

ORIGINAL

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 Use )  
District Boundary to Reclassify )  
Approximately 603 Acres Described )  
as; TMK: 3-3-03; por a, 3-3-02: )  
por 1, 3-3-06: por 19, and 3-4-05: )  
por 7, Lihue and Puhi, County of )  
Kauai, Hawaii, into the Urban )  
Land Use District )  
DML 060989 3358K )

JUN 9 3 55 PM '89  
LAND USE COMMISSION  
HONOLULU, HAWAII

AMENDED  
STIPULATION TO FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND CONDITIONS OF RECLASSIFICATION

Grove Farm Properties, Inc. ("Petitioner") and the Office of State Planning of the State of Hawaii ("OSP") by and through their undersigned attorney or representative, hereby stipulate and agree to the Petitioner's Findings of Fact, Conclusions of Law, Decision and Order and Conditions of Reclassification filed with the Land Use Commission of the State of Hawaii on June 1, 1989.

1. Petitioner's Findings of Fact Nos. 1-20, 24-27, 29-32, 34-47, 50, 52-57, 60-61, 63-64, 66-67, 69-70, 72-77, 79-81, 84-86, and 88; and and the following as amended herein: Nos. 21-23, 28, 33, 47-49, 51, 58-59, 62, 65, 68, 71, 78 (delete), 82-83, 87, 89 and 90.
2. Petitioner's Conclusions of Law as proposed.

3. Petitioner's proposed Conditions of Reclassification Nos. 1, 6, 7, 10, 11, and 12; and the following as amended herein: Nos. 2, 3, 4, 5, 8, and 9.

#### OSP'S PROPOSED AMENDMENTS

1. Amend Factual Findings No. 21

21. Of the proposed residential units and lots, 810 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).

2. Amend Factual Finding No. 22

22. 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 subject petition area is 1,010 units. (Petitioner's Proposed Factual Finding #19).

3. Amend Factual Finding No. 23

23. 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. (TR: p. 19, L 8-25; p. 39, L 15-18; p. 67, L 16-22; p. 19, L 15-17).

4. Amend Factual Finding No. 28

28. 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. (Petition, p. 8; TR: p. 16, L 1-7).

5. Amend Proposed New Factual Finding No. 33

33. Within five years of zoning, Petitioner expects to substantially complete the golf course and related . . . ., and (Line 11); one hundred percent (100%) the necessary and applicable 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 . . .

6. Inclusion of New Factual Finding No. 47a

47a. 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". (County of Kauai Testimony, Ex #1, p.7)

7. Amend Factual Finding No. 48

48. 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. (TR: p. 30, L 20-25; p. 36, L 10-23; p. 31, L 14-18)

8. Amend Factual Finding No. 49

OSP proposes that an amendment to the first 6 lines of factual finding #49 to delete the first sentence and to read as follows:

49. 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.

9. Amend Factual Finding No. 51

51. 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)

10. Amend Factual Finding No. 58

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 commit to the adequacy of its source and storage facilities until a development is in the subdivision approval process. Current water storage . . .

11. Amend Factual Finding No. 59

59. The use of chemical fertilizers and pesticides on the proposed golf course are not expected to adversely effect groundwater resources. (TR: p. 77, L 7-25; p. 78, L 1-9)

12. Amend Factual Finding No. 62

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

13. Amend Factual Finding No. 65

65. 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. (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)

14. Amend Factual Finding No. 68

68. Petitioner is planning to build a major 2-lane roadway through the Project that will service the Project and become a bypass between Kaumualii Highway and Nawiliwili Harbor and that will 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. (TR: p. 23, L 13-25; p. 34, L 23-25; p. 25, L 1-7; p. 54, L 14-18)

15. Amend Factual Finding No. 71

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 the Petitioner or to a private sub-regional sewage treatment plant within the Project area to be developed by the Petitioner in accordance with State Department of Health requirements. Other existing developments adjacent to the petition area, as testified by Petitioner, will also be connected to the central sewage system. (Petition, p. 18; TR: p. 133, L 18-25; p. 134, L 1-25; p. 134, L 1-14; p. 146, L 16-14)

16. Delete Factual Finding #78.

17. Amend Factual Finding No. 82h to delete the phrase "nor require the commitment of state funds and resources."

18. Amend Factual Finding No. 83

83. The proposed Development is consistent with portions of the Hawaii State Plan as set forth in Chapter 226, Hawaii Revised Statutes, as amended. (OSP Ex 1, 35-36)

19. Amend Factual Finding No. 87

87. 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.

20. Amend Factual Finding No. 89

89. The Petitioner states that the first increment, which is colored in orange on the map attached as Exhibit 2 can be substantially completed within five years of the date of County zoning and will . . . (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 expandable treatment system capable of servicing the entire project, . . .

21. Amend Factual Finding No. 90

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 is substantially completed and will . . .

## 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 Puhī, County of Kauai, shall be reclassified from the Agricultural District to the Urban District subject to the following conditions.

IT IS ALSO HEREBY ORDERED that the remaining balance of approximately 123 acres of the petition area, situate at Lihue and Puhī, Kauai, shall be and the same is approved for incremental districting pursuant to Section 15-15-78 of the Commission Rules and that redistricting 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 indicated above, within five years of the date of County zoning approval and subject to the following conditions:

### CONDITIONS

1. Petitioner's Proposed Condition #1 is acceptable to OSP as currently proposed.
2. The affordable housing requirement shall be satisfied as follows:



A. 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 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 area) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.

3. The 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. The Petitioner shall participate in or otherwise provide all additional planning studies related to the Project as required by the State Department of Transportation (DOT). The 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. The Petitioner shall also provide an 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. The 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. The 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. 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 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. The 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. The 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.

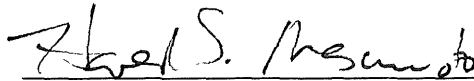
Should any archaeological resources such as artifacts, shell, bone, or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the project's development, the Petitioner shall immediately stop work and contact the State Historic Sites Section.

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, HRS, limits the circumstances under which pre-existing 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. 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 provision of adequate assurance of satisfaction of these conditions by the Petitioner.

DATED: Honolulu, Hawaii, June 9, 1989.

  
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DENNIS M. LOMBARDI  
Attorney for Petitioner  
Grove Farm Properties, Inc.

  
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HAROLD S. MASUMOTO  
Director of Planning  
Office of State Planning  
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on June 9, 1989, upon the following by either hand delivery or depositing the same in the U.S. Postal Service:

Tom Shigemoto, Planning Director                      Mail  
Planning Department  
County of Kauai  
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Lihue, Kauai, HI 96766

Planning Commission                                      Mail  
County of Kauai  
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Michael Belles, Esq.                                      Mail  
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The Lihue Plantation Company, Ltd.                      Mail  
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David W. Pratt, President                                  Mail  
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DATED: Honolulu, Hawaii, June 9, 1989.

  
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HAROLD S. MASUMOTO  
Director of Planning  
Office of State Planning  
State of Hawaii