



SUCCESSOR PETITIONER (TO A PORTION OF PARCEL 8)  
REGENCY PUAKEA PROPERTIES, LLC'S MOTION FOR ORDER  
RELEASING CONDITION NO. 2 AS SET FORTH IN THE LAND USE COMMISSION'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
DATED JUNE 30, 1989 AND DECEMBER 20, 1995

I. **RELIEF AND ORDER SOUGHT**

REGENCY PUAKEA PROPERTIES, LLC, a Hawaii limited liability company, as successor petitioner ("Successor Petitioner") to the portion of the Petition Area identified as Tax Map Key No. (4) 3-3-003-045 ("Lot 1545-A"), by and through its attorneys, Yamamoto Hetherington, LLLC, hereby requests that the State of Hawai'i Land Use Commission ("Commission"):

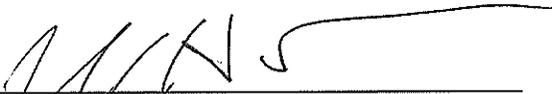
- (1) recognize Regency Puakea Properties, LLC as the Successor Petitioner to a portion of Parcel 8, with full standing to seek and obtain the relief requested in this Motion; and
- (2) issue an order modifying, as requested hereinbelow, the Commission's: (a) *Findings of Fact, Conclusions of Law, and Decision and Order* dated June 30, 1989 ("1989 Order"); and (b) *Findings of Fact, Conclusions of Law, and Decision and Order* dated December 20, 1995, as amended by the Commission's letter dated January 5, 1996 (as amended, the "1995 Order"), to expressly release Lot 1545-A from the affordable housing conditions for the Petition Area as those conditions have been fully satisfied and do not apply to Lot 1545-A; and
- (3) to authorize the Commission's Executive Director to sign a *Certification Regarding Declaration of Land Use Commission*

*Conditions* prepared and requested by the U.S. Department of Housing and Urban Development ("HUD") for Lot 1545-A.

II. **GROUND FOR MOTION**

This motion is made pursuant to Hawaii Revised Statutes ("HRS") Chapter 205, and Hawaii Administrative Rules ("HAR") §§ 15-15-70 and -90, the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein.

Pursuant to HAR § 15-15-70(c), Regency Puakea Properties, LLC requests a hearing on this motion.



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J. GEORGE HETHERINGTON

Attorney for Successor Petitioner to Lot 1545-A  
**REGENCY PUAKEA PROPERTIES, LLC**

Dated: Honolulu, Hawaii May 20, 2025

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A89-636
	)	
of	)	MEMORANDUM IN SUPPORT OF
	)	MOTION
GROVE FARM PROPERTIES, INC.	)	
	)	
To Amend the Agricultural Land Use District	)	
Boundary into the Urban Land Use District	)	
for Approximately 103.570 Acres of Land	)	
Situate at Lihue, Kauai, State of Hawai'i,	)	
TMK: (4) 3-3-003-045	)	
_____	)	

**MEMORANDUM IN SUPPORT OF MOTION**

**I. INTRODUCTION AND IDENTIFICATION OF PETITION AREA**

**A. The 1989 Order**

Grove Farm Properties, Inc. ("Original Petitioner") initiated these proceedings on February 16, 1989, via filing of its *Petition to Amend the Agricultural Land Use District Boundary into the Urban Land Use District* ("Petition"). The Petition sought reclassification of approximately 603 acres of land ("Petition Area") from the agricultural land use district to the urban land use district in connection with the development of a new residential community.<sup>1</sup>

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<sup>1</sup> See generally the 1989 Order.

Upon hearing on the Petition, the Commission issued the 1989 Order, which reclassified a portion of the Petition Area referred to as "Increment I", consisting of approximately 480 acres, from the agricultural land use district to the urban land use district. The 1989 Order also ordered that the remaining balance of the Petition Area, referred to as "Increment II", be reclassified at a later date, upon a prima facie showing of certain improvements to Increment I having been substantially completed.<sup>2</sup>

The 1989 Order notably imposed certain conditions upon the reclassification and development of Increment I and Increment II, including certain affordable housing requirements ("Affordable Housing Requirements"). The Affordable Housing Requirements set forth in the 1989 Order state that:

2. The affordable housing requirement shall be satisfied as follows:

A. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County's median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available

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<sup>2</sup> See the 1989 Order at 31-32; see also the 1995 Order at 1.

at rents which families in the specified income ranges can afford.

B. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (with the subject petition area) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.<sup>3</sup>

It should be noted that the Affordable Housing Requirements were intended to be satisfied across the entire Petition Area and that not every parcel would be developed with housing or affordable housing. For instance, the land that became Lot 1545 A was identified as having zero affordable units on page 8 of the 1989 Order.

Subsequent to, and in accordance with, the Commission's issuance of the 1989 Order, a *Declaration of Land Use Commission Conditions* was recorded on June 14, 1990, as Land Court Document No. 1737707 ("Declaration"). The Declaration encumbered both Increment I and Increment II with the Affordable Housing Requirements. The Affordable Housing Requirements continue to encumber both Increment I and Increment II to this day.

#### **B. The 1995 Order**

The Commission issued the 1995 Order upon hearing on the Original Petitioner's *Motion to Approve Incremental Redistricting of the Balance of Increment II Lands From Agricultural to Urban Classification*, filed in these proceedings on July 31, 1995. The 1995

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<sup>3</sup> See the 1989 Order at 33-34.

Order reclassified Increment II, consisting of approximately 103.570 acres, and comprised of Parcels 8, 17, 19, 20, 21, the makai half of Parcel 16, the mauka half of Parcel 7, and the Kaumualii Alignment Area, from the agricultural land use district to the urban land use district.<sup>4</sup> The location of Increment II are shown attached to the 1989 Order as Exhibit A and as the "Approved Area" on page 17 of the 1995 Order.

Additionally, the 1995 Order imposed upon the reclassification and development of Increment II certain Affordable Housing Conditions that are identical to those imposed by the 1989 Order except that the 1995 Order, as clarified by a January 5, 1996 Memorandum from Esther Ueda, Executive Officer of the Commission, deleted the phrase "thirty percent (30%) of the units which families with an income range of 80 to 120 percent of Kauai County's median income can afford and" in the fifth line of Condition No. 2.a.

Despite the exclusion of the aforementioned requirement from the Affordable Housing Requirements contained in the 1995 Order, the Declaration was never amended to reference such change with respect to Increment II.

### **C. Sale of a portion of Parcel 8**

As noted above, Increment II consists of approximately 103.570 acres and is comprised of Parcels 8, 17, 19, 20, 21, the makai one-half of Parcel 16, the mauka one-half of Parcel 7, and the Kaumualii Alignment Area. On March 8, 2001, Original Petitioner sold a portion of Parcel 8, more specifically identified as Lot 1545-A, Tax Map Key No.

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<sup>4</sup> See the 1995 Order at 4.

(4) 3-3-003-045-0000, located at 4391 Nuhou Street, Lihue, Hawaii 96766, to an affiliate of Successor Petitioner via a *Limited Warranty Deed and Reservation of Rights* dated December 19, 2000, filed with the Office of the Assistant Registrar of the Land Court (“Land Court”) of the State of Hawai`i as Document Number 2688215, which was subsequently transferred to Successor Petitioner via *Warranty Deed* filed on March 27, 2003 in the Land Court as Document Number 2908242.<sup>5</sup>

At the time of the sale, Lot 1545-A had not been developed as a residential community, as was contemplated by Original Petitioner when it sought reclassification of the Petition Area, and when the Affordable Housing Requirements were imposed on Increment II and, thereby, on Lot 1545-A. Successor Petitioner developed Lot 1545-A as an assisted living facility named “Regency at Puakea” with 82 assisted living facility beds, and will not be offering any homes or residential units for sale, affordable or otherwise on Lot 1545-A.

Moreover, Condition 11 of the 1989 Order required Grove Farm to notify the LUC of any intent to sell any portion of the Petition Area before development. The annual reports filed from 1999 through 2002 notified the LUC that LOT 1545-A was being created and was being sold to Successor Petitioner for development of an assisted living facility. Consistent with the fact that not every parcel was required to have affordable housing, for the past 25 years, the subject parcel was intended and reported to be commercial use, not affordable housing.

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<sup>5</sup> Regency at Puakea, L.L.C. changed its name to Regency Puakea Properties, LLC.

## II. COMMISSION CRITERIA FOR A MOTION TO AMEND

### A. The Commission's authority to amend the 1989 Order and the 1995 Order

HAR § 15-15-94 provides that:

- (a) If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed by the commission, or imposed pursuant to section 15-15-90(e) or (f), or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.
- (b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.
- (c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11.<sup>6</sup>

Importantly, Section 12 of the 1989 Order and the 1995 Order expressly reserve the right by the LUC to fully or partially release the conditions in the orders as to all or any portion of Increment II upon motion and upon adequate assurance of satisfaction of the condition. Accordingly, the Commission maintains authority to amend the 1989 Order and the 1995 Order by deleting the Affordable Housing Requirements for good cause which will be demonstrated hereinbelow.

### B. Service of Motion

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<sup>6</sup> See HAR § 15-15-94 (emphasis added).

Under HAR Section 15-15-94, a petitioner filing a motion to amend or delete conditions under HAR Section 15-15-70 must serve a copy of the motion on all parties to the original boundary amendment proceedings in which the condition was imposed or the order issued, and to any person who may have a property interest in the subject property as recorded in the County's real property tax records as the time the motion was filed.

Pursuant to HAR Section 15-15-48, a copy of this motion will also be served on the State Office of Planning and the County of Kauai's Planning Department. As determined by a review of the title report for Lot 1545-A, all persons with a recorded interest have been served with a copy of this Motion.

### **III. DISCUSSION**

#### **A. Successor Petitioner has an interest in the Property as the successor-in-interest thereto**

As noted above, Increment II was encumbered with the Affordable Housing Requirements upon Original Petitioner's seeking reclassification of Increment II from the agricultural land use district to the urban land use district. Original Petitioner sought such reclassification, and such Affordable Housing Requirements were imposed, in furtherance of Original Petitioner's plan to develop Increment II into a new residential community.

Subsequent to Increment II's encumbrance with the Affordable Housing Requirements, Original Petitioner sold Lot 1545-A – which makes up a portion of Parcel 8 within Increment II – to Successor Petitioner's affiliate. Thus, Successor Petitioner, as Lot 1545-A's current and sole owner, holds an exclusive interest in the property – including an interest in any removing any requirements encumbering Lot 1545-A which no longer serve a practical purpose and are prohibitive to Successor Petitioner's use of

Lot 1545-A for purposes other than a residential community. Regency Puakea Properties, LLC hereby respectfully requests that the Commission recognize Regency Puakea Properties, LLC as the Successor Petitioner to Lot 1545-A in this Docket A89-636, and thereby recognize and confirm its standing to bring this Motion and to seek the requested relief.

**B. The Commission maintains good cause to amend the 1989 Order and the 1995 Order to release the Affordable Housing Requirements as they relate to Lot 1545-A and to the Petition Area**

Original Petitioner has already satisfied all of the Affordable Housing Requirements with respect to Increment I and Increment II. As stated by Original Petitioner in its July 8, 2025 Annual Report:

This requirement has been satisfied.

This requirement was adopted into County Ordinance No. PM-206-90 with additional conditions imposed by the County. On November 30, 2007, the County acknowledged the satisfaction of this requirement.

Based on a projected density of 1,690 units for Increments I and II, an affordable housing credit requirement of 1,014 credits was imposed. The methodology to determine the housing credits was confirmed by the State Housing Finance and Development Corporation on November 22, 1994. The 1,014 credits were earned through the development of Hokulei Estates, Halelani, Halemalu, and Hookena.

Accordingly, the Affordable Housing Requirements have already been satisfied with respect to the entirety of the Petition Area (Increment I and Increment II – including Lot 1545-A) by development on other parcels. Thus, the Commission maintains good cause to amend the 1989 Order and the 1995 Order by deleting the Affordable Housing Requirements as to Lot 1545-A because the Affordable Housing Requirements for the Petition Area have already been satisfied and the Affordable Housing Requirements have

no relation to and are not applicable to Lot 1545-A, which was developed as an assisted living facility.

**C. Request for Commission Authorization to allow Commission's Executive Officer to Sign the HUD Certification**

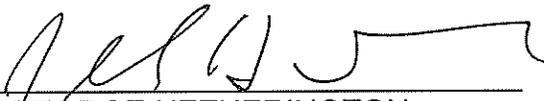
As part of HUD insuring Successor Petitioner's refinancing of the Regency at Puakea facility on Lot 1545-A, HUD's attorney has demanded that Successor Petitioner is required to (a) file this Motion seeking the release of the Affordable Housing Requirement, and (b) post-loan closing obtain from the Commission a signature to the attached *Certification Regarding Declaration of Land Commission Conditions* prepared by HUD.

**IV. CONCLUSION**

Based on the foregoing, HAR Sections 15-15-70 and 15-15-94, evidence and testimony to be provided at the hearing on this Motion, and the records and files in this Docket, Successor Petitioner, REGENCY PUAKEA PROPERTIES, LLC, respectfully requests that the Commission grant the Motion and:

- (1) recognize REGENCY PUAKEA PROPERTIES, LLC as the Successor Petitioner to Grove Farm Properties, Inc., with standing to seek and obtain the relief requested in this Motion;
- (2) issue an order modifying the 1989 Order and the 1995 Order, to delete Condition No. 2, with respect to sales of affordable housing units, in its entirety for the Petition Area, or, in the alternative, to specify that such Condition No. 2 shall not apply to Lot 1545-A; and

- (3) authorize the Commission's Executive Director to sign a *Certification Regarding Declaration of Land Use Commission Conditions* prepared by the HUD attorney for Lot 1545-A.



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J. GEORGE HETHERINGTON

Attorney for Successor Petitioner to Lot 1545-A  
**REGENCY PUAKEA PROPERTIES, LLC**

Dated: Honolulu, Hawaii May 20, 2025



Further affiant sayeth naught.

Dated: May 20<sup>th</sup>, 2025

  
Name: Andrew Rapp  
Title: Chief Financial Officer

Subscribed and sworn to before me

this 20<sup>th</sup> day of May, 2025.

  
Notary Signature  
Notary Public, State of Washington  
Printed Name: Chelsie Lusuegro



My Commission expires: July 10<sup>th</sup>, 2027

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A89-636
	)	
of	)	DECLARATION OF
	)	J. GEORGE HETHERINGTON
GROVE FARM PROPERTIES, INC.	)	
	)	
To Amend the Agricultural Land Use District	)	
Boundary into the Urban Land Use District	)	
for Approximately 103.570 Acres of Land	)	
Situate at Lihue, Kauai, State of Hawai'i,	)	
TMK: (4) 3-3-003-045	)	
	)	
	)	

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**DECLARATION OF J. GEORGE HETHERINGTON**

I, J. GEORGE HETHERINGTON, hereby declare:

1. I am an attorney licensed to practice law in the State of Hawaii.
2. I am an attorney with the law firm of Yamamoto Hetherington LLLC, attorneys for Successor Petitioner REGENCY PUAKEA PROPERTIES, LLC, in the above-entitled matter.
3. As an attorney at Yamamoto Hetherington, I have personal knowledge of the filing in the above-referenced case and access to records and files kept in the normal course of the business conducted by Yamamoto Hetherington.
4. Attached hereto as Exhibit 1 is a true and correct copy of that certain *Findings of Fact, Conclusions of Law, and Decision and Order* dated June 30, 1989.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Land Use Commission Conditions dated May 29, 1990, filed with the Office of the Assistant Registrar of the Land Court, State of Hawaii as Document Number 1737704.

6. Attached hereto as Exhibit 3 is a true and correct copy of the Land Use Commission Memorandum dated January 5, 1996, as well as that certain *Findings of Fact, Conclusions of Law, and Decision and Order* dated December 20, 1995.

7. Attached hereto as Exhibit 4 is a true and correct copy of that *Limited Warranty Deed and Reservation of Rights* dated December 19, 2000, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawai`i as Document Number 2688215.

8. Attached hereto as Exhibit 5 is a true and correct copy of that *Warranty Deed* dated February 19, 2003, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawai`i as Document Number 2908242.

9. Attached hereto as Exhibit 6 is a true and correct copy of the July 8, 2024 Annual Report submitted by Grove Farm Properties, Inc.

10. Attached hereto as Exhibit 7 is a true and correct copy of the *Certification Regarding Declaration of Land Use Commission Conditions* that was drafted by an attorney for the U.S. Department of Housing and Urban Development.

11. Attached hereto as Exhibit 8 is a true and correct copy of County of Kauai Ordinance No. PM-206-90, Bill No. 1317, Draft 2 entitled "A Bill for an Ordinance Amending Chapter 8, Kauai County Code 1987, Relating to Zoning Designation in

Lihue/Puhi, Kauai (Grove Farm Properties, Inc.)" approved on March 13, 1990, by Jo Ann A. Yukimura, Major, County of Kauai.

I, J. GEORGE HETHERINGTON, declare under penalty of law, that the foregoing is true and correct.

Executed this 20th day of May, 2025, at Honolulu, Hawaii.

  
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J. GEORGE HETHERINGTON

Exhibits

- 1-1989 FOF
- 2-1990 Declaration
- 3-1995 FOF
- 4-2001 Deed
- 5-2003 Deed
- 6-2024 Annual Report
- 7-HUD Certification
- 8- County Ordinance PM-206-90

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A89-636
GROVE FARM PROPERTIES, INC. )	GROVE FARM PROPERTIES,
To Amend the Agricultural Land )	INC.
Use District Boundary into the )	
Urban Land Use District for )	
Approximately 603 acres at )	
Lihue, Island and County of )	
Kauai, State of Hawaii, Tax Map )	
Key Nos.: 3-3-3: Portion 1; )	
3-3-2: Portion 1; 3-3-6: )	
Portion 19 and 3-4-5: Portion 7 )	
(inclusive of roadways). )	

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DOCKET NO. A89-636  
GROVE FARM PROPERTIES, INC.

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

**EXHIBIT "1"**

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A89-636
GROVE FARM PROPERTIES, INC. )	
To Amend the Agricultural Land )	GROVE FARM PROPERTIES,
Use District Boundary into the )	INC.
Urban Land Use District for )	
Approximately 603 acres at )	
Lihue, Island and County of )	
Kauai, State of Hawaii, Tax Map )	
Key Nos.: 3-3-3: Portion 1; )	
3-3-2: Portion 1; 3-3-6: )	
Portion 19 and 3-4-5: Portion 7 )	
(inclusive of roadways). )	
_____ )	

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

GROVE FARM PROPERTIES, INC., a Hawaii corporation (hereinafter "Petitioner"), filed a Petition on February 16, 1989 and subsequent Amendments to Petition on March 17, 1989, March 23, 1989, March 28, 1989, April 20, 1989, and on May 8, 1989 pursuant to Chapter 205, Hawaii Revised Statutes, as amended ("HRS"), and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"), to amend the Land Use District Boundary to reclassify approximately 608 acres of land situate at Lihue and Puhi, Island of Kauai, State of Hawaii, Kauai Tax Map Key Numbers: 3-3-3: Portion of 1; 3-3-2: Portion of 1; 3-3-6: Portion of 19; and 3-4-5: Portion of 7, from the Agricultural District to the Urban District to develop residential, commercial, golf

course and open space uses. The Land Use Commission (hereinafter "Commission") having heard and examined the testimony, evidence, and arguments of counsel presented during the hearings, and the parties proposed findings of fact and conclusions of law and decision and orders, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On February 16, 1989, Petitioner filed Petition to reclassify approximately 605 acres of land from the Agricultural District to the Urban District, Tax Map Key Numbers: 3-3-3: Portion of 1; 3-3-2: Portion of 1; and 3-4-5: Portion of 1, including roadways.

2. On March 17, 1989, Petitioner filed First Amendment to Petition to amend the Tax Map Key Numbers to 3-3-3: Portion of 1; 3-3-2: Portion of 1; and 3-4-5: Portion of 7, including roadways.

3. On March 23, 1989, Petitioner filed Second Amendment to Petition and Amendments to Exhibits A, B, and E. The Second Amendment amended the subject property's Tax Map Key Numbers to delete language describing the roadway lots of the Petition area.

4. On March 28, 1989, Petitioner filed Third Amendment to Petition and Amendments to Exhibits A, B, and E. The Third Amendment amended the subject property's Tax May Key

Numbers and acreage of the Petition to TMK Nos.: 3-3-3: Portion of 1; 3-3-2: Portion of 1; 3-3-6: Portion of 19; and 3-4-5: Portion of 7, containing an area of approximately 608 acres.

5. On April 20, 1989, Petitioner filed Fourth Amendment to Petition to amend or supplement Petitioner's Planning and Engineering Report, Market Study, Air Quality Study, and Traffic Impact Assessment.

6. A prehearing conference was held on April 28, 1989.

7. On May 8, 1989, Petitioner filed Supplement To And Fifth Amendment to Petition to delete a five-acre portion, Tax Map Key Number: 3-4-5: Portion 7, from the Petition area, resulting in the tax map description of the subject property and acreage to be TMK Nos.: 3-3-3: Portion of 1, 3-3-6: Portion of 19 and containing an area of approximately 603 acres (hereinafter the "Property").

8. The Commission conducted a hearing on the Petition on May 12, 1989, pursuant to notice published on April 6, 1989, in the Garden Island and the Honolulu Advertiser, a newspaper of general circulation.

9. On May 31, 1989, pursuant to stipulation by the Parties, Petitioner submitted its metes and bounds survey map of the Property, Exhibit A-1, reflecting a revised Petition acreage of 595.775 acres.

10. A timely letter dated April 21, 1989, was received from Elizabeth Ann Stone and was made part of the record. An untimely letter, dated May 1, 1989, was received from Gary Blaich, President of 1000 Friends of Kauai, requesting to be a public witness. Dorothy Tao, upon request of Gary Blaich, testified as a public witness for 1000 Friends of Kauai. An untimely letter was received from Jacqueline Gardner and Sandra Marcy and was made part of the record

11. No requests for intervention were filed.

#### DESCRIPTION OF AREA

12. The Property is located at Lihue and Puhi, Kauai, adjacent to the westerly side of Nawiliwili Road, the southerly side of Kaumualii Highway and the easterly side of Puhi Road and is more completely described and reflected on Petitioner's metes and bounds map, Exhibit A-1. The Property is bounded by and is contiguous to the existing Urban District at Puhi and Lihue.

13. Grove Farm Company, Incorporated, Petitioner's parent corporation, is the fee owner of the portion of the Property designated as Kauai Tax Map Key No. 3-3-03:portion of parcel 1. Grove Farm Land Corp., a Hawaii corporation and an affiliate of Petitioner, is the fee owner of that portion of the Property designated as Kauai Tax Map Key No. 3-3-06:portion of parcel 19. Petitioner has a proprietary interest in the Property and has been authorized to seek the boundary amendment requested in the Petition.

14. The Property is currently leased to Lihue Plantation and is in sugarcane cultivation and related uses. The Lihue Plantation lease expires in 1994 and Petitioner has the right to withdraw substantially all of the Property from the lease in advance of its expiration.

15. Elevation within the project site varies between 120 feet above mean sea level near Nawiliwili harbor and 240 feet above mean sea level at the northwest portion of the site. Average elevation is approximately 200 feet.

16. The topography is generally flat in the Puhī area and the western portions of the Lihue property. There is a gentle slope in the eastern portion of the Lihue property with isolated pockets of low areas along the southern edges. Slopes range from 2 percent in the western portion to less than 3 percent in the eastern portion. The general direction of the slope is from west to east/south and from south in a southeasterly configuration.

17. The average annual rainfall on the Property is approximately 50 inches as reflected by the nearest climatological station. Rainfall on the Property is distributed fairly evenly throughout the year. However, May through September are drier than average months and October through April are wetter than average.

18. The majority of the soils on the Property consist of Lihue Silty Clays (LhB) and Puhī Silty Clays (PhB). These

soils, as indicated by the United States Department of Agriculture Soil Conservation Service in their soils survey of August 1972, are characterized by moderately rapid permeability, slow runoff, and only slight erosion hazard. According to engineering interpretations, this type of soil has no unusual conditions that would affect construction. However, as with many Hawaiian soils, shrink-swell potential is indicated as moderate.

19. The Soil Conservation Service (SCS) classifies the Lihue Silty Clay type of soil in Sugarcane Group 1, indicating that this soil type is in the grouping most suitable for sugarcane.

20. The Land Study Bureau (LSB) Detailed Land Classification for the Island of Kauai identifies the predominant soil ratings on the Property as B41i and B78i. These "B"-rated soils have good productivity potential for most agricultural purposes.

21. The Property is classified as "Prime" according to the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

22. The Property is well above the Puali (Niumalu) Stream, Huleia Stream, and Nawiliwili Harbor. The Property is not in the path of any major floodways. None of the Property is located within the tsunami inundation zone as shown on the Flood Insurance Rate Map for the Island of Kauai prepared by

the U.S. Army Corps of Engineers as part of the National Flood Insurance Program.

PROPOSAL FOR RECLASSIFICATION

23. Petitioner's proposed development of the Property is the final phase of Petitioner's Lihue/Puhi Project District Plan (sometimes referred to as the "Project District" or the "Project District Plan"). The overall Project District encompasses a total of approximately 932.5 acres. Multiple parcels within the Project District, representing approximately 327.5 acres, have received approval from the Commission, appropriate zoning approval, and the projects have either been completed or are currently on-going. The remaining balance of approximately 603 acres within the Project District is the subject of this Petition.

24. Approximately 1,893 new residential units are proposed for the development of the Property, which will result in a total of 2,301 units within the overall Project District. A golf course, utilities, roadways and commercial support areas will also be provided. The land use concepts proposed for the Property are substantially consistent with those approved in the County of Kauai's General Plan. The parcels' numbers and proposed land uses are identified on Petitioner's Exhibit B entitled "Proposed Land Use Concept Plan" dated January 26, 1989. The uses proposed for these parcels, acreage, density, number of market and affordable residential units, are as follows:

<u>PARCEL NO.</u>	<u>USE</u>	<u>ACREAGE</u>	<u>DENSITY</u>	<u>UNITS</u>	<u>MARKET</u>	<u>AFFORDABLE</u>
1	MF Rental	5.0	40	200		200
2	Komohana Sub.	existing		96		96
3	Puhi Subdivision	existing		148		148
4	SF Residential	5.0	6	30		48
5	SF Residential	39.0	6	234		234
6	MF Residential	21.0	10	210		210
7	MF Residential	28.0	12	336		336
8	MF Residential	15.0	12	180	180	
9	SF Residential	8.5	4	34	34	
10	SF Residential	49.0	4	196	196	
11	SF Residential	40.0	4	160	160	
12	MF Residential	4.5	10	45	45	
13	Ulu Ko Sub.	existing		164		164
14	SF Residential	3.5	4	14	14	
15	SF Residential	7.5	4	30	30	
16	SF Residential	38.0	4	152	152	
17	SF Residential	18.0	4	72	72	
18	Shopping Ctr. Exp.	16.0	0	0		
19	General Commercial	8.5	0	0		
20	General Commercial	7.5	0	0		
21	General Commercial	6.0	0	0		
22	Golf/Open	25.0	0	0		
23	Golf/Open	50.0	0	0		
24	Golf/Open	57.0	0	0		
25	Golf/Open	25.0	0	0		
26	Golf/Open	79.5	0	0		
	Roads/Misc.	<u>46.0</u>	0	<u>0</u>		
	Total:	603.0		2301	883	1418

25. In the aggregate, the proposed uses for the Property include: General Commercial - 22 acres, a Shopping Center expansion area - 16.0 acres, Multi-Family Residential - 73.5 acres, Single-Family Residential - 208.5 acres, Golf Course (and related amenities) - 236.5 acres, and Roads and Buffers - 46 acres.

26. Of the proposed residential units and lots, 810 will be affordably priced - based on the State of Hawaii, Housing Finance and Development Corporation (hereinafter

"HFDC") guidelines concerning household median incomes (i.e. 80% to 140% of median income) and resulting residential unit affordability - and as a result will be priced between a range of \$80,000.00 to \$140,000.00 in 1988 dollars.

27. The petition also indicates that 408 affordable for-sale housing units are existing outside of the petition area and 200 affordable rental housing units will be provided within the petition area. The total number of affordable for-sale dwelling units and rental units to be constructed within the Property is 1,010 units.

28. Petitioner may engage in various joint ventures to construct the planned affordable units. Market housing may be constructed by individual lot owners or by the Petitioner.

29. The planned multi-family units may consist of single family attached, townhouse, zero lot line, cluster housing, and apartment style units.

30. The proposed market housing will consist of primarily improved residential lots that Petitioner estimates will be marketed in the range of \$80,000.00 and upwards in 1988 dollars depending on their location and size.

31. Petitioner represents that both the affordable and market priced residential units and lots will be directed for sale to local residents of Kauai and the marketing of these projects will be undertaken in the manner historically utilized by the Petitioner which focuses on the local buyer. Petitioner

estimates that a substantial portion of all the residential properties will be sold to local residents.

32. Parcel 18 is proposed for the expansion of the existing regional shopping center, Kukui Grove Shopping Center, and is contiguous to the Property. Parcels 15, 20, and 21 are proposed for commercial development in the theme of Kukui Grove Village East, an existing commercial center located adjacent to Kukui Grove Shopping Center, and Kukui Grove Village West, which is currently under construction.

33. A golf course and related clubhouse, restaurant and facilities, including a pro shop, maintenance facility, and cart barn, will be integrated into the residential community as reflected on Petitioner's Exhibit B. In addition to satisfying basic infrastructure needs of the proposed development related to drainage, water, and wastewater disposal, the golf course provides a significant open space recreational feature and enhances the marketability of proposed market priced housing and thus acts as a price support for proposed affordable housing.

34. The golf course will be a non-resort course open to the public for play. Petitioner will develop and operate the golf course and will be offering kamaaina rates to State of Hawaii residents.

Petitioner expects to establish its kamaaina greens fees with cart at approximately \$40.00 in 1988 dollars.

Petitioner expects to charge a higher green fee-cart rate to non-residents.

35. Petitioner will also develop necessary on-site and off-site improvements related to the development, including a network of internal roadways, the equivalent of a bypass road along Niunalu and Nuhou Roads, all with underground utilities; a wastewater treatment facility to service the development and necessary drainage improvements.

36. Petitioner estimates that the cost of the overall development will be approximately \$65,000,000.00 to \$75,000,000.00. Infrastructure costs for roadways, grading, and drainage and sewage treatment facilities are projected to be approximately \$22,000,000.00.

37. The construction and completion dates of the proposed development are subject to state and county land use, zoning, and permit approval processes. Assuming Land Use Commission approval by mid-1989 Petitioner projects County zoning of the Petition Property (and general plan approval for the approximate 40 acres requiring that approval) could be obtained by January 1991.

Petitioner anticipates subdivision plans and infrastructure design for the project could start by January 1991 and construction to get underway by late 1991 or early 1992 subject to state and county land use approvals.

38. Within five years of zoning, Petitioner expects to substantially complete the golf course and related facilities, the shopping center expansion area at Parcel 18, residential Parcels 1, 4, 5, 6, 9, 10, 11, 14, and 15, the mauka one-half of Parcel 16, and the makai one-half of Parcel 7, representing 1,352 of the proposed residential units and lots of which 842 are scheduled to be affordably priced and 510 market priced (or a ratio of 62.3% to 37.7%) and one hundred percent (100%) of the necessary and applicable off-site support infrastructure including two lanes of Nuhou Road and an expandable sewage treatment facility which will be capable of servicing the entire project area. The balance of the project consisting of commercial Parcels 19, 20, and 21 and residential Parcels 8, 12, and 17 and the mauka one-half of Parcel 7 and the makai one-half of Parcel 16, representing 541 housing units or lots (169 affordably priced and 373 market priced), will be substantially completed within five years thereafter.

The map attached as Exhibit A hereto reflects the first and second increments of the proposed project.

PETITIONER'S FINANCIAL CAPABILITY  
TO UNDERTAKE THE PROPOSED DEVELOPMENT

39. The Annual Report of Grove Farm Company, Incorporated, submitted with the Petition indicates that Petitioner is in sound financial condition and is capable of undertaking and completing the project as contemplated. Petitioner has available (through its parent corporation and

affiliates) sufficient assets, in addition to the Property, if necessary, to sufficiently collateralize any financial borrowing or undertaking determined necessary or expedient by Petitioner to implement the proposed project.

STATE AND COUNTY PLANS AND PROGRAMS

40. The Property is designated within the State Agricultural Land Use District as reflected on the Commission's Official Map K-11, Lihue.

41. All of the Property, excepting approximately 44 acres is included within an "Urban Mixed Use" designation under the Kauai County General Plan. This anticipates a planned mix of urban uses within the area. The boundary of the County General Plan Urban Mixed Use Area overlaid on the District Plan Map is shown on Petitioner's Exhibit L. But for the referenced 44 acres, no General Plan amendment is required to accommodate the proposed development as the present County designation allows the types of uses proposed by Petitioner.

42. The majority of the Property is classified within the County's agriculture use zoning district (A) and a very small portion may be classified within the open use zoning district (0).

43. The Property is not within the County Special Management Area (SMA) designation.

NEED FOR THE PROPOSED DEVELOPMENT

44. Lihue is the commercial and governmental core of the County of Kauai. With the continuing increase in the

County's population and the probable expansion of governmental services, there is a present and continuing need for residential, recreational and commercial facilities in the area surrounding Lihue and Puhi. The proposed development of the Property would accommodate this expanding demand for housing.

45. Petitioner's Market Study for the Property (Exhibits F and F-1) concluded that as a result of new economic activity, new jobs and increased household incomes, housing demand on Kauai in the last few years has increased faster than the homebuilding industry has been able to construct new units. This has caused a current undersupply of housing units on the island.

46. Petitioner's market consultant Ming Chew predicts that approximately 60%-70% of the new jobs resulting from major projects currently under construction or planned on the island will be located in the Lihue area, thereby further increasing the housing demand, which is projected to occur mainly in the Lihue-Puhi area.

47. Ming Chew estimates that in addition to the current undersupply, factors related to current and planned projects, increased jobs and increased household income, would increase housing demand on Kauai by about 500 units in 1989, 1,000 units during both 1990 and 1991, and 500 units per year from 1992 to 1995.

48. Ming Chew concluded that the residential units and subdivision lots in the proposed project could be absorbed

during the five-year period from 1990 to 1995 and that the existing and expected demand for housing as between affordable and market priced units and lots justified the Petitioner's proposed allocation of housing between those demand segments.

49. Ming Chew further concludes that the proposed commercial improvements and golf course are also needed on the island. Ming Chew projects growth and increased household spending would generate demand for an additional 26 acres of regional commercial retail land use from 1990 to 1995, and another 26 acres from 1995 to 2000. He also estimated that by 1990 there would exist a demand for one additional non-resort open to the public golf course above existing facilities on the island. By 1995, he estimated a second additional non-resort golf course would be needed.

#### IMPACTS UPON RESOURCES OF THE AREA

##### Agricultural Resources

50. The Property is currently under sugarcane cultivation. Petitioner's proposed withdrawal of the Property from sugarcane cultivation is not expected to have a significant effect upon the agricultural industry on Kauai and the Lihue Plantation Company nor will it substantially impair actual or potential agricultural production in the vicinity of the lands or in the County or in this State.

##### Flora and Fauna

51. The existing vegetation on the site consists mainly of cultivated sugarcane with the remainder consisting of

gulches and wasteland. No endangered or threatened species (or candidate species) of flora were identified.

52. No endangered or threatened species of fauna have been identified in the Property. It is expected that the proposed development may actually create a more diverse range of habitats and benefit certain migrant species of avifauna. Further, although there have been sightings of the Hawaiian Hoary Bat outside of the Project area, Petitioner's consultant concluded there will likely be no adverse effects on the species attributable to the development.

#### Archaeological/Historical Resources

53. Based on the archaeological surface and subsurface inventory survey conducted at the project site only two sites within the Property have been identified as historical sites. One is a cemetery which is expected to be preserved through consultation with a local community organization to arrange for management of possible custodianship of the site. The other historical site is the former Grove Farm manager's residence which is to be restored and improved by the addition of a restaurant and incorporated into the proposed golf course facilities. Petitioner's archaeological consultant concluded that these preservation plans were adequate and that the adaptive restoration of the former manager's house is an acceptable preservation alternative.

54. The only potable remains discovered at the site was a ceramic potsherd which has been preserved.

55. Petitioner's archaeological consultant recommended that the Department of Land and Natural Resources be consulted in connection with preservation plans for the two historic sites and that archaeological consultation be sought in the event subsurface artifacts are discovered during the development of the project.

#### Ground Water Resources

56. The use of chemical fertilizers and pesticides on the proposed golf course are not expected to adversely affect groundwater resources.

#### Recreational, Scenic, Cultural Resources

57. The proposed development is not expected to significantly increase the use of existing State or County recreational facilities, or otherwise impact scenic and cultural resources. Rather, the proposed development of a golf course will supplement the already overburdened Wailua Golf Course, and together with existing parks and approved commercial recreational facilities, will provide for increased recreational facilities in the Lihue area.

58. Petitioner intends to comply with County ordinances regarding the dedication of land or money for park sites.

### Coastal/Aquatic Resources

59. Petitioner anticipates under its proposed drainage plan that no runoff will enter Huleia Stream or Menehune Fishpond. Drainage will be directed to natural gulches into Puali Stream with a small portion meeting Nawiliwili Stream.

Petitioner indicates that it is unlikely that the receiving waters of Nawiliwili Harbor will be negatively impacted since the withdrawal of cane and associated irrigation system will cease the additional contribution of runoff from cane cultivation due to irrigation overflow.

### Noise Quality

60. The increase in noise that will be generated by construction will be temporary and only while construction is taking place. The noise level may increase because of increased traffic but is expected to be no greater than would develop as a result of normal usage over the next ten years.

### Air Quality

61. Air quality, generally, will be affected by construction activities on the Property related to the proposed development and by increased automobile traffic in the area. During construction, dust and exhaust from equipment will be emitted. Dust will be controlled by watering and other appropriate methods. The construction equipment to be utilized is essentially the same in terms of air quality impacts as cane

cultivation and harvesting equipment. As a result, no additional impact from construction is perceived. Petitioner's consultant concludes that expected emissions from automobile traffic along major routes to and from the Project would result in emission concentration levels, with or without the Project well within national standards, but possibly exceed state standards at a few spots during adverse meteorological conditions.

#### Water Quality

62. Very little effect is anticipated on existing water quality in the area even after construction of the proposed development is completed. During construction, siltation control measures will be practiced as required by the Kauai County Public Works Department.

63. Control of drainage and runoff at the site in accordance with a proposed comprehensive drainage plan for the area will restrict the quantity of runoff into adjacent streams to current levels.

#### ADEQUACY OF PUBLIC SERVICES AND RESOURCES

##### Highway and Roadway Facilities

64. Petitioner is planning to build a major 2-lane roadway throughout the Project that will service the Project and become a bypass between Kaunualii Highway and Nawiliwili Harbor to be dedicated to the County. Sufficient right-of-way for an additional 2 lanes will also be dedicated to the County

of Kauai. In addition, the Petitioner plans to build a network of interior roadways serving the project and will dedicate them to the County.

65. Petitioner proposes to contribute to the widening of Kaumualii Highway by dedicating one half of the land area required to improve the highway along the border of the Project from two to four lanes to the State of Hawaii. Petitioner will also contribute funds towards signalization of the Nuhou Road-Kaumualii Highway intersection and Puhi Road - Kaumualii Highway intersection, fully channelize the intersection of Kaumualii Highway with Nuhou Road and provide exclusive left-turn lanes on all approaches, and follow the other recommendations contained in Petitioner's traffic consultant's report.

#### Water Service

66. The Project District is served by the Kauai Water Department's Lihue and Puhi water systems. Wells sources for these systems are located mauka of Lihue town and mauka of Kauai Community College.

Grove Farm Properties, Inc. recently installed a 16-inch water service line from the said system's storage facilities to serve the Kukui Grove Center and the remainder of the Project District.

67. The Kauai Water Department has indicated that it anticipates adequate water sources will be available to

accommodate the proposed development. However, the Water Department will not guarantee availability at this time. Current water storage facilities are adequate for the existing development. Moreover, addition to those facilities is expected. Accordingly, no detrimental impact on water storage facilities and supply is anticipated.

#### Wastewater Disposal

68. No public sewer system is currently available in the Project area. All facilities proposed in the development will be connected to the existing plant owned by Petitioner or to a private sub-regional sewage treatment plant to be developed by Petitioner in accordance with State Department of Health requirements. Other existing developments adjacent to the Property will also be connected to the central sewage system.

69. Effluent generated from the treatment of wastewater is expected to reach approximately 800,000 gallons per day upon full development of the Project. The effluent will be utilized to irrigate the proposed golf course which is expected to use approximately 1,000,000 gallons per day for irrigation purposes. Any supplemental irrigation water required is available from current non-potable irrigation water sources.

#### Drainage

70. The Property gently slopes in a southeast direction. Generally, drain inlets and conduits will collect

storm water and direct it to existing natural drainage ways. Measures will be implemented to maintain existing runoff levels. Although soil permeability will be reduced through the development of the lands and runoff may, as a result, increase, the extent and pattern of runoff can be controlled adequately by on-site containment within the golf course and with retention basins.

#### Solid Waste Disposal

71. Refuse and garbage disposal services will be provided by contract to local private concerns. County service will be available for single-family residential lots and certain multi-family residences.

72. Petitioner proposes to dispose refuse at the Halehaka or Kekaha landfills. According to the County, the Halekaha landfill has a remaining life of two more years. The County has suggested that additional landfill area be provided in areas where the golf course is proposed. Petitioner represents it will work with the County Department of Public Works for another landfill site.

#### Schools

73. To date, Petitioner has donated 200 acres to the University of Hawaii adjacent to the Project area for Kauai Community College. Petitioner has been advised by the Department of Education that a school site within the Project area is not currently required. Petitioner is prepared to

incorporate a site for a school within the Project and to dedicate the land for a school provided a request is made by the State Department of Education's Kauai District Office within a reasonable time prior to zoning.

#### Police and Fire Protection

74. Police service for the proposed development area is provided by the Lihue Station, located approximately 1.3 miles from the center of the Property. Fire protection service to the proposed development area is provided by the Lihue Fire Station, located approximately 1.5 miles from the center of the Property. Adequate fire fighting water at the Project will be available from a hydrant system to be constructed as part of the development, and connected to the County water system.

#### Electricity and Telephone Service

75. Petitioner represents that local utility supplies are adequate to respond to the anticipated demand for electricity, gas, and telephone relating to the Project.

#### ECONOMIC IMPACTS

76. The project will result in increased jobs and employment opportunities on Kauai and afford greater commercial opportunities.

77. The contiguous urban areas at Puhi and Lihue are centers for employment on the Island of Kauai. The proposed development will compliment these areas. The development will generate both short-term and long-term employment opportunities

and employment income for Kauai residents. It will provide numerous temporary jobs in construction-related occupations and a magnitude of employment opportunities for Kauai residents and entrepreneurs.

78. Petitioner anticipates that substantially all of the employment opportunities generated by the proposed development of the Property will be filled by residents of Kauai, although some construction related jobs may be filled by off-island residents. It is not expected that jobs in the aggregate will be lost by the withdrawal of the Property from sugarcane cultivation.

79. In addition to the general increase in personal income resulting from such employment, associated government revenues attributable to personal income, general excise and real property tax levies are expected to increase. The increase in real property taxes (absent improvements) attributable to the project will be approximately \$600,000.00, or \$1,000.00 per acre. Considering proposed and expected improvements to the Property and assuming an average 3.2 persons for each created household, the resulting real property tax contribution to the County's budget by people occupying the development, on a per person basis, will equal the current per person contribution level of residential users in the community. In the Petitioner's opinion this results in a long term contribution of a fair share to the County budget and the public services financed with those tax dollars.

80. According to the County of Kauai, this project will "compound impacts to such services and County or State resources may not be able to keep pace in providing the necessary services such as police protection and road repair and maintenance".

81. The proposed project will be marketed toward existing Kauai residents which should result in limited population increases. However, real property taxes and one time fees of close to \$2,000,000.00, attributable to real property roll back taxes and environmental impact assessment fees, will be paid. Moreover, the Petitioner expects to dedicate to the County roads and other infrastructure facilities constructed by the Petitioner.

#### SOCIAL IMPACTS

82. Much of the area immediately adjacent to the Property is currently urban. The proposed development will contribute to the passive recreational open spaces of the community and commercial recreational facilities.

83. The Project will respond to a critical housing demand for affordable and market housing on Kauai.

#### CONFORMANCE TO APPLICABLE DISTRICT STANDARDS AND CRITERIA

84. The proposed development is consistent with the standards and criteria set out in Hawaii Land Use Commission Rules, Section 15-15-18(1) through (8), inclusive, and Section 15-15-77 to the extent such standards and criteria may be applicable.

85. The proposed development is consistent with the relevant Land Use Commission Urban District Standards in that:

a. The proposed development will be within an area consisting of lands characterized by "city-like" concentrations of people, structures, streets, an urban level of services and other related land uses.

b. The Property is in close proximity to Kauai's major trading, employment, governmental and social centers.

c. The economic feasibility of the proposed development has been substantiated by Petitioner.

d. Basic services such as electricity, gas, sewer, water, sanitation, schools, parks, and police and fire protection are available or can be provided to the Property at a reasonable cost without negative impact on such services.

e. The substantial majority of the Property (approximately 92%) is designated by the County for "Urban Mixed Use". The districting permits planned mix or urban uses.

f. The topography of the Property is amenable to urban development. The Property is free of unstable soil conditions and the proposed development will have no significant adverse effects upon the environment.

g. The Property is contiguous to the Urban District and is in an appropriate location for a logical and reasonable extension of the Urban districts for future growth. The proposed development of the Property will not contribute to

scattered urbanization, nor will it require an unreasonable investment in public facilities or services.

h. The Project will increase employment opportunities in the County and facilitate economic development of the island. The Project will not adversely impact valued cultural, historical or natural resources (including those relevant to the state's economy). At the same time, the Project will make provision for housing opportunities for all income groups in the County, as well as provide for the maintenance of scenic open spaces, through the construction of a golf course, within the Project District.

#### CONFORMANCE WITH THE HAWAII STATE PLAN

86. The proposed development conforms with provisions of the Hawaii State Land Use Commission Rules, Subchapter 8, Decision-making Criteria for Boundary Amendment, Sections 15-15-77 and 15-15-78.

87. The Proposed Development is consistent with portions of the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

88. The proposed development will assist both the short-term and long-term growth of the area's economy. In addition to increasing the number of jobs directly available to Kauai County residents, the proposed development will encourage businesses that have favorable financial multiplier effects within Hawaii's economy.

89. The development will respond to an existing housing shortage for affordable and market priced homes and home sites on Kauai.

CONFORMANCE WITH COASTAL ZONE POLICIES AND OBJECTIVES

90. The proposed reclassification of the Property for the development of the project conforms to the policies and objectives of the Coastal Zone Management Program Chapter 205A, Hawaii Revised Statutes, as amended.

INCREMENTAL DISTRICTING

91. The Petitioner proposes to develop the Project in two (2) increments.

92. The Petitioner states that the first increment, which is colored in orange on Exhibit 2 of Petitioner's Proposed Decision and Order can be substantially completed within five years of the date of County zoning and will include (a) approximately 1,352 housing units or residential lots of which 842 will be affordably priced and 510 market value priced located on Parcels 1, 4, 5, 6, 9, 10, 11, 14 and 15, the mauka one-half of Parcel 16 and the makai one-half of Parcel 7, (b) Nuhou Road with sufficient right-of-way for 4-lanes with internalized utilities sized to service the Project area, (c) water source, transmission, and storage systems and facilities necessary to service the housing units to be constructed in the first increment as determined by the County of Kauai, (d) the sewage collection and treatment system

necessary to service the entire project, (e) the drainage system necessary to service the areas upon which the improvements will be constructed in the first increment, and (f) an 18-hole golf course and related facilities as described in the Petition; and an expansion of the existing required commercial shopping center on approximately 16 acres of land at parcel 18.

93. The second increment of Petitioner's Project which is colored in brown on Exhibit 2 can be completed within five years after the first increment is substantially completed and will include (a) approximately 541 housing units or residential lots (168 additional affordable and 373 market priced) on Parcels 8, 12, and 17, the mauka one-half of Parcel 7 and the makai one-half of Parcel 16, improvement of the proposed commercial lots at Parcels 19, 20, and 21 together with the necessary on-site and off-site infrastructure necessary to service these developments.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a

conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended, and the Commission Rules, the Commission finds upon a preponderance of evidence that the reclassification of the lands within Increment I of the Property, approximately shown on Exhibit "A" attached hereto and incorporated herein by reference, consisting of approximately 480 acres of land situate at Lihue and Puhī, Kauai, Hawaii, Tax Map Key Numbers: 3-3-03: portion parcel 1 and 3-3-06: portion parcel 19, from the Agricultural District to the Urban District for a residential lot and housing project, open space recreation, golf course, utility, roadways and commercial support areas, subject to the conditions in the Order, is reasonable, nonviolative of Section 205-2, Hawaii Revised Statutes, and is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission also concludes that inasmuch as full development of the lands within Increment II of the Property, which consists of approximately 116.775 acres of agricultural land as approximately shown in said Exhibit "A", cannot be reasonably completed within five years from the date of final approval by the County of Kauai in this matter, incremental

districting of the lands within Increments II of the Petitioner's development identified as Kauai Tax Map Key Number: 3-3-03: portion parcel 1, situate at Lihue and Puhi, Island of Kauai, State of Hawaii, from the Agricultural to the Urban District and amendment of the Land Use District Boundaries to permit the development of Increment II, subject to the conditions in the Order, is reasonable, nonviolative of Section 205-2, Hawaii Revised Statutes, and consistent with the Commission Rules.

ORDER

IT IS HEREBY ORDERED that a portion of the Property, identified as Increment 1, consisting of approximately 480 acres being the subject of Docket Number A89-636 by Grove Farm Properties, Inc., situated at Lihue and Puhi, Island and County of Kauai, State of Hawaii, identified as Kauai Tax Map Key Numbers: 3-3-03: Portion of Parcel 1 and 3-3-06: Portion of Parcel 19, and approximately identified on Exhibit "A", attached hereto and incorporated by reference herein, for reclassification from the Agricultural District to the Urban District, shall be and hereby is approved, subject to the following conditions:

IT IS ALSO HEREBY ORDERED that the remaining balance of the Property, identified as Increment II, consisting of approximately 116.775 acres of the petition area, situated at Lihue and Puhi, Island and County of Kauai, State of Hawaii,

identified as Kauai Tax Map Key Number: 3-3-03: Portion of Parcel 1, and approximately identified on said Exhibit "A", shall be and the same is approved for incremental districting pursuant to Section 15-15-78 of the Commission Rules and that redistricting of Increment II from the Agricultural to the Urban District will be granted upon receipt of an application by Petitioner for redistricting of this second increment upon a prima facie showing that there has occurred substantial completion of the on-site and off-site improvements within Increment 1 and in accordance with the Petitioner's development plan as represented, within five years of the date of final County zoning approval and subject to the following conditions:

1. In connection with any application for Zoning Amendment or Special Permit for any portion of the Property, Petitioner shall prepare a report to the appropriate County agency addressing the following areas of concern:

- a. The availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, road, refuse collection and disposal, police, and fire protection, the adequacy thereof, and an assessment as to whether the anticipated density and uses to which the Property will be put would unreasonably burden State or County agencies; and how the Petitioner intends to aid in the resolution of any identified inadequate facilities or services;

- b. A detailed drainage analysis of the Property, including an assessment of the downstream impacts which would

result upon approval of the Petitioner's application and the mitigative measures proposed with respect to all such impacts;

c. A description and analysis of how the Petitioner proposes to provide its requested development with sewage and waste water treatment and disposal;

d. A description of the Petitioner's proposed development schedule of all the land uses proposed and phasing development, which development schedule shall also include and address development of the Project's interior roadway system.

2. The affordable housing requirement shall be satisfied as follows:

A. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County's median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available

at rents which families in the specified income ranges can afford.

B. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (with the subject petition area) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.

3. Petitioner shall coordinate with the State of Hawaii and/or the County of Kauai, as appropriate, to ensure that drainage, as well as other infrastructural and service systems, are compatible and developed in a timely fashion to prevent degradation of groundwater and coastal ecosystems. Such infrastructure shall be funded by the Petitioner.

4. Petitioner shall participate in or otherwise provide all additional planning studies related to the Project as required by the State Department of Transportation (DOT). Petitioner shall also participate in the funding and construction of on-site and off-site transportation improvements associated with the proposed development and in designs and schedules required, accepted and coordinated with the DOT. Petitioner shall also provide appropriate dedication of land for the widening of Kaumualii Highway fronting the

proposed development and funding for project related signalization and intersection improvements as required by the DOT.

5. Petitioner shall fund and develop, as required by the County of Kauai and/or the State, as appropriate, the necessary measures required to obtain adequate supplies of water. Petitioner shall also fund and develop as necessary water storage and distribution systems for the proposed development. Petitioner shall obtain such permits as may be required by the State of Hawaii relating to Petitioner's development.

6. Petitioner shall comply with the requirements of the County of Kauai and the Department of Health of the State of Hawaii to expand existing on-site and off-site wastewater collection, treatment, and disposal infrastructure facilities and shall include the proposed project as part of the Petitioner's master plan for a wastewater system.

7. Petitioner shall pay its pro rata share for expansion of educational facilities by way of dedicating a site for such activities at a location within the Project area and containing an area to be mutually agreed upon by the State Department of Education, but no more than 10 acres, provided the State Department of Education elects to obtain such a site prior to the zoning of the Property.

8. Petitioner shall provide a detailed preservation plan for the two (2) identified historical sites to be prepared

and submitted for review and approval by the State's Historic Sites Section and the County of Kauai's Historic Preservation Commission. These agencies shall also verify the successful execution of this plan. This plan must be executed prior to construction. Should any new historical sites be identified during project construction Petitioner shall provide a preservation or data recovery plan as required by the DLNR.

Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, Petitioner shall immediately stop work and contact the State Historic Sites Section.

9. Petitioner shall provide notification to all prospective occupants of the Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

10. Petitioner shall implement appropriate mitigation measures, as recommended by the County of Kauai to limit air and water soil erosion during construction phases which could potentially impact coastal areas.

11. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the

property prior to the development of the Property; provided, however, that entering into a joint venture for the development of portions of the affordable housing projects shall not require prior notice to the Land Use Commission.

12. 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.

13. Petitioner shall provide annual reports to the Land Use Commission, The Office of State Planning and the County of Kauai Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed.

14. Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

DOCKET NO. A89-636 - GROVE FARM PROPERTIES, INC.

Done at Honolulu, Hawaii, this 30th day of June 1989,  
per motions of June 15, 1989 and June 16, 1989.

LAND USE COMMISSION  
STATE OF HAWAII

BY *Renton L. K. Nip*  
RENTON L. K. NIP  
Chairman and Commissioner

BY *Lawrence F. Chun*  
LAWRENCE F. CHUN  
Vice Chairman and Commissioner

BY *Allen K. Hoe*  
ALLEN K. HOE  
Commissioner

BY *Sharon R. Himeno*  
SHARON R. HIMENO  
Commissioner

BY *T. P. Tacbian*  
TEOFILO PHIL TACBIAN  
Commissioner

BY (abstained)  
TORU SUZUKI  
Commissioner

Filed and effective on  
June 30, 1989

Certified by:

*Ethel Lind*  
Executive Officer

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

BY *Frederick P. Whittemore*  
FREDERICK P. WHITTEMORE  
Commissioner

BY *Allen Y. Kajigka*  
ALLEN Y. KAJIGKA  
Commissioner

**A89-636**

**GROVE FARM PROPERTIES, INC.**

T. M. K.: 3-3-03: POR. 01

3-3-03: POR. 19

**PUHI, LIHUE, KAUAI**

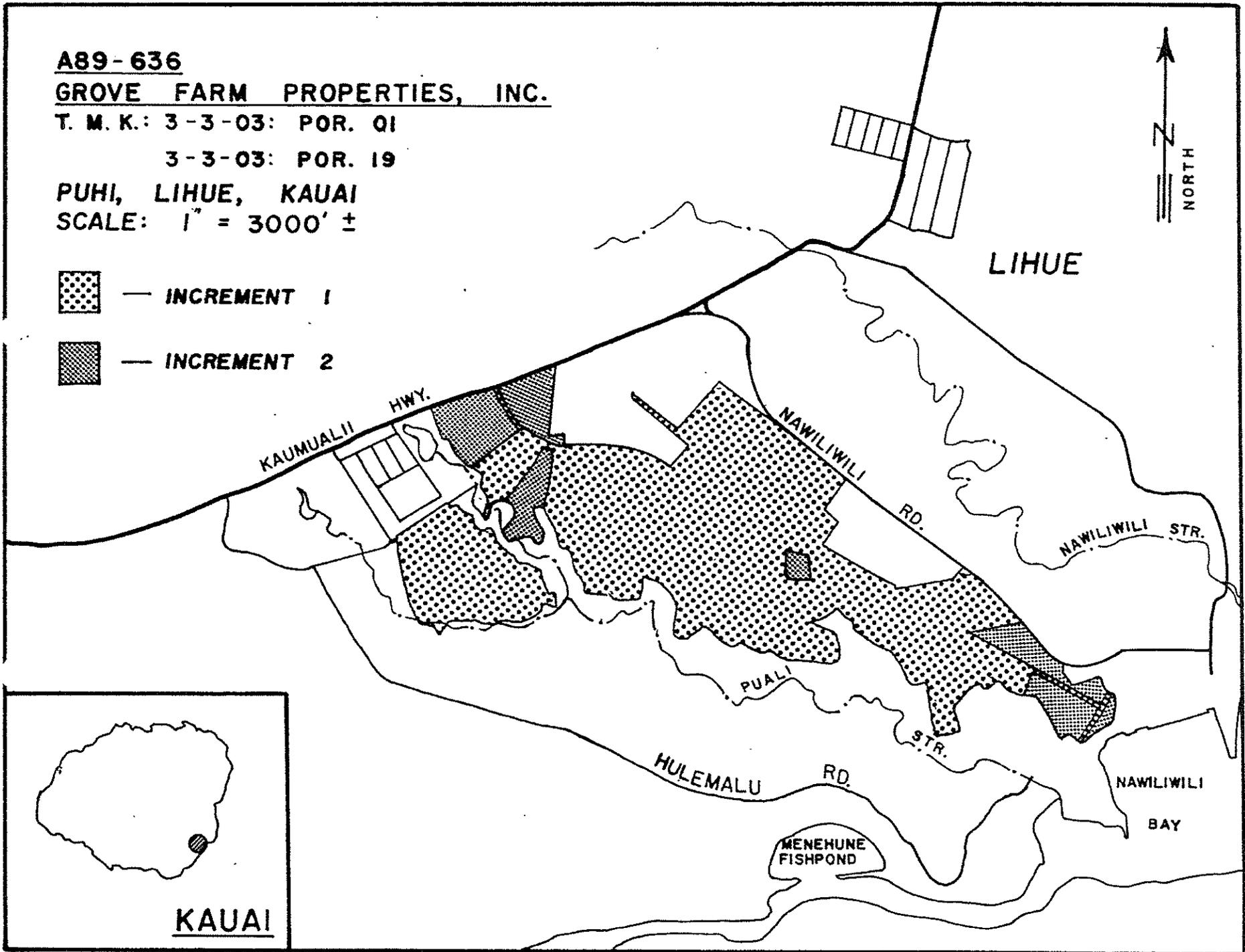
SCALE: 1" = 3000' ±



— INCREMENT 1



— INCREMENT 2



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A89-636  
GROVE FARM PROPERTIES, INC. ) GROVE FARM PROPERTIES,  
To Amend the Agricultural Land ) INC.  
Use District Boundary into the )  
Urban Land Use District for )  
Approximately 603 acres at )  
Lihue, Island and County of )  
Kauai, State of Hawaii, Tax Map )  
Key Nos.: 3-3-3: Portion 1; )  
3-3-2: Portion 1; 3-3-6: )  
Portion 19 and 3-4-5: Portion 7 )  
(inclusive of roadways). )

CERTIFICATE OF SERVICE

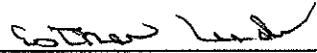
I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director  
Office of State Planning  
State Capitol, Room 410  
Honolulu, Hawaii 96813

CERT. TOM H. SHIGEMOTO, Planning Director  
Planning Department, County of Kauai  
4280 Rice Street  
Lihue, Hawaii 96766

CERT. DENNIS LOMBARDI, ESQ., Attorney for Petitioner  
Case and Lynch  
Suites 2500 and 2600  
Grosvenor Center, Mauka Tower  
737 Bishop Street  
Honolulu, HI 96813

DATED: Honolulu, Hawaii, this 30th day of June 1989.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer

DOCKET NO. A89-636 - GROVE FARM PROPERTIES, INC.

A copy of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by regular mail on July 3, 1989.

DAVID W. PRATT, President  
Grove Farm Properties, Inc.  
P. O. Box 2069  
Puhi Rural Branch  
Lihue, Hawaii 96766

DOUBLE SYSTEM

1737704

90-088395

STATE OF HAWAII  
LAND CONVEYANCES  
DIVISION

'90 JUN 14 AM 8 01

JUN 14 PM 8 01

228,585

S. FURLYAWA, REGISTRAR

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail ( ) Pickup (X)	To: TGA 95235114
Dennis M. Lombardi, Esq. CASE & LYNCH 737 Bishop Street, 26th Floor Honolulu, HI 96813	(DO NOT WRITE IN THIS SPACE)

DECLARATION OF LAND USE COMMISSION CONDITIONS

GROVE FARM PROPERTIES, INC., a Hawaii corporation (the "Declarant" but sometimes the "Petitioner"), the principal place of business and post office address of which is Lihue, Kauai, Hawaii, and Puhā Rural Branch, Lihue, Kauai, Hawaii 96766, respectively, is the holder of an option to acquire (1) the fee simple interest in that certain real property (the "GFC Property") owned in fee by Grove Farm Company, Incorporated, a Hawaii corporation (the "Fee Owner"), the principal place of business and post office address of which is Lihue, Kauai, Hawaii, and Puhā Rural Branch, Lihue, Kauai, Hawaii 96766, respectively, and described in that certain Unrecorded Option Agreement, dated November 15, 1985 (the "GFC Option"), by and between Fee Owner, as Optionor, and Declarant, as Optionee, a short form of which has been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1363999 with Land Court Application No. 1087 (amended), as amended by that certain First Amendment to Option Agreement, dated January 2, 1989, filed as Document No. 1614796, each of which have been noted on Owner's Transfer Certificate of Title No. 123,418, issued to the Fee Owner, and (2) a portion of that certain real property (the "GFLC Property") owned in fee by Grove Farm Land Corp., a Hawaii corporation ("Land Corp.") described in Exhibit A and depicted on Exhibit B hereto, under the terms of that certain unrecorded Option Agreement, dated February 1, 1989, the ("GFLC Option"), by and between the parties. Declarant, Land Corp. and Fee

**EXHIBIT "2"**

Owner, the latter having joined in this Declaration at the direction of Declarant, as required under the aforementioned GFC and GFLC Options, hereby declare that the GFLC Property and the GFC Property depicted as Increment 1 and Increment 2 on Exhibit C hereto (the "Petition Property") shall be and is hereby made subject to each of the following conditions which are enumerated in the Findings of Fact, Conclusions of Law, and Decision and Order of the Land Use Commission of the State of Hawaii entered June 30, 1989, in Land Use Commission Docket No. A89-636, reclassifying the Petition Property from the Agricultural District to Urban District:

1. In connection with any application for Zoning Amendment or Special Permit for any portion of the Property, Petitioner shall prepare a report to the appropriate County agency addressing the following areas of concern:

a. The availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, road, refuse collection and disposal, police and fire protection, the adequacy thereof, and an assessment as to whether the anticipated density and uses to which the Property will be put would unreasonably burden State or County agencies; and how the Petitioner intends to aid in the resolution of any identified inadequate facilities or services;

b. A detailed drainage analysis of the Property, including an assessment of the downstream impacts which would result upon approval of the Petitioner's application and the mitigative measures proposed with respect to all such impacts;

c. A description and analysis of how the Petitioner proposes to provide its requested development with sewage and waste water treatment and disposal;

d. A description of the Petitioner's proposed development schedule of all the land uses proposed and phasing development, which development schedule shall also include and address development of the Project's interior roadway system.

2. The affordable housing requirement shall be satisfied as follows:

A. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County's median income can afford. This condition may be fulfilled through projects,

under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available at rents which families in the specified income ranges can afford.

B. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (within the subject Petition Property) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.

3. Petitioner shall coordinate with the State of Hawaii and/or the County of Kauai, as appropriate, to ensure that drainage, as well as other infrastructural and service systems, are compatible and developed in a timely fashion to prevent degradation of groundwater and coastal ecosystems. Such infrastructure shall be funded by the Petitioner.

4. Petitioner shall participate in or otherwise provide all additional planning studies related to the Project as required by the State Department of Transportation (DOT). Petitioner shall also participate in the funding and construction of on-site and off-site transportation improvements associated with the proposed development and in designs and schedules required, accepted and coordinated with the DOT. Petitioner shall also provide appropriate dedication of land for the widening of Kaunualii Highway fronting the proposed development and funding for project related signalization and intersection improvements as required by the DOT.

5. Petitioner shall fund and develop, as required by the County of Kauai and/or the State, as appropriate, the necessary measures required to obtain adequate supplies of water. Petitioner shall also fund and develop as necessary water storage and distribution systems for the proposed development. Petitioner shall obtain such permits as may be required by the State of Hawaii relating Petitioner's development.

6. Petitioner shall comply with the requirements of the County of Kauai and the Department of Health of the State of Hawaii to expand existing on-site and off-site wastewater collection, treatment, and disposal infrastructure facilities

and shall include the proposed project as part of the Petitioner's master plan for a wastewater system.

7. Petitioner shall pay its pro rata share for expansion of educational facilities by way of dedicating a site for such activities at a location within the Project area and containing an area to be mutually agreed upon by the State Department of Education, but no more than 10 acres, provided the State Department of Education elects to obtain such a site prior to the zoning of the Property.

8. Petitioner shall provide a detailed preservation plan for the two (2) identified historical sites to be prepared and submitted for review and approval by the State's Historic Sites Section and the County of Kauai's Historic Preservation Commission. These agencies shall also verify the successful execution of this plan. This plan must be executed prior to construction. Should any new historical sites be identified during project construction Petitioner shall provide a preservation or data recovery plan as required by the DLNR.

Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, Declarant shall immediately stop work and contact the State Historic Sites Section.

9. Petitioner shall provide notification to all prospective occupants of the Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

10. Petitioner shall implement appropriate mitigation measures, as recommended by the County of Kauai to limit air and water soil erosion during construction phases which could potentially impact coastal areas.

11. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the property prior to the development of the Property; provided, however, that entering into a joint venture for the development of portions of the affordable housing projects shall not require prior notice to the Land Use Commission.

12. 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.

13. Petitioner shall provide annual reports to the Land Use Commission, The Office of State Planning and the County of Kauai Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed.

14. Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

IN WITNESS WHEREOF, Grove Farm Properties, Inc., has caused these presents to be executed, and at its request Grove Farm Company, Incorporated, and Grove Farm Land Corp. have joined in these presents this 27<sup>th</sup> day of May, 1990.

GROVE FARM PROPERTIES, INC.,  
a Hawaii corporation,

By *Shirley Paopapa*  
Its Vice President

By *[Signature]*  
Its Treasurer

GROVE FARM LAND CORP.,  
a Hawaii corporation,

By *William G. Honjugo*  
Its Vice President

By *[Signature]*  
Its Treasurer

GROVE FARM COMPANY, INCORPORATED,  
a Hawaii corporation,

By *David W. P. [Signature]*  
Its President and Chief Executive Officer

By *[Signature]*  
Its Treasurer

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF KAUAI                 )

On this 29<sup>th</sup> day of May, 1990,  
before me appeared Hugh T. ...  
and Jed ..., to me personally known, who, being  
by me duly sworn, did say that they are the Vice President  
and Treasurer, respectively, of GROVE FARM PROPERTIES,  
INC, a Hawaii corporation, and that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation  
and that said instrument was signed and sealed in behalf of  
said corporation by authority of its Board of Directors, and  
said officers acknowledged said instrument to be the free act  
and deed of said corporation.

Sharon A. ...  
Notary Public, State of Hawaii  
My commission expires: 6/19/90

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this 29<sup>th</sup> day of May, 19    ,  
before me appeared David W. Pratt  
and Jim Sweeney, to me personally known <sup>who</sup> being  
by me duly sworn, did say that they are the <sup>President and</sup> Chief Executive Officer  
and                     , respectively, of GROVE FARM COMPANY,  
INCORPORATED, a Hawaii corporation, and that the seal affixed  
to the foregoing instrument is the corporate seal of said  
corporation and that said instrument was signed and sealed in  
behalf of said corporation by authority of its Board of  
Directors, and said officers acknowledged said instrument to be  
the free act and deed of said corporation.

                      
Notary Public, State of Hawaii  
My commission expires: 6/11/90

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

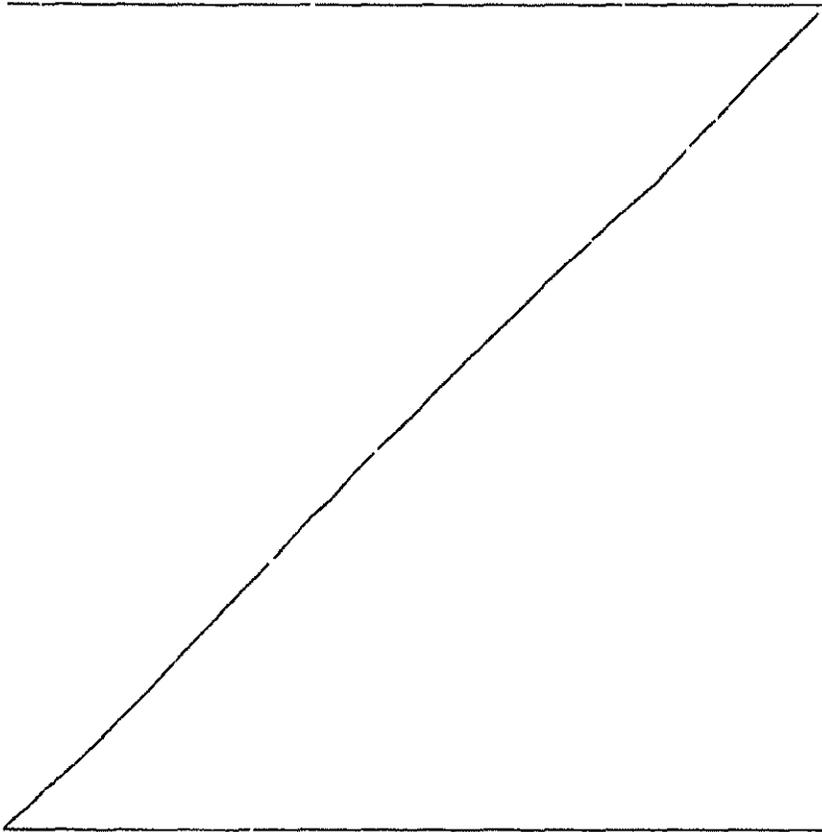
On this 29<sup>th</sup> day of May, 1940,  
before me appeared Walter J. Hansen  
and Ed. Sorensen, to me personally known, who, being  
by me duly sworn, did say that they are the Vice President  
and Treasurer, respectively, of GROVE FARM LAND CORP.,  
a Hawaii corporation, and that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation  
and that said instrument was signed and sealed in behalf of  
said corporation by authority of its Board of Directors, and  
said officers acknowledged said instrument to be the free act  
and deed of said corporation.

Maurice A. Ahrens  
Notary Public, State of Hawaii

My commission expires: 6/19/40

EXHIBIT A

All that certain real property as reflected in Exhibit B to this Declaration more particularly described as portion, approximately 1.6 acres, of Lot 579, as shown on Map 69, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1087 (amended), being a portion of that certain real property more particularly described on Transfer Certificate of Title No. 228,585, issued to Grove Farm Land Corp., a Hawaii corporation.



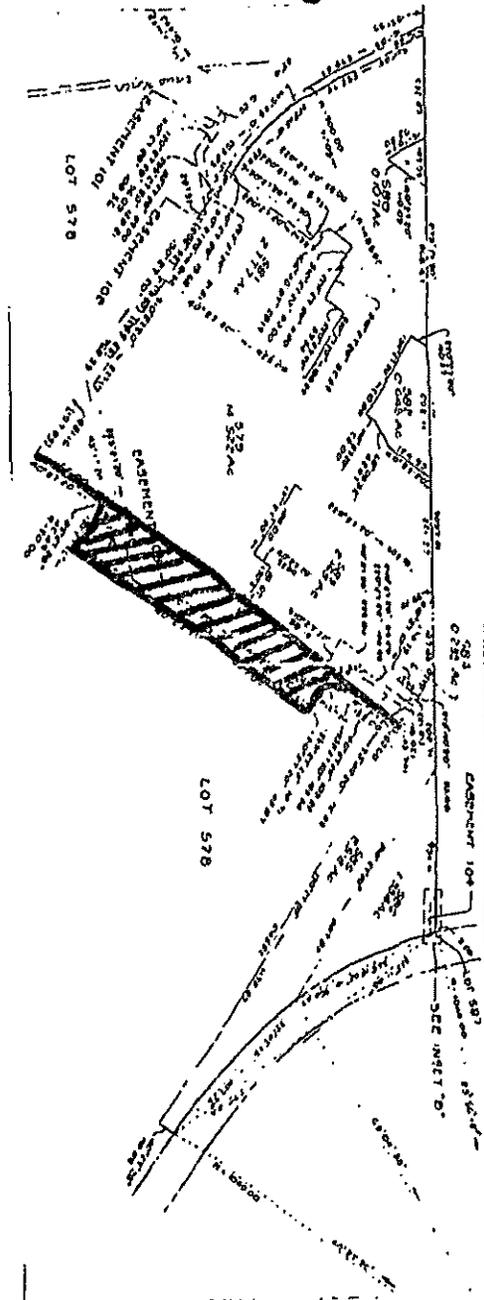


EXHIBIT B

RECORDER'S MEMO: Legibility of Writing, Typing or Printing UNSATISFACTORY in this Document when received.



BENJAMIN J. CAYETANO  
GOVERNOR



ESTHER UEDA  
EXECUTIVE OFFICER

STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
**LAND USE COMMISSION**  
Room 104, Old Federal Building  
335 Merchant Street  
Honolulu, Hawaii 96813  
Telephone: 587-3822  
January 5, 1996

MEMORANDUM

TO: All Parties  
FROM: *Esther Ueda*  
for Esther Ueda, Executive Officer  
Land Use Commission  
SUBJECT: Findings of Fact, Conclusions of Law, and Decision and  
Order Dated December 20, 1995 for LUC Docket No.  
A89-636/Grove Farm Properties, Inc.

Please substitute the attached amended pages 10 and 11 in the Findings of Fact, Conclusions of Law, and Decision and Order of the subject docket issued on December 20, 1995.

The amendment is as follows:

- 1) Delete the phrase "thirty percent (30%) of the units which families with an income range of 80 to 120 percent of Kauai County's median income can afford and" in the fifth line of Condition No. 2.a.

**EXHIBIT "3"**



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

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 )  
103.570 Acres Of Land Situated At )  
Lihue, Kauai, State of Hawai'i, )  
TMK: 3-3-03: por. 1, por. 33; )  
3-3-10: por. 17 and por. 18 )  
\_\_\_\_\_ )

DOCKET NO. A89-636  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER

LAND USE COMMISSION  
STATE OF HAWAII  
DEC 20 8 19 AM '95

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

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A89-636
GROVE FARM PROPERTIES, INC.	)	FINDINGS OF FACT,
To Amend The Agricultural Land Use	)	CONCLUSIONS OF LAW, AND
District Boundary Into The Urban	)	DECISION AND ORDER
Land Use District For Approximately	)	
103.570 Acres Of Land Situated At	)	
Lihue, Kauai, State of Hawai'i,	)	
TMK: 3-3-03: por. 1, por. 33;	)	
3-3-10: por. 17 and por. 18	)	
<hr/>		

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

GROVE FARM PROPERTIES, INC., a Hawai'i corporation ("Petitioner"), filed a Motion to Approve Incremental Redistricting of the Balance of Increment II Lands From Agricultural to Urban Classification on July 31, 1995 ("Motion"). Subsequently, on August 25, 1995, Petitioner filed an Amended and Restated Motion to Approve Incremental Redistricting of the Balance of Increment II Lands from Agricultural to Urban Classification ("Amended Motion"). The Motion and Amended Motion was filed pursuant to chapter 205, Hawai'i Revised Statutes ("HRS") and, section 15-15-78, Hawai'i Administrative Rules ("HAR").

The Land Use Commission ("Commission") having heard and examined the testimony, evidence, and arguments of counsel presented during the hearing, the Petitioner's Proposed Findings

of Fact, Conclusions of Law and Decision and Order, the Office of State Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and the record herein, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On February 16, 1989, Petitioner filed a Petition to reclassify approximately 605 acres of land from the Agricultural District to the Urban District.

2. On June 30, 1989, the Commission issued its Decision and Order ("Decision and Order") and reclassified a portion of the lands that are the subject of LUC Docket No. A89-636 consisting of approximately 480 acres in the Lihue-Puhi Project District, from the Agricultural District to the Urban District ("Increment I").

3. In its Decision and Order, the Commission provided for the incremental redistricting of approximately 116.775 acres ("Increment II") upon a *prima facie* showing that the Petitioner had substantially completed improvements off-site and within Increment I in accordance with Petitioner's development plan.

4. On December 3, 1993, Petitioner filed a Motion to Approve a Portion of Increment II Lands for Incremental redistricting from Agricultural to Urban Classification and to Clarify Location of Parcel 12 of Increment II Lands.

On February 24, 1994, a hearing was held in Lihue, Kauai, on said motion.

On June 2, 1994, the Commission acted to approve said motion and a Findings of Fact, Conclusions of Law, and Decision and Order for said motion was filed on June 9, 1994.

5. On July 31, 1995, Petitioner filed its motions to approve the redistricting of Increment II lands from the Agricultural District to the Urban District as permitted under the Decision and Order, and to clarify the Decision and Order to include a small area of land along the Kaumualii Highway realignment area.

6. On August 25, 1995, Petitioner filed a Motion to Amend and Clarify the Decision and Order ("Motion to Clarify") and the Amended Motion (collectively "Motions").

7. The Motions provided affidavits, and other documentation in support of Petitioner's request to clarify the original Decision and Order and in support of Petitioner's representations that Petitioner has substantially completed off-site and on-site improvements within Increment I in accordance with Petitioner's development plan.

8. The Commission conducted a hearing on the Motions on October 3, 1995, at Lihue, Kauai, pursuant to notice published on September 1, 1995, in the Garden Island and the Honolulu Advertiser, a newspaper of general circulation.

9. The Commission received no letters of comment on the Motions. No requests for intervention were filed. No public testimony was offered at the time of the hearing.

10. On October 20, 1995, the Commission entered its Order Granting the Motion To Amend and Clarify Findings of Fact,

Conclusions of Law and Decision and Order. The Decision and Order was amended to reflect that 1) the total acreage of the petition area is approximately 599.908 acres; 2) that lands identified as Increment I encompasses an area of approximately 491.838 acres; and 3) that lands identified as Increment II encompasses an area of approximately 108.070 acres. With the Findings of Fact, Conclusions of Law, and Decision and Order filed on June 9, 1994, the resultant acreage of Increment II lands is approximately 103.570 acres.

PROPOSAL FOR RECLASSIFICATION

11. The Amended Motion sought the Commission's approval of the incremental redistricting from the Agricultural District to the Urban District of the remaining 103.570 acres of Increment II lands as established by the Motion to Clarify.

12. Petitioner seeks to reclassify Increment II land on the basis that Petitioner has substantially completed improvements in Increment I in accordance with Petitioner's development plan and representations in this docket.

DESCRIPTION OF AREA

13. The properties sought to be reclassified, which total 103.570 acres, are identified in the Decision and Order as Parcels 8, 17, 19, 20, 21, the makai one-half of Parcel 16, the mauka one-half of Parcel 7 (the non-urban portion of Parcel 7), and the Kaumualii Alignment Area. These properties are identified on Petitioner's Exhibits C and E (Proposed Land Use Change Map) as Parcels A2, A3, A4, A5, D1 and D3.

14. The properties are located at Lihue and Puhi, Kauai, generally south of Nawiliwili Road and Kaumualii Highway, and were originally identified as Tax Map Key No.: 3-3-03: portion 01 and now bear Tax Map Key Nos.: 3-3-03:1 (portion), 33 (portion); 3-3-10: 17 (portion), and 18 (portion).

15. Grove Farm Company, Incorporated, Petitioner's parent corporation, is the fee owner of the properties. Petitioner has a proprietary interest in the properties and has been authorized to seek the requested boundary amendment.

INCREMENTAL DISTRICTING

16. Petitioner has substantially completed significant off-site and on-site improvements within Increment I in accordance with Petitioner's development plan and representations.

17. On-site improvements within Increment I lands that have been substantially completed include single family and multi-family residential subdivisions, expansion of the Kukui Grove Shopping Center, and ten holes of the proposed golf course.

18. Within the residential subdivisions, 409 affordable units have been completed. By the end of 1995, an additional 92 units will be completed. Petitioner has represented that it has completed approximately three-quarters of the required number of affordable units.

19. Off-site improvements include water tanks, water transmission lines, and wells for domestic use. A sewage treatment plant has also been completed by the Petitioner.

20. Petitioner has also completed roadways within the Increment I lands.

21. According to the State Department of Education ("DOE"), the Petitioner has met a condition imposed in the Decision and Order by dedicating a 10 acre school site to the DOE as their fair share contribution for school facilities. The State Department of Accounting and General Services indicated that the DOE is currently proceeding with the planning for the proposed school on the 10 acre site.

22. The Petitioner has also agreed to provide the off-site infrastructure conduits for electrical, water, and sewer up to the school site. DOE is currently discussing a proposal to share some of the off-site infrastructure costs for the proposed school site with the Petitioner. Additional funding will be required to meet the added costs for the school.

COUNTY AND STATE POSITION ON MOTION

23. The County of Kauai Planning Department and the Office of State Planning have represented that they are in support of the Motion.

24. The Office of State Planning ("OSP") has represented that the Commission on Water Resource Management ("CWRM"), by letter dated September 20, 1995, has expressed concern regarding the impact of potential development along streams not yet channelized and Petitioner has represented that it will address that concern with the CWRM. The CWRM has requested that a buffer area be provided so that development does

not occur on areas with highly erodible slopes that drain into streams within or adjacent to the project.

25. The OSP has represented that the State Office of Civil Defense has indicated that at least one civil defense emergency siren is necessary in the petition area.

26. The OSP represented that the U.S. Fish and Wildlife Service ("FWS") and the Army Corps of Engineers ("COE") have concerns regarding an area within Increment II lands that is fed by a natural spring. This may be a wetland area as indicated by the National Wetlands Inventory Maps from the U.S. Department of the Interior, FWS, 1978. The COE indicates that a Department of the Army permit may be required for any activities in or near Halehaka or Puali Stream, or in any wetlands within the project area. OSP recommends that the Petitioner contact the COE Regulatory Branch and the FWS to provide more information about their plans adjacent to or in the waters of the United States.

27. Petitioner clarified that the area of the COE's concerns is a reservoir that was previously utilized for cement and truck washing, and is currently being utilized as an irrigation source for the proposed golf course. Petitioner has also represented that it will address the concerns raised during its engineering review for Increment II lands.

28. Petitioner has represented that it has agreed to fund and install emergency siren units (including infrastructure) within Increments I and II, to the satisfaction of the State Department of Defense.

29. Petitioner has represented that it will continue to work with the Commission on Water Resource Management, U.S. Fish and Wildlife Service, and Corps of Engineers to address their concerns.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

30. Although Increment II land is located within the Coastal Zone Management Area, pursuant to chapter 205A, HRS, the land is not located within the Special Management Area established by the County of Kauai. The Amended Motion is generally in compliance with chapter 205A, HRS.

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS and the Hawai'i Land Use Commission Rules, under Chapter 15-15, HAR, this Commission finds upon a clear preponderance of evidence that incremental redistricting from Agricultural to Urban classification of the balance of Increment II land, consisting of approximately 103.570 acres of land situate at Lihue and Puhi, Kauai, Hawai'i, Tax Map

Key No.: 3-3-03: por. 1, por. 33; 3-3-10: por. 17 and por. 18, subject to the conditions in this Order, is reasonable, nonviolative of section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS, and the Coastal Zone Management Program as set forth in chapter 205A, HRS.

ORDER

IT IS HEREBY ORDERED that the balance of Increment II lands, consisting of approximately 103.570 acres being the subject of LUC Docket Number A89-636 filed by Petitioner Grove Farm Properties, Inc., a Hawai'i corporation, situate at Lihue and Puhi, Kauai, Hawai'i, Tax Map Key No.: 3-3-03: por. 1, por. 33; 3-3-10: por. 17 and por. 18, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby reclassified, from the Agricultural District to the Urban District, and that the State Land Use District Boundaries are amended accordingly subject to the following conditions:

1. In connection with any application for zoning amendment for any portion of the Increment II lands, Petitioner shall prepare a report to the appropriate County agency addressing the following areas of concern:

a. The availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, road, refuse collection and disposal, police, and fire protection, the adequacy thereof, and an assessment as to whether the anticipated density and uses to which the Increment II lands will be put would unreasonably burden State or County agencies;

and how the Petitioner intends to aid in the resolution of any identified inadequate facilities or services;

b. A detailed drainage analysis of the Increment II lands, including an assessment of the downstream impacts which would result upon approval of the Petitioner's application and the mitigative measures proposed with respect to all such impacts;

c. A description and analysis of how the Petitioner proposes to provide its requested development with sewage and waste water treatment and disposal;

d. A description of the Petitioner's proposed development schedule of all the land uses proposed and phasing development, which development schedule shall also include and address development of the Project's interior roadway system.

2. The affordable housing requirement shall be satisfied as follows:

a. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawai'i residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County's median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available at rents which families in the specified income ranges can afford.

b. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (with the subject petition area) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.

3. Petitioner shall coordinate with the State of Hawai'i and/or the County of Kauai, as appropriate, to ensure that drainage, as well as other infrastructural and service systems, are compatible and developed in a timely fashion to prevent degradation of groundwater and coastal ecosystems. Such infrastructure shall be funded by the Petitioner.

4. Petitioner shall participate in or otherwise provide all additional planning studies related to the project as required by the State Department of Transportation (DOT). Petitioner shall also participate in the funding and construction of on-site and off-site transportation improvements associated with the proposed development and in designs and schedules required, accepted and coordinated with the DOT. Petitioner

shall also provide appropriate dedication of land for the widening of Kaumualii Highway fronting the proposed development and funding for project related signalization and intersection improvements as required by the DOT.

5. Petitioner shall fund and develop, as required by the County of Kauai and/or the State, as appropriate, the necessary measures required to obtain adequate supplies of water. Petitioner shall also fund and develop, as necessary, water storage and distribution systems for the proposed development. Petitioner shall obtain such permits as may be required by the State of Hawai'i relating to Petitioner's development.

6. Petitioner shall comply with the requirements of the County of Kauai and the Department of Health of the State of Hawai'i to expand existing on-site and off-site wastewater collection, treatment, and disposal infrastructure facilities and shall include the proposed project as part of the Petitioner's master plan for a wastewater system.

7. Petitioner shall pay its pro rata share for expansion of educational facilities by way of dedicating a site for such activities at a location within the project area and containing an area to be mutually agreed upon by the State Department of Education, but not more than 10 acres, provided the State Department of Education elects to obtain such a site prior to the zoning of the Increment II lands.

8. Petitioner shall provide a detailed preservation plan for the two (2) identified historical sites to be prepared and submitted for review and approval by the State's Historical

Sites Section and the County of Kauai's Historic Preservation Commission. These agencies shall also verify the successful execution of this plan. This plan must be executed prior to construction. Should any new historical sites be identified during project construction, Petitioner shall provide a preservation or data recovery plan as required by the DLNR.

Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, Petitioner shall immediately stop work and contact the State Historic Sites Section.

9. Petitioner shall provide notification to all prospective occupants of the Increment II lands of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawai'i Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

10. Petitioner shall implement appropriate mitigation measures, as recommended by the County of Kauai to limit air and water soil erosion during construction phases which could potentially impact coastal areas.

11. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the Increment II lands prior to development of the Increment II lands; provided, however, that entering into a joint venture for

the development of portions of the affordable housing projects shall not require prior notice to the Land Use Commission.

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

13. Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Kauai Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed. The annual report shall be in a format as prescribed by the Executive Officer of the Land Use Commission.

14. Petitioner shall develop the Increment II lands in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Increment II lands.

15. Petitioner shall file an amendment to its Declaration of Land Use Commission Conditions (filed on June 14, 1990 with the Bureau of Conveyances as Document No. 90-088395) with the Bureau of Conveyances of Land Court of the State of Hawai'i, as applicable. Said amendment shall reflect the 4.5 acres reclassified by the Decision and Order filed on June 9, 1994 and specify that said acreage shall also be subject to the conditions stated in the Commission's Decision and Order filed on June 30, 1989 in this docket.

16. Petitioner shall fund and install the necessary number of emergency siren units (including infrastructure) within

Increments I or II, to the satisfaction of the State Department of Defense.

17. Petitioner shall cooperate with the Department of Education and Department of Accounting and General Services, Public Works Division, to provide timely infrastructure improvements for the opening of Kauai Intermediate School now scheduled for September 1998.

18. Petitioner shall cooperate with the Commission on Water Resource Management and the U.S. Fish and Wildlife Service for the designation of a Puali Stream buffer area.

19. Petitioner shall consult with the U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers to determine whether the petition area contains a wetland, and, if necessary, implement mitigation measures to the satisfaction of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers.

20. Petitioner shall file a Declaration of Conditions with the Bureau of Conveyances or Land Court of the State of Hawai'i, as applicable, reflecting that the approximately 103.570 acres reclassified by this Decision and Order are subject to the foregoing conditions, pursuant to section 15-15-92, Hawai'i Administrative Rules.

DOCKET NO. A89-636 - GROVE FARM PROPERTIES, INC.

Done at Honolulu, Hawaii, this 20th day of December 1995,  
per motion on December 14, 1995.

LAND USE COMMISSION  
STATE OF HAWAII

By Allen K. Hoe  
ALLEN K. HOE  
Chairperson and Commissioner

By Trudy K. Senda  
TRUDY K. SENDA  
Vice Chairperson and Commissioner

By Rupert K. Chun  
RUPERT K. CHUN  
Commissioner

By M. Casey Jarman  
M. CASEY JARMAN  
Commissioner

By Lloyd F. Kawakami  
LLOYD F. KAWAKAMI  
Commissioner

By Merle A. K. Kelai  
MERLE A. K. KELAI  
Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

By Joann N. Mattson  
JOANN N. MATTSON  
Commissioner

By (absent)  
ELTON WADA  
Commissioner

Filed and effective on  
December 20, 1995

Certified by:

Arthur Land  
Executive Officer

DOCKET NO. A89-636 / GROVE FARM PROPERTIES, INC.

**LOCATION MAP**

TAX MAP KEY: 3-3-03: por. 1, por. 33, 3-3-10: por. 17, & por. 18

SCALE 1" = 2000 ft ±

APPROVED AREA

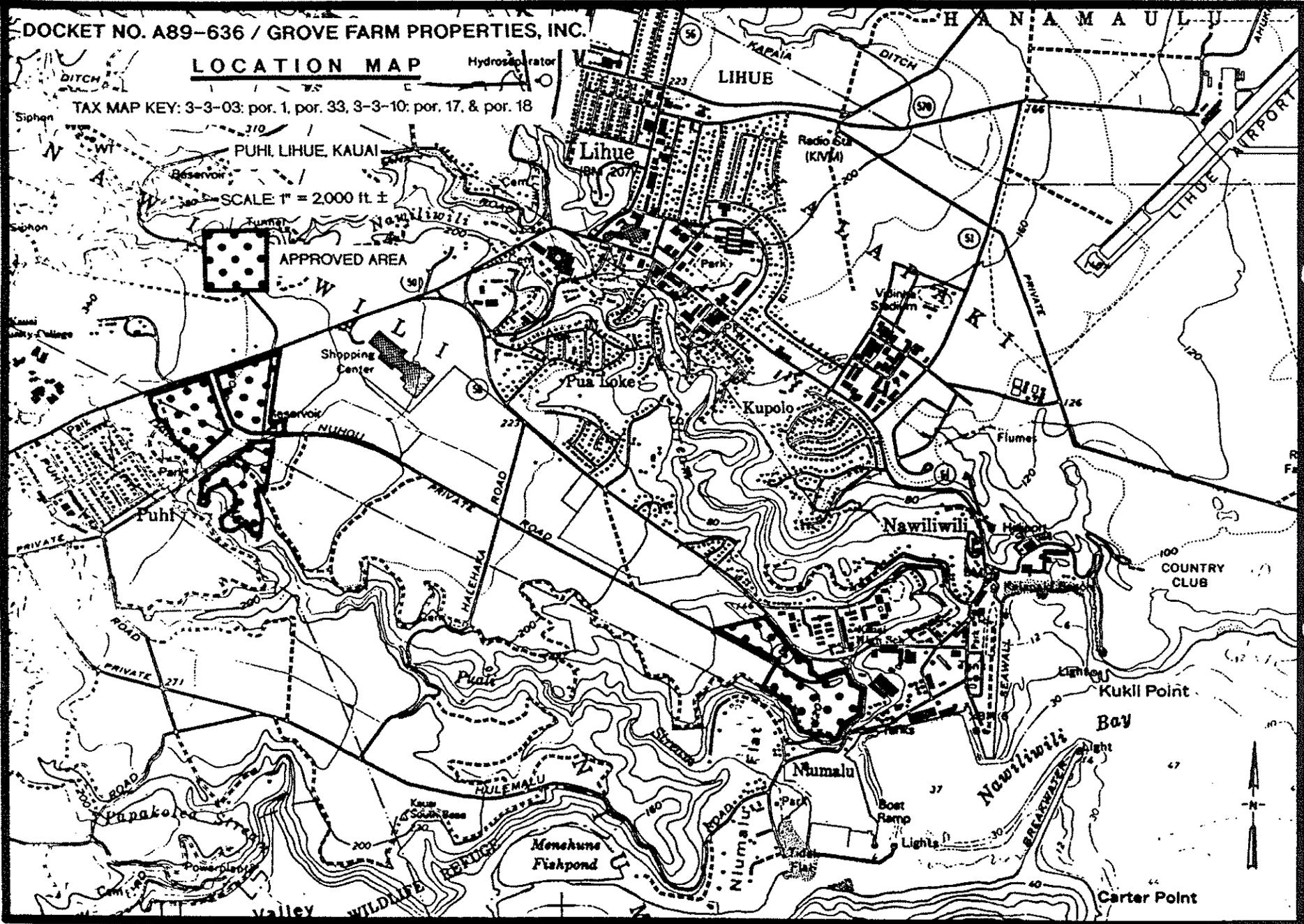


EXHIBIT "A"

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of ) DOCKET NO. A89-636  
)  
GROVE FARM PROPERTIES, INC. ) CERTIFICATE OF SERVICE  
)  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban )  
Land Use District For Approximately )  
103.570 Acres Of Land Situated At )  
Lihue, Kauai, State of Hawai'i, )  
TMK: 3-3-03: por. 1, por. 33; )  
3-3-10: por. 17 and por. 18 )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

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:

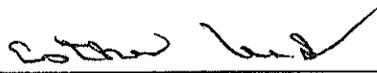
CERT. GREGORY G.Y. PAI, PH.D., Director  
Office of State Planning  
P. O. Box 3540  
Honolulu, Hawaii 96811-3540

CERT. DEE CROWELL, Planning Director  
Planning Department, County of Kauai  
Suite 473, Building A  
4444 Rice Street  
Lihue, Hawaii 96766

CERT. HARTWELL H.K. BLAKE, ESQ.  
County Attorney  
Office of the County Attorney  
County of Kauai  
4396 Rice Street, #202  
Lihue, Hawaii 96766

CERT. DENNIS LOMBARDI, ESQ., Attorney for Petitioner  
Case Myrdal Bigelow & Lombardi  
737 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 20th day of December 1995.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer

L-194 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED

MAR 08. 2001 08:01 AM

Doc No(s) 2688215

on Cert(s) 534.040

Issuance of Cert(s) 576.218

/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

CONVEYANCE TAX: \$854.20

AFTER RECORDATION, RETURN BY:  MAIL ~ PICKUP

TO: Case Bigelow & Lombardi  
737 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813  
Attn: Dennis M. Lombardi

*TGB - Lihue*  
*Amy Silva*  
*REC. 99-401-0172*

LCT

(4)

Total No. of Pages 10

Tax Map Key No. (4) 3-3-3-045

**LIMITED WARRANTY DEED AND RESERVATION OF RIGHTS**

THIS LIMITED WARRANTY DEED AND RESERVATION OF RIGHTS (this "Deed") is made as of December 19, 2000, by and between GROVE FARM PROPERTIES, INC., a Hawaii corporation (the "Grantor"), whose principal place of business is Kauai, Hawaii and whose post office address is P.O. Box 662069 Puhi Rural Station, Lihue, Kauai, Hawaii 96766-7069, and REGENCY PACIFIC INC., a Washington corporation, (the "Grantee"), whose address is 970 Fifth Avenue NW, Issaquah, Washington 98027.

**WITNESSETH:**

That for Ten Dollars and other valuable consideration paid by the Grantee to the Grantor, the receipt of which is hereby acknowledged; the Grantor does hereby grant and convey unto the Grantee, as tenant in severalty, that certain real property (the "Property") described in Exhibit "A" attached hereto, which Exhibit "A" is incorporated into this Deed by reference;

Regency 00-1218  
639057235993.1

**EXHIBIT "4"**

AND the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all rights, easements, rights of way, privileges, appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, and all other rights and benefits running with the Property, unto the Grantee forever.

THE GRANTEE confirms and agrees that the Grantee has inspected the Property and that the Property is being conveyed to the Grantee in "AS IS" condition, and without any representations or warranties of any kind with respect to the Property, except as expressly provided in this Deed.

AND The Grantee, for itself, any person or entity claiming by or through it, and their respective successors and assigns, further acknowledges and agrees that the Grantee shall not interfere with, object to, or participate in any manner in any opposition to the Grantor's plans for the development (residential, commercial, or industrial), subdivision, consolidation, construction, promotion, sale and/or leasing of all or any portion of the adjacent lands described in Certificate of Title Nos. 168,802, 388,757, 435,457, 383,574, 405,144, 435,458, 448,074, 356,454, 228,585, 123,418, 255,832, and 534,040, and as shown on File Plans 1741, 1828, 1995, and 1701.

In consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seised of the Property in fee simple; that the Property is free and clear of and from all liens and encumbrances made or suffered by the Grantor, excepting the lien of real property taxes assessed for the current fiscal year but not yet due, and further excepting any and all exceptions, reservations and encumbrances created by or referred to in this Deed or Exhibit "A" hereto; that the Grantor has good right to sell and convey the Property; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

This conveyance and the covenants of the Grantor shall be binding upon the Grantor and the Grantor's successors and assigns, and shall run in favor of and inure to the benefit of the Grantee and the Grantee's successors and assigns. The covenants and agreements of the Grantee shall run with the land described in Exhibit "A" attached hereto, shall be binding upon the Grantee and the Grantee's successors and assigns, and shall run in favor of and inure to the benefit of the Grantor and the Grantor's successors and assigns.

The parties hereto agree that this Deed may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Deed, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

✓

The Grantor and the Grantee have executed this Deed as of the date first referenced above.

GROVE FARM PROPERTIES, INC.  
A Hawaii corporation

By Michael H. Funakawa  
Name: Michael H. Funakawa  
Title: Vice President

By Sandra L. Day  
Name: Sandra L. Day  
Title: Treasurer

Grantor

REGENCY PACIFIC, INC.  
A Washington corporation

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

Grantee

The Grantor and the Grantee have executed this Deed as of the date first referenced above.

GROVE FARM PROPERTIES, INC.  
A Hawaii corporation

By Michael H. Furukawa  
Name: Michael H. Furukawa  
Title: Vice President

By Sandra L. Day  
Name: Sandra L. Day  
Title: Treasurer

Grantor

REGENCY PACIFIC, INC.  
A Washington corporation

By James L. Clay  
Name: James L. Clay  
Title: President

By Jack Leebron  
Name: Jack Leebron  
Title: Secretary/General Counsel

Grantee

STATE OF HAWAII                    )  
  ) SS:  
COUNTY OF KAUAI                )

On this 19<sup>th</sup> day of December, 2000, before me appeared Michael H. Furukawa and Sandra L. Dey to me personally known, who, being by me duly sworn, did say that they are the Vice President and Treasurer, respectively, of GROVE FARM PROPERTIES, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged the instrument to be the free act and deed of said corporation.

Mary Ann T. McMillan  
Notary Public, State of Hawaii L.S.  
Type or print name: Mary Ann T. McMillan  
My commission expires: 4-19-2002

STATE OF WASHINGTON )  
 ) SS:  
COUNTY OF KING )

On this 27th day of February, 2000, before me personally appeared James L. Day, President, and Jack Leeborn Secretary (General Counsel) to me personally known, who being by me duly sworn, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Janice Churchill  
Notary Public, State of Washington  
Type or print name: Janice Churchill  
My commission expires: May 15, 2001

EXHIBIT "A"

All of that certain parcel of land situate at Lihue, District of Puna, Island and County of Kauai, State of Hawaii, described as follows:

LOT 1545-A, area 5.603 acres, more or less, as shown on Map 145, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1087 (amended).

Being a portion of the land(s) described in Transfer Certificate of Title No. 534,040 issued to Grove Farm Properties, Inc., a Hawaii corporation.

TOGETHER WITH access on and over Lots 1547, 1542 and 1541, and thereafter to Kaunaulii Highway, a public road, as set forth by Land Court Order No. 131986, filed July 8, 1998.

SUBJECT, HOWEVER, to the following:

1. All of the easements and encumbrances reflected on said Map 145 or described in said Certificate of Title No. 534,040, affecting said Lot 1545-A.
2. The covenants and agreements created by or referred to in the Limited Warranty Deed and Reservation of Rights to which this exhibit is attached and incorporated.
3. Reservation in favor of the Grantor, its successors and assigns, of an easement for the right of passage of surface water and drainage on and over the Lot 1545-A, subject to a County-approved drainage plan, which easement and right are herein specifically reserved in favor of the Grantor, its successors and assigns, together with the right to enter onto the premises to construct, reconstruct, install, operate, maintain, repair and replace the improvements thereon located or required, as the Grantor, its successors and assigns, deems appropriate or advisable or as may be necessary for aforesaid purposes, together with the right license or grant on a non-exclusive or exclusive basis said easements and rights to whomsoever the Grantor, its successors and assigns, determines appropriate, these reserved rights to be exercised in a manner that will cause the least practicable interference with the use and occupancy of the premises by the Grantee, its successors and assigns.
4. Reservation of an easement by the Grantor, its successors, assigns, and respective affiliates and subsidiaries for various environmental conditions, hazards and risks, which may result in the premises being periodically affected by various nuisances and hazards and by noise, dust, smoke, soot, ash, odor or adverse environmental conditions of any kind (including but not limited to those attributable to wind drift and other weather factors) created by surrounding prospective, existing, and historical, agricultural, industrial, golf course and other non-residential uses and activities, which include specifically, but are not limited to: (1) cane milling, burning, harvesting and tending, fertilization and weed and pest control; (2) golf

course construction and maintenance, pest management (use of pesticides), weed and fungus control (use of herbicides and pesticides), errant golf balls, operations and events; (3) construction, development, grading, improvement, sales and maintenance of adjacent and surrounding properties, including residential and non-residential property and roadways; (4) irrigation of any and all the surrounding lands, common areas and golf course with treated effluent, reclaimed water or other sources of non-potable water; (5) the use of an adjacent area as a county landfill known as Halehaka, and the closure and post-closure monitoring of the landfill, as well as activities associated with such closure; (6) the husbandry of livestock, including but not limited to swine; (7) a wastewater treatment facility for the subdivision and certain other properties; (8) water supply and sewage pumping stations at various locations in the Subdivision; (9) the use of irrigation lakes in the golf course to mix sewage effluent, reclaimed water and other non-potable water for irrigation purposes; (10) the existence of and events at the nearby Kukui Grove Shopping Center, and other land uses in the vicinity, which may create noise, smell and traffic congestion; (11) the use of the lights at night for the nearby golf driving range; (12) the use of nearby parks for various public recreation events and athletic events, which may create noise and traffic congestion; and (13) the existence of a cemetery near the southern end of Halehaka Road.

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Declaration of Land Use Commission Conditions, dated May 29, 1980, filed as Land Court Document No. 1737704, and amended by instruments dated September 22, 1994, filed as Land Court Document No. 2185539, and dated March 28, 1996, filed as Land Court Document No. 2302461.
6. Right-of-Entry agreement in favor of Citizens Utilities Company, dated May 18, 1990, filed as Land Court Document No. 1765530; granting a right-of-entry for utility purposes.
7. Right-of-Entry in favor of Grove Farm Company, Incorporated, dated June 10, 1992, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 93-063735; granting a right-of-entry for utility purposes.
8. Right-of-Entry agreement in favor of Citizens Utilities Company, dated May 11, 1993, filed as Land Court Document No. 2039363; granting a right-of-entry for utility purposes.
9. Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kauai.
10. Waiver and Release dated November 11, 1994, recorded as Document No. 94-188843, by Greg Kamm, Vice President of Grove Farm Properties, Inc.; re: lack of County-supplied water service.

11. Waiver and Release dated February 21, 1995, recorded as Document No. 95-026692, by Greg Kamm, Vice President of Grove Farm Properties, Inc.; re: lack of County-supplied water service.
12. Waiver and Release dated February 21, 1995, recorded as Document No. 95-026693, by Greg Kamm, Vice President of Grove Farm Properties, Inc.; re: lack of County-supplied water service.
13. Covenants, conditions and restrictions contained in Deed, filed as Land Court Document No. 2554272, as consented to by instrument filed as Document No. 2554273.
14. Mechanic's or materialmen's liens attributable to the Grantee.
15. Any matters that would be disclosed by a survey and archeological study of the Property.
16. Covenants, conditions and restrictions contained in Declaration and Agreement of Conditions of Non-Development dated December 7, 2000, filed as Land Court Document No. 2688212.
17. Reservation by Grantor, GROVE FARM COMPANY, INCORPORATED, and their respective successors and assigns, designees, employees and contractors (and any of their invitees or guests utilizing the Puakea Golf Course) (collectively and individually, the "Golf Course Parties") of an easement over the whole of the premises for the risks, nuisances and hazards associated with the use of the adjacent lands for golf course purposes (including the right to enter the premises), which easement benefits the lands owned by the Golf Course Parties, adjacent to the premises, which may be used, in the discretion of Grove Farm Company, Incorporated and/or of the Grantor (and/or their respective successors and assigns), for golf course purposes, which easement reserved by the Golf Course Parties encompasses each and every variety of risk, nuisance and hazard that may exist for adjacent to and users of adjacent to a golf course, including specifically, but not limited to, the risk, nuisance and/or hazard associated with tournaments, errant golf balls invading the premises or damaging property thereon, loss of privacy, noise and odor. This reservation benefits and such easements are appurtenant to all of those lands of the Golf Course Parties including without limitation those described in Certificate of Title Nos. 435,458, 448,074 and 534,040.
18. Reservation in favor of Grantor, GROVE FARM COMPANY, INCORPORATED, and their respective successors and assigns, designees, employees and contractors (collectively and individually, the "Benefitted Parties"), of an easement as may hereafter required by the Benefitted Parties (and/or its successors and assigns) for electrical, gas, communications, and other utility purposes, for sewer, drainage, irrigation, and water facilities, for landscaping, planting, signage, and screening purposes and for sight distances over, under, along, across, and through the premises, the right to enter thereupon to construct, reconstruct, install, maintain, repair or replace such facilities, structures and appurtenances as may be necessary

for the aforesaid purposes, and the right to grant the same to any appropriate governmental agency or public utility or corporation under the usual terms and conditions required by the Benefitted Parties (and/or successors and assigns) for such easement rights without the consent or joinder of Grantee or Grantee's mortgagee; notwithstanding the foregoing, Grantee, by acceptance of the foregoing deed, agrees to join in and execute all documents designating and conveying such easements, as may be requested by the Benefitted Parties (and/or its successors and assigns). This reservation benefits and such easements are appurtenant to all of lands of the Benefitted Parties including without limitation those described in Certificate of Title Nos. 168,802, 388,757, 435,457, 383,574, 405,144, 435,458, 448,074, 356,454, 228,585, 123,418 and 534,040 and shown on File Plans 1741, 1828, 1995 and 1701.

END OF EXHIBIT "A"



L-970 STATE OF HAWAII  
 OFFICE OF ASSISTANT REGISTRAR  
 RECORDED  
 MAR 27, 2003 12:00 PM  
 Doc No(s) 2908242  
 on Cert(s) 576,218  
 Issuance of Cert(s) 640,761



3 1/5 23

/s/ CARL T. WATANABE  
 ASSISTANT REGISTRAR  
 CONVEYANCE TAX: \$671.80

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ( ) PICKUP ( ):

TO:

Jack Leebron  
 Regency at Puakea, L.L.C.  
 970 Fifth Ave. NW, Suite 7  
 Issaquah, WA 98027

This document  
 contains 3 pages

TITLE OF DOCUMENT:

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That Regency Pacific, Inc., 970 Fifth Avenue NW, Suite 7, Issaquah, Washington 98027, party of the first part, in consideration of the sum of Ten and no/100 Dollars (\$10.00) in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Regency at Puakea, L.L.C., 970 Fifth Avenue NW, Suite 7, Issaquah, Washington 98027, party of the second part, the following described real property and premises situated in Kauai County, State of Hawaii, to-wit:

All of that certain parcel of land situate at Lihue, District of Puna, Island and County of Kauai, State of Hawaii, described as follows:

Lot 1545-A, area 5.603 acres, more or less, as shown on Map 145, filed with Land Court Application 1087 (amended):

**EXHIBIT "5"**



**Exhibit "A"**

**SUBJECT TO:**

1. Taxes for the second half of the fiscal year 2002-2003 and subsequent years, not yet due and payable. Tax Map Key No. : (4) 3-3-003-045
2. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Declaration of Land Use Commission Conditions, recorded June 14, 1990 as Land Court Document No. 1737704 of Official Records.

The foregoing was amended by instruments recorded October 5, 1994 and April 17, 1996 as Land Court Document Nos. 2185539 and 2302461, respectively, of Official Records.

3. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Deed, recorded June 22, 1999 as Land Court Document No. 2554272 of Official Records.
4. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Declaration and Agreement of Conditions of Non-Development, recorded March 8, 2001 as Land Court Document No. 2688212 of Official Records.
5. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the document entitled Limited Warranty Deed and Reservation of Rights, recorded March 8, 2001 as Land Court Document No. 2688215 of Official Records.

# EXHIBIT "6"



July 8, 2024

Mr. Daniel Orodener  
Executive Officer  
State of Hawaii Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, HI 96804-2359

**Subject: 2023 - 2024 Annual Report for LUC Docket No. A89-636 (Increments I and II) Grove Farm Properties, Inc. Lihue/Puhi, Kauai, Hawaii**

Dear Mr. Orodener:

In compliance with Condition No. 13 of the referenced Land Use Commission's Decision and Orders dated June 30, 1989 and December 20, 1995, respectively, for Increments I and II, we submit one original and two copies of this annual report. A copy of this report is also being submitted to the State of Hawaii Office of Planning and the County of Kauai Planning Department.

Per our request and your response of January 12, 1998, the annual reports for Increment I, due on June 30 and Increment II, due on December 20, have been combined into a single annual report. Conditions 1 through 14 for both Increments are identical in substance while Increment II added an additional five conditions. Where appropriate, to differentiate between Increments I and II, conditions to Increments I and II have been listed separately. Also, per your request, where appropriate, responses to the conditions are differentiated according to Increments.

Following is a review of the conditions, with conditions noted in bold type and responses beneath.

1. **In connection with any application for Zoning Amendment or Special Permit for any portion of the Property, Petitioner shall prepare a report to the appropriate County agency addressing the following areas of concern:**
  - a. **The availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, road, refuse collection and disposal, police, and fire protection, the adequacy thereof, and an assessment as to whether the anticipated density and uses to which the Property will be put would unreasonably burden State or County**

3-1850 Kaunualii Highway Lihue, HI 96766-8609

**P** 808.245.3678 **F** 808.246.9470

[www.grovesfarm.com](http://www.grovesfarm.com)

agencies; and how the Petitioner intends to aid in the resolution of any identified inadequate facilities or services;

- b. A detailed drainage analysis of the Property, including an assessment of the downstream impacts which would result upon approval of the Petitioner's application and the mitigative measures proposed with respect to all such impacts;
- c. A description and analysis of how the Petitioner proposes to provide its requested development with sewage and wastewater treatment and disposal;
- d. A description of the Petitioner's proposed development schedule of all the land uses proposed and phasing development, which development schedule shall also include and address development of the Project's interior roadway system.

We will comply with this condition for any future application for Zoning Amendment or Special Permit.

2. The affordable housing requirement shall be satisfied as follows:

- A. Petitioner shall provide housing opportunities for low, low-moderate and moderate income Hawaii residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County's median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available at rents that families in the specified income ranges can afford.

- B. The Affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (with the subject petition area) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.

This requirement has been satisfied.

This requirement was adopted into County Ordinance No. PM-206-90 with additional conditions imposed by the County. On November 30, 2007, the County acknowledged the satisfaction of this requirement.

Based on a projected density of 1,690 units for Increments I and II, an affordable housing credit requirement of 1,014 credits was imposed. The methodology to determine the housing credits was confirmed by the State Housing Finance and Development Corporation on November 22, 1994. The 1,014 credits were earned through the development of Hokulei Estates, Halelani, Halemalu, and Hookena.

3. **Petitioner shall coordinate with the State of Hawaii and/or County of Kauai, as appropriate, to ensure that drainage, as well as other infrastructural and service systems, are compatible and developed in a timely fashion to prevent degradation of groundwater and coastal ecosystems. Such infrastructure shall be funded by the Petitioner.**

We are in compliance with this condition and will comply with this condition for future development within the Project.

Master plans were developed for drainage and other infrastructure systems. Individual project reports, which are in concert with the master plans, are submitted for the State and County's review and approval prior to commencement of construction. Thereafter project specific permits, which require inspections and final approvals, ensure compliance.

4. **Petitioner shall participate in or otherwise provide all additional planning studies related to the Project as required by the State Department of Transportation (DOT). Petitioner shall also participate in the funding and construction of on-site and off-site transportation improvements associated with the proposed development and in designs and schedules required, accepted, and coordinated with the DOT. Petitioner shall also provide appropriate dedication of land for the widening of Kaumualii Highway fronting the proposed development and funding for project-related signalization and intersection improvements as required by the DOT.**

This condition has been satisfied.

Grove Farm funded a right-of-way study for the entire Kaumualii Highway frontage of the Project (and beyond) and worked with the DOT on its implementation. The study was submitted to DOT on February 1, 1991, and DOT approved the concept. We provided all planning studies related to the Project and do not anticipate any

additional planning studies will be required.

We completed required intersection improvements, including signalization, at the Puhi Road-Kaumualii Highway intersection and Nuhou Street-Kaumualii Highway.

We also dedicated land for the widening of Kaumualii Highway fronting the Project. The improvements were coordinated with DOT and funded by Grove Farm.

5. **Petitioner shall fund and develop, as required by the County of Kauai and/or State, as appropriate, the necessary measures required to obtain adequate supplies of water. Petitioner shall also fund and develop as necessary water storage and distribution systems for the proposed development. Petitioner shall obtain such permits as may be required by the State of Hawaii relating to Petitioner's development.**

We are in compliance with this condition and will provide the potable water distribution systems for future development within the Project.

A Water Master Plan was approved by the County on May 4, 1992 and a First Amendment to the Water Master Plan was approved on July 16, 1993. Puhi Well No. 4 was developed and conveyed to the County. The Waiahi Surface Water Treatment Plant (Waiahi) was developed and provides water for Increments I and II as well as additional County developments. Waiahi is owned and operated by Grove Farm and per agreement will be conveyed to the County at a later date. Two water tanks and associated transmission and distribution lines were constructed and dedicated to the County.

6. **Petitioner shall comply with the requirements of the County of Kauai and the Department of Health of the State of Hawaii to expand existing on-site and off-site wastewater collection, treatment, and disposal infrastructure facilities and shall include the proposed project as part of the Petitioner's master plan for a wastewater system.**

We are in compliance with this condition and will provide wastewater infrastructure for future development within the Project.

A wastewater master plan was completed and submitted to the County on May 5, 1992. We received approval from the State and County to construct a wastewater treatment plant and the State authorized commencement of wastewater operations on June 4, 1993. Aqua Engineers, Inc., the operator of the plant, acquired the plant on July 15, 2015.

The plant has an existing capacity of 1 million gallons per day and may be expanded to up to 3 million gallons per day. The current influent is approximately 400,000 gallons per day. The plant services the Project as well as non-Project developments such as Kukui Grove Shopping Center and Kauai Community

College. Transmission lines were constructed to provide service to established subdivisions Pua Loke, Ulu Mahi and Ulu Kukui in the event they convert to a wastewater system.

7. **Petitioner shall pay its pro rata share for expansion of educational facilities by way of dedicating a site for such activities at a location within the Project area and containing an area to be mutually agreed upon by the State Department of Education, but no more than 10 acres, provided the State Department of Education elects to obtain such a site prior to the zoning of the Property.**

This condition has been satisfied.

Upon agreement with the Department of Education a 10-acre site for an intermediate school was initially provided. Subsequently, the site was increased to 14.276 acres pursuant to County Ordinance No. PM-325-96. The site was dedicated to the State and Chiefess Kamakehelei Middle School opened in 2000.

8. **Petitioner shall provide a detailed preservation plan for the two (2) identified historical sites to be prepared and submitted for review and approval by the State's Historic Sites Section and the County of Kauai's Historic Preservation Commission. These agencies shall also verify the successful execution of this plan. This plan must be executed prior to construction. Should any new historical sites be identified during project construction Petitioner shall provide a preservation or data recovery plan as required by the DLNR.**

Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, Petitioner shall immediately stop work and contact the State Historic Sites Section.

We are in compliance with this condition and will comply with this condition prior to construction.

Preservation plans were prepared for both sites. The plan for Halehaka Cemetery was approved by DLNR per their letter of March 2, 1992. The plan for the Manager's House was approved on August 28, 1992.

9. **Petitioner shall provide notification to all prospective occupants of the Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.**

We are in compliance with this condition and will comply with this condition for future development within the Project.

All occupants are notified of the potential odor, noise and dust pollution by way of disclosure and covenant statements prior to sale. This notification is also included in the deed of all lots sold in the Project.

10. **Petitioner shall implement appropriate mitigation measures, as recommended by the County of Kauai to limit air and water soil erosion during construction phases that could potentially impact coastal areas.**

We are in compliance with this condition and will comply with this condition for future development within the Project.

During construction, we implement appropriate mitigation measures as approved by the County through the permitting process. County inspectors ensure that the mitigation measures are implemented.

11. **Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the property prior to the development of the Property; provided, however, that entering into a joint venture for the development of portions of the affordable housing projects shall not require prior notice to the Land Use Commission.**

We will comply with this condition.

12. **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 assurances of satisfaction of these conditions by the Petitioner.**

This condition is acknowledged.

13. **Petitioner shall provide annual reports to the Land Use Commission, The Office of State Planning and the County of Kauai Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed. The annual report shall be in a format as prescribed by the Executive Officer of the Land Use Commission.**

This report is submitted to comply with this condition for 2023 - 2024.

14. **Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of these lands.**

We are in compliance with this condition will comply with this condition for future development within the Project.

15. **Petitioner shall file an amendment to its Declaration of Land Use Commission Conditions (filed June 14, 1990 with the Bureau of Conveyances as Document No. 90-088395) with the Bureau of Conveyances or Land Court of the State of Hawaii, as applicable. Said amendment shall reflect the 4.5 acres reclassified by the Decision and Order filed on June 9, 1994 and specify that said acreage shall also be subject to the conditions stated in the Commission's Decision and Order filed on June 30, 1989 in this docket.**

This condition has been satisfied.

The First Amendment to the Declaration of Land Use Commission Conditions was recorded with the Land Court of the State of Hawaii on October 5, 1994 as Document No. 2185539. A recorded copy was forwarded to the Land Use Commission by letter dated October 14, 1994.

16. **Petitioner shall fund and install the necessary number of emergency sirens (including infrastructure) within Increments I or II, to the satisfaction of the State Department of Defense.**

This condition has been satisfied. We do not anticipate any additional requests.

17. **Petitioner shall cooperate with the Department of Education and Department of Accounting and General Services, Public Works Division, to provide timely infrastructure improvements for the opening of Kauai Intermediate School now scheduled for September 1998.**

This condition has been satisfied.

The Kauai Intermediate School, now named Chiefess Kamakahelei Middle School,

opened in September 2000. Grove Farm provided infrastructure improvements for access, water, wastewater, and other utilities to the school site. These improvements were completed in June 1999 by way of two Grove Farm construction projects, "Nuhou Street-Kaumualii Highway Improvements" and "Kaneka Street 16-Inch Water Main and Partial Relocation of Kokolau Tunnel Waterline."

18. **Petitioner shall cooperate with the Commission on Water Resource Management and the U.S. Fish and Wildlife Service for the designation of a Puali Stream buffer area.**

We will comply with this condition.

Discussions were held with the various agencies and correspondence was submitted to the USFWS and Army Corps of Engineers. We will confirm the Puali Stream buffer area.

19. **Petitioner shall consult with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers to determine whether the petition area contains any wetland, and, if necessary, implement mitigation measures to the satisfaction of the U.S. Fish and Wildlife Service and the U.S. Army Corps of engineers.**

We will comply with this condition.

Discussions were held with the various agencies and correspondence was submitted to the USFWS and Army Corps of Engineers. For the undeveloped portions of the Project, we arranged for a site visit near Parcels 15, 16, and 17 of Increment II. It was determined that the area was not considered a wetland.

20. **Petitioner shall file a Declaration of Conditions with the Bureau of Conveyances or Land Court of the State of Hawaii, as applicable, reflecting that the approximately 103.570 acres reclassified by this Decision and Order are subject to the foregoing conditions, pursuant to section 15-15-92, Hawaii Administrative Rules.**

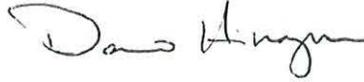
This condition has been satisfied.

The Second Amendment to the Declaration was filed as Document No. 2302461 with the Bureau of Conveyances on April 17, 1996. A certified copy was forwarded to the Land Use Commission by letter dated April 24, 1996.

If there are any questions, please feel free to contact the undersigned at (808) 245-3678.

Sincerely,

GROVE FARM PROPERTIES, INC.



David Hinazumi  
Senior Vice President

cc: State of Hawaii Office of Planning  
County of Kauai Planning Department

Regency at Puakea  
Lihue, Hawaii  
FHA No. 140-22018 (the "Project")

**CERTIFICATION REGARDING  
DECLARATION OF LAND USE COMMISSION CONDITIONS**

The undersigned, in its capacity as representative of the Hawaii Land Use Commission (the "**Commission**"), hereby certifies that:

- (1) The Declaration of Land Use Commission Conditions dated May 29, 1990, as recorded in the State of Hawaii Office of Assistant Registrar of Land Court as Document No. 1737704 on June 14, 1990, as amended (the "**Declaration**"), a copy of which is attached hereto as Exhibit A, has not been amended or changed as it relates to the land owned by Regency Puakea Properties, LLC, a Hawaii limited liability company ("**Borrower**");
- (2) There are no liens, fees, or obligations (the "**Declaration Obligations**") outstanding under the Declaration with respect to the land owned by the Borrower;
- (3) All actions under the Declaration, if any, to be performed by Borrower under the Declaration have been completed and have been accepted by Commission;
- (4) The Commission affirms that affordable housing requirements set forth in Section 2 of the Declaration do not apply to the Borrower or the Project.

The Commission understands and acknowledges that Berkadia Commercial Mortgage LLC (the "**Lender**") and the U.S. Department of Housing and Urban Development ("**HUD**") are relying upon this certification to make a loan to the Borrower and to insure said loan pursuant to the National Housing Act.

EXECUTED as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**COMMISSION:**

Hawaii Land Use Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WARNING:** It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S.C., Sections 1001 and 1010.

Exhibit A  
Declaration of Land Use Commission Conditions

[see attached]

DOUBLE SYSTEM

1737704

90-088395

JUN 14 PM 8 01

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
REGISTRAR'S OFFICE

JUN 14 AM 8 01

228,585

S. FURLYAWA, REGISTRAR

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail ( ) Pickup <input checked="" type="checkbox"/>	To: TCA 95235114
Dennis M. Lombardi, Esq.	(DO NOT WRITE IN THIS SPACE)
CASE & LYNCH	
737 Bishop Street, 26th Floor	
Honolulu, HI 96813	

DECLARATION OF LAND USE COMMISSION CONDITIONS

GROVE FARM PROPERTIES, INC., a Hawaii corporation (the "Declarant" but sometimes the "Petitioner"), the principal place of business and post office address of which is Lihue, Kauai, Hawaii, and Puhi Rural Branch, Lihue, Kauai, Hawaii 96766, respectively, is the holder of an option to acquire (1) the fee simple interest in that certain real property (the "GFC Property") owned in fee by Grove Farm Company, Incorporated, a Hawaii corporation (the "Fee Owner"), the principal place of business and post office address of which is Lihue, Kauai, Hawaii, and Puhi Rural Branch, Lihue, Kauai, Hawaii 96766, respectively, and described in that certain Unrecorded Option Agreement, dated November 15, 1985 (the "GFC Option"), by and between Fee Owner, as Optionor, and Declarant, as Optionee, a short form of which has been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1363999 with Land Court Application No. 1087 (amended), as amended by that certain First Amendment to Option Agreement, dated January 2, 1989, filed as Document No. 1614796, each of which have been noted on Owner's Transfer Certificate of Title No. 123,418, issued to the Fee Owner, and (2) a portion of that certain real property (the "GPLC Property") owned in fee by Grove Farm Land Corp., a Hawaii corporation ("Land Corp.") described in Exhibit A and depicted on Exhibit B hereto, under the terms of that certain unrecorded Option Agreement, dated February 1, 1989, the ("GPLC Option"), by and between the parties. Declarant, Land Corp. and Fee

Owner, the latter having joined in this Declaration at the direction of Declarant, as required under the aforementioned GFC and GFLC Options, hereby declare that the GFLC Property and the GFC Property depicted as Increment 1 and Increment 2 on Exhibit C hereto (the "Petition Property") shall be and is hereby made subject to each of the following conditions which are enumerated in the Findings of Fact, Conclusions of Law, and Decision and Order of the Land Use Commission of the State of Hawaii entered June 30, 1989, in Land Use Commission Docket No. AB9-636, reclassifying the Petition Property from the Agricultural District to Urban District:

1. In connection with any application for Zoning Amendment or Special Permit for any portion of the Property, Petitioner shall prepare a report to the appropriate County agency addressing the following areas of concern:

a. The availability of public services and facilities such as schools, sewers, parks, water, sanitation, drainage, road, refuse collection and disposal, police and fire protection, the adequacy thereof, and an assessment as to whether the anticipated density and uses to which the Property will be put would unreasonably burden State or County agencies; and how the Petitioner intends to aid in the resolution of any identified inadequate facilities or services;

b. A detailed drainage analysis of the Property, including an assessment of the downstream impacts which would result upon approval of the Petitioner's application and the mitigative measures proposed with respect to all such impacts;

c. A description and analysis of how the Petitioner proposes to provide its requested development with sewage and waste water treatment and disposal;

d. A description of the Petitioner's proposed development schedule of all the land uses proposed and phasing development, which development schedule shall also include and address development of the Project's interior roadway system.

2. The affordable housing requirement shall be satisfied as follows:

A. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai County's median income can afford and thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County's median income can afford. This condition may be fulfilled through projects,

under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available at rents which families in the specified income ranges can afford.

B. The affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (within the subject Petition Property) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.

3. Petitioner shall coordinate with the State of Hawaii and/or the County of Kauai, as appropriate, to ensure that drainage, as well as other infrastructural and service systems, are compatible and developed in a timely fashion to prevent degradation of groundwater and coastal ecosystems. Such infrastructure shall be funded by the Petitioner.

4. Petitioner shall participate in or otherwise provide all additional planning studies related to the Project as required by the State Department of Transportation (DOT). Petitioner shall also participate in the funding and construction of on-site and off-site transportation improvements associated with the proposed development and in designs and schedules required, accepted and coordinated with the DOT. Petitioner shall also provide appropriate dedication of land for the widening of Kaunualii Highway fronting the proposed development and funding for project related signalization and intersection improvements as required by the DOT.

5. Petitioner shall fund and develop, as required by the County of Kauai and/or the State, as appropriate, the necessary measures required to obtain adequate supplies of water. Petitioner shall also fund and develop as necessary water storage and distribution systems for the proposed development. Petitioner shall obtain such permits as may be required by the State of Hawaii relating Petitioner's development.

6. Petitioner shall comply with the requirements of the County of Kauai and the Department of Health of the State of Hawaii to expand existing on-site and off-site wastewater collection, treatment, and disposal infrastructure facilities

and shall include the proposed project as part of the Petitioner's master plan for a wastewater system.

7. Petitioner shall pay its pro rata share for expansion of educational facilities by way of dedicating a site for such activities at a location within the Project area and containing an area to be mutually agreed upon by the State Department of Education, but no more than 10 acres, provided the State Department of Education elects to obtain such a site prior to the zoning of the Property.

8. Petitioner shall provide a detailed preservation plan for the two (2) identified historical sites to be prepared and submitted for review and approval by the State's Historic Sites Section and the County of Kauai's Historic Preservation Commission. These agencies shall also verify the successful execution of this plan. This plan must be executed prior to construction. Should any new historical sites be identified during project construction Petitioner shall provide a preservation or data recovery plan as required by the DLNR.

Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, Declarant shall immediately stop work and contact the State Historic Sites Section.

9. Petitioner shall provide notification to all prospective occupants of the Property of the potential odor, noise, and dust pollution resulting from surrounding Agricultural District lands, and that the Hawaii Right-To-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.

10. Petitioner shall implement appropriate mitigation measures, as recommended by the County of Kauai to limit air and water soil erosion during construction phases which could potentially impact coastal areas.

11. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interest in the property prior to the development of the Property; provided, however, that entering into a joint venture for the development of portions of the affordable housing projects shall not require prior notice to the Land Use Commission.

12. 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.

13. Petitioner shall provide annual reports to the Land Use Commission, The Office of State Planning and the County of Kauai Planning Department in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed.

14. Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.

IN WITNESS WHEREOF, Grove Farm Properties, Inc., has caused these presents to be executed, and at its request Grove Farm Company, Incorporated, and Grove Farm Land Corp. have joined in these presents this 29<sup>th</sup> day of May, 1990.

GROVE FARM PROPERTIES, INC.,  
a Hawaii corporation,

By *John S. Pagan*  
its Vice President

By *[Signature]*  
its Secretary

GROVE FARM LAND CORP.,  
a Hawaii corporation,

By *William E. Honjuga*  
its Vice President

By *[Signature]*  
its Treasurer

GROVE FARM COMPANY, INCORPORATED,  
a Hawaii corporation,

By *David W. Pagan*  
its President and Chief Executive Officer

By *[Signature]*  
its Treasurer

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF KAUAI                 )

On this 29<sup>th</sup> day of May, 1990,  
before me appeared Helen K. ...  
and Jed ..., to me personally known, who, being  
by me duly sworn, did say that they are the Vice President  
and Secretary, respectively, of GROVE FARM PROPERTIES,  
INC, a Hawaii corporation, and that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation  
and that said instrument was signed and sealed in behalf of  
said corporation by authority of its Board of Directors, and  
said officers acknowledged said instrument to be the free act  
and deed of said corporation.

Marion A. ...  
Notary Public, State of Hawaii  
My commission expires: 6/19/90

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

On this 29<sup>th</sup> day of May, 19    ,  
before me appeared David W. Pratt  
and J.R. Suckling, to me personally known, who, being  
by me duly sworn, did say that they are the President and  
and Treasurer, respectively, of GROVE FARM COMPANY,  
INCORPORATED, a Hawaii corporation, and that the seal affixed  
to the foregoing instrument is the corporate seal of said  
corporation and that said instrument was signed and sealed in  
behalf of said corporation by authority of its Board of  
Directors, and said officers acknowledged said instrument to be  
the free act and deed of said corporation.

Naomi A. Sherrill  
Notary Public, State of Hawaii  
My commission expires: 6/11/90

STATE OF HAWAII )  
 ) SS.  
COUNTY OF KAUAI )

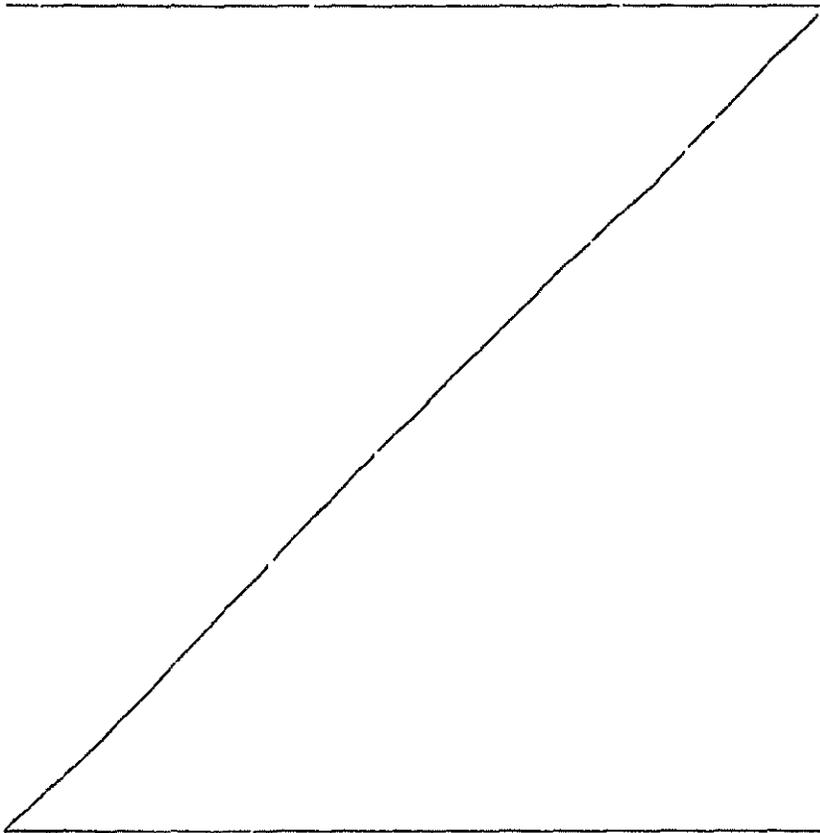
On this 29<sup>th</sup> day of May, 1990,  
before me appeared William T. Hooper  
and John Suraba, to me personally known, who, being  
by me duly sworn, did say that they are the Vice President  
and Treasurer, respectively, of GROVE FARM LAND CORP.,  
a Hawaii corporation, and that the seal affixed to the  
foregoing instrument is the corporate seal of said corporation  
and that said instrument was signed and sealed in behalf of  
said corporation by authority of its Board of Directors, and  
said officers acknowledged said instrument to be the free act  
and deed of said corporation.

James A. Wheeler  
Notary Public, State of Hawaii

My commission expires: 6/19/90

EXHIBIT A

All that certain real property as reflected in Exhibit B to this Declaration more particularly described as portion, approximately 1.6 acres, of Lot 579, as shown on Map 69, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1087 (amended), being a portion of that certain real property more particularly described on Transfer Certificate of Title No. 228,585, issued to Grove Farm Land Corp., a Hawaii corporation.



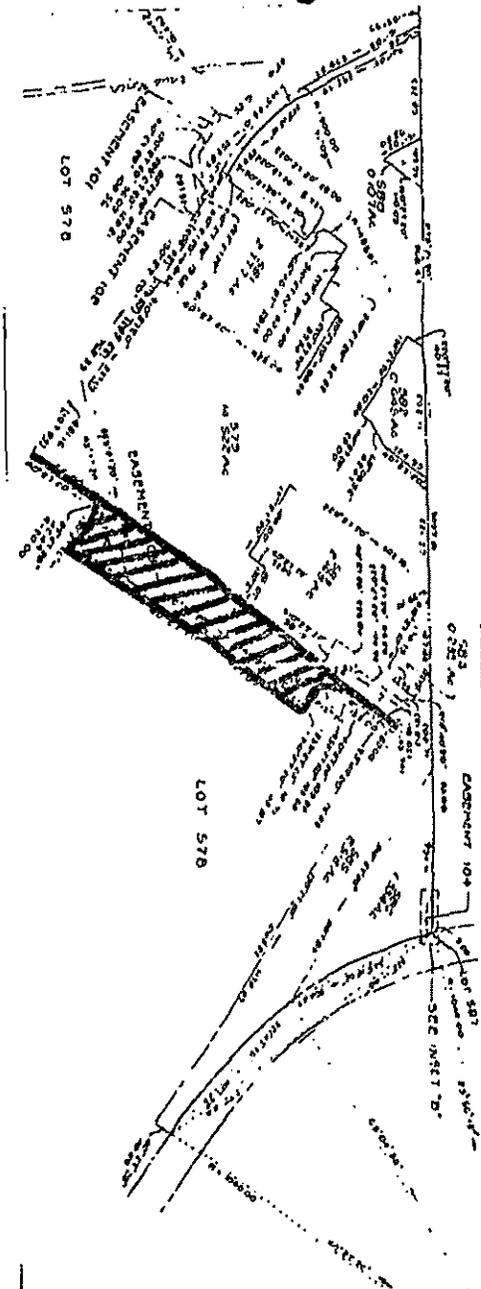


EXHIBIT B

RECORDER'S MEMO: Legibility of Writing, Typing or Printing UNSATISFACTORY in this Document when received.

A89-636

GROVE FARM PROPERTIES, INC.

T. M. K.: 3-3-03: POR. 01

3-3-06: POR. 19

PUHI, LIHUE, KAUAI

SCALE: 1" = 3000' ±

— INCREMENT 1

— INCREMENT 2

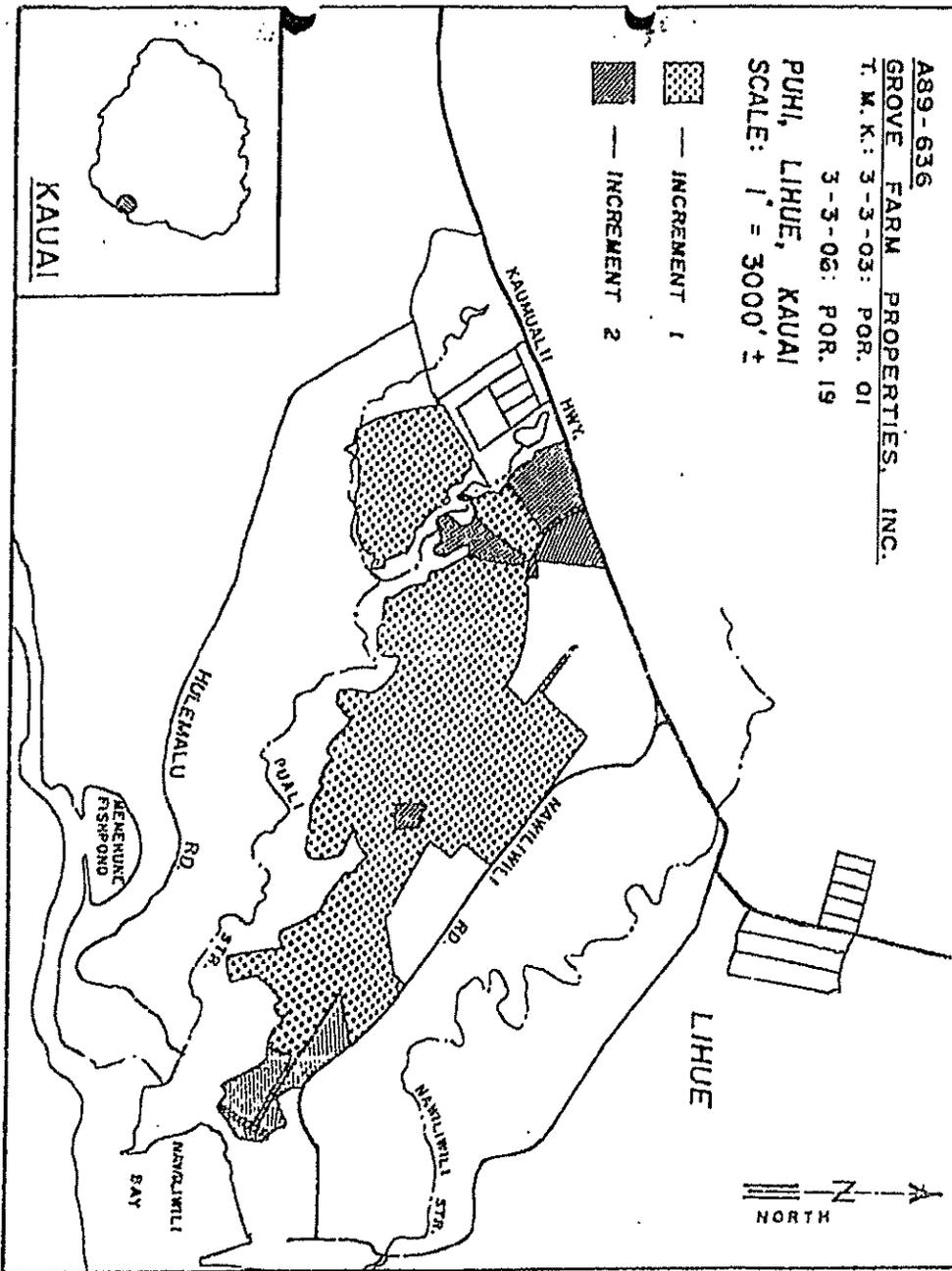


EXHIBIT C

RECORDER'S MEMO: Legibility of Writing, Typing or Printing UNSATISFACTORY in this Document when received.

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,  
KAUAI COUNTY CODE 1987, RELATING TO  
ZONING DESIGNATION IN LIHUE/PUHI, KAUAI  
(Grove Farm Properties, Inc.)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. The zoning designation for that certain area in Lihue/Puhi, Kauai, identified as TMK: 3-3-03: Por. 1 and 3-4-06: Por. 19, as shown on Zoning Map ZM-400-K-I and on the map attached hereto and incorporated herein as Exhibit ZA-90-2, is hereby amended from "Open District (O)" and "Agriculture District (A)" to "Residential District (R-4)," "Residential District (R-6)," "Residential District (R-10)," "Residential District (R-20)," "Open District (O)," and "General Commercial District (C-G)," subject to the following conditions:

1. The applicant shall provide housing opportunities for low, low-moderate, and moderate income Hawaii residents by offering for sale at least thirty percent (30%) of the units at prices which families with an income range of 120 to 140 percent of Kauai County's median income can afford, and thirty percent (30%) of the units at prices which families with an income range of 80 to 120 percent of Kauai's median income can afford. This condition may be fulfilled:
  - a. through projects, under such terms as may be mutually agreeable between the applicant and other appropriate governmental agency;
  - b. through the construction of rental units to be made available at rents which families in the specified income ranges above can afford; or
  - c. in a manner that meets with the approval of the County Housing Agency or other appropriate governmental agency by the construction of units within the petition area, off-site units on lands under the control of the applicant, or a housing development fee payable to the County of Kauai that would satisfy the then current housing needs.

Twenty (20) of the units shall be sold at prices which families below 80 percent of Kauai County's median income can afford shall be administered under the County's self-help housing program. The location of said lots/units shall be established at a site that is mutually agreeable between the County and applicant. Finally, upon delivery of the first units to be developed under the aforementioned affordable housing allocations, the applicant and County Housing Agency shall establish an affordable housing unit monitoring plan to ensure that the specified units are accounted for. Furthermore, any government subsidized rental housing project developed pursuant to this condition shall remain in effect for a period required by the funding agency from the date of issuance of occupancy permit. The applicant is advised that the allocations shall be based on a density of the

1,690 units proposed within Increment I (Phases I, II and III) and Increment II which is subject to incremental districting by the State Land Use Commission and which is shown on the "Alternate '3' Phasing Plan" (Date: September 25, 1989; Rev. Oct. 31, 1989) which is incorporated herein by reference and on file at the Planning Department.

All conditions heretofore imposed by the Land Use Commission relative to housing are hereby incorporated by reference and made a part hereof.

2. As represented by the applicant, the main sewer conveyance system that will serve the entire project district shall be designed in a manner such that its capacity will be able to accept all sewage flows from the existing Puhi and Komohana residential subdivisions, existing Puhi industrial facilities, Kauai Community College, and the proposed Puhi Industrial Park Subdivision. Relative to the applicant's sewer master development plan and phasing plan thereof, the applicant shall:
  - a. at time of subdivision application for each phase of residential development, demonstrate that such phase will be connected to the project district sewer system upon final subdivision approval;
  - b. establish a main sewer line easement in favor of the County of Kauai within Lot 24 (Golf Course) (which is shown on the "Alternate '3' Development Plan," Date: September 25, 1989, Rev. October 31, 1989, which is incorporated herein by reference and on file at the Planning Department) in order to allow future connection of existing residential development in Lihue (Pua Loke, Ulu Mahi, Ulu Kukui) along Nawiliwili Road which are not currently connected to the County's Lihue sewer system, to the project district sewer system;
  - c. as represented, provide for the connection of the Ulu Ko Subdivision to the project district sewer system during the development of Increment I, Phase II.

Because the project district sewer system will potentially serve as a subregional system, the applicant shall provide, if needed, the additional 1.9 acres as represented on the development plan map. As recommended by the Public Works Department, the applicant shall develop a coordinated sewer implementation plan in a manner that would complement the update of the County's sewer plans for the Lihue Planning Area.

3. In order to defray the increased costs of solid waste disposal that will be generated by the project district master plan, the applicant shall, as recommended by the Public Works Department, pay a minimum of one-third of the construction cost of the proposed off-site Lihue refuse transfer station and receive a credit against Environmental Impact Assessment fees chargeable to the project. This condition may also be fulfilled by the dedication of land as determined by the Public Works

Department and at a site as mutually agreed upon by said agency and the applicant.

4. As represented on the development plan map, the applicant shall dedicate ten (10) acres of Lot 7-A of Increment II to the State Department of Education (DOE) for the development of a school site. Dedication of that portion of Lot 7-A shall occur upon demand by the DOE or prior to submittal of zoning amendment petition for Increment II; whichever occurs sooner. The applicant is advised that the remaining five (5) acres of Lot 7-A shall be developed for a park site in conjunction with the school facilities. The five (5) acres shall be dedicated to the County and credited towards the park dedication requirements applicable to the development of the project district area.
5. The applicant shall resolve and comply with the following conditions as recommended by the State Highways Division:
  - a. fully channelize the intersections of Kaumualii Highway-Nuhou Road and Nawiliwili Road-Nuhou Road with the provision of left-turn, right-turn, and deceleration-acceleration lanes on all approaches;
  - b. install traffic lights at the intersections of Kaumualii Highway-Nuhou Road and Kaumualii Highway-Puhi Road;
  - c. provide a master control system that will link the highway traffic signal systems with the proposed traffic signal system at the intersection of Kaumualii Highway and Nawiliwili Road;
  - d. protect all traffic light systems with traffic islands, sidewalks, curbs, and approach improvements, if required;
  - e. dedicate property along Kaumualii Highway and Nawiliwili Road for highway improvements.
6. Relative to traffic circulation, the applicant shall:
  - a. In accordance with Ordinance No. PM-160-88, improve the extension of Nawiliwili Road to Kaumualii Highway and provide the necessary intersection improvements, including signalization. Such improvement costs qualify for credit towards any EIA fees that would be assessed for the project. Should the applicant desire such improvements be made by the State Highways Division instead, or, if the extension of the road is not completed by December 31, 1991, then the applicant shall, by that date, design and complete construction of an alternative road connection from Nawiliwili Road to the project area as identified in said Ord. No. PM-160-88. With the exception of the Kukui Village West commercial subdivision, the upcoming industrial subdivision in Puhi or any other subdivision that will provide affordable housing, final subdivision approvals shall not be granted for any future subdivisions within the Lihue-Puhi Project district area until construction of this alternate road is underway and substantially

completed (pavement of roadway) or construction of the Nawiliwili extension road and intersection improvements are underway. The applicant is advised that construction of the alternative road connection as identified herein also means construction of the Pikake Street Extension as identified on the applicant's development plan map.

- b. As recommended by the Public Works Department and prior to construction of the residential subdivision proposed on Lot 11 (Increment I, Phase I), obtain County Council approval for the abandonment of a portion of Halehaka Road and Niunalu Road. The applicant is advised that the abandonment of the right-of-way, including any utilities situated therein, shall be relocated at the expense of the applicant. It shall be the applicant's responsibility to resolve the right-of-way/utility abandonment plan with the applicable government agencies and utility companies.
7. The applicant shall provide a detailed preservation plan for the two (2) identified historical sites to be prepared and submitted for review and approval by the State's Historic Sites Section (HSS) and the Planning Department. Said plan shall be executed prior to construction of the development proposed within the project district area. The applicant is advised that:
    - a. a preservation or data recovery plan as required by the HSS shall be provided for any new historical sites identified during construction of the project; and
    - b. should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during development of the project, the applicant shall immediately stop work and contact the HSS.
  8. The applicant shall fund and develop, as required by the Water Department, the necessary measures to obtain additional water service for the project district area including the construction of water storage and distribution systems. As recommended by the Water Department, any actual subdivision or development in the project district area will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.
  9. As recommended by the State Health Department, the following conditions are imposed relative to the project district area:
    - a. The entire development shall be serviced by the existing public sewer system, the existing private sewer system serving the Kukui Grove Shopping Center area or a new regional sewage treatment facility. The use of individual wastewater systems will not be allowed by the Department of Health for wastewater disposal. Chapter 62, Wastewater Systems, Title 11, Administrative Rules, State of Hawaii, does not allow individual wastewater systems

to be utilized when (1) the total planned development generates more than 5,000 gallons per day of combined domestic wastewater; (2) the residential development exceeds sixteen lots or dwelling units; and (3) the development with buildings other than dwellings exceeds 31,250 square feet of lot area.

- b. The entire development shall be provided with potable water from an approved source.
- c. The Halehaka landfill site, after it is closed in accordance with Chapter 58, Solid Waste Management Control, Title 11, Administrative Rules, State of Hawaii, shall not be built over for a period of one year to prevent health hazards or nuisances from occurring and to allow for the maintenance of the site.
- d. The milk plant wastewater, excluding the restroom wastewater, is currently being discharged into an irrigation ditch and used for the irrigation of the cane fields below the light industrial area in Puhi. The existing light industrial area should also be serviced by the sewer system that will serve the proposed development.
- e. Presently, the effluent from the wastewater treatment works serving the Kukui Grove Shopping Center and the Kauai Community College is being discharged into a reservoir and used for the irrigation of the subject cane lands. The owner/developer shall make provisions to accommodate the effluent from the KCC wastewater treatment works if the cane growing operation is eliminated. The KCC property is situated above the Underground Injection Control line and so underground injection will not be allowed.
- f. There is an existing piggery operation located at the intersection of Hufemalu Road and Puhi Road that may be a source of odor nuisance to the workers in the Puhi Light Industrial area and the residents of the multi-family and single-family areas along Puhi Road.
- g. The existing cane haul road, should it be allowed to run through the property, may create dust and odor nuisance to the residents and workers. Smoke and dust nuisances may arise during cane harvesting operations in the nearby cane fields.
- h. The owner/developer shall advise potential buyers of adverse environmental conditions and such conditions shall be made known to subsequent buyers through proper provisions in the property deed which will run with the parcels so long as the environmental conditions include: odor, dust and smoke nuisances as mentioned in comments "f" and "g."
- i. Effective soil erosion and dust control measures shall be implemented by the owner/developer during all phases of development.

- j. The disposal of demolition material and grubbed material shall be at a solid waste disposal facility that is permitted by the Department of Health. Open burning of the material is prohibited. Prior to the demolition of buildings other than residential buildings, the owner/developer shall submit a completed "Asbestos Demolition/Renovation Notification" to the Vector Control Branch, Department of Health, State of Hawaii.
- k. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 26, Vector Control, Title 11, Administrative Rules, State of Hawaii, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- l. The proposed development shall meet all applicable requirements of Chapter 22, Mortuaries, Cemeteries, Embalmers, Undertakers, and Mortuary Authorities, Title 11, Administrative Rules, State of Hawaii.
- m. Due to the general nature of the proposed project, we reserve the right to implement future environmental concerns when more detailed information is submitted.
10. As recommended by the State Health Department, the following conditions are imposed relative to the proposed 18-hole golf course:
- a. Owner/developer shall obtain a written statement from the Department of Water regarding their intentions to utilize or not utilize groundwaters beneath and downgradient of the project site for potable drinking water, now and in the future.
- b. Owner/developer shall obtain a written statement from the State Department of Land and Natural Resources that they will not issue any private water well permits beneath and downgradient of the project sites whose uses are intended for potable drinking water, now and in the future.
- c. In the event the Department of Water and/or the Department of Land and Natural Resources considers the groundwaters below or downgradient of the project site to be, now or in the future, a source of potable drinking water, the owner/developer and all subsequent owners shall establish a groundwater monitoring plan and system which shall be presented to the State Department of Health for its approval. The groundwater monitoring plan and system shall minimally describe the following components:
1. A system of monitoring wells constructed throughout the site. These monitoring wells shall extend approximately ten (10) feet below the water table.

2. A routine groundwater monitoring schedule of at least once every six (6) months and more frequently, as required by the State Department of Health, in the event that the monitoring data indicates a need for more frequent monitoring.
  3. A list of compounds which shall be tested for as agreed to by the State Department of Health. This list may include, but not be limited to the following: total dissolved solids; chlorides; pH, nitrogen; phosphorus; or any other compounds associated with fertilizers, biocides or effluent irrigation.
- d. If condition "c" is in effect, baseline groundwater data shall be established as described in this paragraph. Once the test well sites and list of compounds to be monitored for have been determined and approved by the State Department of Health, the owner/developer shall contract with an independent third-party professional (approved by the State Department of Health) to have groundwater sampled and its data reported to the State Department of Health. Testing of the groundwater shall be done by a certified laboratory.
  - e. If condition "c" is in effect and that data from the monitoring wells indicate the presence of the measured compound and/or the increased level of such compound, the State Department of Health can require the owner/developer or subsequent owner to take immediate mitigating action to stop the cause of the contamination. Subsequently, the owner/developer or subsequent owner shall mitigate any adverse effects caused by the contamination.
  - f. Owner/developer shall provide sewage disposal by means of connection to the public sewer system or by means of a wastewater treatment works providing treatment to a secondary level with chlorination. Effluent from this wastewater treatment works may be used for golf course irrigation, subject to condition "e." The entire system shall be approved by the State Department of Health.
  - g. If a wastewater treatment works with effluent reuse becomes the choice of wastewater disposal, then the owner/developer and all subsequent owners shall develop and adhere to a Wastewater Reuse Plan which shall address at a minimum, the following items:
    1. Management Responsibility. The managers of the irrigation system using reclaimed wastewater shall be aware of the possible hazards and shall evaluate their system for public health, safety, and efficiency. They must recognize that contact with the reclaimed wastewater from domestic sewage poses potential exposure to pathogenic organisms which commonly cause infectious diseases (bacteria, viruses, protozoa, and helminths or worms).

2. General Recommendations:

- (i) Irrigated areas should be no closer than 500 feet from potable water wells and reservoirs.
- (ii) Irrigated areas should be no closer than 100 feet from any private residence.
- (iii) Application rates should be controlled to minimize ponding. Excess irrigation tailwater in the reclaimed wastewater irrigation area shall be contained and properly disposed. An assessment should be made of the acceptable time and rate of application based on factors such as type of vegetation, soil, topography, climate and seasonal variations.
- (iv) Effluent holding/mixing ponds shall be designed to prevent the infiltration of the wastewater into the subsurface. The holding/mixing ponds shall be made impervious.
- (v) Irrigation shall be scheduled such that the public is not in the vicinity and the soil is sufficiently dry to accept the irrigation water.
- (vi) Permanent fencing or barriers shall be erected around polishing or holding ponds to prevent public entry or stray feral and tame animals from gaining access to the ponds.
- (vii) Adequate irrigation records shall be maintained. Records should include dates when the fields are irrigated, rate of application, total application and climatic conditions. Records should also include any operational problems, diversions to emergency storage or safe disposal and corrective or preventive action taken.
- (viii) The holding/mixing ponds shall be periodically monitored for the purpose of detecting leakage into the subsurface. If leakage is detected, corrective action shall be immediately taken.

3. Adequate Notice. Appropriate means of notification shall be provided to inform the employees and public that reclaimed wastewater is being used for irrigation on the site.

- (i) Posting of conspicuous signs with sufficient letter size for clear visibility with proper wording should be distributed around the use areas.
- (ii) Signs shall be securely fastened. Periodic surveillance shall be conducted

to assure permanent posting at all times. Immediate replacement shall be made when necessitated by deterioration, vandalism or misuse.

4. Adequate Employee Education. Employees or users should be cautioned and warned of the potential health hazards associated with the ingestion of reclaimed wastewater being used at the site.

(i) Employees should be warned that the ingestion of reclaimed wastewater is unsafe.

(ii) Employees should be protected from direct contact of the reclaimed wastewater. If necessary, protective clothing should be provided.

(iii) Employees should be informed of the following:

(A) The irrigation water is unsafe for drinking or washing.

(B) Avoid contact of the water or soil with any open cuts or wounds.

(C) Avoid touching the mouth, nose, ear or eyes with soiled hands, clothes or any other contaminated objects.

(D) Be aware that inanimate objects such as clothes or tools can transport pathogenic organisms.

(E) Always wear shoes or boots to protect feet from the pathogenic organisms in the soil or irrigation water.

h. Use of electrical golf carts is recommended. It is recognized that underground storage tank(s) to store gasoline for gas-driven golf carts will impose potential risks to the groundwater. If gasoline-driven carts are to be utilized, the developer/owner must meet all Federal requirements in the installation of any underground storage tank.

i. On- and off-site wells will be utilized for irrigation purposes only. Potable water will be accommodated by the Department of Water transmission lines.

j. Buildings designated to house the fertilizer and biocides shall be bermed to a height sufficient to contain a catastrophic leak of all fluid containers. It is also recommended that the floor of this room be made waterproof so that all leaks can be contained within the structure for cleanup.

k. A golf course maintenance plan and program will be established based on "Best Management Practices (BMP)" in regards to utilization of fertilizers and

biocides as well as the irrigation schedule. BMPs will be revised as an ongoing measure. The golf course maintenance plan will be reviewed by the State Department of Health prior to implementation.

11. In order to meet projected park dedication requirements, the applicant shall dedicate to the County the land area, in lieu of a park dedication fee, as identified on the development plan map (Lots 24-B and 5-A). As established by condition #4, the five (5)-acre park site to be developed in conjunction with the DOE school site can be credited towards the park dedication requirements. The applicant is advised that based on a total density of 1,690 units (772 single-family units and 918 multi-family units), the projected land area for Increment I (Phases I, II and III) is approximately 8.1025 acres, however, the actual park acreage shall be determined at time of subdivision application.
12. As represented by the applicant, all golf cart traffic including pedestrian golfers shall be accommodated by the construction of underpasses at all crossing points along Nuhou Road.
13. 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).

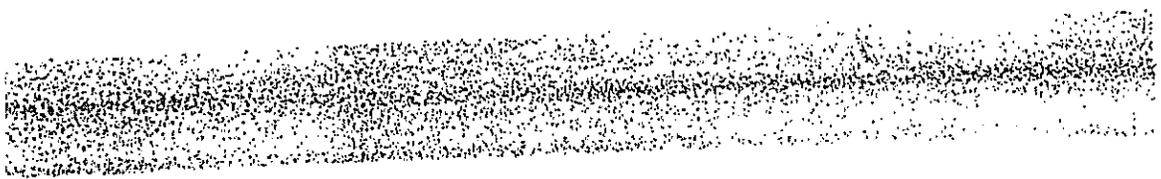
SECTION 2. The Planning Commission is directed to note the change on the official Zoning Map ZM-400-K-L on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY: /s/ JAMES TEHADA  
(By Request)

Date of Introduction:

January 24, 1990  
Lihue, Kauai, Hawaii



**LEGEND**

**PROPOSED AMENDMENT TO ZONING MAP ZM-400-K-L**

**FROM**

**OPEN DISTRICT (O) / AGRICULTURAL DISTRICT (A)**

**TO**

**Residential District:**

R-4    

R-4    

R-4    

R-20   

R-20   

**General Commercial District:** C-2    

**Open District:**                            D    



**Exhibit ZA-90-2**

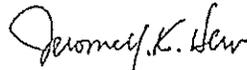
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 1317, Draft 2, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on February 28, 1989, by the following vote:

FOR ADOPTION: Fukushima, Kouchi, Munechika  
Santos, Tehada, Correa TOTAL - 6,

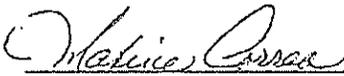
AGAINST ADOPTION: Asing TOTAL - 1,  
EXCUSED & NOT VOTING: None TOTAL - 0.

February 28, 1989



Jerome Y.K. Hew  
County Clerk, County of Kauai

ATTEST:

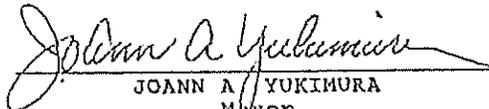


MAKINE CORREA  
CHAIRPERSON & PRESIDING OFFICER

DATE OF TRANSMITTAL TO MAYOR:

March 1, 1990

Approved this 13<sup>th</sup> day of  
March, 1990.



JOANN A. YUKIMURA  
Mayor  
County of Kauai



**Planning Director**  
**Department of Planning, County of Kauai** XX  
4444 Rice Street  
Lihue, Hawaii 96766

**Kauai County Attorney**  
**Office of the County Attorney** XX  
4444 Rice Street, Suite 220  
Lihue, Hawaii 96766

**Grove Farm Properties, Inc.** XX  
Attn: David Hinazumi, Senior Vice President  
3-1850 Kaumualii Highway  
Lihue, Hawaii 96766-8609

DATED: Honolulu, Hawaii, May 20, 2025.

  
\_\_\_\_\_  
J. GEORGE HETHERINGTON

Attorney for Successor Petitioner to Lot 1545-A  
**REGENCY PUAKEA PROPERTIES, LLC**