

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A00-730
	)	
LANIHAU PROPERTIES, LLC	)	ORDER GRANTING PETITIONER'S
	)	REQUEST FOR A TIME EXTENSION
To Amend the Conservation Land Use	)	TO SATISFY CONDITIONS OF
District Boundary into the Urban Land Use	)	APPROVAL 1C, 3B AND 8
District for Approximately 336.984 Acres at	)	
Honokohau, North Kona, Hawaii,	)	
Tax Map Key Nos.: 7-4-08: portion of	)	
13 and 7-4-08: 30	)	
_____	)	

ORDER GRANTING PETITIONER'S REQUEST FOR A TIME EXTENSION TO  
SATISFY CONDITIONS OF APPROVAL 1C, 3B AND 8

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A00-730  
)  
LANIHAU PROPERTIES, LLC ) ORDER GRANTING MOTION TO  
) AMEND CONDITIONS AND  
To Amend the Conservation Land Use ) EXTEND TIME FOR COMPLIANCE  
District Boundary into the Urban Land )  
Use District for Approximately 336.984 )  
Acres at Honokohau, North Kona, Hawaii, )  
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ORDER GRANTING MOTION TO AMEND CONDITIONS  
AND EXTEND TIME FOR COMPLIANCE

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ORDER GRANTING MOTION TO AMEND CONDITIONS  
AND EXTEND TIME FOR COMPLIANCE

The Land Use Commission ("Commission"), considered the Motion To Amend Conditions and Extend Time For Compliance ("Motion") filed on August 24, 2007, by West Hawaii Business Park, LLC, successor to Lanihau Properties, LLC ("Petitioner"), relating to the Findings of Fact, Conclusions of Law, and Decision and Order filed herein on September 26, 2003 ("Decision and Order"), at its meeting on September 7, 2007, at Kailua-Kona, Hawaii. R. Ben Tsukazaki, Esq. appeared on behalf of Petitioner. Brooks Bancroft, Esq., and Norman Hayashi appeared on behalf of the County of Hawaii Planning Department ("County"). Bryan C. Yee, Esq. and Abe Mitsuda appeared on behalf of the State office of Planning ("OP"). Richard Boston and

Sallie Beavers appeared on behalf of Intervenor Koloko Honokohau National Historical Park, National Park Service.

On September 7, 2007, the Intervenor submitted a response to the Motion with respect to Condition 1c.

The Petitioner argued that the requested amendment to Condition 1c will clarify that the respective standards for reduction of phosphorus and nitrogen are understood to apply to the reduction of total nitrogen pursuant to the design of the individual wastewater systems, and, separately, the reduction of the phosphorus pursuant to the design of the absorption field in combination with treatment in the individual wastewater system. With respect to condition 2a, the Department of Health has declined to approve various covenants, conditions and restrictions required to ensure that future development on lots within the Petition Area will include mitigation measures to protect against potential run-off containing industrial pollutant reaching Koloko Honokohau National Historical Park. Consequently, Petitioner cannot comply with the condition unless it is amended. With respect to Condition 7, Petitioner argued that there is no basis in the Decision and Order to require Petitioner to develop a financial plan for satisfying the fair-share contribution requirements agreed to by Petitioner. Petitioner acknowledged that there were fair-share contribution requirements in the Decision and Order and that it intended to comply with them.

The County had no objection to the Motion.

The OP stated that it (i) had no objection to the request for extension of time; (ii) had no position and no opposition to the deletion of Condition 7; (iii) supported the Amendment to Condition 2a in light of the position of the Department of Health; and (iv) suggested deferring action on the amendment to Condition 1c until the Intervenor could get an attorney involved.

The Intervenor stated that it did not have any objection to the proposed language change in Condition 1c although it did not believe the change was necessary. Intervenor took no position with respect to the rest of the Motion.

After considering the Motion, the memorandum in support of motion filed by Petitioner, and the Intervenor's response, and having examined the record and considered the arguments by counsel on behalf of West Hawaii Business Park, LLC, the OP, the County, and by representatives of Intervenor, a motion was made and seconded to grant Petitioner's motion. There being a vote tally of 6 ayes and 1 absent, the motion carried.

#### ORDER

A motion having been made at a hearing on September 7, 2007, in Kailua-Kona, Hawaii, and the motion having received the affirmative votes required by section 15-15-13, HAR, this Commission hereby GRANTS Petitioner's Motion. The Decision and Order is amended as follows:

1. CONDITION 1c is amended to read as follows:

"1c. Except for the existing quarry operations and the construction of the roads and utilities as provided for below, the Petitioner and / or any future owner(s) of the Petition Area shall refrain from constructing upon or occupying any portion of the Petition Area until such time as the portion (e.g., lot) to be constructed upon or occupied is connected to the WTP, unless in the interim, the portion to be constructed upon or occupied has installed a septic tank system or other Individual Wastewater System (IWS) designed to remove no less than 80% Total Nitrogen from the treatment system (e.g., septic tank with FAST, Biofilter, Recirculation Filters, Sequential Batch Reactor, or comparable technology) and an absorption field of import material which is constructed in a manner to achieve no less than 90% reduction in phosphorous, featuring adequate percolation rate. The existing quarry operation shall have in place an IWS as described above within one year of the date of issuance of boundary reclassification. Installation is subject to conditions of approval dictated by the Director of the Hawaii State Department of Health and Hawaii Administrative Rules (HAR) Title 11 Chapter 62. When connection to the WTP becomes available, all portions of the Petition Area, including all individual lots therein, shall connect to the WTP, whether or not an interim wastewater treatment system has been installed."

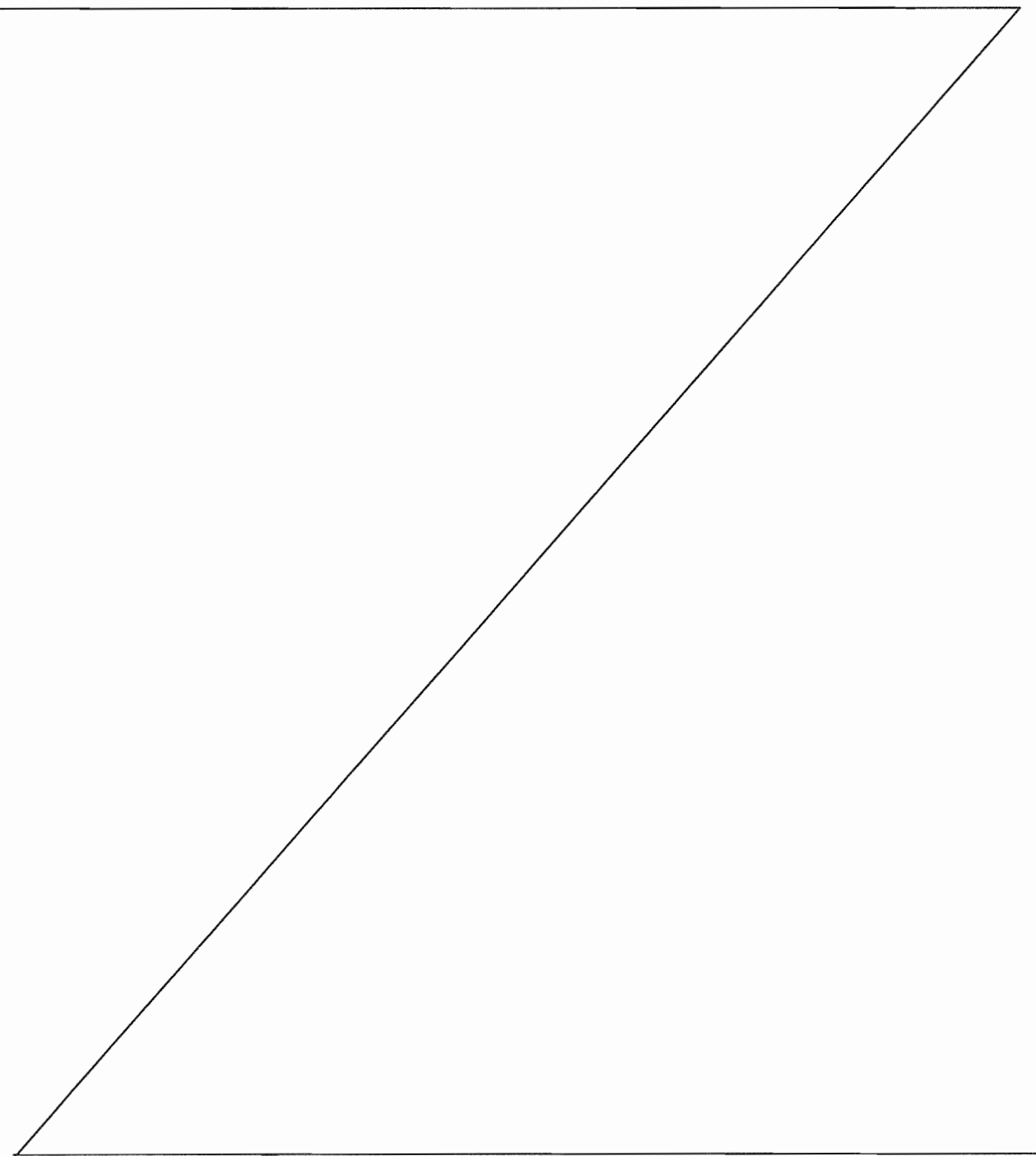
2. CONDITION 2 is amended by amending 2a to read as follows:

"2a. To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all runoff entering the ground shall be first treated to remove all industrial waste so that no industrial pollutants will reach KAHO or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Petition Area to contain spills and prevent materials associated with 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 be prepared by Petitioner upon consultation with the NPS and the County of Hawai'i. The Petitioner and/or tenant shall obtain all required permits and construct required improvements for storm water discharge on and from the property. These conditions shall include the following:"

3. CONDITION 7 is deleted.

4. The time of compliance with Conditions 1c and 2a, as amended, shall be extended to August 31, 2008.

All other findings of fact, conclusions of law, and conditions in the Decision and Order are affirmed and continue in full force and effect.

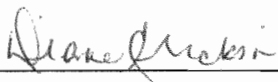


**ADOPTION OF ORDER**

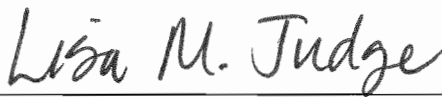
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 31st day of January, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

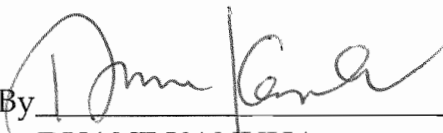
Done at Honolulu, Hawai'i, this 31st day of January, 2008, per motion on September 7, 2007.

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

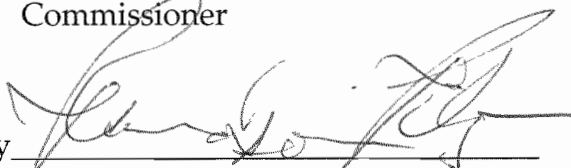
By   
\_\_\_\_\_  
LISA M. JUDGE  
Chairperson and Commissioner

By   
\_\_\_\_\_  
DUANE KANUHA  
Vice Chair and Commissioner

By   
\_\_\_\_\_  
THOMAS CONTRADES  
Commissioner

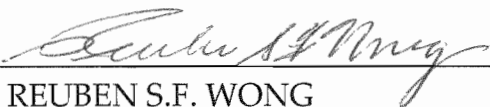


By   
VLADIMIR PAUL DEVENS  
Commissioner

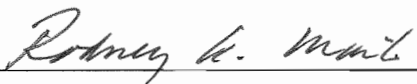
By   
RANSOM PILTZ  
Commissioner

By \_\_\_\_\_ (absent)  
NICHOLAS W. TEVES, JR.  
Commissioner

Filed and effective on:  
JAN 31 2008

By   
REUBEN S.F. WONG  
Commissioner

Certified by:

  
Interim Executive Officer

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LANIHAU PROPERTIES, LLC ) CERTIFICATE OF SERVICE  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Motion To Amend Conditions And Extend Time For Compliance was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL. MARY LOU KOBAYASHI, Acting Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

BRYAN C. YEE, Esq.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

LINCOLN ASHIDA, Esq.  
BROOKS BANCROFT, Esq.  
Corporation Counsel  
County of Hawaii  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720

CHRISTOPHER YUEN, Director  
County of Hawaii, Planning Department  
Aupuni Center  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

CERT. R. BEN TSUKAZAKI, Esq.  
Tsukazaki Yeh & Moore  
85 W. Lanikaula Street  
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, JAN 31 2008.

  
\_\_\_\_\_  
RODNEY A. MAILE  
Interim Executive Officer