

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 RESCINDING THE ORDER
) DENYING ACCEPTANCE OF
To Amend the Conservation Land Use) PETITIONER'S FINAL
District Boundary into the Urban Land Use) ENVIRONMENTAL IMPACT
District for Approximately 336.984 Acres at) STATEMENT BY THE STATE LAND
Honokohau, North Kona, Hawaii,) USE COMMISSION ISSUED ON
Tax Map Key Nos.: 7-4-08: portion of) APRIL 25, 2002
13 and 7-4-08: 30)

ORDER RESCINDING THE ORDER DENYING THE ACCEPTANCE OF
PETITIONER'S FINAL ENVIRONMENTAL IMPACT STATEMENT BY THE STATE
LAND USE COMMISSION ISSUED ON APRIL 25, 2002

LAND USE COMMISSION
STATE OF HAWAII
2003 APR 11 A 9:13

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Lanihau Properties, LLC, fka Lanihau Partners, L.P. ("Petitioner"), filed a Petition for Land Use District Boundary Amendment to reclassify approximately 336.984 acres of land at Honokohau, North Kona, Hawaii, from the Conservation Land Use District to the Urban Land Use District ("Petition").

The Petition proposes to develop a business park that will include mixed light industrial and commercial uses and retention and expansion of existing quarrying and quarry-related uses such as a ready mix concrete plant, an asphalt concrete plant, stockpiling, quarry and aggregate sales, and pre-cast concrete manufacturing.

PROCEDURAL MATTERS

On March 21, 2002, Petitioner filed a document entitled Final Environmental Impact Statement ("FEIS") with the State Land Use Commission ("LUC" or "Commission").

On April 5, 2002, the Commission held a hearing in Honolulu, Oahu, to consider whether to accept Petitioner's FEIS pursuant to the Hawaii Environmental Impact Statement ("EIS") Law, Chapter 343, HRS, and the EIS Rules, Chapter 11-200, Hawaii Administrative Rules ("HAR"). The Commission believed that the FEIS did not fulfill the definitions and requirements of an environmental impact statement and did not adequately describe identifiable environmental impacts as specified in Chapter 343, HRS, and Chapter 11-200, HAR. The Commission also believed that Petitioner's findings regarding potable water, solid waste, air quality, and energy demands were insufficient. Consequently, upon a proper motion, the Commission rejected Petitioner's FEIS.

On April 22, 2002, Petitioner filed its Motion For Reconsideration of Action on Final Environmental Impact Statement ("Reconsideration Motion"). The Reconsideration Motion requested that the Commission reconsider and rescind its action rejecting the FEIS; allow Petitioner to revise the FEIS; and allow Petitioner to resubmit the FEIS to the Commission for its determination of acceptability. Petitioner stated, among other things, that it believed the Commission's intent in the rejection of

the FEIS was to allow Petitioner to revise the FEIS without repeating the forty-five (45) day period for public review and comment for a Draft EIS. Petitioner asserted that another EIS public review process was unwarranted because it had previously gone through such a process and had incorporated the comments generated in the public review of the FEIS.

On April 25, 2002, the Commission filed its Order Denying Acceptance of Petitioner's Final Environmental Impact Statement by the State Land Use Commission ("Rejection Order").

On May 2, 2002, the Commission held a meeting in Hilo, Hawaii, and ruled the Reconsideration Motion out of order. Upon its motion, the Commission deferred its action upon the Reconsideration Motion to provide the parties with additional time for research and consultation for a potential amendment to the motion.

On February 10, 2003, Petitioner submitted its written request to schedule the continued hearing on the Reconsideration Motion ("Petitioner's Request"). In its request, Petitioner reiterated its motion; described proposed revisions to Petitioner's FEIS; and informed the Commission of agreements with the National Park Service, U.S. Department of Interior ("NPS") regarding potential conditions of approval and Petitioner's FEIS.

On February 20, 2003, the Commission held a meeting in Kona, Hawaii, to discuss and act upon Petitioner's Request. Petitioner stood by its request and added

that it had consulted the Office of Environmental Quality Control, Department of Health (“OEQC”), and the NPS on procedural and substantive issues regarding the FEIS. The Planning Department, County of Hawaii, and the Office of Planning, Department of Business, Economic Development and Tourism, did not have objections to Petitioner’s request.

The Commission raised concerns that Petitioner’s request appeared to be intended to avoid the public comment period for an EIS. Petitioner responded that it believed that the Commission intended that the revised FEIS go through a procedural process rather than the requisite public comment period for a Draft EIS. It further clarified that the proposed revisions amounted to a restructuring of existing information in the FEIS that did not result in any changes to its findings. Petitioner offered to provide those agencies and organizations, who submitted substantive comments on its Draft EIS, a copy of the revisions for review and comment prior to the submittal of a revised FEIS to the Commission for acceptability. Petitioner further added that if the Commission rescinded the rejection of the FEIS and permitted the filing of a revised FEIS, notices of the rescinding of the rejection and the republishing of a revised FEIS would be submitted to the OEQC.

On February 20, 2003, at its meeting in Kona, Hawaii, the Commission rescinded the Rejection Order for the foregoing reasons.

At the hearing conducted on April 5, 2002, a Motion to rescind the Rejection Order was made and seconded. There being a vote tally of five ayes and one nay, the Motion was PASSED, having received the affirmative votes required by Section 15-15-13, HAR.

CONCLUSIONS OF LAW

Pursuant to Chapter 11-200, HAR, and Chapter 15, HAR, the Commission, having considered Petitioner's Request, and the representations made to the Commission that Petitioner engaged in additional research and consultation for specific issues as required by the Commission, and that the revised FEIS will be provided to certain public agencies and organizations for review and comment prior to the submittal of a revised FEIS for acceptability by the Commission pursuant to Section 15-15-50 (b), HAR, rescinds the Rejection Order.

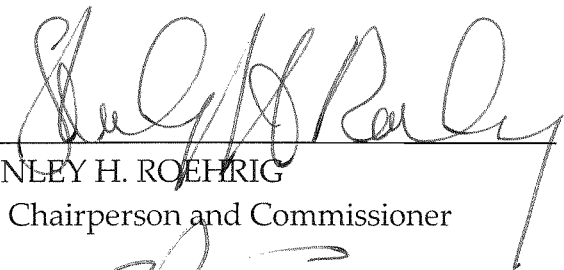
ORDER

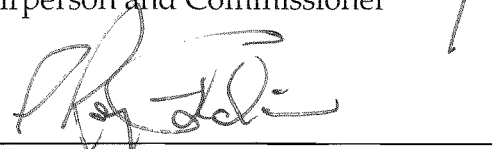
IT IS HEREBY ORDERED that the Rejection Order is hereby rescinded, pursuant to Section 15-15-50 (b), HAR.

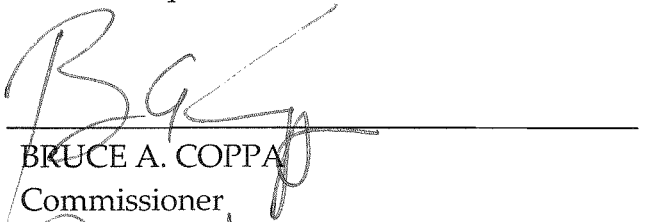
Dated: Honolulu, Hawaii, April 11, 2003.

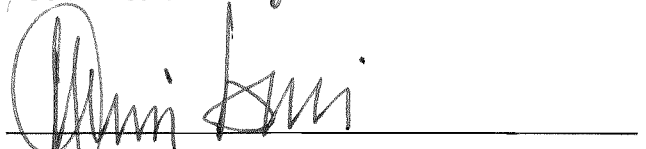
LAND USE COMMISSION
STATE OF HAWAII

By 
LAWRENCE N. C. ING
Chairperson and Commissioner

By 
STANLEY H. ROEHRIG
Vice Chairperson and Commissioner

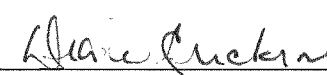
By 
P. ROY CATALANI
Vice Chairperson and Commissioner

By 
BRUCE A. COPPA
Commissioner

By 
PRAVIN DESAI
Commissioner

By ABSENT
ISAAC FIESTA, JR.
Commissioner

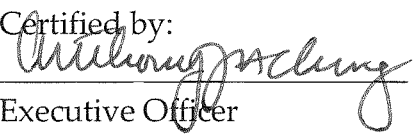
APPROVED AS TO FORM



Deputy Attorney General

By ABSENT
STEVEN LEE MONTGOMERY
Commissioner

Filed and effective on
April 11, 2003

By 
RANDALL F. SAKUMOTO
Commissioner

Certified by:

Executive Officer

By 
PETER YUKIMURA
Commissioner

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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 Rescinding the Order Denying Acceptance of Petitioner's Final Environmental Impact Statement by the State Land Use Commission Issued on April 25, 2002 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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

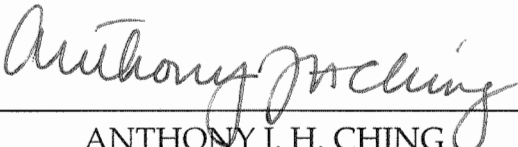
CERT. JOHN CHANG, ESQ.
Deputy Attorney General
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

CERT. R. BEN TSUKAZAKI, ESQ.
Michael W. Moore, Esq.
Tsukazaki Yeh & Moore
100 Pauahi Street, Suite 204
Hilo, Hawaii 96720

CERT. CHRISTOPHER J. YUEN, DIRECTOR
Planning Department
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. LINCOLN ASHIDA, ESQ.
Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720-4262

DATED: Honolulu, Hawaii, this 11th day of April, 2003.



ANTHONY J. H. CHING
Executive Officer