

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
GROVE FARM ROCK COMPANY)
)
For a Special Permit to Establish)
a Limestone and Basalt Quarrying)
and Operations/Storage Area on)
Approximately 113 Acres of Land)
Situated Within the State Land Use)
Agricultural District at Mahaulepu,)
Koloa, Kauai, Tax Map Key Number:)
2-9-03: Portion of 5)
_____)

DOCKET NO. SP92-382
GROVE FARM ROCK COMPANY

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu Hawaii.

MAR 19 1993

Date

by

Lotha
Executive Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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STATE OF HAWAII

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

Grove Farm Rock Company (hereinafter "Applicant" initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Subchapter 12 of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Special Permit Application (hereinafter "Permit") for establishment of limestone and basalt quarries and operations/storage areas (hereinafter "Project") on approximately 113 acres at Mahaulepu, Koloa, Kauai, was filed by the Applicant with the Kauai County Planning Department (hereinafter "Department") on April 29, 1992.

2. The Kauai County Planning Commission (hereinafter "Planning Commission") conducted public hearings on the Permit on June 9, 1992, November 12, 1992 and November 24, 1992.

3. On November 24, 1992, the Planning Commission recommended approval of the Permit to the LUC subject to 10 conditions. The LUC received partial record of the County's proceedings on the Permit on December 11, 1992.

4. At its meeting of January 13, 1993 at Wailuku, Maui, the LUC deferred its decision on the Permit due to the incomplete record submitted by the County of Kauai.

5. On February 16, 1993, the LUC received the additional transcripts to complete the record from the County of Kauai.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

6. The Special Permit area (hereinafter "Property") consists of approximately 113 acres located at Mahaulepu, Koloa, Kauai, and is identified as Tax Map Key No.: 2-9-03: portion of 5.

7. The Property is located approximately 6 miles southwest of Lihue and 3 miles northeast of Poipu. The Property is on lands owned by Grove Farm Company, Inc., parent company of the Applicant, and in the vicinity of Puu Keke Ridge.

8. Access to the Property is via privately-owned sugarcane haul roads that service an existing limestone quarry operation that is 4,200 feet southwest of the Property. The existing limestone quarry was established in the 1950s.

9. The Property and surrounding areas are currently used as pasture lands or for the cultivation of sugarcane.

10. The slope of the Property vary from 1% to 70%.

11. Rainfall in the area is estimated by Grove Farm Company staff to be approximately 35 inches annually.

12. The U.S. Department of Agriculture Soil Conservation Service classifies the Property as having numerous types of soil, generally falling into categories of rock land and various clays.

13. The Land Study Bureau's Detailed Land Classification Report designates the areas of the proposed limestone and basalt quarries as Class "D" and "E" lands. The operations/storage area is designated as Class "B" lands.

14. The State of Hawaii's Agricultural Lands of Importance to the State of Hawaii (ALISH) system has not classified a majority of the Property. However, within the proposed limestone quarry area, approximately 4.3 acres are designated as "Prime" and 7 acres are designated as "Other Important Agricultural Lands." Within the proposed operations/storage areas, approximately 22 acres are designated as "Prime" and 16 acres are designated as "Other Important Agricultural Lands."

15. According to the U.S. Army Corps of Engineers Flood Insurance Rate Map (FIRM), the Property is within an area of undetermined flood hazards (Zone D).

SUMMARY OF PROPOSED USE

16. The Applicant is requesting the Permit to establish limestone and basalt quarries and operations/storage areas. This Project will replace the existing limestone quarry, which has a projected life span of approximately 3 to 4 years. Approximately 44 acres are intended for limestone quarrying, 28 acres for basalt quarrying and 41 acres for the operation/storage areas.

STATE AND COUNTY PLANS AND PROGRAMS

17. The State Land Use District Classification of the Property is Agricultural, as reflected on State Land Use District boundary maps K-8, Koloa, and K-11, Lihue.

18. The County of Kauai zoning designations for the Property are Agricultural and Open.

19. The Property is not located within the County's Special Management Area.

SUMMARY OF STATE AND COUNTY AGENCIES COMMENTS

20. The County Fire Department had no objections to the Project. However, it noted that the Applicant must apply for a fuel tank installation permit prior to conducting operations.

21. The County Department of Public Works commented that mining or quarrying operations regulated by State or Federal government is exempt from the Grading Ordinance and no permits are required.

22. The County Water Department had no objections to the Project. However, it commented that prior to granting of a building permit, the Applicant will be required to sign a waiver and release form with the County Water Department, agreeing that no County water service is available to the Project.

23. The Kauai Historic Preservation Review Commission commented that the Applicant should establish a buffer zone to maintain the ridge line, develop a landscape master plan and permits being sought be subject to review every four years.

24. The Department, in its recommendations to the Planning Commission, commented that the existing ridge top silhouette should not be breached or altered, only areas necessary for quarrying be excavated, that the Applicant utilize appropriate erosion control techniques to assure restriction of run-off to the quarry area, and water on the site be recycled for use in operations and not discharged into the Special Management Area, bodies of water or abutting properties.

25. The State Department of Health had no objections to the Project. However, it commented that the Applicant obtain various permits prior to operation.

26. The Office of State Planning commented that a portion of the Property is part of a 235-acre, Priority 2 recommendation for reclassification from the Agricultural

District to the Conservation District under the Draft Five Year Boundary Review Report for Kauai County.

27. The State Historic Preservation Division of the State Department of Land and Natural Resources commented that sufficient information was collected for three historic sites found on the Property and the sites are rendered as "no longer significant."

SOCIO-ECONOMIC IMPACTS

28. The Project will ensure that supply of rock material is available to meet expected demand from the agricultural and construction industries. Additionally, availability of rock material will stabilize prices and prevent possible increases in price due to importation of rock material.

IMPACTS UPON THE RESOURCES OF THE AREA

Agricultural Resources

29. Existing sugar cane crops will be removed for the operation/storage areas. Approximately 11.3 acres of grazing lands will be removed for the limestone and basalt quarries. No impact is anticipated as most of the quarry areas are comprised of rock land, which is unsuitable for agricultural development.

Flora

30. Vegetation in the area is basically shrubs and various types of grasses. There are no rare, threatened, or endangered species of flora on the Property.

Fauna

31. Birds and mammals identified in the area are not considered to be threatened or endangered species.

Scenic Resources

32. The Property is located in a remote area of Mahaulepu. The Project will not be visible from any portions of the Mahaulepu or Poipu shorelines. The Project is not visible from the State highway.

Archaeological and Cultural Resources

33. Three sites were found in the area of the proposed Basalt quarry. Data on the three sites were subsequently gathered during an inventory survey of the sites.

34. The State Historic Preservation Division of the State Department of Land and Natural Resources reviewed the inventory survey and has rendered the sites as "no longer significant."

ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

Highways and Roadway Facilities

35. Privately-owned cane haul roads will be utilized to service the Project. Quarry-generated truck traffic will not represent significant increases to current traffic levels along public roadways.

Drainage

36. Excavation of some areas in the Property may produce low areas which will result in localized ponding. The

Applicant will mitigate drainage concerns in accordance to applicable drainage and run-off engineering control techniques.

37. A drainage plan incorporating the National Pollution Discharge Elimination System (NPDES) guidelines will be submitted to the County for review and approval prior to the start of any work in regards to the Project.

Air Quality

38. The Project will generate ambient dust. However, dust levels are not considered significant. The use of non-potable water will be used to water the area in order to control dust. The Applicant assures that ambient air quality standards (AAQS) set by the State Department of Health will not be exceeded.

Noise

39. Operation of the quarries will be conducted in strict conformance to the State Department of Health and U.S. Treasury, Firearms and Tobacco Division standards.

Water

40. The Property is not serviced by the County Water Department. Existing non-potable water is being supplied by an agricultural use well. Potable water will be delivered by truck to the Property.

Solid Waste

41. Solid waste generation is anticipated to be minimal and will be directed to the existing County landfill.

Sewage

42. There is no municipal sewer service to the Property. Liquid waste will be handled through the use of portable toilets.

Electricity and Telephone Service

43. There is no electrical or telephone service to the Property. Electrical power will be provided through the use of an on-site diesel generator. Telephone service will be provided through the use of cellular phones.

CONFORMANCE WITH SPECIAL USE PERMIT TESTS

44. The Planning Commission has provided the following comments with respect to the Permit's conformance with the Special Use Permit Tests as follows:

1. The use shall not be contrary to the objectives sought to be accomplished by Chapter 205 and Chapter 205A, HRS, and Chapter 15-15, Hawaii Administrative Rules.

Such use could be construed to be contrary to the objectives sought to be accomplished by the Land Use Laws and Regulations due to (a) the productivity rating of the soils on the site as reflected by the ALISH maps, and Detailed Land Classification Study prepared by the Land Study Bureau; and (b) the existing agricultural use of the land and productivity rating of the site.

However, extenuating circumstances applicable to this project necessitate consideration of this project at this site. The alternative sites considered are not acceptable due to environmental, recreational, visual and social considerations. Further, the applicant states that given their historical experience with the poor drainage capability of the soils, the land is considered to be of marginal quality for cane production. Lastly, there exists an island need

for such activity and its product since the life of the existing quarry is approximately 3-4 years, more so now in the Iniki aftermath. In this sense, the proposed use is considered "unusual and reasonable."

2. The desired use would not adversely affect surrounding property.

The proposed quarry-related uses would not adversely affect surrounding properties since the surrounding properties are in sugarcane or mountain. This site is considered remote enough such that any existing residential communities will not be impacted.

3. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

All access to the site is via the applicant's private cane haul roadways. All other infrastructure and utility requirements will be provided by the applicant. The proposed use would not unreasonably burden public agencies to provide infrastructure improvements.

4. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

Since the Land Use Laws and Regulations do not specifically permit quarries and related activities within the State Agricultural District, we are of the opinion that an unusual need has arisen relative to these type uses and where they should be properly located. Since the Agricultural District is more appropriate than the Rural, Urban or Conservation districts, the siting of quarry-type operations within this district is considered more appropriate in terms of the least amount of potential impacts to neighboring uses.

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The land area upon which the proposed use is sought is suitable of the uses permitted within the State Agricultural District.

PLANNING COMMISSION RECOMMENDATIONS

43. At its meeting of November 24, 1992, the Planning Commission recommended approval of the Permit to the LUC subject to the following conditions:

- "1. The Planning Commission reserves the right to add additional conditions, revise existing conditions, or revoke the subject permits through proper procedures should the applicant fail to comply with conditions of approval, or should unforeseen circumstances arise that may be detrimental to the environment or to public health, safety and welfare.
- "2.
 - a. Applicant shall employ dust control measures including but not limited to compacting, graveling, watering and/or paving.
 - b. Applicant shall implement erosion control methods including but not limited to berms, terrace excavation, collection ponds, and re-vegetation. Erosion, siltation and drainage shall not affect abutting properties, nor the Special Management Area.
- "3 Applicant shall comply with the requirements of the Public Works Department, Fire Department, Water Department, State Health Department, and State Land and Natural Resources- Historic Preservation Division.
- "4. Prior to the issuance of a grading, grubbing or building permit for this project, applicant shall submit the following for review and/or approval by the Planning Director:
 - a. Grading and reclamation master plan. Said plan shall also reflect the "green belt/no disturbance zone" at the ridge top, a drainage master plan that conforms to NPDES guidelines, and landscaping/re-vegetation master plan. This "no disturbance zone" shall also be staked in accordance with item 4b below, and shall be no less than 60 ft. wide, as represented.

This grading master plan should also reflect projected areas as they are needed to be quarried, on

an annual basis. As additional areas are opened up for quarrying, those previously quarried areas should be back-filled and re-vegetated.

The grading and reclamation master plan shall include both the proposed site and the current quarry site. The applicant shall schedule and hold a public meeting prior to the submittal of the reclamation plan for the current quarry site.

- b. A metes and bounds map of the site, prepared by a registered surveyor. A stake line shall be established on this perimeter utilizing 10 ft. high poles painted fluorescent orange, set in concrete, every 100 ft. The Planning Department shall confirm the type of pole to be utilized, and the staking of the site. Applicant shall maintain these poles so as to prevent equipment operators from exceeding the quarry limits.
 - c. Those items required by the CZO Secs. 8-14.3 and 8-15.3 relative to the requirements for development within the Soils and Slope Constraint Districts.
 - d. For baseline purposes, an aerial photo of the subject site as it exists now.
- "5. Applicant shall submit an annual report (for information purposes) to the Planning Commission on the anniversary date of the project's approval. Said report should include:
- a. A map of the site showing the areas being quarried, intended to be quarried, those areas still under vegetation and those areas re-vegetated;
 - b. Drainage and ponding areas;
 - c. Environmental, social or historical problems encountered and how they were handled; and
 - d. An aerial photo of the site reflecting the extent of operations from the past year.

The Planning Commission reserves the right to schedule such document for a public hearing should problems be occurring that need to be adequately addressed.

- "6. Should any archaeological or historic sites, artifacts, or remains be unearthed during the excavation and construction, the applicants shall cease all work at the

site and contact the State Historic Preservation Division of the State Department of Land and Natural Resources and the Planning Department. Disinterment of any burial related items shall be resolved in accordance with Chapter 6E, Hawaii Revised Statutes.

- "7. The permits approved herein are applicable to the subject property and applicants. Said permits shall be rendered null and void upon the sale and/or transferal of ownership interests in the subject property to third parties prior to completion of the project.
- "8. The conditions of approval of this permit shall be recorded at the State Bureau of Conveyances. Applicant shall furnish a recorded copy to the Planning Department prior to issuance of the Building Permit. Said recordation shall not be amended unless reviewed and approved by the Planning Commission.
- "9. The proposed quarry operations shall not overlap the existing quarry operations beyond two years from the date of the commencement of grading/grubbing activities beginning on the proposed site. Applicant shall submit the necessary documentation to the Planning Department reflecting the start up of such operations.
- "10. The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies)."

CONCLUSIONS OF LAW

The Special Permit request to allow a limestone/basalt quarry and operations/storage area constitutes an "unusual and reasonable" use as defined in Section 205-6, HRS, as amended, and the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that Special Permit Docket No. SP92-382 to allow a limestone/basalt quarry and operations/storage area on approximately 113 acres of land designated within the State Land Use Agricultural District, Tax Map Key No.: 2-9-03: portion of 5 at Mahaulepu, Koloa, Kauai, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby approved and subject to the following conditions:

1. The Planning Commission reserves the right to add additional conditions, revise existing conditions, or revoke the subject permits through proper procedures should the applicant fail to comply with conditions of approval, or should unforeseen circumstances arise that may be detrimental to the environment or to public health, safety and welfare.

2. a. Applicant shall employ dust control measures including but not limited to compacting, graveling, watering and/or paving.

b. Applicant shall implement erosion control methods including but not limited to berms, terrace excavation, collection ponds, and re-vegetation. Erosion, siltation and drainage shall not affect abutting properties, nor the Special Management Area.

3. Applicant shall comply with the requirements of the Public Works Department, Fire Department, Water Department,

State Health Department, and State Land and Natural Resources-Historic Preservation Division.

4. Prior to the issuance of a grading, grubbing or building permit for this project, applicant shall submit the following for review and/or approval by the Planning Director:

a. Grading and reclamation master plan. Said plan shall also reflect the "green belt/no disturbance zone" at the ridge top, a drainage master plan that conforms to NPDES guidelines, and landscaping/re-vegetation master plan. This "no disturbance zone" shall also be staked in accordance with item 4b below, and shall be no less than 60 ft. wide, as represented. This grading master plan should also reflect projected areas as they are needed to be quarried, on an annual basis. As additional areas are opened up for quarrying, those previously quarried areas should be back-filled and re-vegetated.

The grading and reclamation master plan shall include both the proposed site and the current quarry site. The applicant shall schedule and hold a public meeting prior to the submittal of the reclamation plan for the current quarry site.

b. A metes and bounds map of the site, prepared by a registered surveyor. A stake line shall be established on this perimeter utilizing 10 ft. high poles painted fluorescent orange, set in concrete, every 100 ft. The Planning Department shall confirm the type of pole to be utilized, and the staking of the site. Applicant shall maintain these poles so as to

prevent equipment operators from exceeding the quarry limits. A copy of the approved metes and bounds map of the site shall also be submitted to the Land Use Commission.

c. Those items required by the CZO Secs. 8-14.3 and 8- 15.3 relative to the requirements for development within the Soils and Slope Constraint Districts.

d. For baseline purposes, an aerial photo of the subject site as it exists now.

5. Applicant shall submit an annual report (for information purposes) to the Planning Commission and the Land Use Commission on the anniversary date of the project's approval. Said report should include:

a. A map of the site showing the areas being quarried, intended to be quarried, those areas still under vegetation and those areas re-vegetated;

b. Drainage and ponding areas;

c. Environmental, social or historical problems encountered and how they were handled;

d. An aerial photo of the site reflecting the extent of operations from the past year; and

e. Applicant's progress in complying with the conditions imposed.

The Planning Commission reserves the right to schedule such document for a public hearing should problems be occurring that need to be adequately addressed.

6. Should any archaeological or historic sites, artifacts, or remains be unearthed during the excavation and construction, the applicants shall cease all work at the site and contact the State Historic Preservation Division of the State Department of Land and Natural Resources and the Planning Department. Disinterment of any burial related items shall be resolved in accordance with Chapter 6E, Hawaii Revised Statutes.

7. The permits approved herein are applicable to the subject property and applicants. Said permits shall be rendered null and void upon the sale and/or transferal of ownership interests in the subject property to third parties prior to completion of the project.

8. The conditions of approval of this permit shall be recorded at the State Bureau of Conveyances. Applicant shall furnish a recorded copy to the Planning Department prior to issuance of the Building Permit. Said recordation shall not be amended unless reviewed and approved by the Planning Commission.

9. The proposed quarry operations shall not overlap the existing quarry operations beyond two years from the date of the commencement of grading/grubbing activities beginning on the proposed site. Applicant shall submit the necessary documentation to the Planning Department reflecting the start up of such operations.

10. The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

11. The applicant shall commence quarrying operations no later than two years from the date of approval by the Land Use Commission.

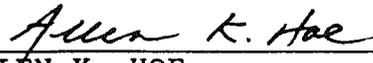
Done at Honolulu, Hawaii, this 19th day of March 1993,
per motions on February 25, 1993 and March 18, 1993.

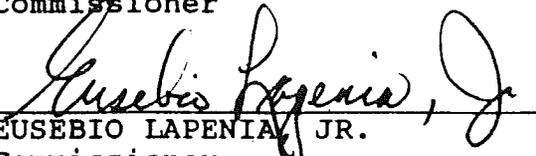
LAND USE COMMISSION
STATE OF HAWAII

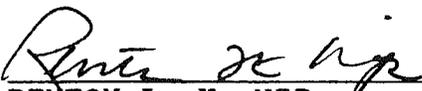
By 
ALLEN Y. KAJIOKA
Chairman and Commissioner

By (absent)
KAREN S. AHN
Vice Chairman and Commissioner

By (absent)
JOANN N. MATTSON
Vice Chairman and Commissioner

By 
ALLEN K. HOE
Commissioner

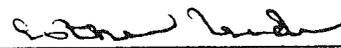
By 
EUSEBIO LAPENIA, JR.
Commissioner

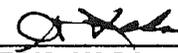
By 
RENTON L. K. NIP
Commissioner

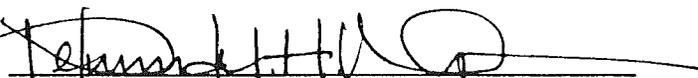
By (absent)
TRUDY K. SENDA
Commissioner

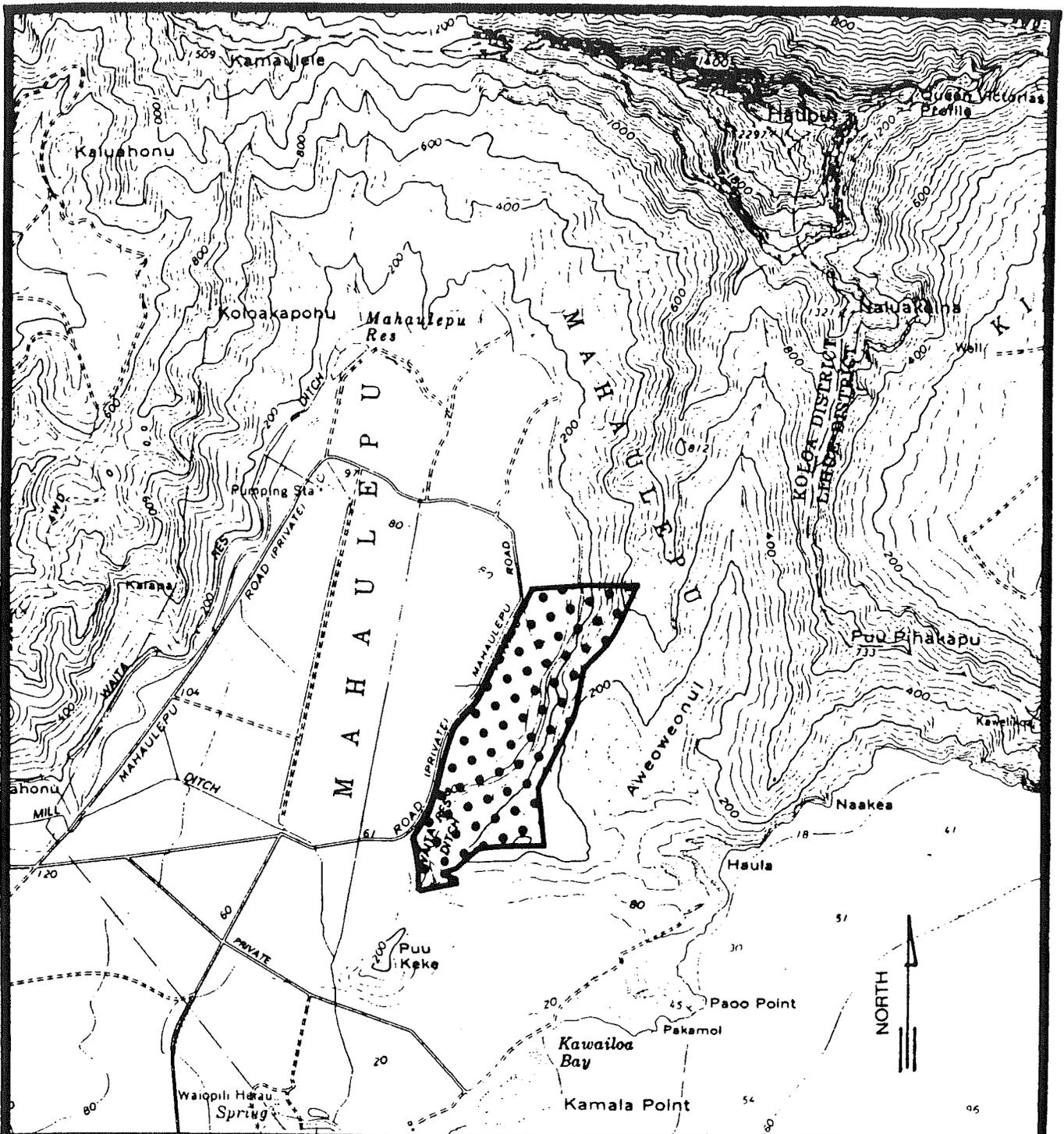
Filed and effective on
March 19, 1993

Certified by:


Executive Officer

By 
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner



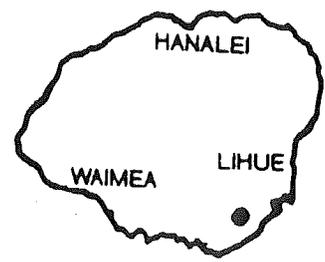
DOCKET NO. : SP92-382 / GROVE FARM ROCK COMPANY

LOCATION MAP

TAX MAP KEY: 2-9-03: por. 05

MAHAULEPU, KOLOA, KAUAI

SCALE : 1" = 2,000 ft. ±



KAUAI