BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of DON KARLEEN and PEGGY KARLEEN To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 6,606 square feet at Wainiha, Kauai, Hawaii, Tax Map Key No.: 5-8-12: 12	DOCKET NO. A91-668 DON KARLEEN and PEGGY KARLEEN

LAND USE COMMISSION
STATE OF HAWAII
JAN 8 1 45 PM '92

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of DON KARLEEN and PEGGY KARLEEN To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 6,606 square feet at Wainiha, Kauai, Hawaii, Tax Map Key No.: 5-8-12: 12	))))))))))	DOCKET NO. A91-668 DON KARLEEN and PEGGY KARLEEN

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

DON KARLEEN and PEGGY KARLEEN (hereinafter "Petitioners") filed a Petition on June 10, 1991, pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and Title 15, Subtitle 3, Chapter 15, Hawaii Administrative Rules, as amended, (hereinafter "Commission's Rules") to amend the Land Use District Boundary to reclassify approximately 6,606 square feet of land from the Conservation Land Use District to the Urban Land Use District, situated at Wainiha, District of Hanalei, Island and County of Kauai, State of Hawaii, identified as Kauai Tax Map Key No.: 5-8-12:12 (hereinafter "Property") to construct a single family residence thereon.

The Land Use Commission, (hereinafter "LUC"), having heard and examined the testimony, evidence, and arguments during the hearings, the Petitioners' proposed findings of fact, conclusions of law, and decision and order, the joinder

with petitioners' proposed findings of fact, conclusions of law, and decision and order of the County of Kauai (hereinafter "County"), the proposed findings of fact, conclusions of law, and decision and order of the Office of State Planning (hereinafter "OSP"), and the Petitioners' comments and responses to the OSP's proposed findings of fact, conclusions of law, and decision and order, does hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioners filed a Petition for Boundary Amendment on June 10, 1991.

2. Petitioners are Don Karleen and Peggy Karleen, husband and wife, whose mailing address is P. O. Box 1570, Hanalei, HI 96714.

3. On June 27, 1991, the LUC, following a hearing pursuant to Chapter 343, Hawaii Revised Statutes, determined that the proposed action would not have a significant effect on the environment, and that an Environmental Impact Statement was not required of Petitioners.

4. On July 5, 1991, the LUC issued its Findings of Fact, Conclusions of Law and Decision and Order Supporting A Negative Declaration For A State Land Use District Boundary Amendment.

5. On September 9, 1991, a Prehearing Conference was held which was attended by all parties.

6. The LUC held a hearing on the Petition on September 19, 1991, pursuant to notice published on August 9, 1991 in the Garden Island and the Honolulu Advertiser.

7. The LUC did not receive any requests for intervention or appearance as a public witness.

DESCRIPTION OF PROPERTY

8. The Property is situated makai of Kuhio Highway at Wainiha, District of Hanalei, Island and County of Kauai, State of Hawaii, and is more particularly identified as Kauai Tax Map Key No.: 5-8-12:12.

9. The Property is currently owned by Magdi A. Latif and Sheree A. Latif, who sold the same to Petitioners under an Agreement of Sale dated February 20, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-031067.

10. The petition was authorized by Magdi A. Latif.

11. A shoreline certification was done by Dennis Esaki of Esaki Surveying, indicating the area of the Property as 6,606 square feet.

12. The tax map, as well as the description of the Property in the Agreement of Sale of February 20, 1990, shows the Property as having an area of 10,833 square feet.

13. The metes and bounds description in the Agreement of Sale indicates the lot area as measured to the highwater mark at seashore.

14. The shoreline certification measures only to the vegetation line, and not the highwater mark at seashore.

15. The difference in computing the area of the lot, i.e., whether to the vegetation line or the highwater mark at seashore, explains the differences between 10,833 square feet (as shown on Petitioners' Exhibits A and C) and 6,606 square feet (as shown on Petitioners' Exhibit B).

16. The Property is the first residential sized lot makai of Kuhio Highway as one rounds the bend from Wainiha Bay, and is the start of the Haena community.

17. The Property is the only residential sized parcel in the immediate neighborhood which is contained within the State Conservation Land Use District; all other residential sized lots on both sides of Kuhio Highway in the immediate neighborhood are within the State Urban Land Use District.

18. The Property is not physically distinct from the other lots in the area which are in the Urban Land Use District.

19. Other lots within the immediate neighborhood, both mauka and makai of Kuhio Highway, have been built upon.

20. The Property is presently vacant.

21. The elevation of the Property ranges between 16 and 18 feet above mean sea level.

22. The Property is generally flat, with steepening as the shoreline is approached.

23. Like the other properties along the shoreline in the area, the Property is within the VE or Coastal High Hazard

flood zone as set forth in the Federal Insurance Rate Maps (FIRM) of March 4, 1987, because of its being on the shoreline in a tsunami inundation area.

24. The soils of the Property are primarily beach sand and are not rated by the ALISH land rating system. The Land Study Bureau rates the overall productivity of the site as "E", with "A" being the best and "E" being the poorest in terms of suitability for agriculture.

PROPOSAL FOR RECLASSIFICATION

25. Petitioners desire to construct a single family residence on the Property.

26. Prior to purchasing the Property, Petitioner Don Karleen went to the County of Kauai's Planning Department to check on the zoning and the classification of the property.

27. Based on information obtained, Petitioners proceeded to purchase the lot and have plans drawn for a single family residence.

28. Upon completion of the plans and working drawings, application was made to the County for a building permit for the residence.

29. The County issued a foundation permit in April of 1990.

30. Petitioners then cleared and grubbed the Property, dug foundation footings, placed steel in the footing, erected forms and were getting ready to pour the foundations, when they

were requested by the County to see a County planner with respect to a problem.

31. The work was subsequently stopped by the State Department of Land and Natural Resources (hereinafter "DLNR"), the forms dismantled, the steel pulled out of the footing, and the foundation trenches backhoed.

32. Petitioners thereafter applied to DLNR for a Conservation District Use Application permit, which was denied.

33. The house for which foundation plans were issued by the County contained a living area of 1,900 square feet.

34. Under the conditions negotiated and agreed to between the County, through its Mayor, and Petitioners, the house could not exceed 25 feet in height from grade, and will be a single-family residence with an allowed loft.

35. Petitioners have also agreed to maintain landscaping, and they will be using natural materials, wood for siding, and earth tones for color of the residence.

PETITIONERS' FINANCIAL ABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

36. Petitioners' financial statement indicates a net worth of $3,229,077.

37. With a project estimate of approximately $490,000 (purchase price of $305,000 and estimated construction cost of $190,000 for the dwelling), Petitioners are financially capable of undertaking the proposed development.

STATE AND COUNTY PLANS AND PROGRAMS

38. The Property is located within the State Land Use Conservation District, as reflected on State Land Use District Boundary Map K-3-Haena.

39. The Property is within the North Shore Special Planning Area, which places a 25 feet height limit on structures.

40. The proposed structure, as conditioned by the County of Kauai, would not be violative of the North Shore Development Plan.

41. The Property is within the Special Management Area, as established by the County.

42. The proposed structure would be exempt under the County's Special Management Area Rules and Regulations, and would not be violating the same.

43. Under the authority granted to the counties under Chapter 205A of the Hawaii Revised Statutes to adopt shoreline setbacks, the County adopted a 20-foot shoreline setback for the Property.

44. The proposed structure would meet the 20-foot shoreline setback requirement.

45. The Property is designated on the County General Plan as Open.

46. The Property is currently shown on the County's zoning map as Conservation, which is a LUC designation and not a County zoning designation.

47. The lands immediately to the west and abutting the Property are within the State Land Use Urban District, and are zoned Open by the County.

NEED FOR THE PROPOSED DEVELOPMENT

48. The proposed reclassification is to permit Petitioners the ability to construct a single family residence on the Property.

49. As Petitioners intend to reside in the proposed residence on the Property, the Property is not intended to be marketed.

SOCIO-ECONOMIC IMPACTS

50. As only one single family residence is being proposed, no significant economic effects can be anticipated.

51. While temporary jobs will be provided during the construction of the proposed residence, economic benefits to the County would be primarily in the area of increased real property taxes.

52. The County has been assessing the Property for real property tax purposes as being within the State Land Use Urban District and zoned Open under the County zoning, and has been charging the landowner the real property taxes based on an Urban/Open rate.

53. On December 19, 1991, the Commission entered into evidence a letter received on October 10, 1991 from the County of Kauai Department of Finance certifying that the Property has

been assessed as a residential lot for real property tax purposes since 1955.

54. The proposed single family residence would not result in any social impacts.

IMPACT UPON RESOURCES OF THE AREA

Agricultural Resources

55. The Property, due to its size, shape, and proximity to the ocean, lacks agricultural potential.

Archaeological and Historical Resources

56. Prior to the work on the foundation being stopped, the site had been excavated.

57. During the excavation, no artifacts or skeletal remains were uncovered.

58. Nancy McMahon of the Historic Sites Section of DLNR visited the Property, and did not see any archaeological artifacts.

59. Nancy McMahon also indicated that there was no historical significance to the Property.

60. Petitioners are receptive to a condition that if during the course of constructing the proposed residence, any artifacts or remains are uncovered, that work would stop and the Historic Sites Section of DLNR advised.

Flora and Fauna

61. As the Property was formerly cleared and grubbed pursuant to the foundation permit before work was stopped

thereon, the site does not contain any threatened or endangered species of flora.

62. The Property also does not contain any threatened or endangered species of fauna or avifauna to the best of Petitioners' knowledge, the prior clearing and grubbing of the area having destroyed the habitats of such species.

Coastal and Aquatic Resources

63. Concern was raised by OSP as to a perceived loss of over 4,000 square feet over the years from the shoreline erosion processes, due to the difference of 10,833 square feet shown on the tax map for the Property and the 6,606 square feet shown on the shoreline certification survey.

64. Aerial photographs of the Property, dated November 22, 1950, September 15, 1957, October 13, 1963, and April 10, 1975, admitted as Petitioners' Exhibits J through M, respectively, showed that there was no significant change in the land area of the Property over the 25 year period.

65. The last aerial photograph of April 10, 1975 was reflective of the condition of the Property as it currently exists.

66. Over the past 40 or 41 years, there has not been any significant loss of land due to shoreline erosion processes.

67. The differences between the areas shown on the tax maps and the shoreline certification survey can be attributed to including the area down to the highwater mark at seashore on

the tax maps, but only to the line of vegetation on the shoreline certification survey.

68. Petitioners have agreed with the County that Petitioners will not submit any application for any shore stabilization structure.

69. A 20-foot shoreline setback would be in compliance with existing County setback ordinances, rules and/or regulations.

70. Petitioners were already issued a septic tank permit by the State Department of Health (hereinafter "DOH") for the single family residence previously proposed for the Property, despite its proximity to the coastal waters.

Open Space and Visual Resources

71. Among the conditions agreed to between Petitioners and the County were the following:

> "1. 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 the design limitations warrant the supplemental area and that it will not interfere with the public view plane towards the ocean. An additional 400 square feet shall be allowed for a garage . . .
>
> "2. 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.
>
> * * *

"4. 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. The Petitioner shall also screen the eastern boundary of the structure running from the ocean towards Kuhio Highway.

* * *

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

* * *

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

72. The Property is in excess of 150 feet along Kuhio Highway, and building the garage on the side of the dwelling would take about one-third of the road frontage and leave two-thirds open for the view plane to the ocean.

73. The above conditions agreed to by Petitioners and the County, together with the size and placement of the dwelling on the lot and the use of natural materials and earth tones, will mitigate any visual impact from the proposed use.

74. Petitioners also agreed to grant public pedestrian access to the beach along the Property's Haena boundary.

75. The proposed use would not affect beach access for beach goers and fishermen.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water Service

76. A County domestic water system currently exists to provide potable water to the area, and the proposed use will not result in an unreasonable burden on the County's water system to provide potable water.

Sewage Treatment and Disposal

77. Sewage treatment and disposal will be through an individual wastewater treatment plant, and Petitioners were already issued a septic permit by DOH for the larger single family residence originally proposed for the lot.

Solid Waste

78. Solid waste will be disposed of in County facilities through regular periodic pick-ups by County operators. Other solid waste, if any, can also be disposed of by Petitioners at the Hanalei refuse transfer station.

Drainage and Flooding

79. The Property presently drains towards the ocean, and the proposed single-family dwelling would not significantly alter the drainage pattern.

80. As the Property is within the VE or Coastal High Hazard zone due to its location in a tsunami inundation area, Petitioners are required to elevate the structure so that the

lowest framing member is at least 21 feet above mean sea level in compliance with the federal flood insurance program.

81. As the Property ranges between 16 and 18 feet above mean sea level, the lowest framing member would have to be about 3 to 5 feet above existing grade.

Electrical Power and Communication

82. Utilities, such as electricity, telephone and gas can be provided to the Property by the appropriate public utilities without reduction in quality and level of services.

Schools

83. As Petitioners and their children already reside on the North Shore, the construction and occupancy of the proposed residence would not increase the number of children attending the public schools, nor would it cause an unreasonable burden on the public school system to meet the educational needs of those children.

Police and Fire Protection

84. Ambulance and police services are available to the Property.

85. The proposed reclassification for one single family residence will result in only a marginal or insignificant increase in the need for police protection.

86. No fire protection ever existed nor currently exists for the Haena and Wainiha areas due to the inability of the fire trucks to cross over the double bridge.

87. The Property would not need any more fire protection than the other improved lots in the Haena area.

Highway and Other Concerns

88. In the vicinity of the Property, Kuhio Highway is a 2-lane, 18-foot wide roadway with a 40-foot wide State highway right-of-way.

89. Petitioners were granted a driveway approach permit by the State of Hawaii for the previously planned residence, after proving that there would be 100 feet of visibility in either direction.

90. There are sufficient sight distances for safe entrance and exiting from the Property unto Kuhio Highway.

91. Building a structure on a lot which is essentially sand instead of soil can be resolved by designing and engineering a floating foundation system designed especially for sand application.

92. The conditions set forth in the direct written testimony of Peter A. Nakamura (County's Exhibit 1) were agreed to between the County and Petitioners.

CONFORMANCE TO STATE LAND USE POLICIES AND CONTROLS

Hawaii State Plan

93. The proposed reclassification generally conforms with the objectives and policies set forth in the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes, as follows:

Sec. 226-3 Overall Theme

The proposed use will promote one of the basic functions of society, "to enhance the ability of individuals and groups to pursue their goals freely, to satisfy basic needs and to secure desired socio-economic levels. The elements of choice and mobility within society's legal framework are fundamental rights."

Sec. 226-5 Objectives and Policies for Population

The proposed use will provide and promote increased opportunities for Petitioners to pursue their physical, social, and economic aspirations through the construction of a residence in a location of their choice.

Sec. 226-11 Objectives and Policies for the Physical Environment - Land Based, Shoreline, and Marine Resources

The proposed use will insure compatibility between land based and water based activities and natural resources and ecological systems.

It will also be a prudent and reasonable use of the Property, while promoting accessibility for public recreation through the granting of a pedestrian easement.

Sec. 226-12 Objectives and Policies for the Physical Environment - Scenic, Natural Beauty, and Historic Resources

The conditions agreed upon between the County and Petitioners would promote the preservation of views and vistas, while still permitting Petitioners to have reasonable use of their private property.

Sec. 226-13 Objectives and Policies for the Physical Environment - Land, Air and Water Quality

The proposed use would be encouraging urban development in close proximity to existing services and facilities.

By requiring compliance with the requirements of the federal flood insurance program through elevating the structure to 21 feet above mean sea level, the threat to life and property from tsunamis and flooding is reduced.

Sec. 226-19 Objectives and Policies for Socio-Cultural Advancement - Housing

The proposed use would increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style and size of housing. It would also promote the design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.

Sec. 226-24 Objective and Policies for Socio-Cultural Advancement - Individual Rights and Personal Well-Being

The proposed use would enhance and protect the national and state constitutional rights of Petitioners.

State Functional Plan

94. Policy A(3) of the State Housing Functional Plan is to "[i]ncrease homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style,

and size of housing." The proposed use would be consistent with this policy in that it provides Petitioners the opportunity to build a house where they desire.

CONFORMANCE WITH APPLICABLE DISTRICT STANDARDS

95. The proposed reclassification conforms to Section 15-15-18 of the Commission's Rules for determining Urban District Boundaries, as follows:

(a) Abutting the Haena community, the Property is characterized by "city like" concentrations of people, structures, streets, urban levels of services and other related land uses.

(b) The economic feasibility of the proposed use has been substantiated by Petitioners.

(c) The Property is relatively flat and reasonably free from danger of floods, unstable soil conditions, and other adverse environmental effects.

(d) The Property is contiguous to the existing Haena Urban District, and is the only residential sized lot in the neighborhood excluded from the State Land Use Urban District.

(e) The Property is in the area of urban growth as shown on the County General Plan, in that it is designated Open on the County General Plan, as is the remainder of the abutting Haena community.

(f) The Property would represent a minor portion of the Haena Urban Land Use District.

(g) The urbanization of the Property will not contribute towards scattered spot urban development and will not necessitate unreasonable investment in public infrastructure or support services.

96. The proposed reclassification does not conform to the standards contained in Section 15-15-20 of the Commission's Rules for retention within the Conservation District, as follows:

(a) The Property is not necessary for protecting watersheds, water resources and water supplies.

(b) Although the Property is within the VE or Coastal High Hazard flood zone due to its location within a tsunami inundation area, Petitioners will construct the proposed residence in accordance with the requirements of the federal flood insurance program to minimize danger.

(c) The Property is not necessary for the preservation of historic or archaeological sites.

(d) The Property is not necessary for the preservation of scenic viewplanes, as the conditions agreed between Petitioners and the County will leave scenic corridors open across the property.

(e) The Property does not include lands with slopes in excess of 20%.

(f) The Property is unsuited to agricultural activity since it is beach sand, 6,606 square feet in area, and subject to salt spray.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

97. The proposed reclassification conforms to the Coastal Zone Management objectives and policies, as follows:

(a) The willingness of Petitioners to provide a pedestrian access easement to the beach will provide coastal recreational opportunities accessible to the public.

(b) The Property is not necessary for the preservation of historic resources.

(c) The conditions agreed between Petitioners and the County as to the size and siting of the proposed residence will preserve the coastal scenic planes.

(d) The proposed use will comply with the requirements of the Federal Flood Insurance Program.

RULING OF STIPULATED AND PROPOSED FINDINGS OF FACT

Any of the stipulated or proposed findings of fact submitted by Petitioners or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Pursuant to Chapter 205 of the Hawaii Revised Statutes, as amended, and the Hawaii Land Use Commission Rules, the Commission finds upon a preponderance of the evidence that the reclassification of the Property and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, consisting of 6,606 square feet, situated at Wainiha, District of Hanalei, Island and County of Kauai, State of Hawaii, identified as Kauai Tax Map Key No.: 5-8-12: 12, from the Conservation Land Use District to the Urban Land Use District for a proposed single family residence, subject to the conditions in the Order, conforms to the standards established in the Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules, is reasonable, non-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.

ORDER

IT IS HEREBY ORDERED that the Property, being the subject of this Docket No. A91-668 by Don Karleen and Peggy Karleen, consisting of 6,606 square feet of land at Wainiha, District of Hanalei, Island and County of Kauai, State of Hawaii, identified as Kauai Tax Map Key No.: 5-8-12:12, and approximately identified on Exhibit "A", attached hereto and incorporated herein, for reclassification from the Conservation

District to the Urban District, shall be and is hereby approved subject to the following conditions:

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 the design limitations warrant the supplemental area and that it will 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.

(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 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.

(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.

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 of historic or prehistoric significance be encountered during the development of the Property.

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.

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.

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.

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.

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

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.

DOCKET NO. A91-668 - DON KARLEEN AND PEGGY KARLEEN

Done at Honolulu, Hawaii, this 8th day of January 1992, per motion on December 19, 1991.

LAND USE COMMISSION
STATE OF HAWAII

By _____
RENTON L. K. NIP
Chairman and Commissioner

By (absent)
ALLEN K. HOE
Vice Chairman and Commissioner

By _____
ALLEN Y. KAJIOKA
Vice Chairman and Commissioner

By _____
KAREN S. AHN
Commissioner

By _____
EUSEBIO LAPENIA, JR.
Commissioner

By _____
JOANN N. MATTSON
Commissioner

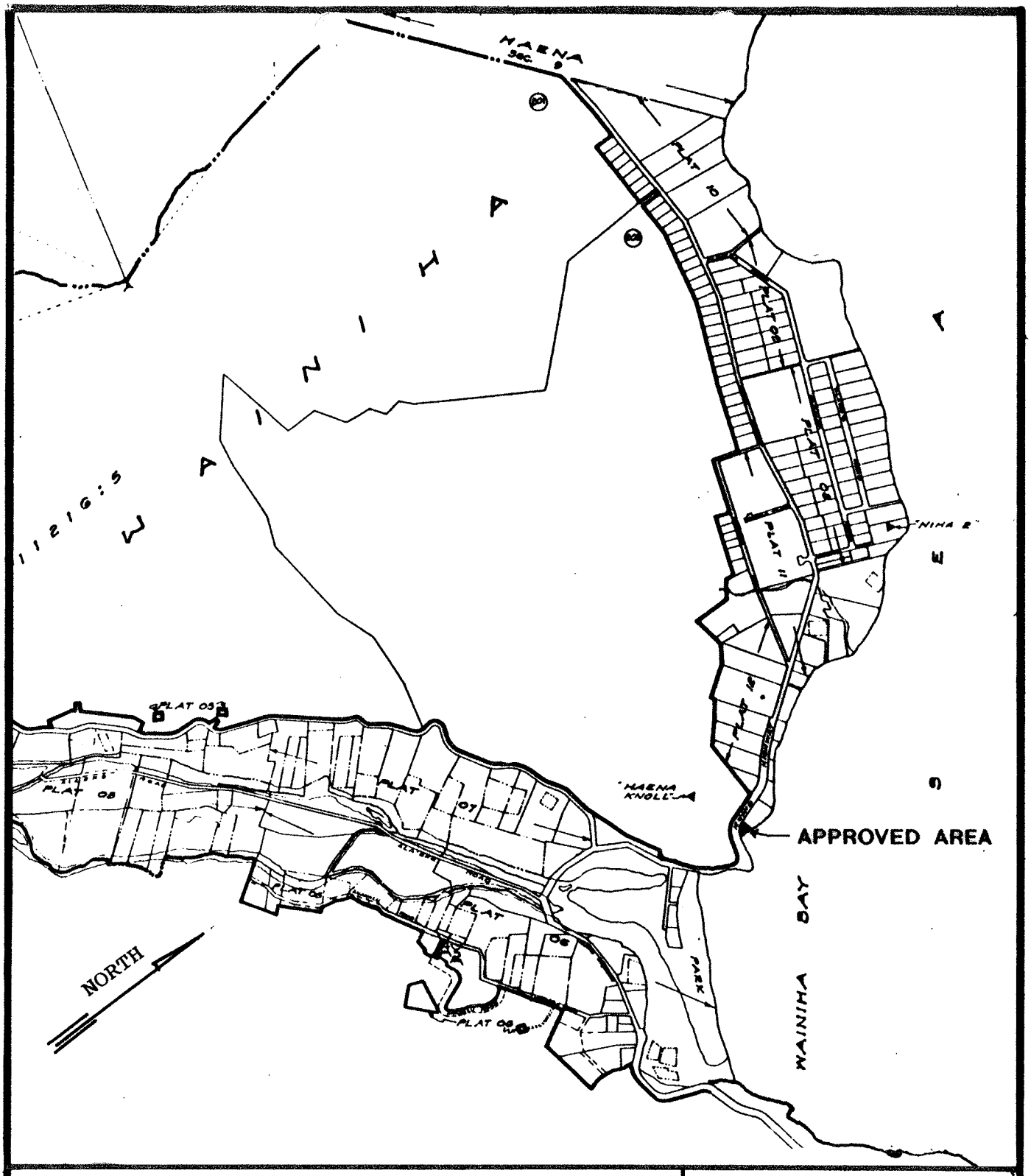
By (absent)
ELTON WADA
Commissioner

By _____
DELMOND J. H. WON
Commissioner

Filed and effective on
January 8, 1991

Certified by:

_____
Executive Officer



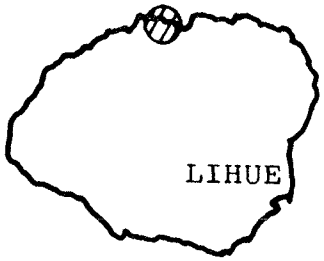
DOCKET NO.: A91-668 / DON KARLEEN AND PEGGY KARLEEN

LOCATION MAP

T.M.K.: 5 - 8 - 12 : 12

WAINIHA HUI LAND, HANALEI, KAUAI

SCALE: 1" = 1,000 ft. ±



KAUAI

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of DON KARLEEN and PEGGY KARLEEN To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 6,606 square feet at Wainiha, Kauai, Hawaii, Tax Map Key No.: 5-8-12: 12	)	DOCKET NO. A91-668 DON KARLEEN and PEGGY KARLEEN

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and 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:

HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

CERT. PETER A. NAKAMURA, Planning Director
Planning Department, County of Kauai
4280 Rice Street
Lihue, Hawaii 96766

CERT. KATHLEEN N.A. WATANABE, ESQ.
County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street, #202
Lihue, Hawaii 96766

CERT. WALTON HONG, ESQ., Attorney for Petitioner
3135-A Akahi Street
Lihue, Hawaii 96766

CERT DON KARLEEN, Petitioner
P. O. Box 1570
Hanalei, Hawaii 96714

DATED: Honolulu, Hawaii, this 8th day of January 1992.

ESTHER UEDA
Executive Officer