

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A84-578
	)	
NIUMALU-NAWILIWILI COMMUNITY	)	NIUMALU-NAWILIWILI
PLANNING PROJECT, INC.	)	COMMUNITY PLANNING
	)	PROJECT, INC.
To Amend the Agricultural	)	
Land Use District Boundary to	)	
Reclassify Approximately 5 Acres,	)	
TMK: 3-2-03: portion 8, at Niumalu	)	
and Nawiliwili, Island and County	)	
of Kauai into the Urban Land Use	)	
District	)	
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DECISION AND ORDER

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A84-578
	)	
NIUMALU-NAWILIWILI COMMUNITY	)	NIUMALU-NAWILIWILI
PLANNING PROJECT, INC.	)	COMMUNITY PLANNING
	)	PROJECT, INC.
To Amend the Agricultural	)	
Land Use District Boundary to	)	
Reclassify Approximately 5 Acres,	)	
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and Nawiliwili, Island and County	)	
of Kauai into the Urban Land Use	)	
District	)	
<hr/>		

DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed on September 11, 1984, pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1, of the Land Use Commission's Rules of Practice and Procedure and District Regulation by Niumalu-Nawiliwili Community Planning Project, Inc., which is requesting that the designation of approximately 5 acres of land, situate at Niumalu and Nawiliwili, Island and County of Kauai, State of Hawaii, more particularly identified as Kauai Tax Map Key No. 3-2-03: portion 8 (the "Property"), be amended from the Agricultural to the Urban District.

PURPOSE OF THE PETITION

The Petitioner proposes to subdivide the Property into 20 individual lots to be developed as a low and moderate income residential subdivision for Petitioner's members.

THE HEARING

The Commission's Hearing Officer held the hearing on this Petition in Lihue, Kauai on November 19, 1984, pursuant to notice published on October 15, 1984 in the Garden Island and Honolulu Advertiser. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

The Petitioner herein was represented by Stanford H. Achi, President of the Niualu-Nawiliwili Community Planning Project, Inc.; The Planning Department of the County of Kauai was represented by Max Graham, Deputy County Attorney; The Department of Planning and Economic Development was represented by Daniel Yasui. The witnesses presented by the aforementioned parties were as follows:

Petitioner

Manuel Medeiros - Housing Consultant for Petitioner.

David Bettencourt, Esq. - Corporate Counsel for Petitioner.

Mrs. Waalani - Member of the Petitioner's organization, Niualu Tenants Association.

James Tehada - Interested Citizen and former member of the Kauai Planning Commission.

County of Kauai

Keith Nitta - Staff Planner, County of Kauai Planning Department.

The Department of Planning and Economic Development

Daniel Yasui - Staff Planner

POSITION OF THE PARTIES

The Department of Planning, County of Kauai - Approval. The Department of Planning and Economic Development - Approval.

APPLICABLE REGULATIONS

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- (1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:
  - (a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
  - (b) It shall take into consideration the following factors:
    1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
    2. Substantiation of economic feasibility by the petitioner.

3. Proximity to basic services such as sewers, water, sanitation, schools parks, and police and fire protection.
  4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.
- (c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.
  - (d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State or County General Plans.
  - (e) It shall include lands in appropriate locations for new urban concentrations and shall give considerations to areas of urban growth as shown on the State and County General Plans.
  - (f) Lands which do not conform to the above standards may be included within this District:
    1. When surrounded by or adjacent to existing urban development; and
    2. Only when such lands represent a minor portion of this District.
  - (g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.

- (h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

#### FINDINGS OF FACT

The Land Use Commission, having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein, makes the following findings of fact:

1. The Property is owned in fee simple by Kanoa Estate, Inc., a Hawaii corporation which has executed an unrecorded option to purchase agreement with the Petitioner. The Property is located along the north side of Niunalu Road and along the northeastern slopes of Niunalu Valley. The Property contains some residential dwellings situated near the roadway along the southern portion (makai) of the site.

2. The Property is situate within the State Land Use Agricultural District, adjacent to surrounding lands to the northeast and west, also classified in the Agricultural District. Lands to the south (makai), which do not abut the Property, are classified in the Urban District. The Kauai General Plan Update and Kauai County zoning designate the Property as Agricultural. The Property is situate in the

County's Special Management Area and Petitioner must obtain a Special Management Area permit for development of the project.

3. The elevation of the Property is approximately 70 feet above sea level and the Property has an average annual rainfall of approximately 50 inches. The University of Hawaii Land Study Bureau, in its Detailed Land Classification - Island of Kauai (1967), classifies the Property as "D" and "E" on a scale from "A" - "E" with "A" as the highest and "E" as the lowest productivity rating. The United States Department of Agriculture Soil Conservation Soil Survey classifies the soils of the Property as Hanalei silty clay, 0 to 2 percent slopes (HnA) and Rough broken land (rRR).

The Hanalei soil series consists of somewhat poorly drained soils on bottom lands on the island of Kauai. This soil is found on stream bottoms and floodplains. In a representative profile the surface layer is about 10 inches thick consisting of silty clay. These soils exhibit moderate permeability and very slow runoff. The erosion hazard is no more than slight.

The Property is not classified according to the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

4. The Petitioner proposes to reclassify the Property from Agricultural to Urban in order to develop the Property into a 20 lot residential subdivision for sale to members of the Niumalu Tenants Association. The members of Petitioner's organization began their movement to create the proposed subdivisions in 1971 when some 40 households organized the Niumalu Tenants Association. Approximately 30 of these households organized the Niumalu-Nawiliwili Community Planning Project, Inc. as a non-profit corporation in 1980 for purposes of implementing Petitioner's proposed project. The other 10 households have either obtained the fee interest in their houselots from their landlord, moved from the community, or passed away. The Niumalu Tenants Association's primary objective since 1971 has been to protect its members and others in the community from eviction, to obtain fee simple land tenure for its members, and to stop development that would not be in keeping with the low-key residential character of Niumalu and Nawiliwili. The Petitioner has opposed plans by developers to build 450 condominium units, 500 hotelrooms, townhouses and a restaurant in the historic Menehune Fishpond area. After years of negotiations with prospective developers for the Menehune Fishpond area, the Petitioner has reached an option agreement with the owner of the Property which would accomodate concerns of the Petitioner and the owners of the



adjoining property in regard to their developments. Pursuant to the option agreement, Kanoa Estate, Inc. will give the Petitioner the Property at no cost if Kanoa Estate, Inc. and/or its developer is able to obtain all necessary State and County approvals for a residential development on a nearby 40.55 acre parcel. The development of the 40.55 acre parcel is presently in the planning process and Kanoa Estate, Inc. may subsequently file an application to reclassify the adjacent property from Agricultural to Urban with the State Land Use Commission. The option agreement also provides that if the application for reclassification of the 40.55 acres from Agricultural to Urban is denied by both the State Land Use Commission and the County then the Petitioner has an option to purchase the Property for \$100,000.00. The Commission's approval of this Petition shall in no way be deemed or construed as an approval of development of the 40.55 acre property.

Petitioner estimates that site preparation costs, including the construction of roads, water and utility lines, will cost approximately \$372,000.00. The Petitioner intends to apply to the County of Kauai and/or United States Department of Housing and Urban Development for financial assistance under the Community Development Block Grant Program for the funds necessary to carry out the site

development costs. These costs in turn will be passed on to the 20 lot owners for a pro rata assessment on \$18,600.00 per lot. Petitioner estimates that the cost of constructing each residence to be an additional \$41,000.00 for an aggregate per lot cost of \$60,000.00. If Petitioner must purchase the land for \$100,000.00, the per lot cost would increase by \$5,000.00 for a total cost per lot of \$65,000.00. The Petitioner and its housing consultant will be assisting its membership in applying with the Farmers Home Loan Administration to obtain the necessary financing to acquire and develop the land and construct homes. The \$65,000.00 total cost is within the limitations of the Farmer Home Loan Administration Program.

Petitioner intends to defray the development costs by purchasing and relocating vacated McBryde Sugar Company, Ltd. homes which have been offered to the Petitioner. The Petitioner is also prepared to sell a maximum of four lots in the proposed subdivision to defray development costs. Lots sold under these circumstances will be subject to covenants utilized by the Hawaii Housing Authority restricting the sales prices upon resale.

Petitioner's housing consultant believes that the Petitioner will be able to obtain the necessary funding to carry through the development of the proposed project.

Petitioner has also received a \$50,000.00 grant which is financing the Petitioner's initial development costs.

5. Because the Property has been utilized for residential purposes for many years, the proposed development should not have any adverse impact upon agricultural, recreational, scenic and archaeological resources or on flora and fauna.

6. The reclassification of the Property will not unreasonably burden public agencies to provide necessary amenities, services and facilities because fire and police protection, schools, electrical, water, sewage, solid waste disposal and roadway access are all available to the Property. These services can be found within a mile and a half radius in the Lihue Urban District.

7. Based on a review of the Petition, the evidence adduced at the hearing, and the provision of Chapter 205 of the Hawaii Revised Statutes, the County of Kauai and the Department of Planning and Economic Development have recommended that the reclassification of the Property be approved.

#### CONCLUSION OF LAW

Reclassification of the Property, consisting of approximately 5 acres of land, situate at Niumalu and Nawiliwili, Island and County of Kauai, State of Hawaii,

from Agricultural to the Urban District and an amendment to the district boundaries accordingly, subject to the condition stated below, is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

ORDER

IT IS HEREBY ORDERED:

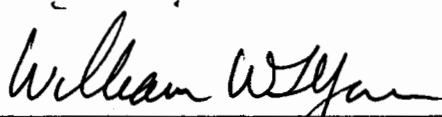
That the property which is the subject of this Petition in this Docket No. A84-578, consisting of approximately 5 acres of land situate at Niunalu and Nawiliwili, Island and County of Kauai, State of Hawaii, identified as Kauai Tax Map Key No. 3-2-03: portion 8, more specifically described in Exhibit A attached hereto and incorporated herein by reference, shall be and hereby is reclassified from the Agricultural District to the Urban District and the district boundaries are amended accordingly on the condition that all lots created by a subdivision of the Property shall first be offered for sale to the present residents of the Niunalu-Nawiliwili Community Planning Project Inc. at prices affordable to them.


This condition may be fully or partially released by the Land Use Commission as to all or any portion of the Property upon timely motion and provision of adequate assurance of satisfaction of this condition by the Petitioner.


DOCKET NO. A84-578 - NIUMALU-NAWILIWILI COMMUNITY  
PLANNING PROJECT, INC.


Done at Honolulu, Hawaii, this 16th day of May,  
1985, per motions on February 21, 1985 and March 19, 1985.

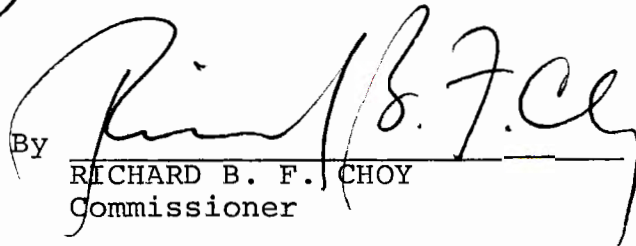
LAND USE COMMISSION  
STATE OF HAWAII

By   
WILLIAM W. L. YUEN  
Chairman and Commissioner

By   
TEOFILO PHIL TACBIAN  
Vice Chairman and Commissioner

By   
EVERETT L. CUSKADEN  
Commissioner

By   
TORU SUZUKI  
Commissioner

By   
RICHARD B. F. CHOY  
Commissioner

DOCKET NO. A84-578 - NIUMALU-NAWILIWILI COMMUNITY  
PLANNING PROJECT, INC.

By *Frederick P. Whittemore*  
FREDERICK P. WHITTEMORE  
Commissioner

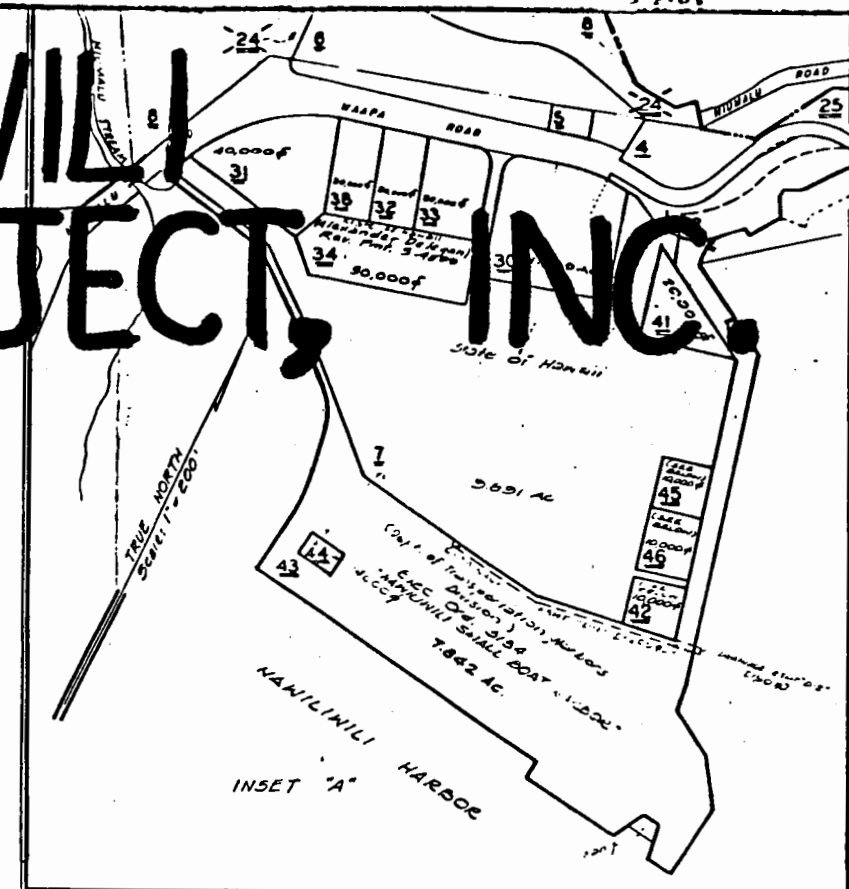
By *Winona E. Rubin*  
WINONA E. RUBIN  
Commissioner

By *Lawrence F. Chun*  
LAWRENCE F. CHUN  
Commissioner

# A84-578 NIUMALU-NAWILIWILI COMMUNITY PLANNING PROJECT, INC.

- Power Contrades - 1/2
- Joseph Contrades, Jr. - 1/4
- Franklin Contrades - 1/4
- Philip Contrades - 1/4
- Daisy M. Kaunwai - 1/4
- Sarah Contrades - 1/4
- Elizabeth C. Jimenez - 1/4
- Rose C. Barford - 1/4
- Ephraim Kalciofi, Jr. et al - 1/4
- Rose C. Oncha - 1/20
- Juanita K. Contrades - 1/20

- Adeline S. Contrades - Down in (1/20)
- John P. Contrades Jr. - 1/20
- Yura C. Tibayan - 1/20
- Ernest K. Contrades - 1/20
- Barbara Contrades (minor) - 1/20
- Neller, Joseph, John, Antonio & Abraham Contrades
- Josephine Ferreira & Helen Brandenburgh



APPROVED AREA →

- Parcel 18:
- Sung Goo Goo
  - George H. Kim
  - Charles K. Y. Kim
  - Dinah K. Titus
  - Elizabeth K. Salis
  - Francis B. Goo
  - Joseph B. Goo
  - Hans T. Goo
  - Joseph T. Goo
  - Christian K. Goo

- 42 (John R. Carrara) - Rev. Pat. S-5825
  - 45 (John Meads) - Rev. Pat. S-6102
  - 46 (Nawiliwili Harbor Inc) - Rev. Pat. S-5550
  - 2 State of Hawaii (Dept. of Transportation - Harbor Div.)
  - 39 (Carl M. Stearns) - Rev. Pat. H-78-712
  - 40 (Stanley D. Young) - Rev. Pat. H-78-712
- Parcels Dropped: 22, 24

Dwg. No.: 2-71  
 Source: Tax Maps Bureau  
 BY H.N. & S.L.C. August, 1956

NOTICE: Owner's, lessee's and vendee's names recorded on this tax map print may not be current. Refer to Administrative Directive 24-68 (Rev.) dated November 21, 1968, as amended by RFP Procedure 4-74, dated July 2, 1974.

TAX MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC.	PLAT
3	2	03
CONTAINING		PARCELS
SCALE: 1 in. = 200 ft.		

EXHIBIT A

PRINTED BY S 104

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A84-578
	)	
NIUMALU-NAWILIWILI COMMUNITY	)	NIUMALU-NAWILIWILI COMMUNITY
PLANNING PROJECT, INC.	)	PLANNING PROJECT, INC.
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District for approximately	)	
5 acres at Niumalu and Nawiliwili,	)	
Kauai, Tax Map Key: 3-2-03:	)	
Portion of 8	)	
	)	

CERTIFICATE OF SERVICE


I hereby certify that a copy of the Land Use Commission 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 M. 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

STANFORD H. ACHI, President  
Niumalu-Nawiliwili Community Planning Project, Inc.  
P. O. Box 382  
Lihue, Hawaii 96766

DATED: Honolulu, Hawaii, this 16th day of May, 1985.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer



DOCKET NO. A84-578 - NIUMALU-NAWILIWILI COMMUNITY PLANNING  
PROJECT, INC.

A copy of the Land Use Commission's Decision and  
Order was served upon the following by regular mail on  
May 16, 1985.

EVERETT KANESHIGE, Deputy Attorney General  
Department of the Attorney General  
State Capitol, 4th Floor  
Honolulu, Hawaii 96813

MAX GRAHAM, County Attorney  
Office of the County Attorney  
County of Kauai  
4396 Rice Street  
Lihue, Hawaii 96766

BENJAMIN MATSUBARA, Hearing Officer  
1717 Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813