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January 17, 2013

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LAND USE COMMISSION
STATE OF HAWAII

Mr. Daniel Orodener
Executive Officer
Land Use Commission
235 South Beretania Street
Suite 406
Honolulu, Hawaii 96813

Dear Mr. Orodener:

Subject: Petition for Declaratory Order to Designate Important Agricultural Lands
Docket No. DR12-48
Grove Farm Company, Incorporated
11,206.2 acres (Haupu and Lihue, Kauai)

Thank you for this opportunity to comment on this important petition. The Department of Agriculture expresses its appreciation to the petitioner for their interest in and effort to identify potential Important Agricultural Lands (IAL). We note that the petitioner is not seeking a reclassification of land pursuant to Section 205-45(b), in conjunction with this petition to designate IAL. The petitioner is also voluntarily waiving all rights to claim any credits pursuant to Section 205-45(h) (Petition, page 9). This is the third IAL petition involving agricultural lands on the island of Kauai and the sixth IAL petition statewide.

The Department offers conditional support of the petitioner's request for IAL designation, because the limited information contained in the petition raises concerns that the quality and characteristics of some of the petitioned lands fall short of what we believe to qualify as IAL.

In the following, we have responded to the petitioner's statements as to how the Lihue and Haupu sites meet the eight criteria for identifying potential IAL (Section 205-44, HRS).



Lihue Lands Lands used for agricultural production

Current agricultural production

According to the petition (Appendix A, page 3 and Lihue, Figure 2), 6,000 acres of the 10,266-acre Lihue site are leased to 20 tenants. Cattle ranching is the predominant activity, occupying 4,505 acres (75 percent of the total leased area). According to PBR Hawaii (email, dated January 7, 2013), there are 3,355 head of cattle being raised by 18 of the 20 tenants. Biomass production is found on 1,328 acres (22 percent), and 166 acres (3 percent) is in diversified agriculture consisting of corn, bananas, and taro (acreages for biomass and diversified agriculture are estimates we derived from the information provided in Figure 2).

Past agricultural production

The Office of Planning's Geographic Information System Program estimates about 3,229 acres of sugarcane was cultivated in the Lihue petition area in the early 1980's. Most of the cultivation took place along the lower elevations of the petition area but did also occur on level areas near the northern and western flanks of Kilohana crater. The footprint of the aforementioned cattle grazing operations include much of what was once in sugarcane cultivation. According to research by Department staff, neither historic sugarcane cultivation nor the current ranching operations used the southeastern portion of the Lihue site from the Kilohana crater and extending nearly a mile down. This indicates to us that the lands in this portion of the petition area that were not planted in sugar nor leased for cattle grazing have very limited, if any, utility for agricultural production.

Future agricultural production

According to the petition, up to 9,980 acres of the 10,266 acre Lihue site may be put to biomass production consisting of a combination of eucalyptus and banagrass (PBR Hawaii, email of January 7, 2013) subject to the exercising of a lease option agreement between the petitioner and Hawaii BioEnergy LLC that expires in August 2015. HBE plans to implement their biomass to energy project "...within the next 5 years" (Petition, Appendix A, page 3) and if the option is exercised, HBE's lease will be for 30 years.

Impact of proposed future agriculture production on the Kauai cattle industry

According to the petition (Appendix A, Lihue, Figure 2) nearly all the existing agricultural operations will be affected, except for the Sanchez and a portion of the Malina ranches located on the north-northeast edge of the Lihue site. The 3,100 head of cattle on the affected ranches represent a significant 23 percent of the total cattle population on Kauai (Statistics of Hawaii Agriculture 2010; page 69).

Lihue Lands

Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops, and Lands identified under agricultural productivity ratings systems, such as the Agricultural Lands of Importance to the State of Hawaii (ALISH)

According to the Land Study Bureau's Detailed Land Classification for the Island of Kauai, 8,767 acres (85 percent) of the 10,266-acre Lihue site are rated "D" (poor) or "E" (very poor) (Petition, Appendix A, Lihue, Figure 3). The "B" and "C" rated areas (14 percent) are found primarily along the lower elevations to the northeast and south. There is no improvement to productivity of the "C", "D" and "E" rated lands by the addition of irrigation.

Sixty-six percent of the Lihue site is not classified according to the Agricultural Lands of Importance to the State of Hawaii (ALISH) system (Petition, Appendix A, Lihue, Figure 5). "Prime" and "Other Important" agricultural lands in almost equal acreages comprise the remaining 34 percent of the Lihue site.

Lihue Lands

Land types associated with traditional native Hawaiian agricultural uses such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production

As noted in the Petition (page 7) and earlier in this letter, the HBE LLC, should it decide to exercise a lease option agreement with the petitioner, will lease an unstated portion of the Lihue site to grow biomass (eucalyptus and banagrass) to convert into energy.

Lihue Lands

Lands with sufficient quantities of water to support viable agricultural production

The petition states that "The Property has access to irrigation water, including onsite and offsite water sources and water transmission distribution system." (Petition, page 7) The three reservoirs (Papuaa, Halenanahu, and Kapaia) serve lands outside of the petition area (Petition, Appendix A, pages 4-5) respectively. End users include agricultural lands in Puhi, Lihue and Kalepa, a source for drinking water, irrigation for a golf course, and in the case of the Halenanahu Reservoir, is not functioning. With the possible exception of the Kapaia Reservoir which is said to provide irrigation water to "...lands makai of the reservoir", the other reservoirs do not appear to have a role in providing irrigation water to lands within the Lihue petition area, nor do these reservoirs provide irrigation water to designated IAL.

According to a report done by the United States Geological Survey ("Effects of Irrigation and Rainfall Reduction on Ground-Water Recharge in the Lihue Basin, Kauai, Hawaii",

S. K. Izuka, D. S. Oki, C. H. Chen; Scientific Investigations Report 2-15-5146; U.S. Department of the Interior, U.S. Geological Survey, 2005), the sugarcane grown on the Lihue site was not irrigated by any means other than rainfall (Figure 9, page 11 and Figure 10, page 12). The rainfall in the Lihue site, according to the petition (Appendix A, Lihue, Figure 6) ranges from 65 to 120 inches.

Lihue Lands

Land whose designation as Important Agricultural Lands is consistent with general, development, and community plans of the County

The property is entirely within the State Agricultural District. The northwestern boundary of the site, including Kilohana Crater is in the Conservation District. The 2000 Kauai General Plan, Koloa Land Use Map (Petition, Appendix A, Lihue, Figure 7) did not include a major portion of the Lihue site west of Kilohana Crater, however it appears that some, if not the major portion of that area as well as the area east of Kilohana Crater is in the "Open" classification which typically includes "...important landforms, wetlands, streams, steep slopes, and other environmentally-sensitive areas." (Kauai General Plan - 2000, Chapter 5, page 5-5, Development of Open Lands). According to the Kauai Comprehensive Zoning Code, diversified agriculture, livestock and grazing are permitted uses in the Open zone (Section 8-8.2, page 215), however "intensive agriculture" (Section 8-8.3, page 215) which is defined as "...the growing and harvesting of plant crops...and involving the long-range commitment to one crop..." requires a use permit (Section 8-1.5, page 164).

Lihue Lands

Land that contributes to maintaining a critical land mass important to agricultural operating productivity

About 4,505 acres of the Lihue site is leased by 18 ranchers for the grazing of 3,355 head cattle. This cattle population represents 25 percent of the cattle population on Kauai (see page 2, Lands used for agricultural production; Statistics of Hawaii Agriculture 2010; page 69). These livestock operations clearly appear to meet this IAL identification criterion of "land that contributes to maintaining a critical land mass important to agricultural operating productivity." The petition does not explain what will happen to the affected ranches and the other agricultural operations found within the Lihue site if HBE exercises their lease option and displaces existing ranches and other agricultural operations.

Lihue Lands

Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power

From the petition (Appendix A, Lihue, Figure 6), there are three irrigation ditch systems (Upper and Lower Lihue, Hanamaulu) and three reservoirs, however as we note on

page 4 of this letter, with the possible exception of the Kapaia Reservoir which is said to provide irrigation water to "...lands makai of the reservoir", the other reservoirs do not appear to have a role in providing irrigation water to lands within the Lihue petition area, nor do these reservoirs provide irrigation water to designated IAL.

The Lihue site does appear to run adjacent to Kaunualii Highway. The petition contains the blanket statement that "Existing infrastructure servicing the Property include irrigation systems, roadways and transport systems, and markets and necessary facilities to support agriculture." (page 8). Reference is made to Appendix A (pages 3 and 4) and Figure 6, however, only the irrigation ditch and reservoir improvements are discussed in the text and shown on Figure 6. There is no discussion on transport systems, markets, and necessary facilities to support agriculture.

Haupu Lands Consolidated response to the eight IAL identification criteria

The 759.9-acre Haupu section includes the 415-acre Waita Reservoir which is a source of irrigation water for the IAL-designated Mahaulepu area. The majority of the lands outside the reservoir (345 acres) are "Prime" (142 acres) or "Other Important" (115 acres) agricultural lands according to the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. The Land Study Bureau indicates poor to very poor productivity potential for 79 percent of the Haupu section.

The six existing ranching operations occupy about 285 acres (83 percent of the acreage outside the Waita Reservoir) and have 439 head of cattle (PBR Hawaii, email of January 7, 2013). Combined with the 3,355 head of cattle in the Lihue site, the two sites contain 28 percent of the total number of cattle raised on Kauai in 2010 (Statistics of Hawaii Agriculture 2010; page 69). According to the information in the petition (Appendix A, Haupu, Figure 2) and additional information provided by PBR Hawaii, the Sanchez operation has 250 head on 14 acres which appear to indicate a feedlot-type operation. The next largest operation, Akita, has 130 head on 81 acres.

The historic use of most of the land outside of the gulches and hills was sugarcane cultivation. In combination with the area presently in cattle ranching, the historic and present uses describe the arable lands within the Haupu site.

As with the Lihue site, HBE must exercise their lease option agreement by August 2015 for the Haupu site. They are considering leasing up to 178 acres of the Haupu section outside of the Waita Reservoir (DOA estimate from Petition, Appendix A, Lihue Figure 2 and Haupu Figure 2). Two entire ranches (Louis 25.4 acres and Sanchez 14.4 acres) and a portion of a third (Waalani 111.3 acres) are to be unaffected should HBE exercise its lease option as planned for the Haupu site (Petition, Appendix A, Haupu, Figure 2). This leaves at least 200 acres of pasture lands on three ranches and a portion of a

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fourth, and 160 head of cattle to be displaced should HBE fully exercise their lease option on the Haupu site.

The entire site outside of the Reservoir is within the Agriculture designation in the Kauai General Plan (Petition, Appendix A, Haupu, Figure 7) and in the State Agricultural District (Figure 8). The Koloa Town Urban District is about 250 feet from the southwestern section of the Haupu site and future urban encroachment should be of concern to the Commission.

We note that the petition mentions the Waita Reservoir is used for commercial fishing tours and kayaking. (Petition, Exhibit C, page 4) We do not object to these uses provided they do not reduce, impede, or contaminate the water in the reservoir which is used for irrigation on the IAL-designated Mahaulepu area.

Department of Agriculture Comments and Recommendations on the Lihue and Haupu Lands

Given the information in the petition on the conformance of the Lihue and Haupu sites to the eight criteria used to identify potential IAL, and additional information acquired or developed by Department staff, the Department of Agriculture offers the following comments and recommendations.

Lihue Lands

The Department of Agriculture supports the IAL designation for the Lihue site, except for the Papuaa and Halenanahu reservoirs, as they do not appear to have a role in providing irrigation water to lands within the Lihue petition area, nor do these reservoirs provide irrigation water to designated IAL (see page 3 of this letter). Should the Commission approve the Lihue site for IAL designation, we recommend the Commission require the petitioner to provide an annual report to the Commission, including maps and charts, describing the progress of crop cultivation on the Lihue site and the extent to which all Lihue lands designated in IAL is in conformance with Section 205-43(3) that requires State policy and rules to promote the long-term viability of agricultural use of IAL and "ensure that uses on important agricultural lands are actually agricultural uses."

Haupu Lands

The Department of Agriculture supports the designation of the Haupu lands as IAL. As we indicated earlier in this letter, the Haupu lands are situated about 250 feet from the Koloa Town Urban District and future urban encroachment upon the Haupu lands should be of concern to the Commission.

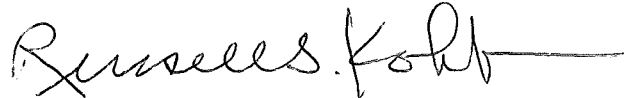
We agree that the Waita Reservoir be designated as IAL, as it provides irrigation water to the IAL-designated Mahaulepu area, provided, however that the commercial recreational uses of the reservoir do not reduce, impede, or contaminate the water in the reservoir.

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Should the Commission approve the Haupu site for IAL designation, we recommend the Commission require the petitioner to provide an annual report to the Commission, including maps and charts, describing the progress of crop cultivation on the Haupu site and the extent to which all Haupu lands designated in IAL is in conformance with Section 205-43(3) that requires State policy and rules to promote the long-term viability of agricultural use of IAL and "ensure that uses on important agricultural lands are actually agricultural uses."

Thank you for the opportunity to present and your consideration of our analysis, comments, and recommendations on this important petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell S. Kokubun", with a horizontal line extending to the right.

Russell S. Kokubun
Chairperson, Board of Agriculture

c: Office of Planning
Kauai County Planning Department