

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A82-539
)	
GROVE FARM PROPERTIES, INC.)	GROVE FARM PROPERTIES,
)	INC.
To Amend the Agricultural Land Use)	
District Boundary to Reclassify)	
Approximately 4 Acres, TMK:)	
2-8-02: portion of parcels 1 and)	
5, at Koloa, Island of Kauai,)	
State of Hawaii, into the Urban)	
Land Use District)	
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DECISION AND ORDER

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DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by Grove Farm Properties, Inc., which is requesting that the designation of the subject property be amended from the Agricultural to the Urban District. The requested change consists of property comprising approximately 4 acres of land, situated at Koloa, Island of Kauai, State of Hawaii. The subject property is more particularly identified as Tax Map Key No. 2-8-02: portion of parcels 1 and 5.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioner can subdivide the subject property into six (6) separate lots of approximately one-half acre each, with each lot containing one (1) already

existing dwelling unit. The Petitioner intends to offer these house and lot packages for sale to the general public at "fair market prices."

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on September 27, 1982. Due notice of the hearing on this Petition was published on January 3, 1983, in the Garden Island and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on December 28, 1982. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on February 8, 1983, in Lihue, Kauai, Hawaii.

Grove Farm Properties, Inc., the Petitioner herein, was represented by Burt Tsuchiya; Kauai County was represented by Max W. J. Graham, Jr., Esq; and the Department of Planning and Economic Development was represented by Abe Mitsuda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Burt Tsuchiya

Hideo Toyama

County of Kauai:

Bryan Mamaclay

Department of Planning and Economic Development:

Abe Mitsuda

POSITION OF THE PARTIES

County of Kauai - Approval.

Department of Planning and Economic Development - Approval.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- (1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:
 - (a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
 - (b) It shall take into consideration the following factors:
 1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
 2. Substantiation of economic feasibility by the petitioner.
 3. Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.
 4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.
 - (c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.
 - (d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and

particularly when indicated for future urban use on State or County General Plans.

- (e) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.
- (f) Lands which do not conform to the existing standards may be included within this District:
 - 1. When surrounded by or adjacent to existing urban development; and
 - 2. Only when such lands represent a minor portion of this District.
- (g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.
- (h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

FINDINGS OF FACT

The Panel of the Land Use Commission, after having duly considered the record in this docket, the testimony of the witnesses and the evidence adduced herein, makes the following findings of fact:

- 1. The subject property, owned in fee simple by the Petitioner herein, is located at Koloa, Island of Kauai, State of Hawaii, and consists of approximately 4 acres, more particularly described as Tax Map Key No. 2-8-02: portion of parcels 1 and 5. The subject property is located on the easterly side of Maluhia Road and on the northerly side of Wailaau Road. At present, six dwelling units which were

formerly used as residences for supervisory personnel of the Petitioner when it was engaged in the sugar industry, are located on the subject property. The subject property is currently being used for residential purposes as it has for the past 40 years. The subject site is adjacent to the Koloa town Urban District and the surrounding lands within the Agricultural District also contain some urban residential uses.

2. As reflected on Land Use District Boundary Map (K-8) Koloa, the subject property is situated within the State Land Use Agricultural District. The Kauai County General Plan designates three (3) acres of the subject property as "Single-Family Residential." The remaining one (1) acre, located at the eastern portion of the subject site, is designated "Open," a designation which reflects the probable flooding limits of the area which borders Waihohonu Stream. A County General Plan amendment will be required to reclassify this portion of the subject property from "Open" to "Single-Family Residential" if the Petition is approved.

3. The County zoning for the subject property is "Agricultural District (A)" and "Open (O)." The subject property is unclassified under the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. The subject property is not situated within the Shoreline Management Area (SMA) boundary.

4. The appropriateness for urban settlement north of Koloa town has been further reinforced by land use patterns formulated by the proposed Koloa-Poipu-Kalaheo

Development Plan which delineates approximately 64 more acres in the same area for "Single-Family Residential" use. The Development Plan functions as a means to amend the General Plan Land Use designation for this area. The Land Study Bureau Detailed Land Classification for the lands of Kauai (1967) shows the subject property in urban use (U).

5. The subject property has an elevation of approximately 240 feet above sea level with a slope of 3 percent to the southeast, draining into Waihohonu Stream. The average rainfall for the area is 35 inches per year.

6. The U.S.D.A. Soil Conservation Service, Soil Survey Report classifies the soil of the subject property as Lihue silty clay (LhB) and Pohakupu silty clay loam (PkB).

Lihue silty clay (LhB) soil is found on the tops of broad interfluves in the uplands. In a representative profile, the surface layer is dusky-red silty clay about 12 inches thick. The subsoil, more than 48 inches thick, is dark-red and dark reddish-brown. The surface layer is strongly acid and the subsoil is slightly acid to neutral. Permeability is moderately rapid, runoff is slow and the erosion hazard is no more than slight. This soil is used for sugarcane, pineapple, pasture, truck crops, orchards, wildlife habitat and homesites.

Pohakupu silty clay loam (PkB) soil has smooth slopes and occurs on terraces and alluvial fans. In a representative profile, the surface layer is dark reddish brown silty clay loam about 13 inches thick and the subsoil is 40 to more than 60 inches thick. Permeability is moderately rapid, runoff is slow and the erosion hazard is slight. This soil is used for sugarcane and pineapple on Kauai.

More than three-fourths of the subject property consists of Lihue silty clay (LhB).

7. In concurrence with the Petition's claim that there are no known historic or archaeological sites on the subject property, the Department of Land and Natural Resources ("DLNR"), in a letter to the Department of Planning and Economic Development dated December 15, 1982, stated that a review of Historic Sites records indicated that the proposed project is not located on historic properties that are listed on the Hawaii Register or the National Register of Historic Places, or that have been determined eligible for inclusion on the National Register of Historic Places. Due to the lack of archaeological surveys in the area, the DLNR is not aware that significant resources exist in the project area, but this, however, does not confirm the absence of historical, cultural, architectural and/or archaeological resources on the subject property. The DLNR has requested that it be contacted if any previously unidentified sites or remains, burials, rock or coral alignments, pavings or walls are encountered.

8. According to the Petition, there are no endangered flora or fauna on the subject property since it has been in continuous use for residential purposes over the past 40 years.

9. The Department of Health, in letter dated October 22, 1982, stated that potential buyers should be advised by the developer of adverse environmental conditions through proper provisions in the property deed as long as the environmental conditions exist. The environmental conditions prospective buyers should be made aware of

include: smoke, noise, dust and mosquito nuisances from nearby agricultural activities; excessive mosquito nuisance from nearby McBryde Plantation trash land; excessive noise and dust from cane hauling activities from the cane haul road adjacent to the proposed Lot 4; and dust noise and smoke from agricultural activities from nearby canefields. The Petitioner has represented that there have been no complaints of dust, noise or smoke in the area. Occasionally, there are complaints about mosquitoes.

10. The Petitioner intends to subdivide the subject property into six (6) separate lots of approximately one-half acre each with each lot containing one (1) already existing dwelling. The Petitioner then plans to give the existing tenants first rights to purchase these house and lot packages at "fair market prices," before offering them for sale to the general public. The Petitioner has represented that unless pressing repair is needed, the house and lot packages will be sold as is.

The houses originally served as residences for supervisory personnel when Petitioner was engaged in the sugar industry, but that activity was discontinued in 1974. Presently, the houses are being rented from the Petitioner by individuals who are not employees, and the Petitioner does not wish to continue renting these houses. The Petitioner has represented that the land value for the area is approximately \$5 per square foot and that the price of a house and lot package would be between \$150,000.00 and \$200,000.00. Rentals now range from \$200 to \$500 per month, and the Petitioner has represented that it is likely that the present tenants will be able to purchase the lots.

The State Department of Health, in a letter to the Department of Planning and Economic Development dated October 22, 1982, stated that before final approval of the subdivision, the property line within proposed Lot 4 shall be removed or the existing dwelling shall be demolished or relocated to conform to Chapter 2, Housing Public Health Regulations, State of Hawaii. The regulations do not allow a house to straddle a property line. The Petitioner has represented that the property line will be amended during the subdivision application process.

The Petitioner has stated that the completion date for subdivision is dependent on the dates the approvals are received for this Petition and the required zoning designation from the County of Kauai.

Inasmuch as all improvements are existing, Petitioner has represented that it has the financial capability to undertake and complete the proposed development. Stockholders' equity amounted to \$12,031,897 in 1980, and \$11,857,385 in 1981.

11. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Water - At present, water is provided to the six homes existing on the subject property by a private water system owned by the Petitioner. The water transmission system, however, does not meet Kauai County standards. If the developer wishes to connect to the County water system, the County of Kauai Water Department will impose requirements to upgrade and provide for adequate water service and fire flows to the site. Until such time as the

developer desires to connect to the County water system, the County will allow the subject property to be serviced by the private water system. The Petitioner has represented that it will continue to provide water to the six homes as long as no new units are installed requiring an expansion of the system. When the properties are sold, included with the deed will be a covenant requiring the owners to connect with the County system if they desire to expand the capacity of the water system of their houses.

b. Sewage - As no public sewage system is available at the present time, all six houses on the subject property are serviced by cesspools. The State Department of Health, in a letter dated October 22, 1982, stated that the existing cesspool structures shall conform to the requirements of Chapter 38, Private Wasteland Treatment Works and Individual Water Systems, Public Health Regulations, State of Hawaii, which directs that cesspools be located 9 feet from a property line, 10 feet from a single-family dwelling unit and 50 feet from streams.

c. Drainage - The subject property has a 3 percent slope toward the southeast and drains naturally into Waihohonu Stream. The County of Kauai Department of Public Works, in a letter to the Department of Planning and Economic Development dated October 14, 1982, stated that the 100-year flood from the Waihohonu Stream may inundate

portions of lands on the easterly end of the subject property. Also, the management of flood plains to protect lives and properties from flood risk and damage is required under County Ordinance No. 416. The Kauai County Department of Public Works has requested that flood studies be conducted to determine flood limits and building restrictions. The Petitioner has represented that there has been no flooding during the past four years or damage to the house located near Waihohonu Stream.

d. Traffic - The County of Kauai, Department of Public Works, in a letter to the Department of Planning and Economic Development dated October 14, 1982, stated that the subject property abuts Wailaau Road which has a row width of 30 feet and a pavement width of 12 feet. These widths are substandard for either a minor or collector street and will not accommodate two-way traffic. The narrow shoulders also do not safely accommodate utilities and pedestrian traffic. However, as long as additional lots are not developed on the subject parcel, the Department of Public Works does not envision traffic impacts.

e. Schools - The State Department of Education, in a letter to the Department of Planning and Economic Development dated October 7, 1982, stated that the subject request for district boundary reclassification and the subsequent sale of the six existing dwellings will have a negligible impact on the schools in the area.

f. Parks - The Koloa Town Park, a major County recreational facility for the region is located near the subject property.

g. Electricity/Telephone/Gas Service - Local utilities are currently providing all existing dwelling units with their respective services.

h. Police and Fire Protection - The subject property is currently included in the regular beat of the Kauai Police Department. The Koloa Fire Station on Maluhia Road is located approximately .54 mile from the subject property and will be providing mobile pump units in case of emergencies.

i. Solid Waste - Refuse and garbage collection services are provided by the County of Kauai for the existing houses.

12. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the County of Kauai and the Department of Planning and Economic Development have recommended that the reclassification of the subject property be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 4.00 acres of land, situated at Koloa, Island and County of Kauai, from the Agricultural District to the Urban District and an amendment to the district boundaries accordingly is reasonable and non-violative of the Section 205-2 of the Hawaii Revised Statutes.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A82-539, consisting of approximately 4.00 acres of land, situated at Koloa, Island and County of Kauai, State of Hawaii, identified as Tax Map Key No. 2-8-02: portions of parcels 1 and 5, (since redesignated as portions of parcels 1 and 13) shall be and hereby is reclassified from the Agricultural District to the Urban District and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 9th day of May, 1983, per Motion on April 14, 1983.

LAND USE COMMISSION
STATE OF HAWAII

By Richard B. F. Choy
RICHARD B. F. CHOY,
Vice-Chairman

By Lawrence F. Chun
LAWRENCE F. CHUN,
Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO,
Commissioner

By Winona E. Rubin
WINONA E. RUBIN,
Commissioner

By Teofilo Phil Tacbian
TEOFILO PHIL TACBIAN,
Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE,
Commissioner

By Frederick P. Whittemore
FREDERICK P. WHITTEMORE,
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
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GROVE FARM PROPERTIES, INC. (KAUAI)) DOCKET NO. A82-539
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To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 4 Acres,)
2-8-02: Portion of parcels 1 and)
5, at Koloa, Island of Kauai,)
State of Hawaii, into the Urban)
Land Use District)
_____)

CERTIFICATE OF SERVICE

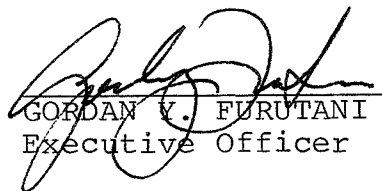
I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

AVERY YOUN, Planning Director
Planning Department
County of Kauai
4280 Rice Street
Lihue, Hawaii 96766

DAVID W. PRATT, President and Chief Executive Officer
Grove Farm Properties, Inc.
Puhi Rural Section
Lihue, Hawaii 96766

DATED: Honolulu, Hawaii this 9th day of May, 1983.


GORDAN V. FURUTANI
Executive Officer

DOCKET NO. A82-539 - GROVE FARM PROPERTIES, INC. (KAUAI)

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on May 9, 1983:

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

BENJAMIN M. MATSUBARA
Suite 1748, 190 South King Street
Pacific Trade Center
Honolulu, Hawaii 96813

MORRIS SHINSATO, County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

A82-539 GROVE FARM PROPERTIES, INC.

6 Kumao Fujii & wife Mitsuyo Fujii
Kiichi Fujii Adm.

7 Isaac W. Kari, Jr. & wife Gladys Y. Tze

8 Martin H. Steeles, Jr.

9 Alexander G. Ruiz & wife Yasue F. Tze

11 & 10 Serapion S. Javier & wife Margaret B. -4r

A82-539 GROVE FARM PROPERTIES
AGRICULTURAL TO URBAN 4 ACRES

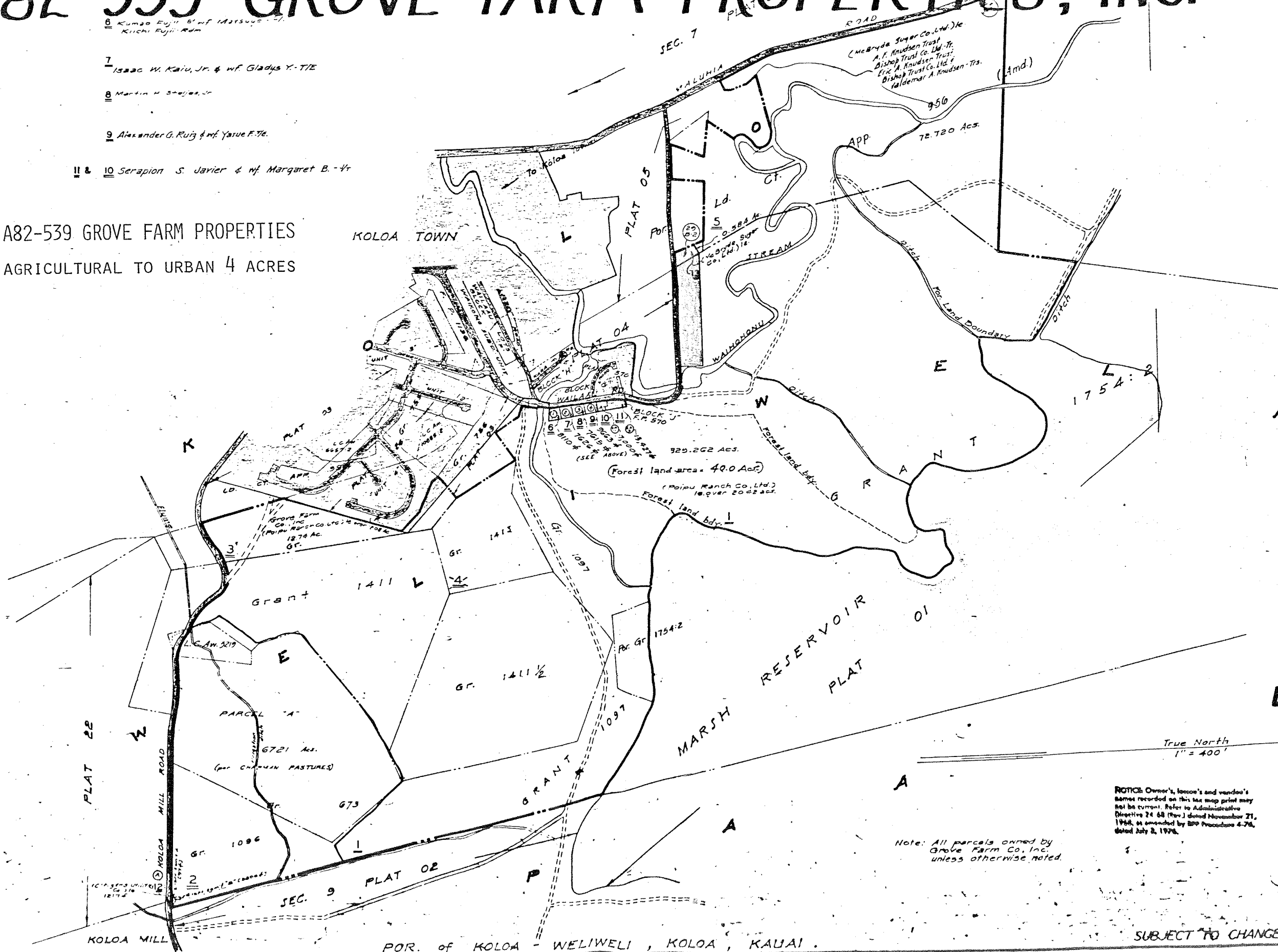


EXHIBIT A

NOTICE: Owner's, lessee's and vendee's names recorded on this tax map print may not be current. Refer to Administrative Directive 24-68 (Rev. J) dated November 21, 1968, as amended by BPP Procedure 4-76, dated July 2, 1976.

Note: All parcels owned by Grove Farm Co., Inc. unless otherwise noted.

Parcels Dropped: 11, 4, 2

TAXATION MAPS BUREAU TERRITORY OF HAWAII TAX MAP		
FOURTH	SEC.	DIVISION
2	8	02
CONTAINING PARCELS		
SCALE 1 in = 400 ft		

SUBJECT TO CHANGE

PRINTED SEP 29 1982

Dwg No. JOSE
 Source: Maps Bureau & Lt. St. App. 956 (Am.)
 By: S.C. & J.L.C. Oct. 1976.

No. 3 1945

22 1966

20 1976

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