

LAND USE COMMISSION
MEETING MINUTES

February 8, 2013

Site Visit- DR12-48 Grove Farm Company, Inc.
Līhu`e, Kaua`i

COMMISSIONERS PRESENT: Ronald Heller
Ernest Matsumura
Nicholas Teves, Jr.
Lance Inouye
Sheldon Biga
Thomas Contrades
Chad McDonald

COMMISSIONERS EXCUSED: Kyle Chock
Jaye Napua Makua

STAFF PRESENT: Daniel Orodener, Executive Officer
Scott Derrickson, Staff Planner
Sarah Hirakami, Deputy Attorney General
Riley Hakoda, Staff Planner/Chief Clerk

Executive Officer Orodener described the protocol for the site visit to the site visitors at 9:00 a.m. and the site visit began thereafter. The site visit concluded at 10:56 a.m.

February 8, 2013
DR12-48 Grove Farm Company, Inc.
State Building, Conference Rooms A, B, C-2nd Floor
3060 Eiwa Street,
Līhu`e, Kaua`i, Hawai`i, 96766

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COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

CALL TO ORDER

Acting Chair Heller called the meeting to order at 1:00 p.m.

DR12-48 Grove Farm Company, Incorporated (Kaua`i)

Acting Chair Heller announced that this was a hearing and action meeting on DR12-48 in the matter of the Petition of Grove Farm Company, Incorporated for declaratory order to designate Important Agricultural Land (IAL) for approximately 11,026.2 acres at Ha`upu and Lihu`e, Kaua`i, Hawai`i.

APPEARANCES

Benjamin Matsubara, Esq., and Curtis Tabata, Esq., represented Petitioner Grove Farm Company, Inc.

Michael Tressler, Grove Farm Company, Inc.

Michael Dahilig, Director, Kaua`i County Planning Department ("KCPD")

Maunakea Trask, Esq. Deputy Corporation Counsel, represented KCPD

Bryan Yee, Esq., represented State Office of Planning ("OP")

Jessie Souki, Director, OP

Acting Chair Heller updated the record and asked if Petitioner was willing to abide by the Commission's policy on reimbursement of hearing expenses. Mr. Tabata replied that Petitioner would comply

Acting Chair Heller disclosed that his law practice involved matters dealing with the County of Kauai but that he was not aware of what the details of the involvement was and was offering his disclosure to inform the Parties and allow for any comments or objections regarding his continued participation in the docket's proceedings. Mr. Maunakea Trask also disclosed that he was involved the case(s) that Acting Chair Heller was referring to. There were no comments or objections to Acting Chair Heller or Mr. Trask's disclosures.

Acting Chair Heller declared that the documents submitted by the Department of Agriculture, Office of Planning, Kaua'i County and Petitioner's response would become part of the record. There were no objections and Public Witnesses were called to testify.

PUBLIC WITNESSES

None

STAFF REPORT

Acting Chair Heller called on LUC staff planner Scott Derrickson to provide a map orientation on the Petition Area. Mr. Derrickson described items of note and the general features of the Petition Area using two maps of the Petition Area posted on the wall.

Acting Chair Heller requested clarification on a Special Permit issued for the region which allowed All-Terrain Vehicle (ATV) use in the Petition Area. Mr. Derrickson described the location and extent of the ATV activities allowed by the Special Permit.

There were no further questions for Mr. Derrickson.

PRESENTATIONS

Petitioner

Mr. Tabata provided a detailed historical summary of the DR12-48 IAL Petition's development, and argued how the Petition Area qualified for and met IAL designation criteria and why the Commission should grant the Petition.

Acting Chair Heller asked if the Commissioners had any questions for the Petitioner at the present time. The Commissioners had no comments or questions

County

Mr. Trask stated that the County had submitted written testimony regarding the docket and described how the County had reviewed and formulated its position statement and why it supported the Petition; and determined that the Petition Area met the IAL criteria for IAL designation.

The Commissioners had no questions or comments for Mr. Trask.

OP

Mr. Yee stated that Mr. Rodney Funakoshi, OP Land Use Division, would provide a PowerPoint presentation (hard copies of presentation provided to the Parties and the Commission) regarding OP's position on the Petition. Mr. Funakoshi described the various features of the Haupu and Lihue portions of the Petition Area and detailed why OP felt that only limited parts of the Lihue acreage were suitable for IAL designation. Mr. Funakoshi summarized his presentation and shared OP's concerns about maintaining the criteria standards set for designating IAL lands and the need to avoid setting precedents that might jeopardize future IAL evaluations and decisions.

Acting Chair Heller inquired if the State Department of Agriculture ("DOA") had a presentation for the Commission. Mr. Yee responded that the DOA had submitted correspondence on the matter and that a DOA representative was available for the Commission to question if needed.

DECISION-MAKING

Acting Chair Heller asked if the Commissioners had any questions for the Parties before proceeding.

Commissioner McDonald recognized OP's concerns regarding the Lihue portion of the Petition Area and requested clarification on whether the area consisted of a single tax map key ("TMK"). Mr. Tressler responded that several TMKs were involved and that there were no plans to further subdivide the existing TMKs. Commissioner McDonald also requested clarification of the estimated percentages of proposed IAL land compared to the Grove Farm Company's total land area.

Discussion occurred to determine the specific percentages to answer Commissioner McDonald's question and Mr. Tressler estimated the percentage to be one third of the total combined urban and agricultural land area that Grove
(Please refer to LUC Transcript for more details on this matter)
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Farm owned and identified what lands outside of the Petition Area to the north and south belonged to the Petitioner. Mr. Tabata described how the Petitioner had studied the General Plan and determined what portions of its lands would be proposed for IAL designation. Mr. Tressler described how Petitioner pursued agricultural initiatives and participated in the decision-making process for IAL designation determinations. Mr. Yee requested permission and was allowed to clarify comments on the Community Plan designations referenced in slide 16, Factor 6, of the PowerPoint that OP presented.

Acting Chair Heller requested clarification on what the County status was on IAL determinations and how the proposed lands ranked on the County's priority list. Mr. Dahilig described how the County process was determining its IAL areas and shared the achievements that had been accomplished by a University of Hawaii study group that had assisted the County in developing measures to assess and score lands to determine their IAL suitability. Discussion ensued and Mr. Trask described further details of the County process for IAL determination and what his perception was for the future of agriculture on Kauai.

Acting Chair Heller asked if the Petitioner or OP had any further comments. Mr. Tabata responded that he did not. Mr. Yee described why OP had used agricultural standards in line with sugar cane production; and commented that OP had no problem with Kauai County's methodology in making its IAL decisions although OP had concerns about the lack of further criteria for discriminating on what qualified for IAL and might need further study.

Commissioner Inouye expressed his concerns about whether the County had a complete plan for designating IAL lands and an implementation strategy for the program. Mr. Dahilig responded that the County did not have IAL maps developed yet and described how County was implementing its IAL program. Discussion ensued on how the scoring system for determining IAL land worked, what factors were part of the formula determining the scoring, how the General Plan was impacted by the scoring system, what County incentives were in place for IAL, and when the County would be ready to go public with its IAL plan. Mr. Dahilig answered Commissioner Inouye's questions satisfactorily and described the County's efforts to develop and implement its IAL program.

There were no further questions.

Commissioner Contrades moved to grant the Petition of Grove Farm Company, Incorporated for declaratory order to designate Important Agricultural Land (IAL) for approximately 11,026.2 acres at Ha`upu and Lihu`e, Kaua`i, Hawai`i. Commissioner Teves seconded the motion.

There was no discussion regarding the motion. Commissioner McDonald applauded the County for its progress on its IAL initiative.

The Commission was polled as follows:

Ayes: Commissioners Contrades, Teves, Inouye, Matsumura, Biga, McDonald, and Acting Chair Heller.

Nays: None

Excused: Commissioners Chock, and Makua.

The Motion passed 7-0 with 2 excused.

There being no further business, the meeting was adjourned by Acting Chair Heller at 2:38 p.m.