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February 1, 2013

HAND DELIVERY

Mr. Daniel E. Orodener, Executive Officer
Land Use Commission, State of Hawai'i
235 South Beretania Street
Room 406, Leiopapa A Kamehameha Bldg.
Honolulu, Hawai'i 96813

2013 FEB - 1 P 3:12
LAND USE COMMISSION
STATE OF HAWAII

Re: Grove Farm Company, Incorporated, DR12-48, Petition For Declaratory
Order To Designate Important Agricultural Lands

Dear Mr. Orodener:

Please find this as Petitioner Grove Farm Company, Incorporated's ("Petitioner") response to the written comments to the above-entitled petition ("Petition") received from the Office of Planning, State of Hawai'i ("OP"), the Planning Department, County of Kaua'i ("County"), the Department of Agriculture, State of Hawai'i ("DOA"), the Natural Resources Conservation Service, United States Department of Agriculture ("NRCS"), the State Energy Office, State of Hawai'i ("State Energy Office"), and the College of Tropical Agriculture and Human Resources, University of Hawai'i, Manoa ("University of Hawai'i").

Petitioner would like to thank all of the governmental agencies who have taken the time to provide their analysis in connection with the Petition. Petitioner is also grateful for the general support received from the agencies in the efforts to protect and preserve agricultural lands.

Petitioner's specific responses to the written comments are provided below with respect to each agency.

1. Office of Planning, State of Hawai'i

OP does not object to the designation of the approximately 760 acres of land at Ha'upu as important agricultural lands ("IAL"). OP does object to approximately

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6,309.2 acres of land at Lihue being designated as IAL, and only supports the designation of approximately 3,957 acres of Lihue lands as IAL.

OP argues at page 6 of its comments dated January 17, 2013 that the Lihue lands do not meet the statutory definition of IAL pursuant to § 205-42(a)(1), *Hawai`i Revised Statutes* ("HRS"), which defines IAL as lands that "are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology." OP's reliance on the applicable IAL definition, however, is incomplete and does not take into account parts two and three of the definition. HRS § 205-42(a) provides the following definition of IAL as those lands that:

- "(1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
- (2) Contribute to the State's economic base and produce agricultural commodities for the export or local consumption; or
- (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production."

(Emphasis added).

HRS § 205-42(a) provides three different and independent definitions of IAL, as is indicated by the use of the word "or", where any one of the three definitions of IAL may suffice. Whereas OP only focuses on the first definition at HRS § 205-42(a)(1); the other two definitions found at HRS § 205-42(a)(2) and (3) also apply.

HRS § 205-42(a)(2) provides that IAL is that which "[c]ontribute to the State's economic base and produce agricultural commodities for the export or local consumption". A review of OP's Figure 3 and Petitioner's Petition Exhibit A, Figure 2 demonstrate a significant portion of the 6,309.2 acres of land in question are in ranching and is by definition contributing to the State's economic base and producing agricultural commodities for export or local consumption.

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Even more significant, however, is the definition at HRS § 205-42(a)(3), which defines IAL as lands that “[a]re needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.” (Emphasis added). This definition of IAL is critical as it envisions the need to protect lands that are not in production in order to provide for the future expansion of agricultural activities.

In other words, if we only protect and preserve lands that are currently in production, then it will not be possible to later expand production in the future, at least not on an increased acreage basis. We must protect and preserve agricultural lands that are not currently in production for future use.

To address the future need of biofuels, Hawai'i BioEnergy, LLC (“HBE”) has obtained an option to lease approximately 9,890 acres of the 10,266.2 acres of the Lihue Petition area.

OP, however, dismisses HBE’s option by stating that “there is presently no commitment to such use, only an option to lease.”

Clearly, the Lihue lands in question need to be preserved even if there were no option to lease, much less a commitment. The State Energy Office has confirmed that “[b]oth trees and grasses have been identified as ‘strong candidates for energy crops for sugar and fiber production’ and the identified lands have areas with soil qualities and growing conditions suitable for the cultivation of these crops.” (Emphasis added). The land in question, therefore, has value far into the future and goes beyond any existing contracts or options. Indeed, the State Energy Office makes it clear that “[t]he preservation of contiguous agricultural areas is important for bioenergy projects.” (Emphasis added).

Furthermore, HBE is a significant member of the renewable energy community. The State Energy Office points out that “HBE has entered into a 20-year contract, subject to approval by the Hawai'i Public Utilities Commission, to supply Hawaiian Electric Company (HECO) with 10 million gallons of biofuel per year for 20 years. HECO considers this contract a ‘major milestone’ in HECO’s strategy to meet its clean energy

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goals." Attached to this letter as Exhibit 1 is the Hawai'i BioEnergy and Hawaiian Electric Company press release dated September 12, 2011 describing the 20 year contract.

The State Energy Office goes on to say that "[i]t has been our impression that the team of experts retained by HBE in the course of its project development has credibility in relevant areas, including bioenergy, local agriculture, and forestry."

But even if we were to be restricted to OP's narrow reading of the IAL definition and apply only HRS § 205-42(a)(1), it is clear that the Lihue lands "[a]re capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology."

The University of Hawai'i has stated that the Lihue "soils do have good physical properties and with proper fertilization can be productive for a wide range of crops", and "[w]hile irrigation is available, mainly from surface waters, reservoirs, and ditches, rainfall is quite high (ranging from 60-100 inches per year) and is adequate for rainfed production of many crops."

As such, the University of Hawai'i recommends approval of the designation of the Lihue lands as IAL:

"I recommend that these lands be approved for Important Agricultural Lands. The agricultural fields are suitable for producing a wide range of tree crops, pasture, vegetable and fruits and while not the most productive lands (due to relatively low soil fertility and solar radiation) **they can be managed to produce many agricultural products sustainably.**" (Emphasis added).

According to the University of Hawai'i, therefore, the Lihue lands can be productive in sustainably producing many crops when managed according to accepted farming methods, including the use of fertilizers, in compliance with the IAL definition found at HRS § 205-42(a)(1).

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OP also criticizes the Lihue lands for having slopes over 20%, consisting of ravines and gulches and having poor soil qualities.

The NRCS addresses the soils issue as follows:

“Even though all of the land included in the area submitted by the petitioner does not meet either the state (ALISH) or federal (USDA Prime Farmland) criteria for important agricultural lands, **USDA-NRCS recognizes the potential benefits of preserving the petitioned IAL as a large block of contiguous land area. Such a contiguous designation could be conducive to integrated management activities or both agricultural production and environmental protection.**” (Emphasis added).

Similarly, both the State Energy Office and the University of Hawai'i recognize the importance and benefits of preserving large contiguous areas of land. Preserving large contiguous blocks of land is consistent with the State's policy of promoting “the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management” pursuant to HRS § 205-43(1).

2. Planning Department, County of Kaua'i

The County is in support of the designation of the entire 11,026.2 acres of land as IAL.

The County has spent approximately four (4) years studying lands for inclusion in IAL on the island of Kaua'i. The County contracted with the University of Hawai'i Department of Urban and Regional Planning to conduct research, gather data and analyze maps to determine those lands qualifying as IAL. Also a part of this process was a seventeen-member Stakeholder and Technical Advisory Committee comprised of experts in the fields of agriculture and land use. Based upon their progress after years of work, the County has confirmed that the entire 11,026.2 acres of land being proposed

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for designation qualify as IAL in the preliminary maps developed through the IAL Study.

The County did raise a question as to whether IAL designation will affect the use of the Waita Reservoir. The answer is that there is no anticipated use changes of Waita Reservoir in the event the land is designated as IAL.

3. Department of Agriculture, State of Hawai'i

The DOA supports the designation of all 760 acres of lands in Ha'upu as IAL. The DOA agrees that the Waita Reservoir should be designated as IAL as it provides irrigation water, and does not object to the reservoir's recreational uses so long as those uses do not reduce, impede or contaminate the water in the reservoir.

The DOA also supports the designation of the Lihue lands except for Papuaa and Halenanahu reservoirs on the grounds that the two reservoirs do not appear to irrigate IAL or proposed IAL.

Petitioner confirms that both the Papuaa and Halenanahu reservoirs provide irrigation water for agricultural uses. Although not intended to irrigate IAL, at least for now, both the Papuaa and Halenanahu reservoirs are valuable agricultural infrastructure resources.

Although both reservoirs are situated on the Makai boundary of the proposed Lihue IAL, they are a part of an integrated system of streams and ditches that are located on the proposed IAL that need to be preserved for future agricultural production that may or may not be located on IAL.

It should be noted that IAL does not comprise the boundary of agricultural lands. The fact that most of the State's agricultural lands are not IAL should reinforce the understanding that agriculture is important wherever it occurs.

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The DOA also states that in the event the Land Use Commission, State of Hawai'i ("Commission") decides to designate the lands as IAL, that Petitioner be required to submit an annual report to the Commission, including maps and charts, describing the progress of crop cultivation pursuant to HRS § 205-43(3), which provides that State's policy of ensuring that uses on IAL are actually agricultural uses.

While Petitioner understands the intent of this request, the Commission is not the proper party for the enforcement of use restrictions in the classification districts. The County is the statutorily authorized party pursuant to HRS § 205-12 as follows:

"Enforcement. The appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition relating to agricultural districts under section 205-4.5 and shall report to the commission all violations."

According to HRS § 205-12, the County of Kaua'i Planning Department would be the proper agency to take actions to enforce the use restrictions within the agricultural district, and if any violations occur, then the County would report those violations to the Commission. *See Lanai Company vs. Land Use Commission*, 105 Hawai'i 296, 318, 97 P.3d 372, 394 (2004) (HRS § 205-12 delegates the power to enforce district classifications to the counties).

Petitioner would also note that the proposed annual report requirement is very different from the standard condition requiring annual reports in decisions and orders granting a district boundary amendment. The annual report requirement in district boundary amendments relates to the conditions imposed by the Commission which fall under the Commission's authority. The annual report requirement being proposed by the DOA, however, is to enforce use restrictions in the agricultural district which is a responsibility of the County by statute.

Petitioner, therefore, opposes the DOA's request for annual reports in the event the Commission grants the Petition.

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4. Natural Resources Conservation Service, United States Department of Agriculture; the State Energy Office, State of Hawai`i; and the College of Tropical Agriculture and Human Resources, University of Hawai`i, Manoa

The NRCS confined its comments to issues relating to soil properties and did not provide a recommendation with respect to the designation of the lands as IAL. The State Energy Office also restricted its review to the scope of its expertise relating to land and crops for fuel and energy.

The University of Hawai`i provided a more expansive review of the overall agricultural qualities of the proposed IAL. The University of Hawai`i recommended approval of all of the lands being proposed for IAL.

Based upon the foregoing and the Petition, the proposed IAL satisfies the standards and criteria for the identification of IAL pursuant to HRS § 205-44, is consistent with the objectives and policies of HRS § 205-42 and HRS § 205-43 and with Article XI, Section 3 of the Hawai`i State Constitution, and Petitioner respectfully requests that the Commission grant the Petition.

Very truly yours,

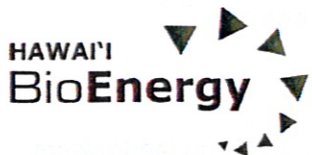
MATSUBARA – KOTAKE



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Attachment

cc: Grove Farm Company, Incorporated
Planning Department, County of Kaua`i
Office of Planning, State of Hawai`i



Hawaiian Electric Company

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For Immediate Release
September 12, 2011

Hawai'i BioEnergy:
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Hawaiian Electric selects Hawai'i BioEnergy to supply sustainable local biofuel for Kahe Power Plant

(Honolulu, Hawaii) Hawaiian Electric Company and Hawai'i BioEnergy, LLC have agreed on a contract for a supply of 10 million gallons per year of locally grown and processed biofuel for power generation at Hawaiian Electric's Kahe Generating Station. The contract now goes to the Hawaii Public Utilities Commission (PUC) for review with input from the State Consumer Advocate.

Dedicated sustainable energy crops for the renewable fuel will be grown on the island of Kauai, on largely fallow and underutilized Grove Farm land. The crops will be processed into biofuel on Kauai for shipment to Oahu.

The 20-year contract offers a stable pricing structure not linked to the volatile price of petroleum fuel. It calls for a one million gallon test batch to be delivered within 48 months of PUC approval of the contract. Delivery of the 10-million gallon annual supply is to begin within 60 months of PUC contract approval.

"We hope to give a tremendous boost to local agriculture on Kauai while increasing the energy produced from renewable sources in Hawaii and reducing our heavy dependence on imported fossil fuels," said Joel Matsunaga, executive vice president and chief operating officer of Hawai'i BioEnergy.

"Use of locally grown feedstocks for biofuel production will improve Hawaii's energy sustainability and security while creating jobs in our communities. Further, our approach to agriculture is not only to improve Hawaii's energy independence but also strengthen food security through production of feed, fertilizers and other co-products."

This is the third contract to result from an earlier request for proposals for locally grown and processed biofuels issued by Hawaiian Electric.

...more

Hawaiian Electric & Hawai'i BioEnergy sign biofuels contract

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"This is another step in establishing a local biofuel market, providing landowners with the assurance they need to commit to growing energy crops," said Robbie Alm, Hawaiian Electric Company executive vice president. "We are pleased to be partnering with a consortium of well-respected companies that includes long-established local landowners.

"Switching from fossil fuels to green fuels in our existing generators is one part of our effort to develop a broad range of clean energy resources," Alm said.

The anticipated annual 10 million gallons will represent more than four percent of Kahe power plant's annual fuel use. Hawaiian Electric recently successfully tested blends of biofuel and low sulfur fuel oil at the Kahe plant, the largest on Oahu with a total capacity of 650 megawatts.

Hawai'i BioEnergy has conducted extensive research to assess viable and sustainable biofuel feedstocks and processing technology. The site of the processing facility is being finalized. Liquid biofuel will be created by an established process using high temperature in the absence of oxygen to cause thermo-chemical decomposition of organic matter.

The biofuel supplied by Hawai'i BioEnergy will comply with sustainable sourcing standards developed by the Hawaiian Electric companies in partnership with the Natural Resources Defense Council.

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Hawai'i BioEnergy (HBE) is a consortium established by three of Hawaii's largest landowners: Kamehameha Schools, Grove Farm Company Inc., and Maui Land & Pineapple Company, Inc. with venture capital partnerships including Vinod Khosla, Ulupono Initiative and Finistere Ventures.

Hawaiian Electric Company and its subsidiaries, Maui Electric Company and Hawaii Electric Light Company, serve more than 400,000 customers on the islands of Oahu, Hawaii, Maui, Lanai and Molokai, home to 95% of Hawaii's people. Hawaiian Electric is a subsidiary of Hawaiian Electric Industries (NYSE: HE). For more information, visit www.heco.com.