

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
GROVE FARM PROPERTIES, INC.)
To Amend the Agricultural Land)
Use District Boundary into the)
Urban Land Use District for)
Approximately 60 Acres at Puhi,)
Lihue, Kauai, State of Hawaii,)
Tax Map Key No.: 3-3-02: Portion 1)

DOCKET NO. A87-612
GROVE FARM PROPERTIES,
INC.

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

In the Matter of the Petition of)	DOCKET NO. A87-612
)	
GROVE FARM PROPERTIES, INC.)	GROVE FARM PROPERTIES,
)	INC.
To Amend the Agricultural Land)	
Use District Boundary into the)	
Urban Land Use District for)	
Approximately 60 Acres at Puhi,)	
Lihue, Kauai, State of Hawaii,)	
Tax Map Key No.: 3-3-02: Portion 1))	

Grove Farm Properties, Inc., a Hawaii Corporation (hereinafter "Petitioner"), filed this petition on June 16, 1987, as amended by First Amendment filed on July 21, 1987, and as amended by Second Amendment filed on August 4, 1987, pursuant to Chapter 205, Hawaii Revised Statutes, and the Hawaii Land Use Commission Rules, State of Hawaii, to amend the land use district boundary for approximately 60 acres of land, Kauai Tax Map Key No.: 3-3-02: Portion of 1, situate at Puhi, Lihue, Island of Kauai, State of Hawaii (hereinafter "Property"), from the Agricultural District to the Urban District. The Land Use Commission (hereinafter "Commission"), having heard and examined the testimony, evidence and argument of counsel presented during the hearings, the Joint Proposed Findings of Fact and Conclusions of Law, and

Decision and Order submitted by the Petitioner, the County of Kauai Planning Department, and the Department of Business and Economic Development, State of Hawaii, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Commission conducted a hearing on this petition on September 9, 1987, pursuant to notice published in the Garden Island and The Honolulu Advertiser on July 31, 1987.

2. The Commission received written testimony from JoAnne Yukimura, Kauai Council member.

3. There were no requests for intervention in this petition.

4. A prehearing conference was held on August 20, 1987.

DESCRIPTION OF THE PROPERTY

5. The Property is identified as Kauai Tax Map Key Number: 3-3-02: Portion of 1, and consists of approximately 60 acres.

6. The Property, which is part of the Lihue-Puhi Master Plan (LP Masterplan) totaling approximately 892.5 acres, is located adjacent to the existing Puhi industrial area which is within the State Urban District.

7. The Property is owned by Grove Farm Company Inc. and leased to Lihue Plantation Co. It is currently being used for sugarcane cultivation.

8. Petitioner has the option to acquire the fee simple interest in the Property from its parent corporation, Grove Farm Company, Inc., a Hawaii Corporation.

9. The existing lease from Grove Farm Company, Inc. to the Lihue Plantation Co. provides for optional yearly withdrawals of any 25 acres of leased caneland by the Petitioner on a cumulative basis. Grove Farm Company, Inc. currently has the right to withdraw up to 265 acres, exclusive of 85 acres already withdrawn and inclusive of the Property.

10. The U.S. Department of Agriculture Soil Conservation Service Soil Survey indicates that two soil types are found on the Property. The most significant is the Puhi silty clay loam, 3 to 8 percent slopes (PnB) located on approximately 66 percent of the Property. The remainder of the site has Puhi silty clay loam, 15 to 25 percent slopes (PnD) soils in areas located in the vicinity of the drainageway. The PnB soils have a slight erosion hazard, generally slow runoff, and slight limitations for septic tank filter fields.

PnD soils have moderate erosion hazards, medium runoff, and severe limitations for septic tank filter fields. Both soil types are used primarily for agricultural purposes. PnD soils that are not suitable for cesspool use are located in the gulch area portion of the Property, which is not slated for development or cesspools.

11. The Land Study Bureau system of land classification has rated the Property as approximately 90 percent B78i and 10 percent C79i.

12. Approximately two-thirds of the Property is classified as "Prime" by the Agricultural Lands of Importance to the State of Hawaii (ALISH) system.

13. Topographical characteristics of the Property generally direct runoff toward the central part of the Property and into a tributary of Halehaka Stream. Slopes in the upper portions of the Property are generally moderate at about 3 percent. The more severe slopes of 15 to 25 percent are located in conjunction with the existing drainageway.

PETITIONER'S PROPOSED USE OF THE PROPERTY

14. Petitioner proposes to use the Property for the development of an extension of the adjacent Puhi light industrial area for warehousing, storage facilities, light manufacturing and fabrication. Petitioner also proposes minimal retail operations.

15. Petitioner does not anticipate heavy manufacturing uses to locate on the Property.

16. Petitioner has agreed to comply with provisions of Section 8-6.3 of the Revised Code of Ordinances of the County of Kauai dated 1976, subparagraph A, which states as follows:

"Sec. 8-6.3 Generally Permitted Uses and Structures.

(a) Limited Industrial. The following uses and

structures in limited industrial districts are permitted:

- (1) Accessory uses and structures
- (2) Animal hospital
- (3) Automobile service sales, repair and storage
- (4) Cemeteries, mortuaries and crematoriums
- (5) Communication facilities
- (6) Construction material storage
- (7) Food processing and packaging
- (8) Light manufacturing
- (9) Manufacturing in retail sales
- (10) Private and public utilities and facilities
- (11) Public parks and monuments
- (12) Research and development
- (13) Restaurants, bars and food services
- (14) Retail sales
- (15) Warehouses"

Petitioner also proposes to establish two churches within the Property although no specific sites have yet been determined.

17. The estimated number of lots being considered by the Petitioner ranges from approximately 80 to 125. Actual number of lots will depend on market considerations and may be increased to a maximum of 270.

18. The average estimated sale price for lots in the 60-acre project site is \$10.00 per square foot.

19. Petitioner anticipates completion of site improvements no sooner than September 1988. Completion dates for the proposed development is dependent upon obtaining necessary land use, zoning and permit approvals.

PETITIONER'S FINANCIAL CAPABILITY
TO UNDERTAKE THE PROPOSED DEVELOPMENT

20. Estimated cost to construct the light industrial area lots and associated roadways together with off-site water improvements will be approximately \$7,886,000.00.

21. Petitioner and its parent company, Grove Farm Company, Inc., have developed other major projects such as the Kukui Grove Center, which is a 25 million dollar project.

22. Petitioner believes that Grove Farm Properties has the financial ability to develop the project as proposed.

23. Petitioner's consolidated statement of income and retained earnings show retained earnings of \$7,341,072 for 1986.

STATE AND COUNTY PLANS AND PROGRAMS

24. The Property is designated in the State Land Use Agricultural District as shown on the Commission's Official Map K-11, Lihue.

25. The Kauai County General Plan has designated the Property and abutting lands (226 acres total) as "Urban Mixed Use". No General Plan change will be required to accommodate the proposed development. County zoning for the property is "Agricultural District (A)".

26. The Property is not located within the Kauai County Special Management Area.

NEED FOR THE PROPOSED PROJECT

27. The proposed light industrial park will be essentially an extension of the adjacent light industrial area in Puhi, with a focus toward non-retail service manufacturing and warehousing oriented establishments. Petitioner states that no space is currently available in the Puhi industrial area and only a limited number of resale spaces remain in the existing Lihue Industrial Park.

28. Petitioner's market study for the Property concluded that there is an increasing demand for light industrial land in east Kauai since the population is shifting toward east Kauai, and the economy is shifting toward tourism.

29. Petitioner's consultant Ming Chew stated there is an acute under supply of industrial lands in east Kauai and the proposed project is well located to accommodate that imbalance of demand relative to supply.

30. Petitioner's consultant predicts that the absorption rate for the proposed light industrial lots will approximate 15 acres per year until about 1989 and then decline to about 12 acres per year until 1990 or to 1994.

31. Petitioner's consultant states that evidence of rapid price appreciation during the last three years is also indicative of an acute under supply of industrial land.

32. Petitioner's consultant also states that demand appears to be for half acre lots and smaller.

33. Petitioner recognizes that some demand for additional housing may result from the increased job opportunities associated with the proposed project and other commercial growth in the area.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES Water

34. Petitioner estimates that the light industrial area will generate a water demand based on a consumption level of 4,000 gallons per day per acre of industrial use.

35. Petitioner states it will fund on-site improvements, including an 8 or 12-inch water line to service the industrial area and a 6-inch line for fire protection.

36. The Department of Water, County of Kauai, has indicated that adequate water sources will be available to accommodate the proposed development. County policy prevents the Department of Water from guaranteeing future water availability until zoning is established and plans for the subdivision are approved.

Waste Water Systems

37. Petitioner estimates the sewage volume from the light industrial area to be approximately 4,000 gallons per acre of building area.

38. Petitioner is proposing private wastewater systems (cesspools) to the extent permitted by state law.

39. The soils in the area of the drainageway have severe limitations for cesspools and septic tank filter fields and will not be used for cesspools.

40. The capacity of cesspools are determined by design characteristics and needs of the user.

41. The State Department of Business and Economic Development (DBED) believes that use of cesspools for on-site wastewater disposal may be troublesome in light of soil limitations, proximity of the site to a surface drainageway, density of development, and unknown composition of wastewater discharges characteristic of light industrial areas.

42. Petitioner's engineer has indicated that cesspools, which uses the earth to treat wastewater, will not be located in areas where soils are not conducive to cesspool use.

43. Though it is not the normal experience, it is possible that overflow from cesspools can result which could discharge contaminants into nearby drainageways.

44. If the groundwater became contaminated as a result of cesspool use, it would be difficult to detect until the contamination reached a potable water source or until a well is drilled in the area of groundwater contamination. At this time, there is no potable source or well source of water that is close to the Property which could be contaminated in such a manner.

45. In their comments of August 3, 1987, the Kauai Department of Public Works expressed concern that the feasibility of alternative systems in lieu of cesspools have not been adequately addressed.

46. Petitioner's engineering consultant has stated that other alternative waste water disposal systems may be required by the Department of Health (DOH), and that the Petitioner will cooperate with DOH to implement their requirements.

47. Petitioner's engineering consultant has not discussed disposal requirements for the light industrial area with the DOH, but Petitioner agrees to satisfy DOH requirements regarding wastewater disposal.

48. Petitioner states that the use of the existing Lihue sewage treatment plant may not be feasible due to capacity limitations, location, right-of-way restrictions, and topography.

49. A sewer master plan prepared by the Petitioner concluded that expansion of the existing plant or development of a new plant would be comparable in cost.

50. The composition of wastewater could be different in an industrial area from that of a residential area.

51. DBED's Coastal Zone Management Program (CZM) suggests consideration of restrictive covenants to limit the creation and disposal of hazardous waste products within the industrial area.

52. Petitioner is willing to implement restrictive covenants which would require contaminant measures for the storage of hazardous chemicals.

Utilities

53. Petitioner will provide underground electrical, telephone and possibly cable TV service to the Property.

Drainage

54. Petitioner's engineer has stated that hard cover surfaces will increase drainage flow. Petitioner proposes to develop a retention basin to capture these excess flows, and to control release of flows over an extended time period.

55. Retention basins are a design feature of the drainage system planned for the LP Masterplan area. The light industrial area is the first area in the LP Masterplan to implement this concept.

56. Petitioner believes the water quality of surface runoff may actually improve as a result of construction of the retention basin.

57. Petitioner will provide a retention basin sized to meet the requirements of the Kauai Department of Public Works.

58. The Kauai Department of Public Works is concerned that the runoff from the Property will be diverted between drainage basins without proper flood control studies to determine impact and recommends a complete flood study and evaluation of proposed flood control facilities be required before the project is developed.

59. Petitioner states it will prepare a final flood study and submit it to the County of Kauai for review and analysis if the Property is reclassified.

60. Petitioner states it will not shift surface water from one drainage basin to another.

61. Petitioner believes volume of drainage runoff at the point of discharge will not be affected.

62. Petitioner's engineering consultant believes that no downstream property damage will result from the project's runoff since additional flows will be retained in the proposed basin.

63. Petitioner's engineering consultant has concluded that the existing bridge over Puhi Road is inadequately sized in relation to the drainage basin involved. Petitioner will replace the existing bridge with a more appropriately sized structure.

64. The Department of Land and Natural Resources (DLNR) is concerned that aquatic resources in Nawiliwili Harbor may be impacted by surface water runoff. It recommends that no runoff be directed to Huleia Stream.

Of particular concern is the pollution potential of surface runoff if operations utilizing/storing quantities of petroleum products or other chemicals is allowed. DLNR recommends that systems be required to contain these chemicals in the event of a spill to prevent such materials from entering or leaching into the storm drainage system.

Transportation Impacts

65. Petitioner's traffic engineering consultant has characterized the traffic in Lihue at peak hours as poor and getting worse.

66. Roadway improvements to the intersection of Puhi Road near the Community College were installed by the Department of Transportation (DOT) in the form of acceleration and deceleration lanes.

67. To mitigate the impact of the proposed light industrial development, Petitioner's engineering consultant recommended that the first step should be channelization of the makai side of the intersection of Puhi Road and Kaumualii Highway. If channelization is insufficient to handle additional traffic flows, the next phase of improvement would be the installation of a traffic light.

68. Petitioner's traffic impact study estimates that both left and right turns from Puhi Road onto Kaumualii Highway will experience levels of service "F" (on a scale of "A" to "F", "F" being the worst level of service) by the year 1996.

69. DOT conducted a test which determined that signalization at the Puhi-Kaumualii Intersection is not currently needed, but also recognized that this would change in the future.

DOT recommends that the Petitioner fund and install these improvements in coordination with DOT.

70. Petitioner's traffic engineer has stated that the Petitioner will work with the DOT to mitigate traffic impacts created by the development of the industrial park.

71. Petitioner's transportation consultant also recommends improvements to Puhi Road which includes widening, other necessary transportation improvements within the light industrial area.

72. Petitioner intends to improve Nuhou Road, located along the mauka boundary of the Property, thereby creating a new channel for traffic circulation in and around Lihue. Improvements on Nuhou Road will be on-going as the LP Masterplan area is developed.

Public Services

73. The Lihue Fire Station, located approximately 2.0 miles from the proposed development and the Lihue Police Station located approximately 1.8 miles away, will serve the proposed development. Adequate fire fighting water will be available from a hydrant system to be constructed as part of the development and connected to the County water system. Phased improvements to police and fire facilities may be required as the different phases of the project are completed.

74. Petitioner has estimated that 16,800 pounds of solid waste per day will be generated by the proposed use of the Property. Disposal sites will be either the Halehaka and/or Kekaha landfills.

Housing

75. Petitioner is in the midst of reevaluating its time schedule regarding the construction of multi-family and residential housing in the General Plan Lihue-Puhi Project District. Petitioner recognizes that the need for housing in the Puhi area may have accelerated faster than originally anticipated and is evaluating its capability to respond to that need. Affordable housing is also being considered as part of its re-evaluation process.

Recreation

76. Petitioner believes the proposed development will not increase the use of existing State or County recreational facilities.

IMPACT UPON RESOURCES OF THE AREA

77. Petitioner submitted a County approved Environmental Impact Statement for the LP Masterplan.

Agricultural Resources

78. Reclassification of the Property will result in the removal of approximately 60 acres from sugarcane cultivation.

79. Petitioner estimates that the removal of the Property from agricultural cultivation will not have a significant impact on Kauai's agricultural production. The Department of Agriculture cautions that although other potentially productive lands on Kauai do exist, it does not

necessarily mean that such lands are available for agricultural purposes.

80. Lihue is essentially surrounded by prime agricultural lands and any outward expansion of the community will be into these areas.

81. Petitioner indicates that the increased efficiency of new farming methods currently available can replace lost production resulting from development of the proposed light industrial area. No impact on sugarcane operations or workers now employed at the Lihue Plantation Co. is anticipated.

82. Petitioner states that no studies have been conducted to determine the viability of the Property for diversified agricultural purposes, although studies have been conducted by other landowners.

83. Petitioner estimates that the removal of these lands from agricultural production will reduce the agricultural lands on Kauai classified as A, B, or C by the Land Study Bureau by 0.1 percent.

84. A landscape buffer will be provided between the proposed light industrial area and the existing agricultural area across from Puhi Road. This agricultural area may be developed into residential units in the near future.

Historical/Archaeological

85. Petitioner states that the entire Property has been under intensive sugarcane cultivation for over 100 years

and that any sites which may have existed "have undoubtedly been destroyed."

86. Petitioner states that although the areas of gulches and wasteland on the Property have not been cultivated, they have been dredged and cleaned.

87. Petitioner's belief that archaeological sites have been destroyed is not based on a professional archaeological study.

88. The Department of Land and Natural Resources recommends that a professional archaeological survey of the Property be undertaken prior to acting on the petition to determine if significant historic sites are present.

89. Archaeological sites have been discovered in the area of Huleia Stream, approximately one mile from the Property.

Flora and Fauna

90. Petitioner's consultant states that the Property is not conducive to important types of flora and fauna due to the previous historic uses of the Property.

91. Petitioner states no threatened or endangered species were found to inhabit the area based on an Environmental Impact Statement (EIS) prepared by the U.S. Department of Transportation and State of Hawaii for the Hanamaulu-Ahukini Cutoff Road.

Petitioner assumes that the same fauna described in this EIS are present on the Property.

Air Quality

92. Petitioner states that air quality impacts will occur as a result of construction dust and exhaust from construction equipment. Petitioner will control fugitive dust by watering.

93. The Department of Health is concerned that the location of residential development adjacent to the light industrial area and agricultural operations may not be compatible uses. They suggest that potential buyers be notified of possible odor, dust, noise and smoke nuisances.

94. Petitioner is willing to inform perspective occupants of the Property of possible dust, noise and other impacts resulting from their operations.

RELATIONSHIP AND CONTIGUITY OF THE PROPERTY TO ADJACENT URBAN DISTRICTS

95. The Property is contiguous to the existing Puhi Industrial area and within the area designated "Urban Mixed Use" in the County's General Plan for the Lihue-Puhi District.

96. The proposed reclassification and proposed development of the Property will not contribute to scattered urban development.

CONFORMANCE TO STATE LAND USE DISTRICT REGULATIONS

97. The proposed reclassification of the Property conforms with all provisions of the Hawaii Land Use Commission Rules, Subchapter 2, Establishment of the State Land Use Districts, Section 15-15-18.

CONFORMANCE WITH THE HAWAII STATE PLAN

98. The proposed development is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

99. Petitioner has adequately addressed the relationship of the proposed light industrial area to the Hawaii State Plan's objectives and policies with respect to the economy and job creation.

100. The proposed development would assist both the short-term and long-term growth of the area's economy and have a favorable financial multiplier effect within the state economy.

101. In their comments to the Lihue-Puhi EIS, the Department of Agriculture and the Petitioner refer to the Agriculture Functional Plan Implementing Action B(5)(c) which states in part that agricultural lands should remain in agricultural production "except where, by the preponderance of the evidence presented, injustice or inequity will result or overriding public interest exists to provide such lands for other objectives of the Hawaii State Plan".

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the parties not adopted by the Commission herein, or rejected by clear contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes and the Hawaii Land Use Commission Rules, the Commission finds upon the preponderance of evidence that the reclassification of approximately 60 acres from the Agricultural to the Urban District at Puhi, Lihue, Kauai, Hawaii, Tax Map Key Number 3-3-02: Portion of 1, for a light industrial park, subject to the conditions stated in the Order below, conforms to the standards established in Subchapter 2 of the Hawaii Land Use Commission Rules, is reasonable and non-violative of Chapter 205-2, Hawaii Revised Statutes, as amended, and is consistent with the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as amended, and the Hawaii Coastal Zone Management Act, Chapter 205A, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property which is the subject of this Petition in Docket No. A87-612 filed by Grove Farm Properties, Inc., consisting of approximately 60 acres of land situated at Puhi, Lihue, Island of Kauai, State of Hawaii, identified as Kauai Tax Map Key No. 3-3-02: Portion of 1, and more approximately shown on Exhibit "A" attached hereto and incorporated herein by reference, shall be and the same is hereby reclassified from the Agricultural District to the Urban District, and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. The Petitioner shall comply with the regulations and directives of the State Department of Health and other appropriate agencies in funding the design and construction of wastewater facilities for the Property.

2. Petitioner shall comply with the requirements of the State Department of Health for storage and/or disposal of hazardous waste prior to their establishment within the Property.

3. The Petitioner shall fund the design and construction of highway improvements for access to the Property, and other improvements as may be required by the State Department of Transportation and the County of Kauai.

4. The Petitioner shall provide notification to future lessees or occupants of the Property, of the potential odor and noise and dust pollution resulting from the Property and surrounding agricultural operations.

5. Petitioner shall prepare a drainage study to include an evaluation of the Property's existing drainage characteristics and the effectiveness of proposed drainage control measures. The completed drainage study shall be submitted to the Kauai Department of Public Works for their review and approval.

6. Petitioner shall cause a qualified archaeologist to conduct a field reconnaissance or survey of the Property and submit the findings to the Department of Land and Natural

Resources, Historic Sites Office. Should any historical or archaeological sites or remains be discovered during construction, work within the affected area shall stop immediately and Petitioner shall notify appropriate State and County agencies and take such measures as required by the appropriate State and County agencies to preserve such sites or remains.

7. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

DOCKET NO. A87-612/GROVE FARM PROPERTIES, INC.

Done at Honolulu, Hawaii, this 28th day of December, 1987
per motions on November 16, 1987 and December 17, 1987.

LAND USE COMMISSION
STATE OF HAWAII

By *T. P. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

By *Everett L. Cuskaden*
EVERETT L. CUSKADEN
Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

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I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and 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:

DENNIS LOMBARDI, ESQ.
Case & Lynch
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813

ESTHER UEDA, Executive Officer

DOCKET NO. A87-612 - GROVE FARM PROPERTIES, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on December 28, 1987.

ROBERT A. MARKS, Supervising Deputy Attorney General
465 South King Street, Room 200
Honolulu, Hawaii 96813

MS. BETTY MATSUMURA, Chairperson
Planning Commission
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