

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	
	)	
AMFAC PROPERTY DEVELOPMENT	)	DOCKET NO. A82-530
CORPORATION, a Division of	)	
Amfac Inc.,	)	AMFAC PROPERTY DEVELOPMENT
	)	CORPORATION
To Amend the Land Use District	)	
Boundary to Reclassify Approxi-	)	
mately 78 Acres of Land, Tax Map	)	
Key 3-5-01: Portions of 6, at	)	
Lihue, Island and County of Kauai,	)	
State of Hawaii, from the Agri-	)	
cultural District into the Urban	)	
District	)	
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DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECISION AND ORDER

The above-captioned proceeding was initiated by the petition of AMFAC PROPERTY DEVELOPMENT CORPORATION pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of certain lands (hereinafter the "subject property") situated at Lihue, Island and County of Kauai, State of Hawaii, from the Agricultural to the Urban Land Use District. The Land Use Commission, (hereinafter "Commission") having heard the testimony and examined the evidence presented at the hearings held on July 15, 1982, September 24, 1982 and February 15, 1983, in Lihue, Kauai, Hawaii, and having considered the total record including the proposed findings of fact and conclusions of law submitted by parties, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Amfac Property Development Corporation, a Hawaii corporation (hereinafter "Petitioner") filed this petition on March 2, 1982, to amend the Agricultural Land Use District

boundary at Lihue, Island and County of Kauai, State of Hawaii, to reclassify approximately 78 acres into the Urban District.

2. The Petitioner is a wholly owned subsidiary of Amfac, Inc. The Petitioner manages Amfac, Inc.'s extensive land holdings and is a developer and manager of resort, commercial, industrial and residential property in Hawaii and on the mainland.

3. The Commission conducted the public hearing on the petition at Lihue, Kauai on July 15, 1982, September 24, 1982 and February 15, 1983, pursuant to notices published in the Honolulu Advertiser and The Garden Island on June 2, 1982, August 24, 1982 and January 3, 1983, respectively.

4. On July 15, 1982, the Commission denied the Petition For Intervention and Motion To Dismiss filed by Elizabeth Ann Stone, President, Honest Environmental Citizens Against Progress due to the absence of Ms. Stone.

5. The Commission received testimony from public witnesses Patrick Nagao and Robert Rask on July 15, 1982, and Charles Trembath on September 24, 1982. The Commission allowed testimony from Martin Mills, Secretary for the Board of Directors of the Kauai Community Clients Council by letter dated September 17, 1982 and by Michael R. Salling on behalf of Senator Lehua Fernandes Salling on February 15, 1983.

#### DESCRIPTION OF PROPERTY

6. The subject property consists of approximately 78 acres of land identified as Kauai Tax Map Key 3-5-01: Portions of 6. These sites are illustrated in Exhibit "A" attached hereto and by reference incorporated herein.

7. The Lihue Plantation Company, Limited, the fee simple owner of record of the subject property, has granted the Petitioner a license to file the petition. The Lihue Plantation Company, Limited, and the Petitioner are both subsidiaries of Amfac, Inc.

8. The four sites that comprise the subject property are situated between Kapule Highway and Ninini Point.

- a. Site 1 (approximately 22 acres) is located between Kapule Highway and the County sewage treatment plant (STP). The boundaries of Site 1 are (north) along the expanded Lihue Airport property line, (east) along canefields, (south) along Halau Street and the Lihue industrial subdivision, and (west) along Kapule Highway. Site 1 is currently planted in sugarcane, and is contiguous to Urban District lands to the north and south; and to Agricultural lands to the east and west.
- b. Site 2 (approximately 24 acres) is located mauka of the Kauai Surf Resort, is contiguous to the Agricultural District on the east (the golf course) and to the Urban District on the west (Petitioner's recently developed light industrial subdivision). Site 2 is relatively flat and is currently planted in sugarcane.
- c. Site 3 (approximately 8 acres) stretches from mauka to makai between the first and second 9-holes of the Kauai Surf golf course in the Agricultural District. Site 3 is currently vacant.
- d. Site 4 (approximately 24 acres) is the most easterly of the four sites, located between Kukii Point and Ninini Point. Site 4 is contiguous on its western and northern boundaries to the Kauai Surf golf course in the Agricultural District, on its eastern tip boundary is adjacent to the Urban District of the expanded Lihue Airport, and on its southern boundary to the 150-foot wide Conservation

District, the steep topography along the shoreline. Site 4 is currently vacant.

9. The U.S. Department of Agriculture Soil Conservation Service Soil Study, 1972, classifies the soils of the subject property as follows:

- a. Site 1 is classified as Lihue series LhB (Lihue silty clay, 0-8% slope) and Lihue series LIB (Lihue gravelly silty clay, 0-8% slope).
  - b. Site 2 is classified as Lihue series LhB (Lihue silty clay, 0-8% slope), Lihue series LIB (Lihue gravelly silty clay, 0-8% slope) and Lihue series LhE2 (Lihue silty clay, 25-40% slope).
  - c. Site 3 is classified as Lihue series LhB (Lihue silty clay, 0-8% slope) and Lihue series LIB (Lihue gravelly silty clay, 0-8% slope).
  - d. Site 4 is classified as Lihue series LhB (Lihue silty clay, 0-8% slope), Lihue series LIC (Lihue gravelly silty clay, 8-15% slope) and rough broken land rRR (40-70% slope).
- The soils on the subject property are generally of moderately rapid permeability, runoff is slow, and the erosion hazard is slight.

10. Prevailing winds in the area of the subject property are from the northeast; the average temperature is 75 degrees Fahrenheit; and annual rainfall averages between 40 to 50 inches.

11. The Federal Insurance Administration classifies the subject property as being in an area of minimal flooding, Zone C in its Flood Insurance Study for Kauai County.

12. The subject property is exposed to tsunami inundation only at Site 4, where wave heights of up to 14 feet are projected.

PROPOSAL FOR DEVELOPMENT

13. The Petitioner proposes the following light industrial and resort condominium uses on the subject property:

- a. The Petitioner proposes to subdivide Site 1 into approximately 35 light industrial lots of about 20,000 square feet each to be offered for sale at a price of \$10.75 per square foot in 1982 dollars.
- b. The Petitioner proposes to develop approximately 240 residential/resort condominium units on Site 2.
- c. The Petitioner proposes to develop approximately 80 residential/resort condominium units on Site 3.
- d. The Petitioner proposes to develop 240 resort condominium or hotel units, and recreational facilities on Site 4.

14. The Petitioner proposes to develop units of employee housing equal in number to 10% of the resort/residential units to be developed on the subject property on Petitioner's land in the Hanamaulu area, located approximately two miles north of the subject property.

15. The Petitioner proposes to utilize such lots or offer a cash-out settlement in lieu of such lots, which will be used in the County's housing program to provide for the needs of resort employees and those of low and moderate family income. In this fashion, the proposed development of the subject property will assist in providing a balanced housing supply for all economic and social groups.

16. The Petitioner's appraisal consultant, John Child

& Company, Inc., estimates total on-site project costs to be \$71,341,000. It estimates improvements and construction of warehouse buildings on Site 1 will cost \$16,125,000; and the development and building improvements on Sites 2, 3, and 4 will cost \$55,216,000. It estimates that necessary off-site infrastructure will cost \$6,000,000.

17. The Petitioner proposes to start developing the subject property within two years from receipt of all required governmental approvals, and proposes to complete all necessary on-site and off-site improvements within five years.

18. The Petitioner does not propose to construct building improvements on the subject property; rather, Petitioner proposes to subdivide lots within sites to be sold to other developers for construction of individual condominium projects. The Petitioner would retain and exercise architectural control over development.

19. The Petitioner intends to subdivide the condominium sites so that each project would be limited to 80-100 units. Petitioner reasons that reducing the size of the building projects will enable more local builder-developers and contractors to develop smaller projects.

#### STATE AND COUNTY PLANS & PROGRAMS

20. The subject property is situated within the State Land Use Agricultural District as reflected on the Commission's District Boundary Map K-11 (Lihue).

21. The State Tourism Plan Technical Reference document dated October 1981, includes as a "Designated Visitor Destination Area" Sites 2, 3, and 4, at "The North end of Nawiliwili Bay from Kalapaki Beach to Ninini Point."

22. The County of Kauai classifies the subject sites as follows:

<u>Site</u>	<u>Kauai General Plan</u>	<u>Lihue Dev. Plan</u>	<u>County Zoning</u>
1	Agriculture	Agriculture	Agriculture
2	Resort (por.)	Hotel (por.)	Limited Industrial (por.)
	Agriculture (por.)	Open (por.)	
	Project Dis- trict (por.)		Agriculture (por.)
	Industrial (por.)	Industrial (por.)	
3	Resort (por.)	Hotel (por.)	Agriculture
	Agriculture (por.)	Open (por.)	
4	Resort	Hotel	Open

23. Prior to development, the County must redesignate Site 1 to "Industrial" in order to permit the Petitioner to subdivide Site 1 for light industrial uses.

24. The County of Kauai distinguishes between resort/hotel condominiums and residential condominiums, and does not generally permit multi-family residential condominiums within resort districts nor resort/hotel uses within residential districts. The County must amend its General Plan, Lihue Development Plan, and zoning in order to permit development of multi-family residential condominiums or resort/hotel condominiums on Sites 2, 3, and 4.

25. Sites 2, 3, and 4 are within the County's Special Management Area; thus an SMA permit will be required for their development.

26. The State Tourism Plan and programs of the State Hawaii Housing Authority and the County of Kauai encourages developers of resort projects to provide housing affordable to employee households or those of low and moderate family income.



## NEED FOR GROWTH AND DEVELOPMENT

27. The subject property is located at Lihue, the civic, financial, commercial and transportation center of the Island and County of Kauai. The proposed developments would be near the ocean adjoining the Kauai Surf golf course and will be in close proximity to both the Lihue Airport and Nawiliwili Harbor.

28. The Petitioner proposes to develop Site 1 of the subject property into 35 industrial lots. The Petitioner has not submitted a market study or analysis to justify the need for the proposed industrial subdivision. While Petitioner stated that it had a list of more than 200 persons who were interested in purchasing the 68 lots in Phase I of its industrial subdivision across the road from Site 1, these purchasers are no longer interested. Petitioner has exhausted the waiting list; and after two (2) years only 37 of the 68 lots have been sold, 31 lots remain unsold.

29. The Petitioner's consultant, Environment Capital Managers, Inc., has submitted a demand/supply study of visitor and residential units in the County of Kauai. This consultant concluded that there will be a net balance need for approximately 600 new resort visitor units and for approximately 1,912 new residential units by 1990. The consultant's president, Bay Yee, concludes that there will be a demand for both the 431 resort condominiums and the 168 residential condominiums projected for development on the subject property.

## IMPACTS UPON RESOURCES OF THE AREA

### Agriculture

30. The four sites comprising the subject property are primarily classified as Prime Agricultural Land under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. There is a

small area of "other important" land, and land not classified according to the ALISH system, within Site 2. The Lihue Plantation Company, Limited has extensively cultivated sugarcane within Site 1 and a portion of Site 2, as well as upon lands to the north of the subject property. The Kauai County General Plan, the Lihue Development Plan and current County zoning indicate that the maintenance of agricultural use on Site 1 is presently the adopted public policy for this area. The reclassification of Site 1 from Agriculture to Urban is not necessary for urban growth at this time and may substantially impair the actual agricultural production of sugarcane in the vicinity of Site 1 and the continued viability of sugar cultivation by The Lihue Plantation Company, Limited.

31. Although a portion of Site 2 is designated as Agriculture on the Lihue Development Plan, and an even smaller part of Site 2 is indicated as Agriculture in the County General Plan, the majority of this site under both plans is designated Resort, and this appears to be the use adopted by public policy for this area. The reclassification of Site 2 from Agricultural to Urban is reasonably necessary for the urban growth projected for the area, will not substantially impair the actual or potential agricultural production in the vicinity of Site 2, and will not affect the viability of sugar production at The Lihue Plantation Company, Limited.

32. Sites 3 and 4 have not been planted with sugarcane since 1972 and are currently surrounded by or adjacent to the existing Kauai Surf golf course. The Kauai General Plan and the Lihue Development Plan indicate that Resort use is presently the adopted public policy for these two areas. The reclassification of Sites 3 and 4 from Agricultural to Urban is reasonably necessary for the urban growth projected for the area, will not substantially impair the actual or potential agricultural production in the vicinity of Sites 3 and 4, and will not affect

the viability of sugar production at The Lihue Plantation Company, Limited.

#### Air Quality

33. The proposed developments are not expected to produce significant adverse air pollution. However, the subject property will continue to be exposed to dust and smoke from sugarcane operations in adjoining lower Lihue fields.

#### Archaeological and Historical Resources

34. The subject property is not listed, nor has it been determined to be eligible for inclusion, on the Hawaii Register or the National Register of Historic Places.

35. Archaeological Research Center Hawaii, Inc. conducted an archaeological reconnaissance of Sites 2, 3, and 4 of the subject property in 1980 and reports that no archaeological or historical remains were found thereon. Archaeological Research Center Hawaii, Inc. didn't survey Site 1 of the subject property because of its long standing use for cane cultivation.

#### Coastal and Recreational Resources

36. The subject property is located near the coast, with Site 4 overlooking the ocean above the 150' wide conservation strip along the shoreline.

37. The State DPED reports that the ocean between Kukii and Ninini Points is a prime fishing area for ulua in the winter months and affords catches of papio, kaku, menpachi, and various snappers during the summer.

38. Petitioner's marine research consultant, Steven J. Dollar, testified that no significant adverse changes in water quality or relevant biological communities are anticipated to result from the proposed development.

#### Flora and Fauna

39. Earthwatch, Environmental Resource Investigators

conducted a baseline survey of the vegetation in April 1980 and found no endangered plant species and no unique fauna supported by the vegetation on the subject property.

40. Sites 1 and 2 act as a temporary refuge for animal life since they are presently used for sugarcane cultivation. Of particular interest is a small drainage reservoir in the Kauai Surf golf course adjacent to Site 2 that supports a pair of Gallinule, considered an endangered species. This habitat can be protected by maintaining a buffer of high grass around the edge of the reservoir. There are no known endangered avifauna or mammals on Sites 3 and 4.

#### Noise Impacts

41. The primary noise impact on the proposed development will be from Lihue Airport, which is located to the north and east of the subject property. A second runway (Runway 17-35) is now under construction.

42. Portions of the proposed development (Sites 1, 2, 4) are within the sound-impacted areas of Lihue Airport. Site 1 and the northernmost portion of Site 2 will fall within Noise Exposure Forecast (NEF) 25 and 30 contours. The eastern portion of Site 4 will also fall within the NEF 25 and 30 contours. The noise impacted areas were designated assuming the new Runway 17-35 was operational.

43. The EIS for Lihue Airport indicated a 25 NEF noise contour that impacts portions of the proposed development. The NEF (Noise Exposure Forecast) is a method that allows a single number rating that predicts the cumulative noise impact of aircraft operations upon land uses adjacent to an airport.

44. State Department of Transportation guidelines indicate that residential developments proposed within the 25 NEF noise contour should be closely examined and controlled to preclude or mitigate potential adverse noise impacts.

This policy was set because of the open-air style of residential construction in the islands and the lifestyle that includes a considerable amount of recreational time outside of buildings.

45. The State Department of Transportation is concerned about the noise impact with respect to airport operations because of their experience in dealing with complaints concerning aircraft noise at airport facilities throughout the State. Noise is a serious problem in some areas.

46. Airports outside the State can also be compared. Los Angeles International Airport was forced to acquire residential properties that were being adversely affected by noise from aircraft even though the aviation activities existed before the houses were built. This problem could have been avoided if aviation easements had been properly obtained to prevent developments which were incompatible with airport operations.

47. Due to the close proximity of the subject project to Lihue Airport, it would be advantageous to analyze the noise impact after the second runway (17-35) is completed and the airport is operational under new flight operating conditions.

48. Complaints about aircraft noise in airport areas can be addressed by conditions, covenants and restrictions in the deeds to affected properties. The system, however, does not guarantee that any subsequent owner is aware of the restrictions, and legal documents do not prevent noise complaints. Although the owners involved may not bring suit against the airport, upset and annoyed people can also create problems for airport operations. Therefore the County should only approve a level within the 30 NEF contour after it ensures proper safeguards and controls will be imposed on the building.

## Scenic Resources

49. The Petitioner proposes to require low building forms, staggered configurations, and complementary landscaping to maximize the positive impact of proposed developments on the scenic quality of the area.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Drainage

50. The proposed development of the subject property is expected to increase storm runoff into three drainage basins. Two of the basins empty into the lagoon on the east side of the hotel grounds at the Kauai Surf Resort. The third basin drains directly into the ocean between Kukii Point and Ninini Point through a rock swale or as sheet flow.

51. The Kauai Surf Hotel experiences drainage difficulties with the existing system. The County of Kauai Department of Public Works is aware of the problems and will apply design standards for drainage improvements proposed to serve development of the subject property to assure that any increase in runoff will not worsen the amount of silt and sedimentation that flows into the Kauai Surf complex and the ocean.

### Electricity and Telephone

52. Kauai Electric Company will be able to provide the estimated 2,000 kilowatts of electricity which will be needed to serve the proposed developments. Kauai Electric Company will enlarge switching facilities and upgrade the overhead line that distributes power to the subject property to accommodate the new load.

53. The Hawaiian Telephone Company will provide telephone service to the proposed developments.

#### Firefighting and Rescue Services

54. Fire protection and rescue services are available from the Lihue Fire Station, located within two miles of the subject property. The Kauai Fire Department estimates that at least two service responses to the subject property will be necessary per week after the proposed developments are completed.

#### Police Services

55. Patrols from the Lihue Police Station will serve the proposed development. The Kauai Police Department estimates that the completed project will create a need for five additional patrol officers, one additional detective, and two new patrol cars.

#### Recreational Services and Facilities

56. Most of the organized recreational services and facilities on the Island of Kauai are located in or around Lihue, and will be available to occupants of the developments proposed on the subject property.

57. Many natural recreational areas and resources are in proximity to the subject property, including Kalapaki Beach which is considered the best on the island for swimming and surfing.

58. The Petitioner has agreed to construct a roadway that will allow public access and parking for recreational uses along the shoreline in the vicinity of Site 4.

#### Roadway Facilities and Traffic

59. Access to the proposed developments on the subject property will be from Kapule Highway through an extension of Halau Street.

60. The Petitioner's traffic impact analysis estimates that the current peak hour traffic of 445 vehicles per hour (vph) on Kapule Highway would be increased by

approximately 240 vph due to traffic from the subject property; to only about 44 percent of its calculated capacity of 1,600 vph.

61. Vehicles from the subject property that utilize Rice Street during the week between 2 p.m. and 3 p.m. would add to the peak traffic volumes that are moving between downtown Lihue and the Nawiliwili industrial area. Ahukini Road is an alternative route to downtown Lihue offering relief to potential congestion of Rice Street.

62. Ahukini Road connects Kapule Highway with Kuhio Highway, and is now used by vehicles going north beyond Lihue as well as only to the downtown area. The State Department of Transportation expects to complete an extension of Kapule Highway within 5 to 7 years which will allow northbound vehicles to connect directly onto Kuhio Highway beyond Hanamaulu thereby bypassing and reducing traffic along Ahukini Road.

#### Schools

63. The Petitioner estimates that development of the subject property will generate approximately 3 to 15 students in grades K through 6 at Wilcox Elementary School and approximately 3 to 15 students in grades 7 through 12 at Kauai High and Intermediate School. Both schools will be able to accommodate the enrollment increase with existing and planned school facilities.

#### Sewage Treatment and Wastewater Disposal

64. The Petitioner estimates that total development of the subject property as proposed will generate an average daily sewage flow of 228,000 gallons per day (gpd): 88,000 gpd from the industrial development on Site 1 and 140,000 gpd from the residential and resort developments on Sites 2, 3, and 4.

65. The Petitioner desires to have sewage from the proposed developments handled by the County's Lihue Sewage



Treatment Plant (STP) which is located nearby, east of Site 1 and north of Site 2.

66. The present capacity of the County STP is 1.5 million gallons per day (mgd). Although only 0.5 mgd of sewage is currently being processed, the County states that the remaining capacity is fully committed to a service area which does not include the subject property.

67. The County has plans to increase the capacity of the STP to 4.5 mgd; however, any such increase will hinge upon providing a satisfactory means of disposing of the increase in wastewater that would flow from the STP.

68. The proposed developments will be exposed to odors from the Lihue STP, The Lihue Plantation Company, Limited's "L-20" reservoir and areas of effluent ponding in canefields located upwind from the subject property. Effluent from the sewer treatment plant and from The Lihue Plantation Company, Limited's sugar mill operations are being disposed of in canefields above the proposed developments at a rate which exceeds the absorption capacity of the soil in the distribution area of 950 acres now available. The oversaturation of this wastewater disposal area has resulted in unpleasant odors and a mosquito breeding problem.

69. The Petitioner proposes to reduce the odors from the L-20 reservoir by distributing the collected mill water onto the lower Lihue canefields on a 24-hour basis, which will reduce the amount of stagnation and smell.

70. The Petitioner proposes to solve the oversaturation problem by constructing a pipeline and pumping a greater portion of the mill wastewater to irrigate approximately 3,000 acres of mauka canelands.

71. From long experience in the Lihue region, The Lihue Plantation Company, Limited developed a general guideline recommending that irrigation water should not exceed 1 mgd per

100 acres (a saturation factor of 1.0) for large land areas of 1,000 acres or more. With the advent of federal environmental regulations in the 1970's, all of the 20 mgd was distributed over the 1,570 acres resulting in overirrigation (a saturation factor of 1.30). The oversaturation condition became worse when the State required the removal of 620 acres of cane within the disposal area for the addition of the new north-south runway and new terminal at the Lihue Airport. For this land takedown, The Lihue Plantation Company, Limited was paid approximately \$4.5 million by the State, which sum was used to add a cooling tower and make other minor improvements to the mill operation, allowing the reduction of 6.5 mgd resulting in a reduced total wastewater discharge to approximately 13.5 mgd. Although the actual amount of wastewater was reduced substantially, the reduction in the disposal area was of such magnitude that the saturation factor actually increased from 1.30 to 1.47. The reason for this worsening of conditions, even after a substantial settlement by the State, is that rather than a proportional reduction in waste discharge to maintain a relative status quo, the amount of reduction funded by the State was fixed at 1 mgd/100 acres or to dispose of 6.5 mgd resulting in a larger amount of water for each remaining acre. This unanticipated oversaturation has resulted in ideal conditions for mosquito breeding. A related concern is the odor from L-20 Reservoir which is used to store the mill wastewater prior to its use for irrigation during the milling operations.

72. A contributing factor to the oversaturation problem is the use of the lower Lihue fields for disposal of treated sewage effluent from the Lihue Sewage Treatment Plant. The County constructed its Lihue sewage treatment plant near Site 1 designed to accommodate 1.5 mgd of effluent. The County and The Lihue Plantation Company, Limited entered into a short-term agreement for the acceptance of up to 1.5 mgd of

effluent by The Lihue Plantation Company, Limited until December 3, 1987.

When the Lihue-Puhi-Hanamaulu region is fully developed and the sewage collection and treatment system is fully implemented, the effluent will increase substantially to approximately 4.5 mgd. A major savings to the County will result from eliminating the need to construct an ocean outfall if the County can work out a long-term agreement with The Lihue Plantation Company, Limited for the acceptance of the effluent over the lands of The Lihue Plantation Company, Limited. However, the lands available for disposal of this effluent are already oversaturated with mill wastewater.

73. The Petitioner recognizes the need to reduce the amount of mill wastewater being disposed of in the lower Lihue fields in order to accommodate more wastewater from and allow expansion of the County STP.

74. The Petitioner states a willingness to construct a new wastewater distribution system to pump 7 mgd of mill wastewater to canefields above the Lihue area. This would free larger portions of lower Lihue canefields for absorption of sewage wastewater and allow expansion of the STP to a 4.5 mgd capacity, enough to handle sewage anticipated from the developments proposed on the subject property.

75. The Petitioner states that it is willing and would accept the responsibility for installing and operating the new wastewater distribution system needed to solve the oversaturation problem if it is able to reach an agreement with the County for cost sharing, and if it is permitted certain other development projects that it plans within the Hanamaulu-Lihue area.

76. Although the County recognizes the Petitioner's needs to spread the costs of the pumping system over its various proposed developments in the Lihue-Hanamaulu-Lihue area, the County cannot and has not agreed to approve, in futuro,

the General Plan and zoning amendments required for such projects. Any such amendments will be considered by the County on an individual basis, in accordance with its applicable ordinances and regulations.

#### Solid Waste

77. Private contractors will haul solid waste from the proposed development to the Kekaha Sanitary Landfill or other approved County dump sites.

#### Water

78. The County of Kauai Department of Water Supply (DWS) indicates that there is adequate source capacity within its existing system to provide for the average water usage of 280,000 gallons per day and the expected maximum usage of 430,000 gallons per day. However, the Petitioner may need to construct a new storage reservoir and connecting lines to service the subject property. The Petitioner has agreed to participate in the funding of a new 12-inch water transmission main line to be installed along Kapule Highway that will ensure adequate domestic and fire protection water flow capacity to the subject property..

#### COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

79. The proposed development of Sites 2, 3 and 4 of the subject property is in accordance with the standards for reclassification into the Urban District in that:

- a. Many of the lands in Lihue in the vicinity of the subject property are characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
- b. The proposed resort and residential developments are near the Lihue area, which is the

- center of trading and employment facilities.
- c. The Petitioner has substantiated the market demand for the proposed residential level on Sites 2, 3, and 4.
  - d. The consolidated financial statements for Amfac, Inc. and its subsidiaries for 1980 and 1981 demonstrate a financial capacity to undertake and complete the proposed development.
  - e. The subject property is near basic services such as schools, police and fire protection, and with appropriate measures, the Petitioner will be able to make available to the subject property other needed services such as sewage disposal and water.
  - f. The sites are needed as additions to the reserve of land in the Lihue area to allow for desired future urban growth.
  - g. The sites are physically suitable for the uses proposed. They have satisfactory topography and drainage, and are reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects. The Petitioner is willing to work with the County government to eliminate the environmental annoyances stemming from the oversaturation of canefields in the area.
  - h. The subject property is contiguous to or in the vicinity of other existing urban areas and has been designated for future urban use by the Kauai General Plan. The County of Kauai supports the reclassification of Sites

2, 3, and 4 into the Urban District.

- i. The subject property will not contribute towards scattered spot urban development and will not require an unreasonable investment in public support of services.
- j. The proposed reclassification to Urban of Sites 2, 3, and 4 can be approved subject to performance conditions that will assure that the development will have no significant adverse effects upon agriculture, natural, environmental, recreational, scenic, historic or other resources of the area.

80. The proposed development of Site 1 for industrial use is not in accordance with the standards for reclassification into the Urban District in that:

- a. It is presently in productive and ongoing agricultural use.
- b. The Petitioner has failed to substantiate a market demand and the economic feasibility of an industrial development on the site.
- c. The site is not designated on the Kauai General Plan for industrial use.

#### RULINGS ON PROPOSED FINDINGS

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

#### CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon the

clear preponderance of the evidence that the reclassification of approximately 56 acres consisting of Sites 2, 3 and 4 of the subject property from the Agricultural District to the Urban District for resort and residential uses conforms to the standards established in the State Land Use District Regulations; is reasonable, is not violative of Section 205-2, Hawaii Revised Statutes, as amended; and is consistent with the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

The Commission further concludes that reclassification of the remaining 22 acres consisting of Site 1 of the subject property from the Agricultural District to the Urban District for industrial uses has not been shown to be reasonably necessary, would not conform to the standards established by the State Land Use District Regulations, and would be violative of Section 205-2 and Chapter 226, Hawaii Revised Statutes.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that approximately 56 acres of land, representing a portion of the area in the petition by Amfac Property Development Corporation in Docket No. A82-530, more particularly identified by Fourth Division Tax Map Key 3-5-01: Portion of 6, and as illustrated in Exhibit A attached hereto and incorporated by reference herein, situated at Lihue, Island and County of Kauai, State of Hawaii, shall be and hereby is reclassified from the Agricultural District to the Urban District, and the Land Use District Boundaries are hereby amended accordingly; subject, however, to the following conditions:

- a. The Petitioner shall be required to enter into an agreement with the County to offer for sale to the County at "cost," as employee housing, a portion of the lots in Petitioner's Hanamaulu subdivision presently classified Urban by the Land

Use Commission. The number of lots to be offered shall be equivalent to ten percent (10%) of the total number of units to be constructed on the subject property herein. The term "cost" shall be defined by the cost policy used by the County at the time of transaction. In the alternative, the County may require a cash payment in lieu of the transfer of lots, provided that any such payment shall be used exclusively as part of the County's public housing program.

- b. The Petitioner shall enter into an agreement with the County containing the following conditions.
  1. The Petitioner shall make available to the County the lands described in "Existing Waste Water Disposal Areas" (Petitioner's Exhibit 14, Figure 14, Figure 2) and, if necessary, other suitable lands, for the disposal of up to 4.5 mgd of wastewater from the Lihue STP.
  2. The lands made available to the County shall be in an amount necessary to maintain a saturation factor of no more than 1.0 on the disposal areas.
  3. This agreement shall be incorporated into the deeds to the affected lands as easements running with the land in favor of the County of Kauai.
  4. The term of these easements shall be for twenty years from the date of approval of this boundary change.
- c. The Petitioner shall construct and implement a system for the disposal of the Lihue mill waste water which will ensure that neither the lower Lihue fields, nor any other areas subject to the



mill wastewater disposal, shall have a saturation factor in excess of 1.0. This condition shall be implemented within five years from the date of approval of this boundary change.

- d. All deeds or instruments transferring interests in the subject property, or in the structures or improvements thereon, easements running in favor of the State of Hawaii and the Land Use Commission, the County of Kauai, and The Lihue Plantation Company, Limited shall indemnify and hold the State of Hawaii and Land Use Commission, County of Kauai, and The Lihue Plantation Company, Limited harmless from any complaints or claims due to noise, odor, dust, mosquitoes, and other nuisances and problems emanating from the operation of the Lihue airport, the use of the lower Lihue fields for agricultural and wastewater disposal purposes, and the operation of the Lihue STP.
- e. The Petitioner shall not permit any resort or residential condominium unit to be placed on the subject property within any noise exposure forecast (NEF) contour in excess of 25 NEF. However, construction of no more than twenty percent (20%) of the total number of residential or resort condominiums for a particular site may be allowed in NEF contours that do not exceed 30 NEF if the County finds that such placement is compatible with the proposed residential or resort use, and subject to such mitigative measures, including sound attenuating construction requirements, that the County shall impose. The NEF contours for the subject property shall be established by actual testing once the new Lihue runway is completed and

in use.

- f. The Petitioner shall comply with any height restriction to be set by the State of Hawaii pursuant to specifications established in FAA regulations for avigational easement purposes along the perimeter of the Lihue Airport runways.
- g. The Petitioner shall set aside a portion of Site 4 at the eastern end for a park and for parking, and shall provide public access to and along shoreline.
- h. The Petitioner shall complete all of the conditions contained in subparagraphs a., b., c., and g., above, within five years from the date of the boundary change.

These conditions may be fully or partially released by the Commission as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner.

BE IT FURTHER ORDERED that the balance of the subject property in this petition by Amfac Property Development Corporation in Docket No. A82-530, consisting of Site 1 of approximately 22 acres, identified by Fourth Division Tax Map Key 3-5-01: Portion of 6, and as illustrated in Exhibit A attached hereto and incorporated by reference herein, situated at Lihue, Island and County of Kauai, State of Hawaii, shall be and hereby is denied reclassification into the Urban District, and therefore, remains in the Agricultural District.

DOCKET NO. A82-530 - AMFAC PROPERTY DEVELOPMENT CORPORATION,  
a division of AMFAC INC.

Done at Honolulu, Hawaii, this 10th day of August,  
1983 per motions on June 27, 1983 and August 10, 1983.

LAND USE COMMISSION  
STATE OF HAWAII

By William W. L. Yuen  
WILLIAM W. L. YUEN  
Chairman and Commissioner

By Richard B. F. Choy  
RICHARD B. F. CHOY  
Vice Chairman and Commissioner

By Lawrence F. Chun  
LAWRENCE F. CHUN  
Commissioner

By Shinsei Miyasato  
SHINSEI MIYASATO  
Commissioner

By Winona E. Rubin  
WINONA E. RUBIN  
Commissioner



By T. P. Tacbian  
TEOFILO PHIL TACBIAN  
Commissioner

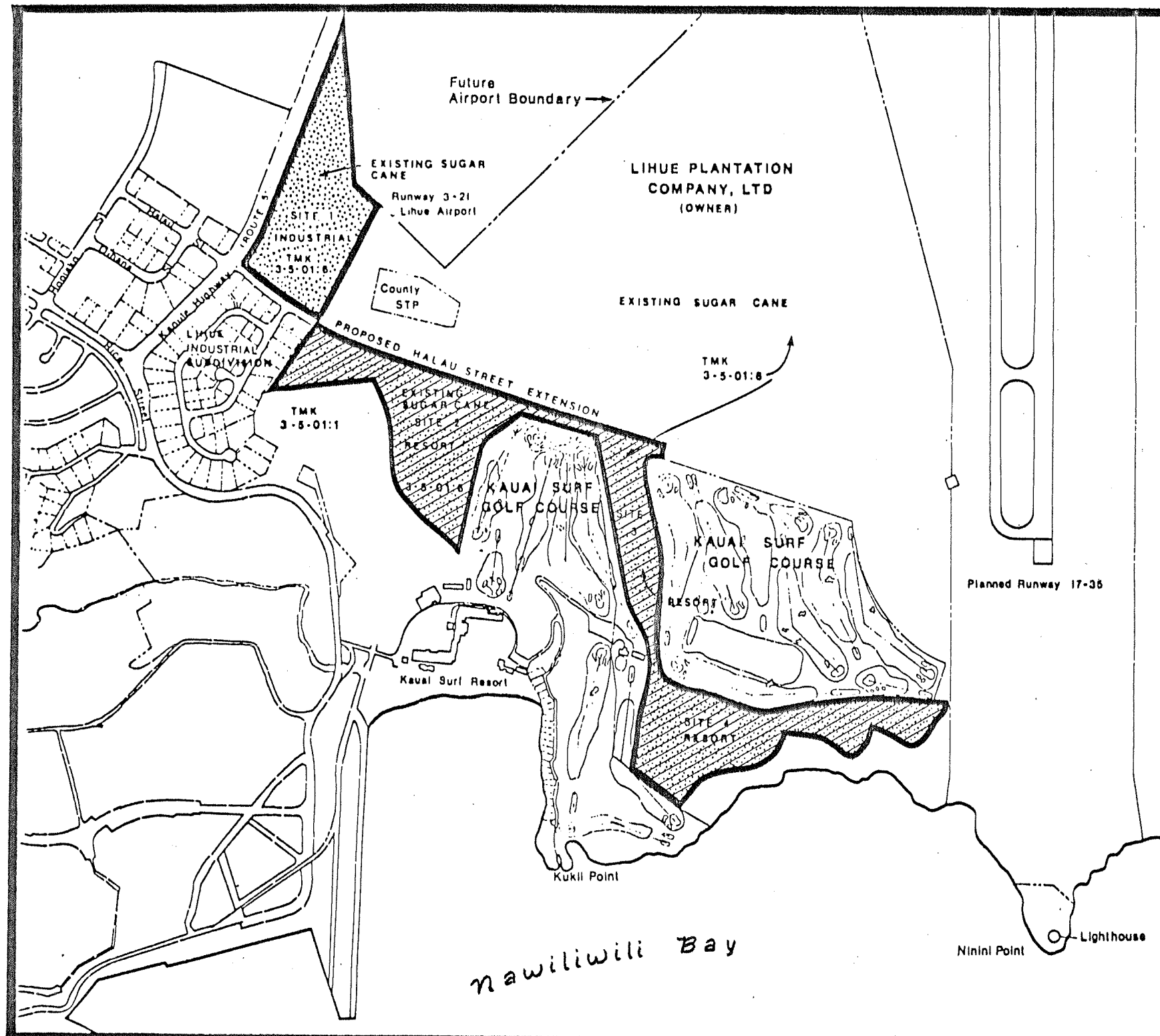
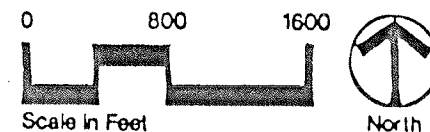
By Robert S. Tamaye  
ROBERT S. TAMAYE  
Commissioner

By Frederick P. Whittemore  
FREDERICK P. WHITTEMORE  
Commissioner

# A82-530 AMFAC Property Development Corporation

## LEGEND

-  Area approved to Urban
-  Area denied



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	
	)	
AMFAC PROPERTY DEVELOPMENT	)	
CORPORATION, a division of AMFAC	)	DOCKET NO. A82-530
INC.,	)	
	)	
To Amend the Land Use District	)	
Boundary to Reclassify Approximately	)	
78 Acres of Land, Tax Map Key 3-5-01:	)	
Portions of 6, at Lihue, Island and	)	
County of Kauai, State of Hawaii,	)	
from the Agricultural District into	)	
the Urban District.	)	

CERTIFICATE OF SERVICE

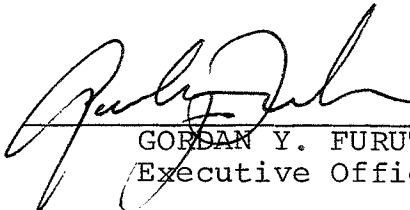
I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

KENT KEITH, Director  
Department of Planning and Economic Development  
State of Hawaii  
250 South King Street  
Honolulu, Hawaii 96813

AVERY YOUN, Planning Director  
Planning Department  
County of Kauai  
4280 Rice Street  
Lihue, Hawaii 96766

CLINTON I. SHIRAISHI  
Shiraishi & Yamada  
P. O. Box 1264  
Lihue, Hawaii 96766

DATED: Honolulu, Hawaii, this 22nd day of August, 1983.

  
\_\_\_\_\_  
GORDAN Y. FURUTANI  
Executive Officer

DOCKET NO. A82-530 - AMFAC PROPERTY DEVELOPMENT CORPORATION ,  
a Division of Amfac Inc.

A certified copy of the Land Use Commission's  
Decision and Order was served by regular mail to the following  
on August 22, 1983.

ANNETTE CHOCK, Deputy Attorney General  
Department of Attorney General  
Capital Investment Building  
Penthouse, 850 Richards Street  
Honolulu, Hawaii 96813

MICHAEL BELLES, County Attorney  
Office of the County Attorney  
County of Kauai  
4396 Rice Street  
Lihue, Kauai 96766

AMFAC PROPERTY DEVELOPMENT CORPORATION  
P. O. Box 3140  
Honolulu, Hawaii 96802