted only in the designated parking stalls. All loading and unloading of trucks must be on-site, as no on-street loading or unloading is permitted. Any on-street parking or on-street loading and unloading shall constitute a default under the License Agreement and Licensee shall pay Licensor liquidated damages of \$50.00 per occurrence. In addition, Licensor shall have all the additional rights and remedies provided for a default under the License Agreement.

(c) Honokohau Industrial Park Covenants and Restrictions. Licensee shall observe and comply with the restrictions, covenants and conditions of the "Honokohau Industrial Park Covenants and Restrictions" applicable to the Lots in the Honokohau Industrial Park, a copy of which are attached hereto as Exhibit C and incorporated herein by reference, as the same may be amended, modified or supplemented by the Licensor from time to time during the term of the License Agreement.

**EXHIBIT C**  
**HONOKOHAU INDUSTRIAL PARK**  
**COVENANTS AND RESTRICTIONS**

**1. DRAINAGE**

1. Runoff generated as a result of the development of the lot shall be accommodated by an onsite subsurface system meeting with the approval of the County Department of Public Works and the State Department of Health.
2. Should the development of the lot generate or use materials normally associated with light industrial uses such as petroleum products, chemicals, solvent or other pollutants, the owner shall coordinate with the County of Hawaii and the State Department of Health to establish an onsite system to contain spills from adversely affecting the groundwater and the coastal waters.

**2. PARKING**

On site parking shall conform to County code and standards. There shall be no parking on any street or Roadway Lot, whether owned by the Seller or dedicated to the County of Hawaii. Whenever possible, landscaping shall be provided with the parking areas, particularly where large parking areas are required.

**3. NUISANCE; PROHIBITED USES**

- a. No lot shall be used in such a manner as to create a nuisance to adjacent lots, such as creating excess vibrations, sounds, electro-magnetic disturbances, radiation, air or water pollution with drainage, dust, or emissions, toxic or noxious matters or odors.
- b. No lot shall be used for (i) any fish or poultry processing business; (ii) any trash disposal, trash collection or trash recycling business, including the storage of vehicles, containers or other equipment related to such businesses; (iii) any "portable toilet" "porta-potty" business, including the storage of portable toilets, vehicles, containers or other equipment related to such businesses; (iv) any septic tank or cesspool cleaning, emptying or servicing business, including the storage of vehicles, containers or other equipment related to such businesses.

**4. LOADING AND UNLOADING**

All loading and unloading of any supplies, materials, products or other items delivered to or removed from a lot must be performed within the boundaries of such lot.

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



WILEY S. COLEMAN-ABRAM, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DEPUTIES  
JANET E. KAWALO  
LINNIE WISHOKA

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhikawa Building, Room 555  
601 Kamehika Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS

November 29, 2001

Mr. Robert S. McClean  
Honokohau Properties  
P.O. Box 3000  
Kailua-Kona, Hawaii 96745

LOG NO: 28609 ✓  
DOC NO: 0111PM16

Dear Mr. McClean:

**SUBJECT: Completion of Historic Preservation Requirements  
Honokohau, North Kona, Hawaii Island  
TMK: 7-4-08:26 and 49**

Thank you for your letter of October 26, 2001 and our apologies for not responding earlier. You have requested written confirmation that the archaeological mitigation project undertaken by PHRI on the subject parcels was successfully completed.

The PHRI data recovery report for Parcels 26 and 49 was accepted in a letter dated August 1, 1994 (Don Hibbard to Paul Rosendahl). The only remaining site is a burial located on Parcel 26. A burial treatment plan for the burial has been approved. Our records indicate that the historic preservation review process for the two parcels has been concluded.

Aloha,

A handwritten signature in dark ink, appearing to read "Don Hibbard", written over a horizontal line.

DON HIBBARD, Administrator  
State Historic Preservation Division

PM:amk

- c. Chris Yuen, Hawaii County Planning Department  
Kai Embler, Hawaii County Department of Public Works (Kona)

**EXHIBIT 4**

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P.O. BOX 3378  
HONOLULU, HAWAII 96801

BRUCE S. ANDERSON, Ph.D., M.I.  
DIRECTOR OF HEALTH

In reply, please refer to:  
EMD - CAB

November 29, 2000

00-627 CAB

Mr. William L. Moore  
William L. Moore Planning  
159 Halai Street  
Hilo, Hawaii 96720

Dear Mr. Moore:

Subject: Air Quality Analysis/McClean Honokohau Properties

The Department of Health, Clean Air Branch (DOH) acknowledges the receipt of the report Air Quality Study For The Proposed McClean Honokohau Properties Project dated September 2000.

The DOH has reviewed the report and has determined that you have met the minimum requirement of the State Land Use Commission to participate in an air quality monitoring program by completing and submitting the air quality study to the DOH.

If you have any questions, please contact Ms. Lisa Young at (808) 586-4200.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wilfred K. Nagamine".

WILFRED K. NAGAMINE  
Manager, Clean Air Branch

LY:jm

**EXHIBIT 5**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following by first class mail 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, December 23, 2014.

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