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JUN 12 34 PM '88
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By 
Dennis M. Lombardi
Attorneys for
GROVE FARM PROPERTIES, INC.

Of Counsel:
CASE & LYNCH

DENNIS M. LOMBARDI 3071-0
SCOTT D. RADOVICH 3746-0
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813
Telephone No. 547-5400

Attorneys for Petitioner
GROVE FARM PROPERTIES, INC.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)	DOCKET NO. A89-636
)	
of)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND DECISION AND ORDER
GROVE FARM PROPERTIES, INC.)	(GROVE FARM PROPERTIES, INC.);
)	EXHIBITS 1 AND 2
to Amend the Land Use District)	
Boundary of Property Situated)	
at Lihue, Island and County of)	
Kauai, State of Hawaii.)	
)	

3330K/053089

FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER

GROVE FARM PROPERTIES, INC., a Hawaii corporation (hereinafter "Petitioner"), by and through its attorneys Case & Lynch, filed its Petition for Land Use District Boundary Amendment with the Land Use Commission on February 16, 1989 and subsequent Amendments on on March 17, 1989, March 23, 1989, March 28, 1989, April 20, 1989, and on May 8, 1989 (collectively the "Petition"). The Petition seeks to amend the

land use district classification of approximately 603 acres of land hereinafter described, from "Agricultural" to "Urban" district classification. The Land Use Commission (hereinafter "Commission") having heard and examined the testimony, evidence, and arguments of counsel presented during the hearings, and the proposed findings of fact and conclusions of law, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. PROCEDURAL MATTERS

1. The Land Use Commission held its hearings in this matter on May 12, 1989 at the Kauai Hilton and Beach Villas Hotel, 4331 Kauai Beach Drive, Lihue, Kauai, Hawaii. The legal advertisement was published on April 6, 1989, in the Garden Island and the Honolulu Advertiser. (Transcript of Record, May 12, 1989, hearing, hereinafter referred to as "TR": p. 4, L 8-9).

2. No requests for intervention have been filed. 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. An opportunity was granted to Mr. Blaich to testify but he was not in attendance at the hearing. An untimely letter was received from Jacqueline Gardner and Sandra Marcy

and was made part of the record as there were no objections to it. (TR: p. 4, L 11-13; p. 98, L 17-24).

3. Dorothy Tao, a board member of the 1000 Friends of Kauai, testified as a public witness. (TR: p. 173-177).

4. A prehearing conference was held on April 28, 1989, at which time the parties, the Petitioner, the Office of State Planning ("OSP"), and the County of Kauai ("County"), exchanged exhibits and lists of witnesses. No prehearing motions were filed. (TR: p. 4, L 14-17).

5. The exhibits of all parties filed in connection with the Petition and reflected in the parties' respective list of witnesses and exhibits, as the same may have been amended were admitted into evidence. (TR: pps. 6-7, references to exhibits will be to the exhibits letter or number and the party introducing the same). Each of the preparers of reports submitted as exhibits by Petitioner were qualified as experts in their respective fields (TR: p. 82).

B. DESCRIPTION OF PETITIONER AND THE PROPERTY

6. Petitioner is Grove Farm Properties, Inc., a Hawaii corporation, with its principal place of business and mailing address is P. O. Box 2069, Puhi Rural Branch, Lihue, Kauai, Hawaii 96766. Its telephone number is (808) 245-3678. (Petition, p. 2).

7. The property which is the subject of the Petition is located at Lihue and Puhi, Kauai, and consists of approximately 603 acres, including roadways, lying on the westerly side of

Nawiliwili Road, the southerly side of Kaumualii Highway and the easterly side of Puhi Road designated as Tax Map Key Nos. 3-3-03:portion of parcel 1, and 3-3-06:portion of parcel 19, and is more completely described and reflected on the metes and bounds map attached hereto as Exhibit 1 (the "Property"). The Petition Property is bounded by and is contiguous to the existing urban districts at Puhi and Lihue. (Petition, p. 21; Petitioner's Exhibit C, p. 10; TR: p. 9, L 24-25; p. 10, L 3-4; p. 9-10, 14-18).

8. 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. (Petitioner's Exhibits D and D-1).

9. The Property is currently leased to Lihue Plantation and is in sugarcane cultivation and related uses (Petitioner's Exhibits C and E). 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. (Petitioner's Exhibit C; TR: p. 72, L 11-13).

10. Elevation within the project site varies. Its lowest point is 120 feet above mean sea level at the point near Nawiliwili harbor. The elevation is 240 feet at the northwest quadrant of the Lihue portion of the site. The highest point within the proposed additional area is 280 feet located just east of the proposed extension of Puhi Road in Puhi. Average elevation is approximately 200 feet with most of the site falling between 180 and 220 feet. (Petitioner's Exhibit C, p. 34).

11. The topography is generally flat in the Puhi 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 just short of 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. (Petitioner's Exhibit C, p. 34).

12. The average rainfall on the Property is approximately 50.0 +/- 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. (Petitioner's Exhibit C, p. 34).

13. The majority of the soils on the Property consist of Lihue Silty Clays (LhB) and Puhi 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. (Petitioner's Exhibit C, p. 38).

14. 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. (Petitioner's Exhibit C, p. 38).

15. The Land Study Bureau (LSB) Detailed Land Classification for the Island of Kauai identifies the predominant soil ratings on the Property as B4li and B78i. These "B"-rated soils have good productivity potential for most agricultural purposes. (Petitioner's Exhibit C, p. 39).

16. The Property is classified as "Prime" according to the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. (Petitioner's Exhibit C, p. 39).

17. The Property is well above the Puali (Niumalu) Stream, Huleia Stream, and Nawiliwili Harbor. The Property is not in the path of any major flood ways. 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. (Petitioner's Exhibit C, p. 53).

C. PROPOSAL FOR RECLASSIFICATION

18. 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 favorable reclassification approvals from the Land Use Commission, appropriate zoning approval, and the projects have either been completed or are currently on-going. The remaining balance of 603 acres within the Project District is the subject of this Petition. (Petition, p. 1; TR: pp. 8-11, 13-18).

19. 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. (Petitioner's Exhibit E.) The Parcels are identified on the District Plan Map (Exhibit B) by number, including those that are the subject of this redistricting request, and the uses proposed for those parcels include the following:

<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.	46.0	0	0		
	Total:	603.0		2301	883	1418

20. In the aggregate, the proposed uses for the Petition 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. (Petitioner's Exhibit E).

21. Of the proposed new residential units and lots, 1,010 will be affordably priced - based on 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. (TR: p. 17, L 11-25; p. 18, L 1-25).

22. Two hundred (200) rental units conforming to HFDC criteria for low income rentals (below 80% of median income) are also planned for the area. (TR: p. 19, L 8-25; p. 39, L 15-18).

23. Petitioner may engage in various joint ventures to construct the planned affordable units. Market housing will be constructed by Petitioner. (TR: p. 19, L 8-25; p. 39, L 15-18; p. 67, L 16-22).

24. The planned multi-family units may consist of single family attached, townhouse, zero lot line, cluster housing, and apartment style units. (Petition, p. 7; TR: p. 18, L 16-19; p. 19, L 8-12).

25. 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. (TR: p. 19, L 15-17; p. 42, L 2-5).

26. 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 (TR: p. 21, L 10-11; p. 31, L 16-18; p. 43, L 4-8; p. 89-91).

27. Parcel 18 (Petitioner's Exhibit B) of the proposed commercial areas is slated for expansion of the existing regional shopping center, Kukui Grove Shopping Center, which is contiguous to the Petition Property. Parcels 15, 20, and 21 (Exhibit B) are slated 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. (Petition, p. 8; TR: p. 15, L 8-25; p. 22, L 5-13).

28. A golf course and related clubhouse, restaurant and facilities, including a pro shop, maintenance facility, cart barn, and the like, 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. (Petition, p. 8; TR: p. 16, L 1-7).

29. The golf course will be a non-resort course open to the public for play; and thus, in the Petitioner's estimation, will reduce overcrowding of the County's course at Wailua (TR: p. 27, L 5-13; p. 50, L 11-20; p. 65, L 22-24).

Petitioner will develop and operate the golf course and will be offering kamaaina rates to state residents. (TR: p. 16, L 5-7; p. 26, L 13-17). Petitioner expects to establish its kamaaina greens fees with cart at approximately \$40.00 in 1988 dollars. (TR: p.26, L 21-15; p. 50, L 20-25). Petitioner expects to charge a higher green fee-cart rate to non-residents. (TR: p. 26, L 13-17; p. 51, L 1).

30. 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 Niumalu and Nuhou Roads, all with underground utilities, a wastewater treatment facility to service the development and necessary drainage improvements. (TR: p. 22, L 18-25; p. 23, L 1-25).

31. Petitioner estimates that the cost of the overall development will be approximately \$65,000,000.00 to \$75,000,000.00. (Petition, p. 10, Petitioner's Exhibit E, p. 8). Infrastructure costs for roadways, grading, and drainage and sewage treatment facilities are projected to be approximately \$22,000,000.00. (TR: p. 24, L 20-21, 25; p. 25, L 1-3).

32. 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. Subdivision plans and infrastructure design for the project could be commenced at that time, which would permit construction to get underway by late 1991 or early 1992. (TR: p. 20, L 17-24; p. 21, L 1-2).

33. Within five years of zoning, Petitioner expects to substantially complete, by having construction contracts in place for, the golf course and related facilities, the shopping center expansion area at parcel 18 (Petitioner's Exhibit B), 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%) as well as one hundred percent (100%) of the off-site support infrastructure including Nuhou Road and the sewage treatment facility necessary to service these developments. 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 (168 affordably priced and 373 market priced), will be substantially completed within five years thereafter. (TR: p. 20, L 9-10; p. 52, L 1-17; p. 96, L 14-17; p. 139, L 7-23; p. 166, L 1-23). The map attached as Exhibit 2 hereto reflects the first increment of the proposed project colored in orange and the second increment colored in brown.

D. PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

34. 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 Petition Property, if necessary, to sufficiently collateralize any financial borrowing or undertaking determined necessary or expedient by Petitioner to implement the proposed project. (Petitioner's Exhibit G). Communications with Petitioner's lender indicate that financing will be available for the project. (TR: p. 25, L 16-19).

E. STATE AND COUNTY PROGRAMS

35. The proposed Project area is now designated within the State Agriculture Land Use District. Petitioner seeks the designation changed to Urban. (Staff Report) (Petition, p. 4)

36. 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. (Petition, p. 21).

37. 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 (O). (Petition, p. 21-22; County's Exhibit 1).

38. The Property is not within the County Special Management Area (SMA) designation. (Petition, p. 25; Petitioner's Exhibit C, p. 83).

F. NEED FOR THE PROPOSED DEVELOPMENT

39. 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. (TR: p. 82, L 23-25; p. 84 L 4-12; p. 162, L 14-23; p. 171, L 21-24; Petition, p. 22; Petitioner's Exhibits C and F).

40. 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. (TR: p. 82, L 16-25; p. 83, L 1-25; p. 86, L 7-11).

41. Petitioner's consultant Ming Chew predicted 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. (Petitioner's Exhibits F and F-1; TR: p. 83, L 24-25; p. 84, L 1-24).

42. Petitioner's consultant estimated that in addition to the current undersupply, these factors related to current and planned projects, increased jobs and increased household income would increase housing demand on Kauai by about 600 units in 1989, 1,000 units during both 1990 and 1991, and 600 units per year from 1992 to 1995. (Petitioner's Exhibits F and F-1; TR: p. 83, L 15-19; p. 84, L 18-24).

43. Petitioner's consultant 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. (Petitioner's Exhibits F and F-1; TR: p. 85, L 1-21).

44. Petitioner's consultant further concluded that the proposed commercial improvements and golf course were also needed on the island. He predicted that projected 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. (Petitioner's Exhibits F and F-1; TR: p. 85, L 22-25). 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. (Petitioner's Exhibits F and F-1; TR: p. 85, L 22-25; p. 86, L 1-11).

G. ECONOMIC IMPACTS

45. 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. (Petition, p. 20; Petitioner's Exhibit F).

46. Impacts associated with increased economic opportunities attributable to the proposed commercial facilities and the construction of residential properties are equally beneficial. The proposed golf course will entail direct as well as indirect and induced impacts during both the temporary construction phase and long-term operational phase of the facility. It is anticipated 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. (Petition, p. 20; Petitioner's Exhibit C, p. 1; TR: p. 75, L 4-12).

47. 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. (Petition, p. 20-21; TR: p. 29, L 13-25; p. 30, L 1-25).

48. In addition to an increase in real property taxes that will be paid to the County, the County can expect to receive increased long term revenues attributable to user fees and gas taxes, as well as one time fees of close to \$2,000,000.00

attributable to real property roll back taxes and environmental impact assessment fees. Moreover, the Petitioner expects to dedicate to the County roads and other infrastructure facilities constructed by the Petitioner at no cost to the County. (TR: p. 30, L 20-25; p. 36, L 10-23).

H. SOCIAL IMPACTS

49. The proposed development of the Property will not adversely impact the characteristics of the surrounding community. Much of the area immediately adjacent to the Property is currently urban. The proposed development will contribute to the community with a variety of existing or contemplated parks, passive recreational open spaces and commercial recreational facilities. The principal open space recreational facility proposed to be developed on the Petition Property is a golf course, with related clubhouse, restaurant, pro shop, and maintenance facilities. In addition to providing ambient open space within the Project District, the golf course will provide needed recreational facilities in Lihue. (Petition, p. 8).

50. The project will result in increased jobs and employment opportunities on Kauai and afford greater commercial opportunities. (TR: p. 75, L 1-7).

51. Most importantly, the project will respond to a critical housing demand for affordable and market housing on Kauai. (TR: p. 86, L 7-11; Petitioner's Exhibits F and F-1).

I. IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

52. As noted earlier, the Property is currently under sugarcane cultivation. The primary impact upon agriculture would be the removal of sugarcane cultivation to replace it with the proposed development of the Property for housing, commercial, and recreational purposes. The proposed withdrawal of the Property from sugarcane cultivation is expected to have only a minor effect upon the agricultural industry on Kauai and Lihue Plantation, and less on the statewide industry, recognizing available improved farming methods to increase yields and the possible cessation of the current lease to Lihue Plantation in 1994. The withdrawal of the portion of the project lands currently in cultivation will not substantially impair actual or potential agricultural production in the vicinity of the lands or in the County or in this State. Moreover, any impact that does result is more than outweighed by the need to address the affordable and market housing demands existing on Kauai and the withdrawal of such lands from agricultural uses is reasonably necessary for urban growth. (Petition, p. 11-12; TR: p. 73, L 9-13; p. 74 L 19-22).

Flora and Fauna

53. 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. (TR: p. 106,

L 1-15; p. 107, L 1-25; Petition, p. 13-14; Petitioner's Exhibits I and I-1).

54. No endangered or threatened species of fauna have been identified in the Project area. 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. (TR: p. 109, L 1-25; p. 110, L 1-15; p. 112, L 22-24; Petition, p. 14; Petitioner's Exhibit J).

Archeological/Historical Resources

55. Based on the archaeological surface and subsurface inventory survey conducted at the project site only two sites within the Project area have been identified as historical period 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, improved by addition of a restaurant and incorporated into the proposed golf course facilities. Petitioner's consultant concluded that these preservation plans were adequate and that the adaptive restoration of the former manager's house is an acceptable preservation alternative. (TR: p. 99 L 18-25;

p. 100 L 4-22; p. 101 L 10-14; p. 102, L 16-21; Petition, p. 13; Petitioner's Exhibits H and H-1).

56. The only potable remains discovered at the site was a ceramic potsherd which has been preserved. (TR: p. 105, L 5-10; Petitioner's Exhibit H).

57. Petitioner's consultant recommended that 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. (TR: p. 101, L 14-19; Petitioner's Exhibits H and H-1).

Ground Water Resources

58. The Kauai Water Department has indicated that it expects 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. (Petition, p. 18; Petitioner's Exhibit C; TR: p. 77 L 1-6; p. 141, L 15-25; p. 142, L 1-25).

59. The use of chemical fertilizers and pesticides on the proposed golf course are not expected to adversely effect groundwater resources. In comparison to existing sugarcane uses less land is involved and a lesser amount of fertilizers

and pesticides are used. Additionally, recognizing the sorbing characteristics of the land involved and golf course turf grass and the more controlled application methods used in a golf course setting risks associated with use of these chemicals are reduced. (TR: p. 77, L 7-25; p. 78, L 1-9).

Recreational, Scenic, Cultural Resources

60. 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 respond to the present need for increased recreational facilities in the Lihue area. These facilities are intended to be used by the public and will be beneficial to both the local and visitor population. (Petition, p. 13; TR: p. 27, L 5-13).

61. Further, Petitioner intends to comply with County ordinances regarding the dedication of land or money for park sites. (TR: p. 28, L 7-25; p. 29, L 1-4).

Coastal/Aquatic Resources

62. The Property does not fall within the Kauai County Coastal Zone Special Management Area and therefore should have no significant impact on aquatic or coastal resources. (Petition, p. 25; Petitioner's Exhibit C, p. 83).

J. ENVIORNMENTAL QUALITY

Noise Quality

63. The increase in noise that will be generated by construction will be temporary 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. (Petitioner's Exhibit C, p. 47-48).

Air Quality

64. 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 concluded 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. (Petitioner's Exhibit J-1; TR: p. 114, L 3-23; p. 116, L 1-20).

Water Quality

65. Improvement of the Property is expected to return the site drainage pattern to its natural runoff system. Very little effect is anticipated on existing water quality in the area even after construction of the proposed development is completed. During construction, siltation measures will be practiced as required by the Kauai County Public Works Department. (Petition, p. 15; Petitioner's Exhibits C and E; TR: p. 136, L 5-25; p. 148, L 11-25; p. 149, L 1-12).

66. 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 and likely improve the quality of the drainage. (TR: p. 135-137).

Other Impacts

67. Petitioner expects that the development, being located next to the center of commerce and employment on the island will mitigate prospective traffic impacts. (Petition, p. 15; Petitioner's Exhibit K; TR: p. 118, L 9-22).

K. ADEQUACY OF PUBLIC SERVICES AND RESOURCES

Highway and Roadway Facilities

68. Petitioner is planning to build a major roadway through the Project that will service the Project and become a bypass between Kaumualii Highway and Nawiliwili Harbor that will be dedicated to the County. In addition, the Petitioner plans to build a network of interior roadways serving the

Project and dedicate them to the County. (TR: p. 23, L 13-25; p. 34, L 23-25; p. 35, L 1-7; p. 54, L 15-18).

69. Petitioner expects to contribute to the widening of Kaumualii Highway by dedicating one half of the land area required to improve the highway along the boarder of the Project from two to four lanes. Petitioner will also contribute towards signalization of the Nuhou intersection and follow the other recommendations contained in Petitioner's traffic consultant's report. (TR: p. 48, L 7-17; p. 54, L 10-12; p. 119, L 6-18).

Water Service

70. The Kauai Water Department has indicated that it expects 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. (Petition, p. 18; Petitioner's Exhibit C, p. 20-21; TR: p. 77, L 1-6; p. 141, L 15-25; p. 142, L 1-25).

Wastewater Disposal

71. 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

the Petitioner. (Petition, p. 18; TR: p. 133, L 18-25; p. 134 L 1-25; p. 134, L 1-4).

72. 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. (TR: p. 134, L 10-17; p. 142, L 7-21).

Drainage

73. 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. (Petition, p. 11, 16; Petitioner's Exhibits C and E; TR: p. 136, L 1-25).

Solid Waste Disposal

74. 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. (Petition, p. 18; Petitioner's Exhibit C).

75. Petitioner has assisted the County in the past by providing property for a landfill site within the Petition Property which now exceeds current fill standards. (TR: p. 146, L 25; p. 147, L 1-24).

Schools

76. 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. (TR: p. 27, L 13-25; p. 28, L 1-7; p. 58, L 4-23).

Police and Fire Protection

77. 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. (Petition, p. 19; Petitioner's Exhibit C, p. 49).

78. Petitioner expects that estimated real property and other tax revenues attributable to the development will offset fairly any increase in costs for public services benefiting the Project. (TR: p. 29, L 5-10; p. 30, L 9-11, 20-25; p. 30, L 1-10).

Electricity and Telephone Service

79. Local utility supplies are adequate to respond to the anticipated demand for electricity, gas, and telephone relating to the Project. (Petition, p.18; Petitioner's Exhibit C, p. 27-28).

L. COMMITMENT OF STATE FUNDS AND RESOURCES

80. The proposed development has received no commitment of state funds or resources. (TR: p. 25, L 16-19).

M. CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

81. 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. (Petition, p. 23).

82. 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. (Petition, p. 24).

b. The Property is in close proximity to Kauai's major trading, employment, governmental and social centers. (Petition, p. 24).

c. The economic feasibility of the proposed development has been substantiated by Petitioner. (Petition, p. 24).

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. (Petition, p. 24).

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. (Petition, p. 24).

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. (Petition, p. 24).

g. The Property is contiguous to and is indeed bounded on multiple sides by existing Urban districts 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. (Petition, p. 24-25).

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), nor require the commitment of state funds and resources. 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. (Petition, p. 25).

N. CONFORMANCE WITH THE HAWAII STATE PLAN

83. The Proposed Development is consistent with the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended. (Petition, p. 23).

84. 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. (Petition, p. 23).

85. The proposed development will also promote and protect intangible resources in Hawaii, through the construction of additional recreational facilities for Kauai residents, which are vital to a healthy economy. Moreover, the development will respond to an existing housing shortage for affordable and market priced homes and home sites on Kauai. (Petition, p. 23).

O. CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTS AND POLICIES

86. The Property does not fall within the Kauai Coastal Zone Special Management Area. (Petition, p. 25; Petitioner's Exhibit C, p. 83).

P. INCREMENTAL DISTRICTING

87. The proposed development conforms with all of the 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.

88. The Petitioner proposes to develop the Project in two (2) increments. (TR: p. 33, L 8-25; p. 34, L 1-22; p. 45, L 23-25; p. 46, L 1-25; p. 47, L 1; p. 51, L 15-25; p. 172, L 11-22).

89. The first increment, which is colored in orange on the map attached as Exhibit 2 can be substantially completed, as evidenced by the award of construction contracts for its integral parts, 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 internalized utilities sized to service the Project area, (c) water transmission and distribution systems and facilities necessary to service the housing units to be constructed in the first

increment, (d) the sewage collection and treatment system necessary to service the first increment, (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. (TR: p. 33, L 8-25; p. 34, L 1-22; p. 46, L 2-25; p. 51, L 15-25; p. 172, L 11-22).

90. The second increment of Petitioner's project which is colored in brown on the map attached as Exhibit 2 can be completed within five years after the first increment 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. (TR: p. 46, L 20-25; p. 47, L 1).

91. Full development of the Property can be substantially completed in accordance with the proposed incrementing plan. (TR: p. 20, L 9-10; p. 52, L 1-17; p. 96, L 14-17; p. 139, L 7-23; p. 166, L 1-23).

RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the parties not adopted by the Commission herein, or rejected by

clear contrary finds of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes and the Hawaii Land Use Commission Rules, the Commission finds upon the preponderance of evidence that the reclassification of approximately 603 acres of Petition Property from Agricultural to the Urban District at Puhi, Lihue, Kauai, Hawaii, Tax Map Key Numbers 3-3-03:portion parcel 1 and 3-3-06:portion parcel 19 as reflected on the metes and bounds map attached hereto as Exhibit 1 for a residential lot and housing project, open space recreation, golf course, utility, roadways and commercial support areas, subject to the incrementing plan and conditions stated in the Order below, conforms to the standards established in Subchapter 2 of the Hawaii Land Use Commission Rules, is reasonable and non-violative of Chapter 205-2, Hawaii Revised Statutes, as amended, and is consistent with the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as amended, and the Hawaii Coastal Zone Management Act, Chapter 205A, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property which is the subject of this Petition in Docket No. A89-636 filed by Grove Farm Properties, Inc., consisting of approximately 603 acres of land situated at Puhi, Lihue, Island of Kauai, State of Hawaii, identified as Kauai Tax Map Key Numbers 3-3-03:portion parcel 1

and 3-3-06:portion parcel 19, and more approximately shown on Exhibit "1" attached hereto is hereby reclassified from the Agricultural District to the Urban District, and the State Land Use District Boundaries are amended accordingly, subject to the following conditions:

1. 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 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 housing units at prices which families with an income range of eighty percent (80%) to one hundred twenty percent (120%) of Kauai County's median income can afford and thirty percent (30%) of the housing units which families with an income range of one hundred twenty percent (120%) to one hundred forty percent (140%) of Kauai County's median income can afford.

This condition may be fulfilled in any one of the following manners:

a. Through projects undertaken by the Petitioner under such terms as may be mutually agreeable between the Petitioner and the Housing Finance and Development Corporation of the State of Hawaii or other appropriate governmental agencies; or

b. Through the Petitioner's construction of rental units to be made available at rents which families in the aforementioned specified income ranges can afford as approved by the Housing Finance Development Corporation of the State of Hawaii; or

c. In such other manner that meets with the approval of the County of Kauai and the Housing Finance and Development Corporation of the State of Hawaii.

3. The Petitioner shall coordinate with the County of Kauai to insure that the drainage and other infrastructure and service systems are compatible with the existing systems and developed in a timely fashion to prevent degradation of groundwater and coastal ecosystems. All on-site infrastructure necessary for the development of the Project shall be funded by the Petitioner.

4. The Petitioner shall contribute its fair share to all additional planning studies as may be required by the Department of Transportation of the State of Hawaii and such on-site and off-site transportation improvements associated with the proposed development as detailed in Petitioner's Traffic Study and shall design and schedule such improvements in cooperation with the Department of Transportation. Petitioner shall dedicate to the Department of Transportation sufficient property along Kaumualii Highway to widen by one lane the portion of Kaumualii Highway fronting the proposed Project.

5. The Petitioner shall comply with the requirements of and conditions imposed by the County of Kauai Department of Water to obtain an adequate supply of potable water.

6. The 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 offsite 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. The Petitioner shall pay its prorata 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. The Petitioner shall submit for review and approval by the State of Hawaii's Historic Sites Section and the County of Kauai's Historic Preservation Commission a detailed preservation plan with respect to the Cemetery (Site 50-30-11-503) Petitioner shall submit for review only a detailed preservation plan by the two (2) agencies with respect to a historic residence (Site 50-30-11-9390) which were identified on the Property. The plan for the cemetery shall be executed prior to the commencement of construction and verified by the aforementioned agencies.

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

9. The 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, Hawaii Revised Statutes, as amended, limits the circumstances under which preexisting farming activities may be deemed a nuisance.

10. The 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. The 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, 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 provision of adequate assurance of satisfaction of these conditions by the Petitioner.

13. Petitioner shall not commence development of the second increment of the project, except as necessary to construct on- or off-site infrastructure for the Petition Property and the development thereon contemplated, until the first increment has been substantially completed in accordance with the incrementing plan described at Findings of Fact No. 33, 89, 90 and 91, and then only upon motion made to and approved by the Commission pursuant to Land Use Commission Rule §15-15-78.