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Attorneys for Petitioner GROVE FARM PROPERTIES, INC.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

| | | |
|---|---|----------------|
| In the Matter of the Petition |) | |
| |) | |
| of |) | Docket A89-636 |
| |) | |
| GROVE FARM PROPERTIES, INC. |) | |
| |) | |
| to Amend the Land Use District Boundary |) | |
| of Property Situated at Lihue, Island and |) | |
| County of Kauai, State of Hawaii. |) | |
| Tax Map Key No. (4) 3-3-01 (portion) |) | |
| _____ |) | |

**MOTION TO AMEND AND CLARIFY
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER**

VERIFICATION

SCHEDULE OF EXHIBITS

LAND USE COMMISSION
STATE OF HAWAII
Aug 25 1 18 PM '95

MOTION TO AMEND AND CLARIFY
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER

Petitioner Grove Farm Properties, Inc., a Hawaii corporation, pursuant to Section 15-15-78 of the Hawaii Land Use Commission Rules moves the Land Use Commission of the State of Hawaii (the "Commission") to amend and clarify those certain Findings of Fact, Conclusions of Law and Decision and Order dated June 30, 1989 (the "Decision and Order"):

(a) to clarify the exterior boundary of the Petition Area by correcting the metes and bounds description to properly reflect the alignment of the Project District land as coterminous with the right of way for Kaumualii Highway (the "Kaumualii Alignment Area") to include within Increment II of the Project District land those parcels identified as Parcel D1 and Parcel D3 on Exhibit A attached hereto (Proposed Land Use Change Map), and thereby amend the total overall acreage covered by the Petition from 596.775 acres to an overall acreage of 599.908 acres; and

(b) to amend the Decision and Order to reflect the results of a survey of the interior boundaries of Increment I and II lands that indicates Increment I lands consist of 491.838 acres as opposed to 480 acres and that Increment II lands consist of 108.070 acres as opposed to 116.775 acres.

In support of this Motion, Petitioner alleges as follows:

1. The clarification of the exterior boundary of the Petition Area to include Parcels D1 (1.676 acres) and Parcel D3 (1.950 acres) within Increment II lands is necessary to properly reflect the alignment of the Project District land with the actual right of way for Kaumualii Highway. As shown on the Proposed Land Use Change Map, Parcel D2 is already included within the urban

Project District land (the mauka boundary is coterminous with the Kaumualii Highway right of way) as indicated in Boundary Interpretation No. 92-16 issued April 14, 1992. 2.87 acres out of the 3.7 acre Kaumualii Alignment Area will be dedicated to the State Department of Transportation for the widening of Kaumualii Highway. Only the balance of the Kaumualii Alignment Area (approximately 0.83 acres of 22% of the total area) will be incorporated into the Parcel 20 and 21 commercial areas.

2. The requested inclusion of Parcels D1 and D3 within Increment II lands will satisfy the original intent of the Petition and Decision and Order filed in this Docket A89-636 because, as reflected in all pictorial exhibits lodged with the Commission in respect of this matter, the Petition area was aligned with the boundary of the right of way for Kaumualii Highway. Unfortunately, however, the original metes and bounds description of the Petition area did not properly align the proposed urban boundary with the right of way and this error should now be corrected.

3. Without the proper alignment of the proposed urban boundary, two (2) narrow islands of Agricultural District lands will remain separating the urban Project District lands from Kauai's major highway. This result was clearly not intended by the Commission when it entered its Decision and Order. Nor is this result consistent with Boundary Interpretation No. 92-16, issued April 14, 1992, indicating Parcel D2 shown on Exhibit A (Proposed Land Use Change Map) is within the urban Project District lands.

4. The inclusion of Parcels D1 and D3 will require the amendment of the Decision and Order to accurately reflect the total area of the lands covered by the Petition as 599.908 acres rather than 596.775 acres.

5. Petitioner also requests that the Decision and Order be amended to reflect the acreages within Increment I and Increment II established by a survey of the interior boundaries of these phases of the development. Such a survey was not conducted at the time of the entry of the original Decision and Order and reflects that the total revised acreage of the Petition Area as shown on Exhibit A should be distributed between the Increment I and Increment II lands as follows:

| | <u>Parcel</u> | <u>Acreage</u> |
|---------------------|---------------|----------------|
| Increment I: | Parcel A1 | 417.705 |
| | Parcel B | 78.491 |
| | Parcel D2 | 0.142 |
| | Parcel 12 | <u>-4.500</u> |

Total Increment I Acreage: 491.838

| | <u>Parcel</u> | <u>Acreage</u> |
|----------------------|---------------|----------------|
| Increment II: | Parcel 12 | 4.500 |
| | Parcel A2 | 19.329 |
| | Parcel A3 | 21.072 |
| | Parcel A4 | 21.003 |
| | Parcel A5 | 38.540 |
| | Parcel D1 | 1.676 |
| | Parcel D3 | <u>1.950</u> |

Total Increment II Acreage: 108.070

Total Project District Acreage: 599.908

6. Although originally included within Increment II lands, Parcel 12 shown on Exhibit B attached hereto has previously been redistricted by Findings of Fact, Conclusions of Law and Decision and Order entered on April 8, 1994, leaving the actual acreage of Increment II lands that are yet to be urbanized as 103.570 acres. In this Motion, Petitioner has "subtracted" Parcel 12 from Increment I and "added" it to Increment II simply to be consistent with the original Decision and Order.

7. The survey of the interior boundaries between Increment I and Increment II lands of the Project District area and various boundary interpretations by the Commission's staff revealed that there are approximately 11.838 acres more land area in Increment I and 8.705 acres less land area in Increment II (after accounting for the additional area added by Parcel D1 and Parcel D3.)

8. When first redistricted by the Commission, the indicated acreage of the parcels within Increment I and Increment II was estimated based on the map area to establish a "planimetric" area (i.e. an area estimate established by measuring the boundary on a map) versus an actual survey of the interior boundaries of each parcel. As a result, only the exterior boundary of the overall Project District was surveyed, not its proposed internal components. Thus, the approval of the requested amendment to the indicated acreages within Increment I and Increment II will conform with original intent of the Commission regarding the allocation of lands between Increment I and Increment II of the Petition Area. Moreover, it will not alter any of the uses, proposed densities or the actual lands covered by the Decision and Order. It will merely correct a technical inaccuracy in the overall acreage estimate that was the result of the planimetric estimate.


WHEREFORE, Petitioner respectfully requests that the Commission amend the Decision and Order to include within the Increment II lands Parcels D1 and D3, and establish the total acreage of the Project District as 599.908 acres, comprised originally of 491.838 acres within Increment I and 108.070 acres within Increment II as set forth above, with the net acreage remaining within Increment II lands, taking into account the previous redistricting of Parcel 12, of 103.570 acres.

Dated: August 25, 1995 Honolulu, Hawaii.

GROVE FARM PROPERTIES, INC.

CASE MYRDAL BIGELOW & LOMBARDI
BELLES GRAHAM PROUDFOOT & WILSON

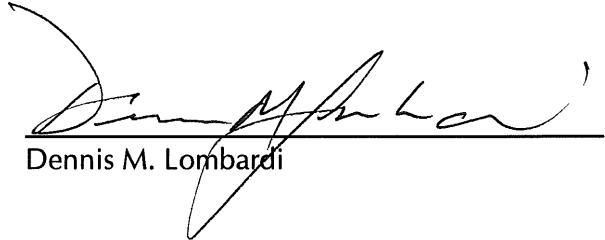
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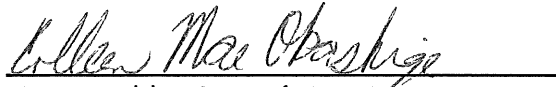
Michael J. Belles
Dennis M. Lombardi

VERIFICATION

Dennis M. Lombardi, the person named, being duly sworn, on oath deposes and says that he is one of the Attorneys for Grove Farm Properties, Inc., a Hawaii corporation, and as such is authorized to make this verification on behalf of Grove Farm Properties, Inc.; that he has read the foregoing Motion and knows the contents thereof and that the same are true to the best of his knowledge, information and belief.


Dennis M. Lombardi

Subscribed and sworn to before me
this 25th day of August, 1995.


Notary Public, State of Hawaii

My commission expires: 11/14/95

L.S.

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OF THE STATE OF HAWAII

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LAND USE COMMISSION
STATE OF HAWAII
AUG 25 1 18 PM '95

SCHEDULE OF EXHIBITS

| | |
|-----------|--|
| Exhibit A | Proposed Land Use Change Map (shows areas to be urbanized) |
| Exhibit B | Portion of Proposed Land Use Concept Plan (revised January 26, 1989) |

AUG 25 1 18 PM '95

PARCEL "A"
PROPOSED LAND USE CHANGE
LIBRE, PUNA, KAUAI, HAWAII
TAX MAP REF: 3-3-025.01, 32
3-3-025.10
PREPARED FOR: GROVE FARM PROPERTIES, INC.
PREPARED BY: ARONSON & ASSOCIATES, LTD.
SCALE: 1" = 200'
JUNE 19, 10

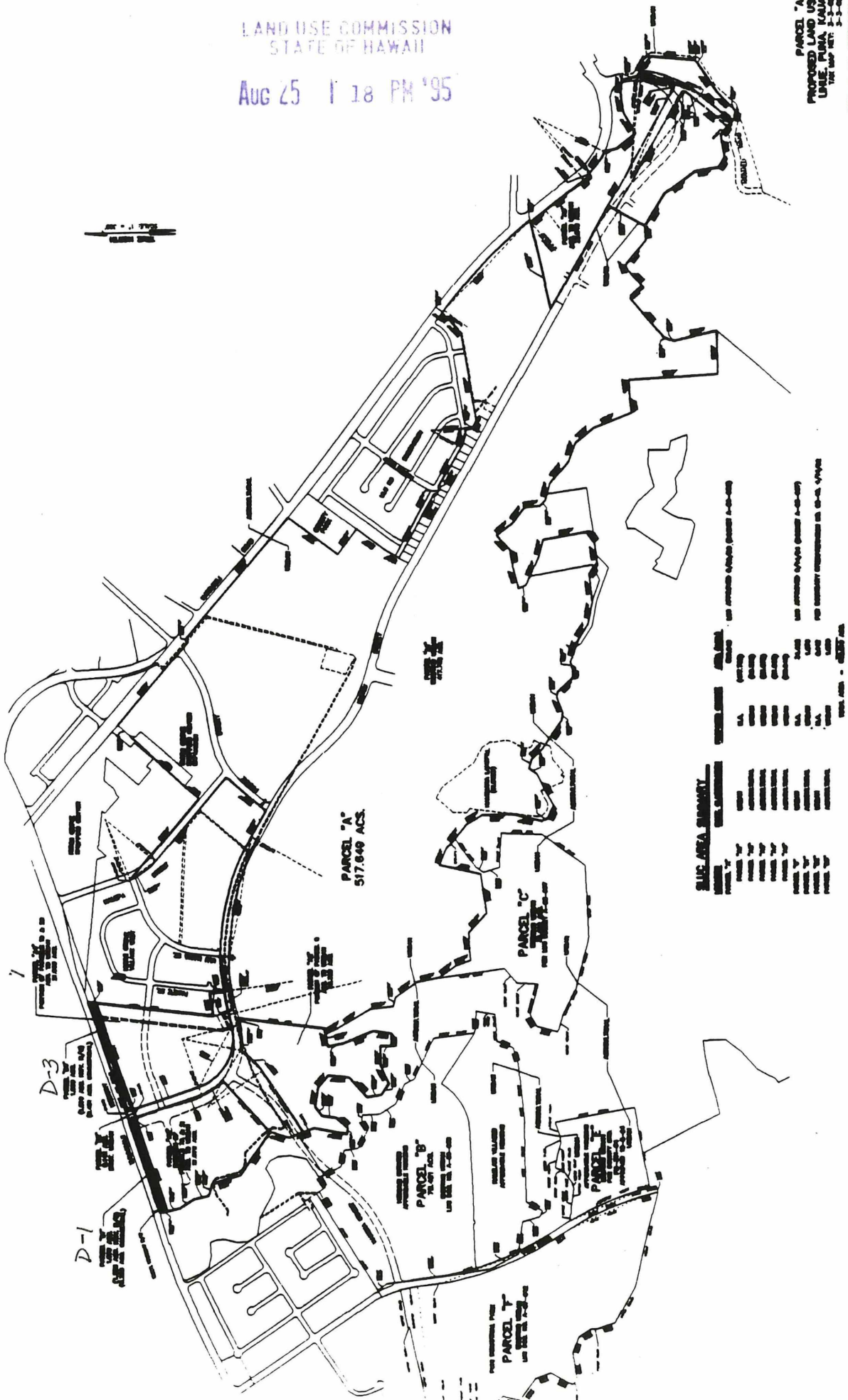


EXHIBIT A

