

ORIGINAL

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Attorney for Petitioners

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
MAY 14 12 31 PM '93

| | | |
|----------------------------------|---|------------------------|
| In the Matter of the Petition of |) | DOCKET NO. A91-668 |
| |) | |
| DON KARLEEN and PEGGY KARLEEN |) | AMENDED MOTION TO |
| |) | RELEASE CONDITIONS OF |
| To Amend the Conservation Land |) | APPROVAL DUE TO SATIS- |
| Use District Boundary into the |) | FACTION OF CONDITIONS; |
| Urban Land Use District for |) | EXHIBITS "A" AND "B"; |
| Approximately 6,606 square feet |) | CERTIFICATE OF SERVICE |
| at Wainiha, Kauai, Hawaii, Tax |) | |
| Map Key No. 5-8-12-12. |) | |

AMENDED MOTION TO RELEASE CONDITIONS OF
APPROVAL DUE TO SATISFACTION OF CONDITIONS

Come now DON KARLEEN and PEGGY KARLEEN, Petitioners in the above referenced docket, through their attorney, and pursuant to Section 15-15-94 of the Hawaii Land Use Commission Rules, hereby respectfully move to release the conditions of approval imposed on the Petitioners, on the basis that all conditions of approval have been satisfied.

This Amended Motion To Release Conditions Of Approval Due To Satisfaction of Conditions supersedes that Motion To Release Annual Report Condition, filed herein on May 6, 1993 by the Petitioners.

In the Findings of Fact, Conclusions of Law, and Decision and Order of the Land Use Commission, dated and filed herein on January 8, 1992, the Land Use Commission imposed a number of conditions in its redistricting of the subject parcel to the "Urban" district. Those conditions were contained in a Declaration of Conditions, dated January 17, 1992, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-011203.

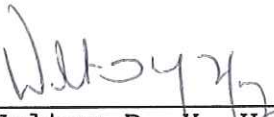
All of the conditions of the approval have been met, including the recordation of the conditions imposed by the Land Use Commission with the Bureau of Conveyances. The proposed single family dwelling on the subject property has been completed in accordance with all conditions of approval. See the annual report of December 28, 1992, filed by Walton D. Y. Hong on behalf of the Petitioners, a copy of which is attached hereto as Exhibit "A" and made a part hereof, as well as the Affidavit of Don Karleen, the original of which was attached to the Petitioner's Motion To Release Annual Report Condition and a copy of which is attached hereto as Exhibit "B" and made a part hereof.

Having satisfied all of the conditions of approval and having completed the project in accordance with the representations made to the Land Use Commission, there is no reason why

those conditions should continue as an encumbrance upon the subject property.

Accordingly, the Petitioners respectfully move to have the conditions of approval released by the Land Use Commission.

DATED: Lihue, Hawaii, this 13th day of May, 1993.



Walton D. Y. Hong
Attorney for Petitioners

LAW OFFICES OF
WALTON D.Y. HONG

WALTON D.Y. HONG

LORNA A. NISHIMITSU

ATTORNEY AT LAW
A Law Corporation
3135-A AKAHI STREET
LIHUE, KAUAI, HAWAII 96766

TELEPHONE (808) 245-4757
TELECOPIER (808) 245-5175

December 28, 1992

Land Use Commission of the
County of Kauai
Room 104, Old Federal Building
335 Merchant Street
Honolulu, HI 96813

Re: LUC Docket No. A91-668, Don and Peggy Karleen

Dear Commissioners:

On behalf of Don and Peggy Karleen, please consider this letter as the annual report to the Land Use Commission.

General Progress of Project:

The application to the Land Use Commission was for the purpose of constructing a single family dwelling on the subject property. "Open" zoning for the subject property was obtained from the County of Kauai on June 10, 1992, and a building permit was obtained shortly thereafter.

Construction has been completed on the single family residence, and the certificate of occupancy issued by the County of Kauai.

Compliance with Conditions:

Condition

"1. As agreed between Petitioners and the County:

"(a) Maximum Floor Area: Floor area of the dwelling unit shall be 900 square feet maximum. Up to an additional 100 square feet of living area may be allowed if it is determined by the Planning Director that design limitations warrant the supplemental area and that it will not interfere with the public viewplane towards the ocean. An additional 400 square feet shall be allowed for a garage which shall be located in the Northwest section of the parcel under the living area. For the purposes of this condition, 'floor area' shall mean the living area of the first story as measured by the exterior walls of the dwelling, and shall not include any loft area.

EXHIBIT A

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December 28, 1992

"(b) Single-Story Structure: The dwelling unit shall be constructed as a single-story structure, except that a loft shall be allowed as long as the overall height of the structure falls within 25 feet from grade.

"(c) Height: The total height of the structure shall not exceed 25 feet from grade regardless of any requirement to raise the structure to satisfy any provisions regarding structures located in a VE (tsunami inundation) zone.

"(d) Visual Mitigation: Petitioner shall develop and adhere to a landscape plan which shall include vegetative screening materials such as hedges to mitigate visual impacts from the highway towards the ocean. The landscape plan shall be approved by the Planning Director. The landscape plan shall incorporate all trees existing as of September 18, 1991, and such trees shall not be removed without prior permission from the Planning Director. Petitioner shall also screen the eastern boundary of the structure running from the ocean towards Kuhio Highway.

"(e) Seawall: Petitioner agrees not to submit an application for construction of a seawall or other shore stabilization device. Petitioner agrees not to hold the County liable for any structural or other damage to the property caused by high surf, wave action or erosion.

"(f) Siting of Dwelling Unit: To the maximum extend [sic.] possible, the dwelling unit shall be sited in the Northwest section of the parcel (on the Haena/Kuhio Highway property boundary).

"(g) Setbacks: Petitioner agrees not to apply for any setback variances.

"(h) Decking: No outside decking on the eastern or Wainiha side of the structure shall be allowed.

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"(i) Grant of Public Pedestrian Easement: Petitioner shall grant a public pedestrian easement to the beach along the Property's Haena boundary.

"(j) Recordation of Conditions: The above conditions shall be recorded at the State of Hawaii Bureau of Conveyances, and shall run with the land. The conditions shall bind Petitioner's heirs, successors and assigns. The County shall be allowed to enforce the above-mentioned conditions through injunctive relief and/or money damages, in addition to any enforcement remedies authorized pursuant to any State or County laws."

Compliance with Condition

The above condition has been materially complied with, in that the plans for the residence were approved by the County of Kauai after determination of compliance with the design requirements, and the residence was completed in accordance with the plans. A landscaping plan was submitted to, and approved by, Planning Director and has been implemented. The Petitioners have not submitted any request for any seawall or other shore stabilization device, and setback variances were not sought or required.

The Petitioners have executed a grant of pedestrian easement to the beach along the Property's Haena boundary in favor of the County of Kauai, and have transmitted the grant document to the County for executed and recordation.

The above conditions were recorded at the Bureau of Conveyances by that certain Declaration of Conditions, dated January 17, 1992, and recorded on January 24, 1992 as Document No. 92-011203. A certified copy of the same has been provided to your staff.

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Condition

"2. Petitioners shall immediately stop work on the Property and contact the Historic Preservation Division, DLNR should any significant cultural remains, such as artifacts, shells, bones, or charcoal deposits, human burial, rock or coral alignments, pavings, or walls or historic or prehistoric significance be encountered during the development of the Property."

Compliance with Condition

No such cultural remains were encountered during the construction of the residence on the Property, requiring the stoppage of work and notification to the Historic Preservation Division.

Condition

"3. Petitioners shall complete the development on the Petition Area in substantial compliance with the representations made before the Land Use Commission. Failure to so develop may result in reversion of the Property to its former land use classification."

Compliance with Condition

The Petitioners have completed the single family residence in substantial compliance with the representations made before the Land Use Commission.

Condition

"4. Petitioners shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property."

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Compliance with Condition

The Petitioners did not have any intent to sell, lease, assign, place in trust, or otherwise alter the ownership interest in the Property prior to development of the Property, and still remain the owners of the Property.

Condition

"5. Petitioners shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Kauai Planning Department in connection with the status of the subject project and Petitioners' progress in complying with the conditions imposed."

Compliance with Condition

This annual status report is intended to fulfill the foregoing condition.

Condition

"6. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner."

Compliance with Condition

There has been no need to fully or partially release the conditions, as they have been fully observed and met.

Condition

"7. Within 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a Statement to the effect that the Property is subject to conditions imposed by

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December 28, 1992

the Land Use Commission in the reclassification of the Property,
and (b) shall file a copy of such recorded statement with the
Commission."

Compliance with Condition

A Statement of Imposition of Conditions by Land Use
Commission, dated January 10, 1992, was recorded on January 14,
1992 in the Bureau of Conveyances as Document No. 92-005494. A
copy of the same was acknowledged by the Commission by its
letter of January 28, 1992.

Condition

"8. Petitioner shall record the conditions imposed by
the Commission with the Bureau of Conveyances pursuant to Title
15, Chapter 15, Section 92, Hawaii Administrative Rules."

Compliance with Condition

The recordation of the said Declaration of Conditions in
the Bureau of Conveyances as Document No. 92-011203 satisfies
this condition.

Summary and Conclusion:

The foregoing shows full compliance with the conditions of
approval and the completion of the proposed development on the
subject property.

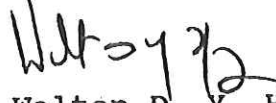
We do not see the necessity for subsequent annual reports
in view of the completed development on the property, and will
thus not be submitting additional annual reports on behalf of
the Petitioners.

If we are mistaken in our understanding of the need to no
longer file annual reports, or if the same requires a motion
before the Land Use Commission, please advise us.

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the State of Hawaii
December 28, 1992

Thank you for your cooperation in this matter. If there
are any questions, please feel free to call me.

Yours very truly,


Walton D. Y. Hong

WDYH:wh

cc: Office of State Planning
Kauai County Planning Department
Don and Peggy Karleen

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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| Map Key No. 5-8-12-12. |) | |
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AFFIDAVIT OF DON KARLEEN

| | | |
|-----------------|---|-----|
| STATE OF HAWAII |) | |
| |) | SS: |
| COUNTY OF KAUAI |) | |

DON KARLEEN, being first duly sworn on oath, deposes and says:

1. That he is one of the Petitioners in the above-referenced Land Use Commission docket;
2. That he is familiar with the conditions imposed by the Land Use Commission in its redistricting the subject property to the "Urban" district, which conditions were set forth in the Commission's Findings of Fact, Conclusions of Law, and Decision and Order, dated January 8, 1992;
3. That the single family residence which was proposed to be developed on the subject property has now been completed and is presently occupied;

EXHIBIT B

4. That the single family residence was constructed in compliance with all of the conditions of approval;

5. That all the conditions of approval have been met; and

6. That he believes that the continued submitting of annual reports on the progress of the development is no longer necessary in view of the completion of the proposed development on the subject property in accordance with the representations made to the Land Use Commission.

Further, Affiant says not.



Don Karleen

Subscribed and sworn to before me
this 5th day of May, 1993.

L.S. Charlton K. Fujii
Notary Public, Fifth Judicial
Circuit, State of Hawaii

My Commission expires: 7-9-95

ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were duly served on the following, by depositing the same in the United States Postal Service, certified mail, addressed as follows:

HAROLD S. MASUMOTO, Director
Office of State Planning
P. O. Box 3540
Honolulu, HI 96811-3450

ANN OGATA DEAL, Esq.
Deputy Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

JAMES TAGUPA, Esq.
Deputy County Attorney
County of Kauai
4396 Rice Street
Lihue, HI 96766

LAND USE COMMISSION
STATE OF HAWAII
MAY 14 12 31 PM '93

DATED: Lihue, Hawaii, this 13th day of May, 1993.

W.D.Y. Hong
Walton D. Y. Hong
Attorney for Petitioners