

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
GROVE FARM PROPERTIES, INC. )  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban )  
Land Use District For Approximately )  
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 )  
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DOCKET NO. A89-636

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

This is to certify that this is a true and correct  
copy of the Decision and Order on file in the office  
of the State Land Use Commission, Honolulu Hawaii.

DEC 20 1995

Date

by

*Robert A. ...*  
Executive Officer

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FINDINGS OF FACT,  
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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

Filed and effective on  
December 20, 1995

Certified by:

Ethan Lead  
Executive Officer

By Joann N. Mattson  
JOANN N. MATTSON  
Commissioner

By (absent)  
ELTON WADA  
Commissioner

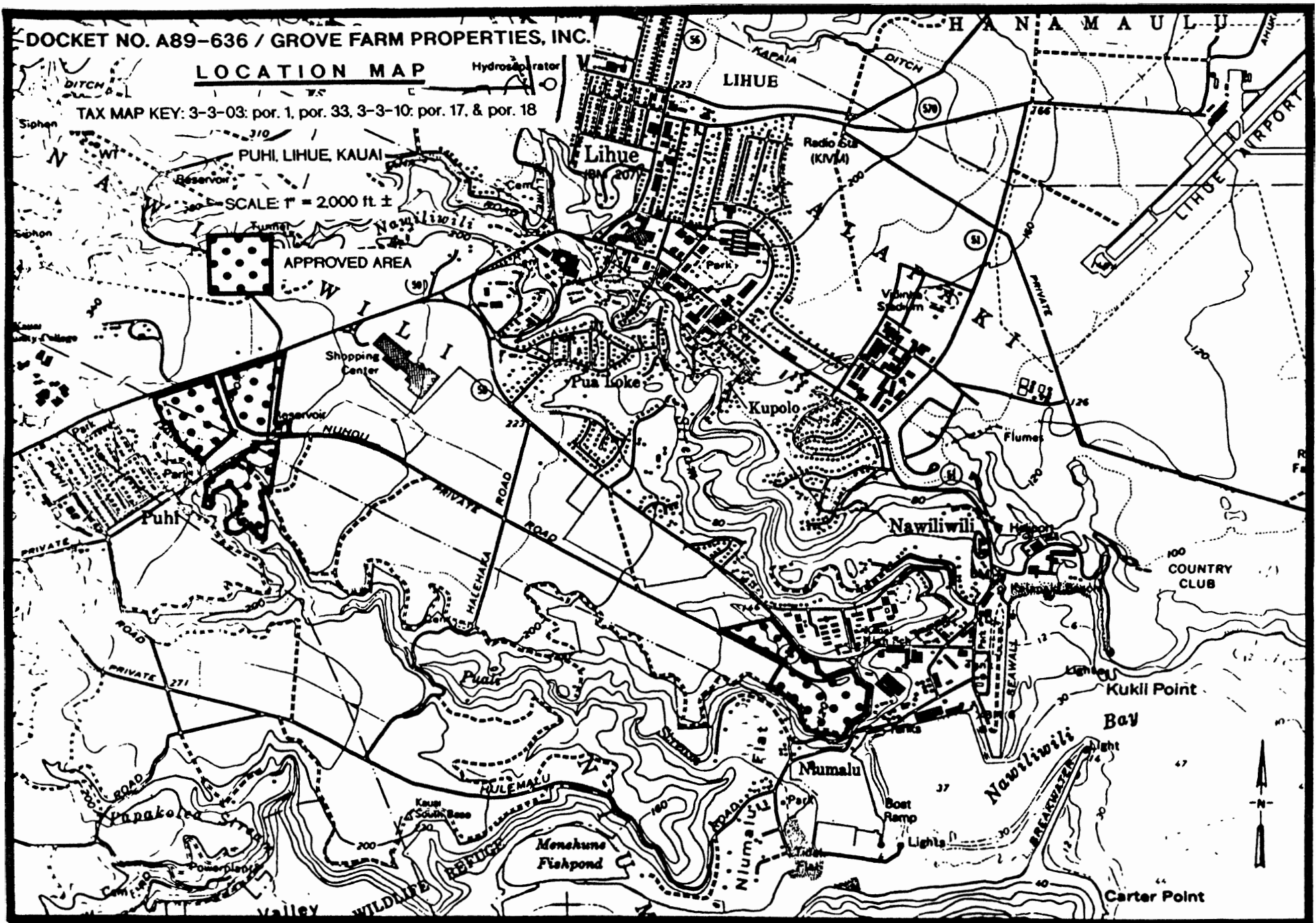


EXHIBIT "A"