



CONSERVATION DISTRICT USE APPLICATION (CDUA)

All permit applications shall be prepared pursuant to HAR 13-5-31

File No.:

Acceptance Date:

180-Day Expiration Date:

Assigned Planner:

for DLNR Use

PROJECT NAME Benskin After-The-Deck

Conservation District Subzone: Resource

Identified Land Use: P-8 Structures and Land Uses Existing (C-1) Moderate alterations of existing structures, facilities, uses and equipment.

(Identified Land Uses are found in Hawai'i Administrative Rules (HAR) §13-5-22 through §13-5-25)

Project Address: 3300 Kaiwiki Road

Hilo, HI 96720

Tax Map Key(s): (3) 2-6-011:022

Ahupua'a: Kaiwiki

District: South Hilo

County: Hawaii

Island: Hawaii

Proposed Commencement Date:

Proposed Completion Date: Completed
Commenced Late 2023 Early 2024

Estimated Project Cost: \$ 10,000

TYPE OF PERMIT SOUGHT **Board Permit** **Departmental Permit**

ATTACHMENTS

\$ 250 Application Fee. 2.5% of project cost for Board Permits, but no less than \$250, up to a maximum of \$2500; \$250 for Departmental Permits (ref §13-5-32 through 34).

\$ _____ Public Hearing Fee (*\$250 plus publication costs; ref §13-5-40*)

- 20 copies of CDUA (*5 hard + 15 hard or digital copies*)
- Draft / Final Environmental Assessment (EA) or Draft / Final Environmental Impact Statement (EIS) or Statement of Exemption
- State Historic Preservation Division HRS 6E Submittal Form (dlnr.hawaii.gov/shpd/review-compliance/forms)
- Management Plan or Comprehensive Management Plan (*ref §13-5-39*) if required
- Special Management Area Determination (*ref Hawai'i Revised Statutes 205A*)
- Shoreline Certification (*ref §13-5-31(a)(8)*) if land use is subject to coastal hazards.
- Kuleana documentation (*ref §13-5-31(f)*) if applying for a non-conforming kuleana use.
- Boundary Determination (*ref §13-5-17*) if land use lies within 50 feet of a subzone boundary.

Honolulu, Hawai'i 96809-0621

Signature: _____ **Date:** _____

CERTIFICATION

I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attachments and exhibits is complete and correct. I understand that the failure to provide any requested information or misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, or for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Land Board.

I hereby authorize representatives of the Department of Land and Natural Resources to conduct site inspections on my property. Unless arranged otherwise, these site inspections shall take place between the hours of 8:00 a.m. and 4:30 p.m.



Signature of authorized agent(s) or if no agent, signature of applicant

AUTHORIZATION OF AGENT

I hereby authorize _____ John Pipan _____ to act as my representative and to bind me in all matters concerning this application.



Signature of applicant(s)

TO WHOM IT MAY CONCERN:

As landowner and applicant of parcel identified by TMK: (3) 2-6-011:022, I hereby consent and authorize Land Planning Hawaii LLC to file and process a Conservation District Use Application on my behalf.

By: *William Benskin*
William Benskin

Apr 17 2025 10:00 PDT
(Date)

Certificate of Completion

Summary

Document ID: 2A6681DB-SCTERXBMUM0PE2TUFBOGR8DJJ0BVWVTZ20TG_ROBOKC

Document name: Benskin - CDUA Form (after the fact) & Letter of Authorization

Sent by: Katrina Kern <katrina@landplanninghawaii.com>

Organization: Land Planning Hawaii LLC
194 Wiwoole St., Hilo, HI, United States 96720

Sent on: Apr 15, 2025 17:10 PDT

Signers: 2

Completed on: Apr 17, 2025 10:00 PDT

Receives a copy: 0

Sign order: Random

Approvers: 0

No. of documents: 2

Witnesses: 0

Recipient reviewers: 0

Recipients

 **Signer** John Pipan
john@landplanninghawaii.com

Signature



Emailed on: Apr 15, 2025 17:10 PDT

Accessed from: 147.81.101.68

Viewed on: Apr 16, 2025 09:15 PDT

Device used: Mobile

Terms agreed on: Apr 16, 2025 09:15 PDT

Authentication type: None

Signed on: Apr 16, 2025 09:16 PDT

 **Signer** William Benskin
billy.benskin@the-printer.com

Signature



Emailed on: Apr 15, 2025 17:10 PDT

Accessed from: 75.162.43.165

Viewed on: Apr 17, 2025 09:59 PDT

Device used: Mobile

Terms agreed on: Apr 17, 2025 09:59 PDT

Authentication type: None

Signed on: Apr 17, 2025 10:00 PDT

Legal Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

Please read the following information carefully. By clicking the 'I agree' button, you agree that you have reviewed the following terms and conditions and consent to transact business electronically using Zoho Sign electronic signature system. If you do not agree to these terms, do not click the 'I agree' button.

Electronic documents

Please note that Land Planning Hawaii LLC ("we", "us" or "Company") will send all documents electronically to you to the email address that you have given us during the course of the business relationship unless you tell us otherwise in accordance with the procedure explained herein. Once you sign a document electronically, we will send a PDF version of the document to you.

Request for paper copies

You have the right to request paper copies of these documents sent to you electronically from info@landplanninghawaii.com. Alternatively, you also have the ability to download and print these documents sent to you electronically, and re-upload a scanned copy of the printed and physically signed documents. If you, however, wish to request paper copies of these documents sent to you electronically, you can write back to the sender.

Withdrawing your consent

At any point in time during the course of our business relationship, you have the right to withdraw your consent to receive documents in electronic format. If you wish to withdraw your consent, you can decline to sign a document that we have sent to you and send an email to info@landplanninghawaii.com informing us that you wish to receive documents only in paper format. Upon request from you, we will stop sending documents using Zoho Sign electronic signature system.

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If you need to change the email address that you use to receive notices and disclosures from us, write to us at info@landplanninghawaii.com

System requirements

Compatible with recent versions of popular browsers such as Chrome, Firefox, Safari, and Internet Explorer. Zoho Sign is also available on iOS and Android devices.

CONSERVATION DISTRICT USE PERMIT APPLICATION
WILLIAM BENSKIN
KAIWIKI, HILO, COUNTY OF HAWAI'I, STATE OF HAWAI'I
TMK: (3) 2-6-011: 022

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EXHIBITS

Exhibit A: CDUP HA-2474 – 1991

PROJECT DESCRIPTION AND PROPOSED USE

Total size/area of proposed use (indicate in acres or sq. ft.): 220.2 sq. ft.

Please provide a detailed description of the proposed land use(s) in its entirety. Information should describe what the proposed use is; the need and purpose for the proposed use; the size of the proposed use (provide dimensions and quantities of materials); and how the work for the proposed use will be done (methodology). If there are multiple components to a project, please answer the above for each component. Also include information regarding secondary improvements including, but not limited to, grading, and grubbing, placement of accessory equipment, installation of utilities, roads, driveways, fences, landscaping, etc.

Attach all associated plans such as location map, site plan, floor plan, elevations, and landscaping plans drawn to scale (ref §13-5-31).

Purpose and Need

The purpose of this application is for Mr. Benskin (“**applicant**”) to request after-the-fact approval for the unauthorized enlargement of the deck on the existing structure for which CDUP HA-2474 approved after-the-fact. The applicant was unaware of the need to secure permits prior to modifying the deck on the house and wishes to remedy the violation via an after-the-fact Conservation District Use Permit.

Project Location and Property Description

The subject property is a 25.48-acre parcel identified as TMK (3) 2-6-011: 022 in the Resource subzone of the State Land Use Conservation District in Kaiwiki, Hilo. Access to the subject property is from Kaiwiki Road, roughly 5 miles west of its intersection with Wainaku Street (**Figure 1**).

Native vegetation on site consists primarily of Koa (*Acacia koa*), Hapu‘u (*Cibotium menziesii*), and ‘Ōhi‘a lehua (*Metrosideros polymorpha*). Non-native vegetation includes Strawberry guava (*Psidium cattleianum*), Uluhe fern (staghorn fern; *Dicranopteris linearis*), Wainaku grass (*Panicum repens*), and Rose apple (*Syzygium jambos*).

The home is sited approximately 80 to 120 feet from Kaiwiki Road and is accessed by a short (roughly 50-foot long) gravel driveway. The property contains a tributary to a perennial stream known as Maili Stream. The tributary is located roughly 700-feet north of the home site. Another, smaller, unnamed intermittent drainage crosses the mauka corner of the property and exits crossing Kaiwiki Road, approximately 300 feet mauka of the house site.

Project Description

CDUP HA-2474 (**Exhibit A**), approved on August 9, 1991, allowed for an after-the-fact single-family residence. An Environmental Assessment was performed in support of the 1991 CDUP, and a Finding of No Significant Impact (FONSI) was issued. Additionally, one acre of clearing for experimental crops was also approved in the original CDUP.

Based on the approved plans and confirmed field measurements, the floor area of the residence was expanded by 220.2 sq. ft. Based on the approved floor area (under roof) of the residence of 542 sq. ft., the deck addition represents an increase of 40.6%. The under roof area of the SFR is 1,041 sf, versus the original approved under roof area of 835 sf, which amounts to an approximately 25% increase. Both the floor and under roof areas are consistent with the definition of “Moderate Alteration” according to HAR Chapter 13-5-2. The site plan is provided in **Figure 2**. Floor Plans and Elevations are shown in **Figures 3** and **4**.

Per § 13-5-22 STRUCTURES AND LAND USES, EXISTING (C-1) *Moderate alteration of existing structures, facilities, uses, and equipment*, a “moderate alteration” is being requested after-the-fact.

Where “Moderate Alteration” is defined:

“Moderate Alteration” means work done to an existing structure, facility, or use that results in more than a ten per cent increase, but no more than a fifty per cent increase, in the size of the structure, facility, or use.

No grading was necessary for the construction of the deck extension. Existing grass was simply cleared in the footprint of each footing (approximately 18" x 18"). Best Management Practices for construction activities were followed to prevent adverse impacts to soil. Vegetation removal and soil disturbance were minimal, consisting only of what was necessary for the installation of the new pier block footings. This is shown in the site photos in **Figures 5-9**. No changes to the existing landscaping are proposed and basic land management will remain the same.

Dwg. No. 2136 Revised to: _____
By: H.N. August 1934
Source: Tax Maps Bureau

CONFIDENTIAL
FEB 20 1940
FEB 26 1940

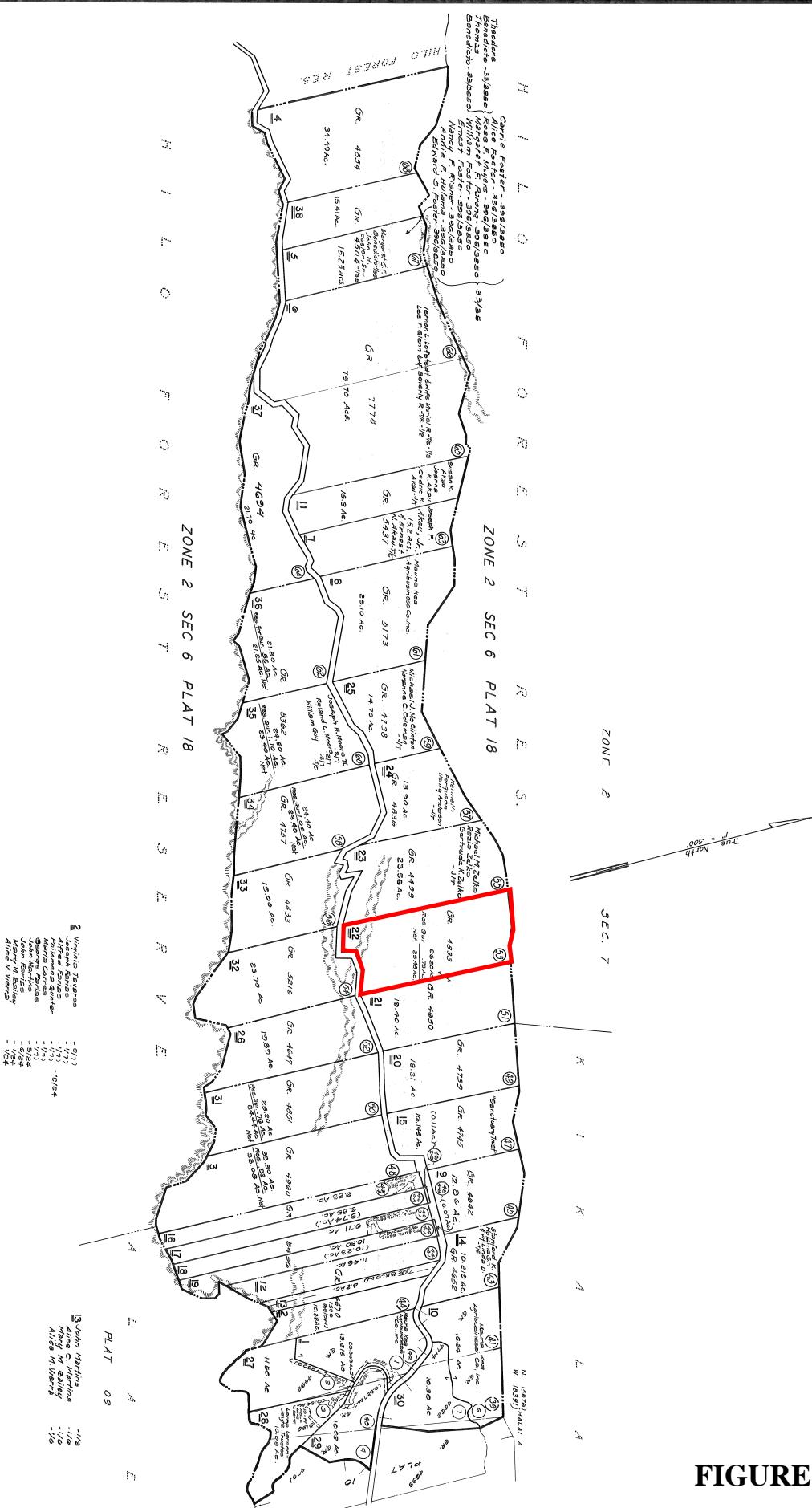


FIGURE 1

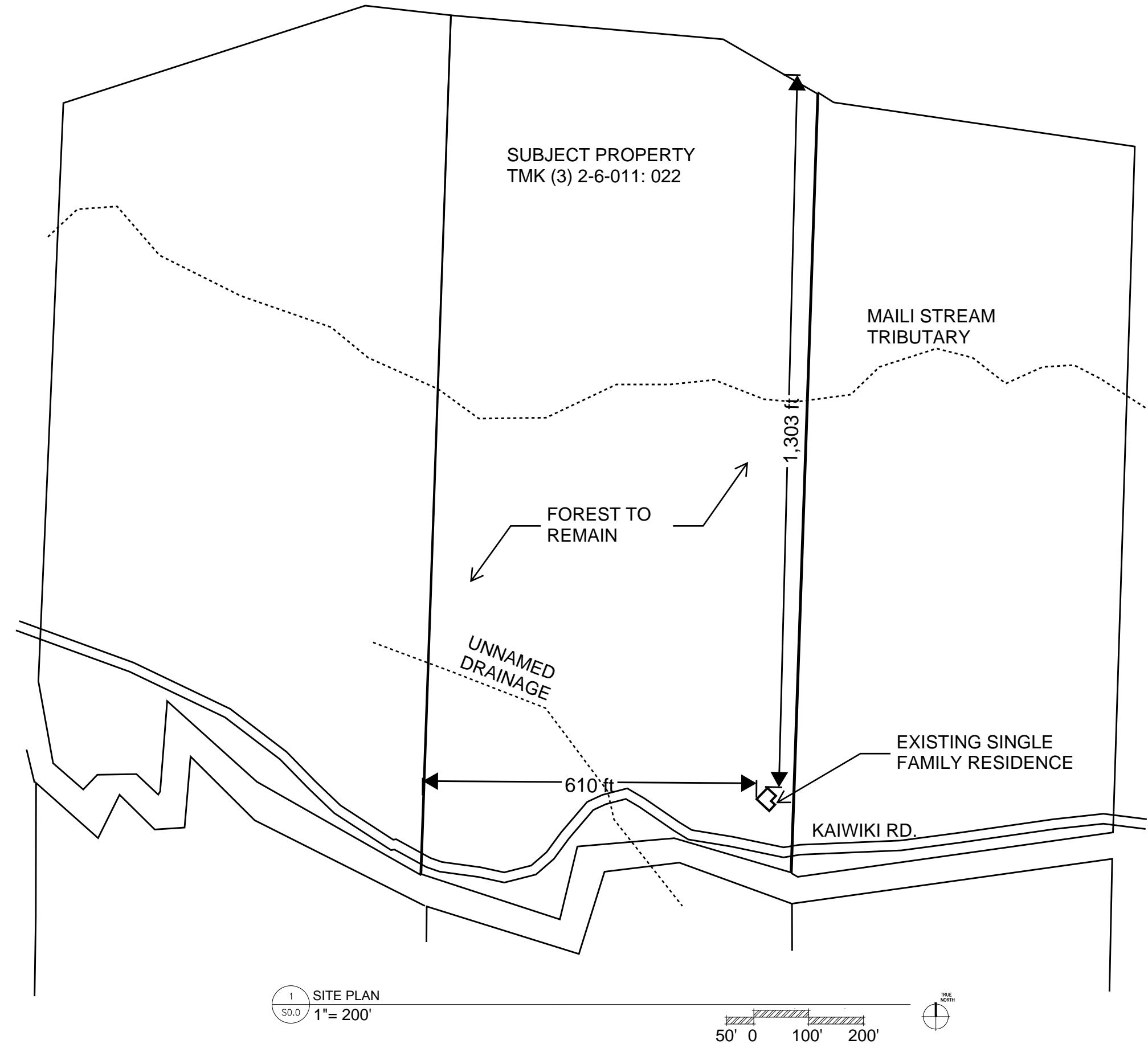


FIGURE 2

PRELIMINARY: NOT FOR CONSTRUCTION

LAND PLANNING HAWAII LLC

NOTES:

Issued
Current

Previous

Revisions

No. Description Date

Project

Drawing
Title

SITE PLAN

Drawing No

A-00

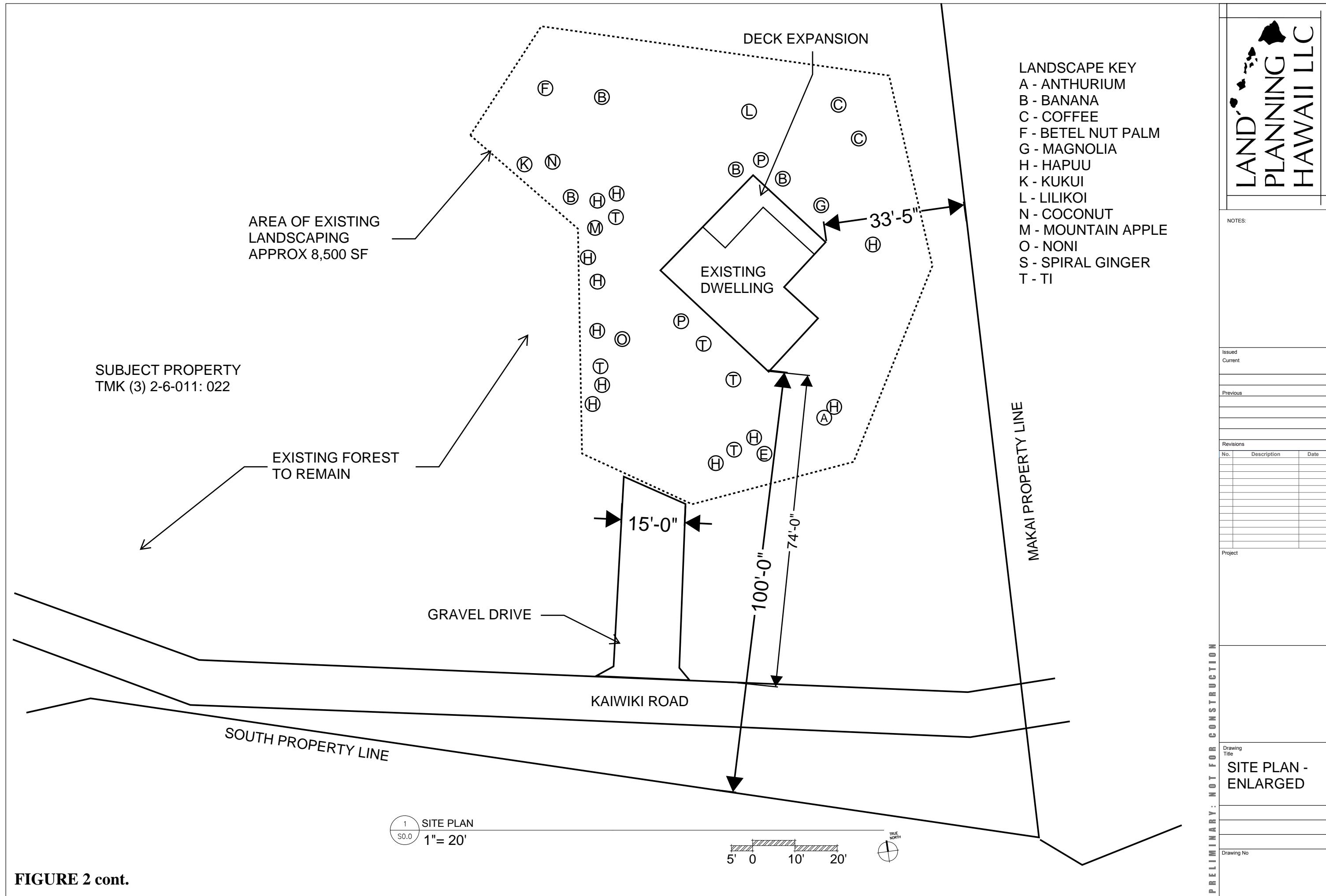
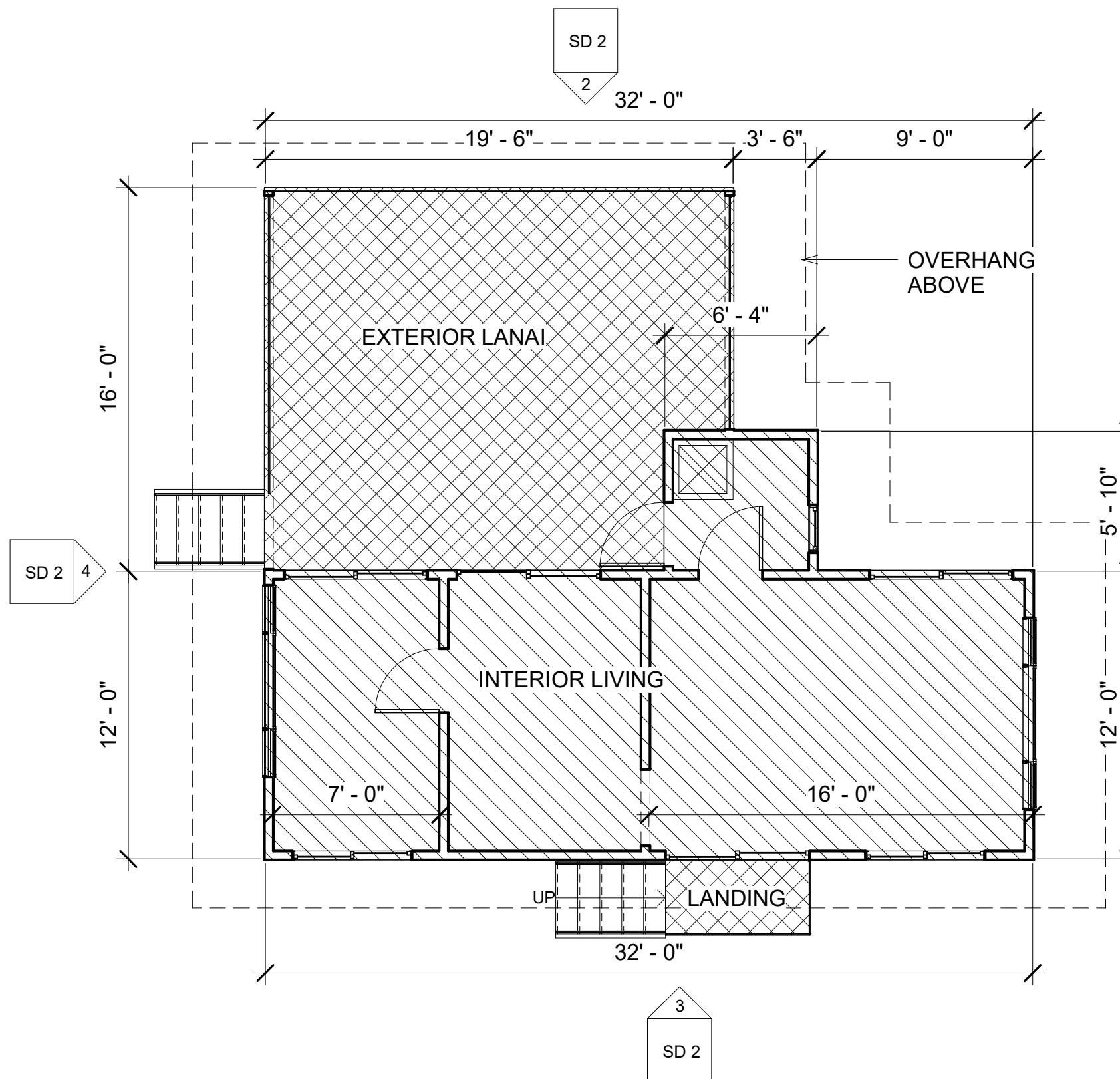


FIGURE 2 cont.



1 FLOOR PLAN
3/16" = 1'-0"

FIGURE 3

ADVANCE ARCHITECTS
LLC

www.advancearchitectshi.com

BENSKIN
DWELLING

No.	Description	Date

EXSTG COND

Project number 362
Date 2025
Drawn by KJB
Checked by KJB

SD 1

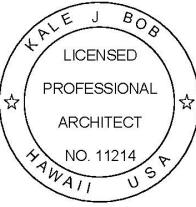


LICENSE EXPIRES: APRIL 30, 2026

THIS WORK WAS PREPARED BY
ME AND/OR UNDER MY SUPERVISION

7/1/23

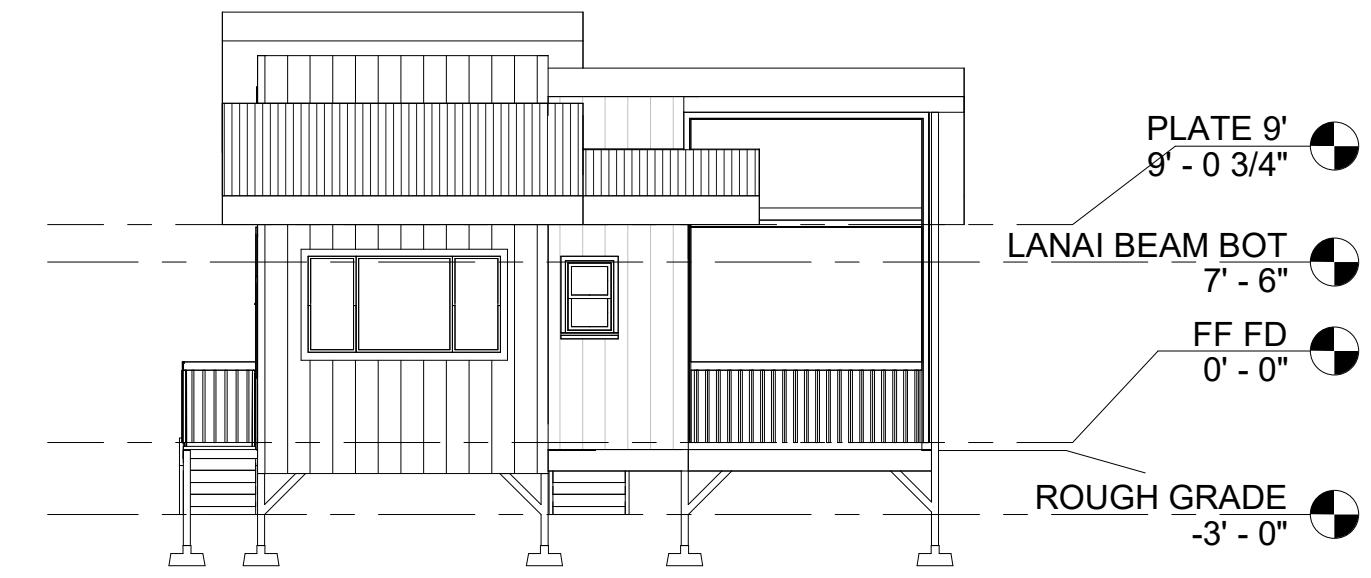
OWNER: WILLIAM JACOB BENSKIN
TMK: (3) 2-6-011:022
ADDRESS: 3300 KAIWIKI ROAD, HILO



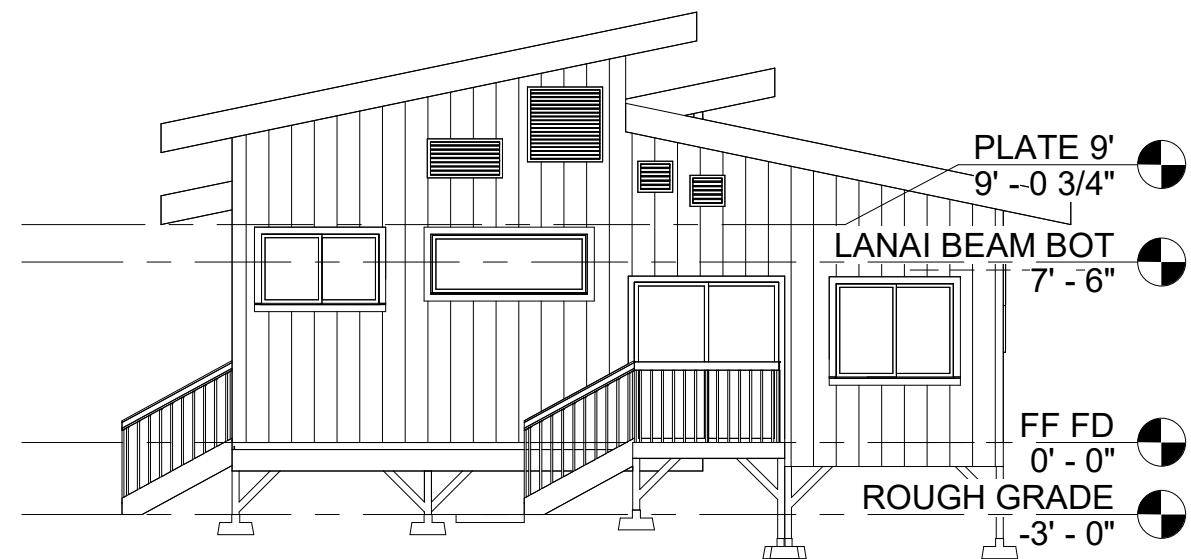
LICENSE EXPIRES: APRIL 30, 2026

THIS WORK WAS PREPARED BY
ME AND/OR UNDER MY SUPERVISION

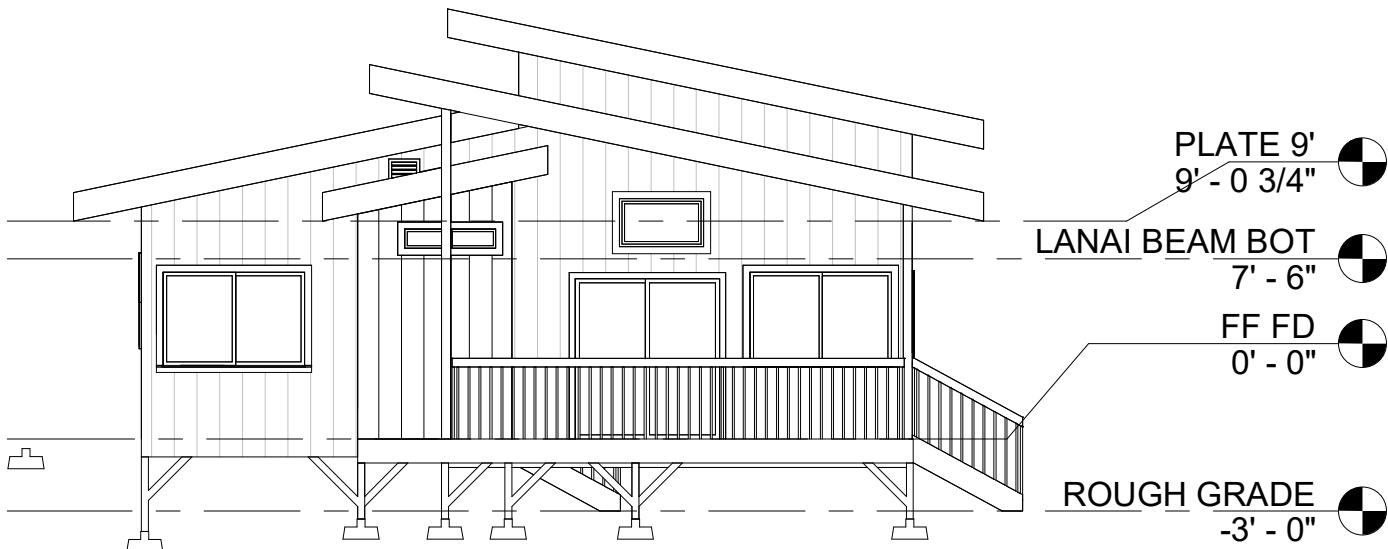
Ym 32



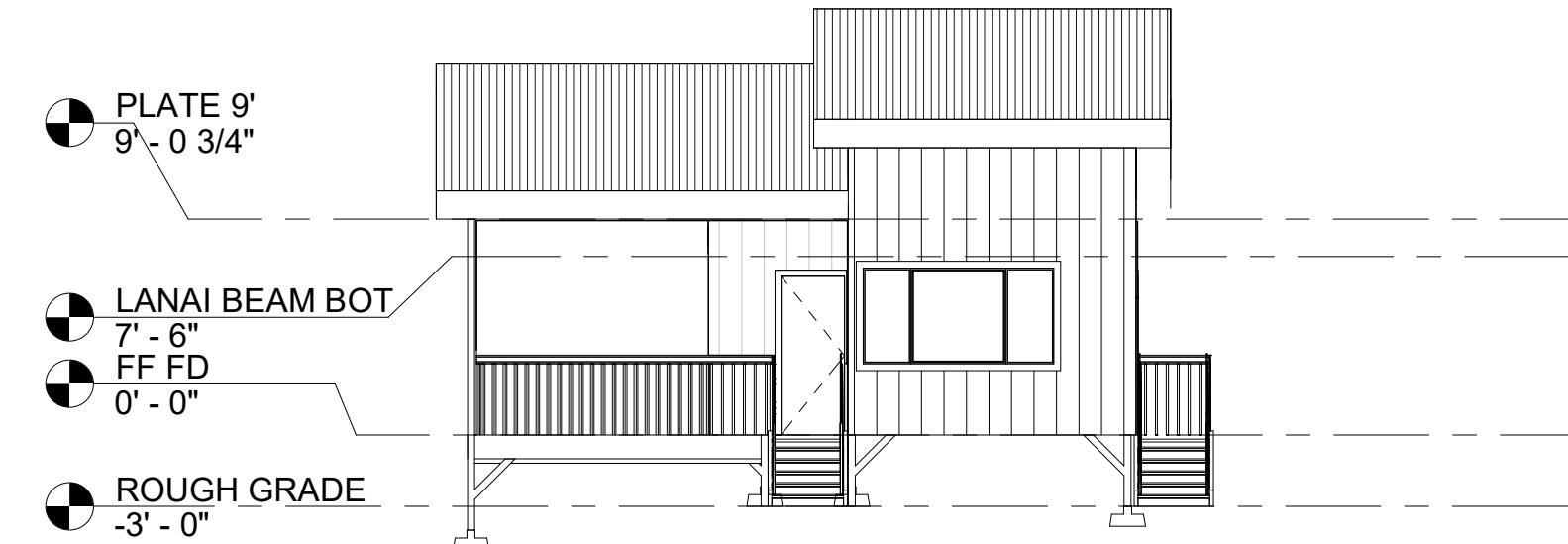
1 MAKAI EXT ELE
1/8" = 1'-0"



3 HILO EXT ELE
1/8" = 1'-0"



2 HAMAKUA EXT ELE
1/8" = 1'-0"



4 MAUKA ELE
1/8" = 1'-0"

OWNER: WILLIAM JACOB BENSKIN
TMK: (3) 2-6-011:022
ADDRESS: 3300 KAIWIKI ROAD, HILO

FIGURE 4



BENSKIN
DWELLING

No.	Description	Date

EXSTG COND ELEVATIONS		SD 2
Project number	362	
Date	2025	
Drawn by	KJB	
Checked by	KJB	Scale 1/8" = 1'-0"

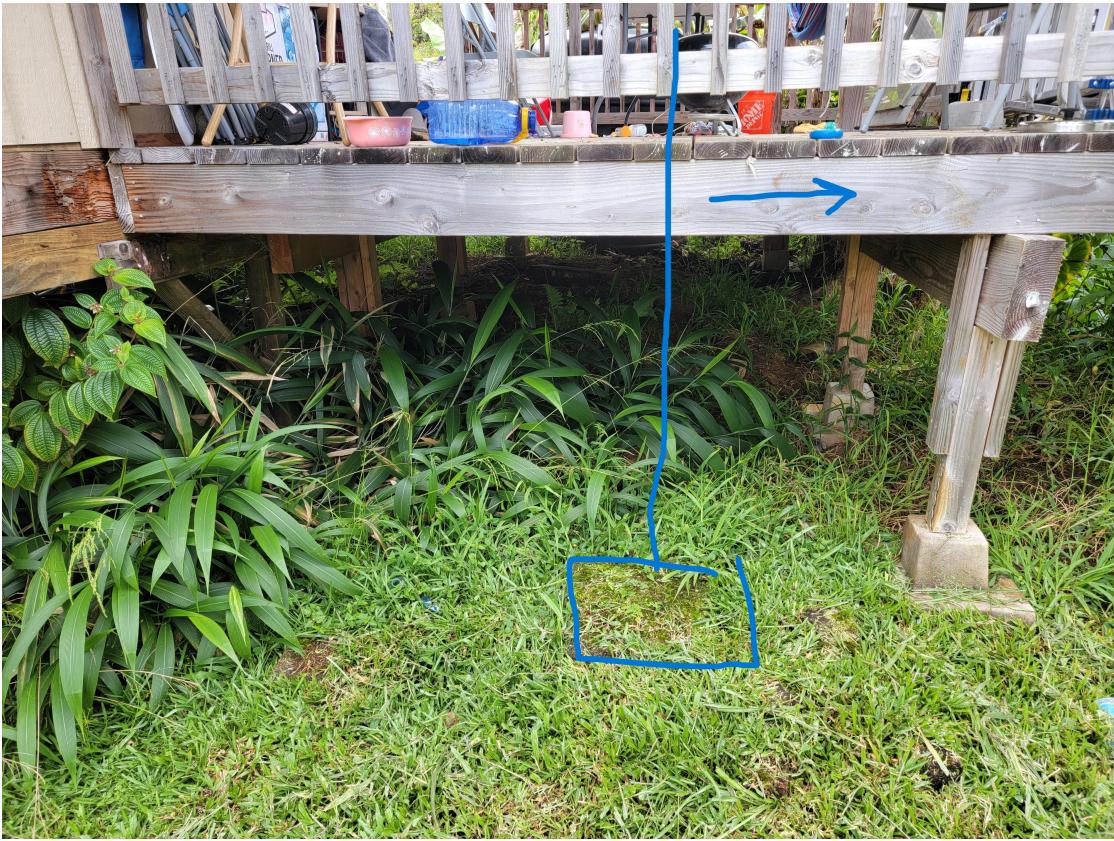


Figure 5



Figure 6



Figure 7



Figure 8

I. SUBJECT PROPERTY CONDITIONS

a. Existing Access to Site

Access to the subject property is from Kaiwiki Road, roughly 5.5 miles west of its intersection with Wainaku Street.

A gravel driveway approximately 50 feet long and 15 feet wide leads to the existing dwelling on site.

b. Existing Buildings/Structures

The existing dwelling is located on the subject property, to which the deck is affixed, approximately 74 feet from Kaiwiki Road. This dwelling was built in 1987 by a previous landowner under emergency conditions following the loss of their home to a lava flow in Puna that same year. As stated prior, CDUP HA-2474 approved on August 9, 1991, allowed for this after-the-fact single-family residence.

The existing dwelling was approved as 835 square feet under roof, including two small lanais at opposite sides of the dwelling. Other than the enlargement of the northern deck, which is the subject of this application, the house remains as it was approved in 1991.

c. Existing Utilities

Electrical, communication, gas, drainage, water & wastewater.

There are no county utilities available to the site. The applicant has a 5,000-gallon water tank and presently the site has no source of electricity. If further development is proposed, additional infrastructure would likely be required and additional Conservation District Permit(s) would be sought.

The original CDUP approved the water and electricity sources for the dwelling, which consisted of a water tank and a gas generator at the time. A cesspool was also installed alongside the initial construction of the house. These were included in the after the fact approval of the CDUP. Additionally, it is stated that the previous landowner had negotiated with HELCO and Hawaiian Telephone to connect phone and electricity service to the property, however the property remains without grid electricity today.

There are no public facilities, parks, or schools nearby that could be impacted by the proposed development. Police and fire services are available roughly 7 miles south in Hilo.

d. Physiography

Geology, topography & soils.

The subject property is located on the flanks of Mauna Kea at roughly 1,800 to 1,900 feet above sea level. The home site is relatively flat with no notable topographic features in the immediate vicinity.

The United States Natural Resources Conservation Service defines the majority of the subject property as Kaiwiki highly organic hydrous silty clay loam with 6 to 20 percent slopes (2m8vb). The northern portion of the property is Kaiwiki hydrous silty clay loam with 10 to 20 percent slopes (2mlw5). Both soil types are ash fields on lava flows, are well drained and have a medium runoff class. Neither soil type is considered prime farmland.

e. Hydrology

Surface water, ground water, coastal waters & wetlands.

A tributary to Maili Stream flows west to east across the parcel roughly 1,000 feet from the southern boundary and 900 feet from the existing dwelling and after-the-fact deck expansion. This stream is perennial and feeds into the ocean. Tributaries of Maili stream are also present to the west and south of the property. Honoli‘i Stream is located approximately 2,000 feet to the north of the dwelling and approximately 600 feet north of the northern property boundary.

f. Flora and Fauna

Indicate if rare or endangered plants and/or animals are present.

Although a formal biotic survey was not conducted on the subject property, the applicant does not believe that any rare or endangered floral or faunal resources are likely to be found on the site.

Vegetation on site consists of native plants including Koa (*Acacia koa*), Hapu‘u fern (*Cibotium menziesii*), and ‘Ōhi‘a lehua (*Metrosideros polymorpha*), and uluhe fern (*Dicranopteris linearis*). Non-native vegetation includes Strawberry guava (*Psidium cattleianum*), wainaku grass (*Panicum repens*), and rose apple (*Syzygium jambos*), and alexander palm (*Archontophoenix alexandrae*).

No Koa, Hapu‘u, or ‘Ōhi‘a lehua were disturbed as a result of the deck enlargement, nor will any impacts to native flora or fauna result from the after-the-fact approval of the deck expansion.

Several birds are common in the area, including common myna (*Acridotheres tristis*), Japanese white-eye (*Zosterops japonicus*), and saffron finch (*Sicalis flaveola*). It would also be possible to find the Hawaiian Hawk (I‘o) (*Buteo solitarius*), the Hawaiian Owl (Pueo) (*Asio flammeus sandwichensis*), and the Hawaiian Hoary Bat or ‘Ope‘ape‘a (*Lasius cinereus semotus*) flying over, roosting, or utilizing resources near the property.

Hawai‘i Administrative Rules §13-5 strictly prohibits the planting of invasive plant species in a Conservation District.

The existing landscaping around the house is shown on the site plan (**Figure 2**). Landscaping species consist of Kukui (*Aleurites moluccanus*), coconut palm (*Cocos nucifera*), betel nut palm (*Areca catechu*), banana (*Musa*), ti (*Cordyline fruticosa*), noni (*Morinda citrifolia*), southern magnolia (*Magnolia grandiflora*), lilikoi (*Passiflora edulis*), spiral ginger (*Costus barbatus*), and bird of paradise (*Strelitzia reginae*). All plant species are considered “pono plants” and are classified as non-invasive, thus remaining appropriate for landscaping within a Conservation District as established by HAR §13-5.

g. Natural Hazards

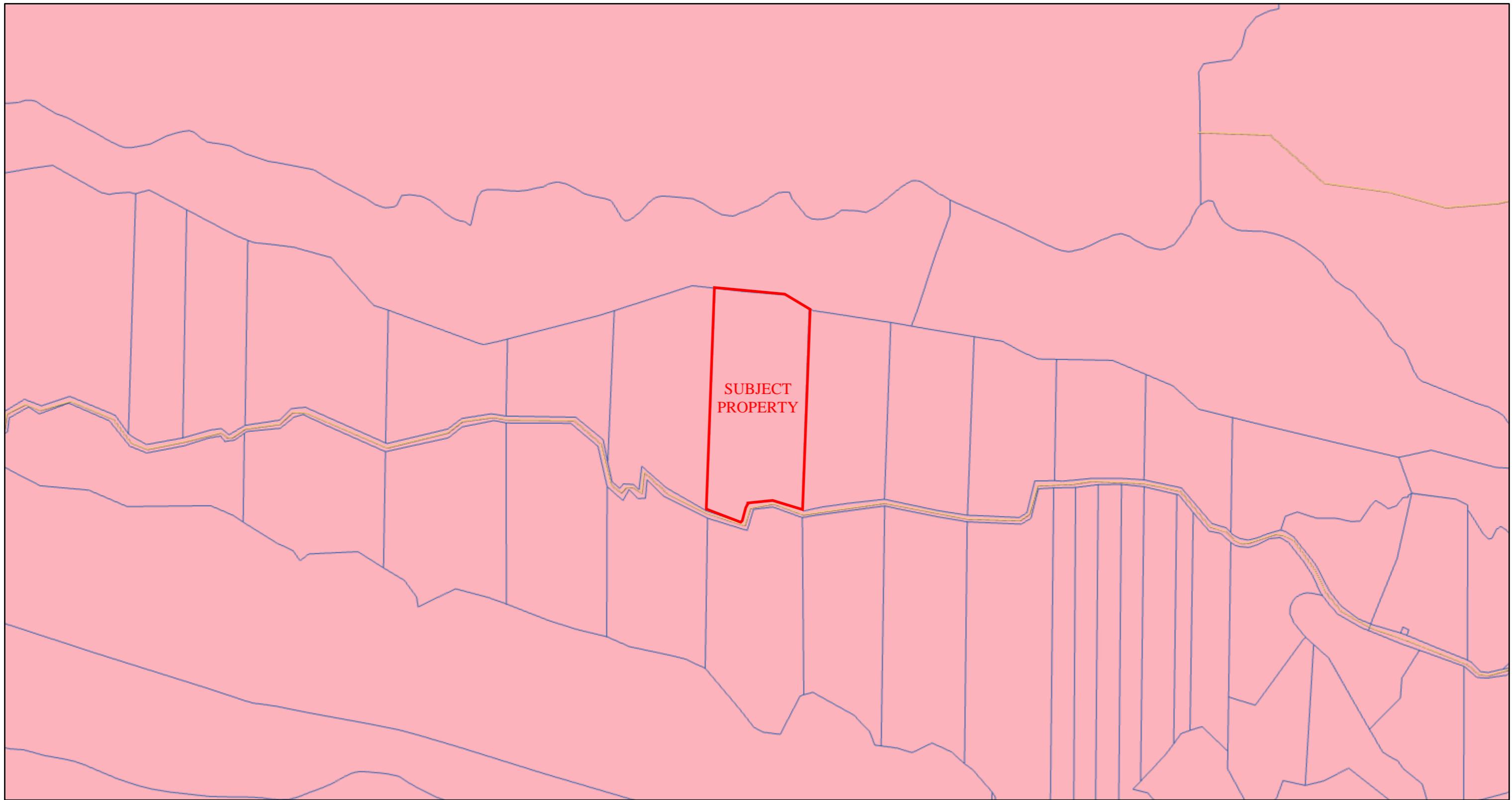
Erosion, flooding, tsunamis, seismic, etc.

According to the Federal Emergency Management Agency (FEMA), the Flood Insurance Rate Map (FIRM) classifies the subject property as Flood Zone X, which is outside of the 500-year floodplain (**Figure 9**).

The proposed project will not be impacted by coastal hazards based on the 5-mile distance from the coast.

The United States Geological Survey (USGS) classifies the subject property to be within Lava Hazard Zone 8, which is ranked on a scale ranging from 1-9 (**Figure 10**). Hazard Zone 8 is considered to be at minimal risk for any volcanic threats.

Flood Hazard Map of TMK (3) 2-6-011: 022



4/11/2025, 10:19:10 AM

1:9,028

0 0.1 0.2 0.4 mi
0 0.15 0.3 0.6 km

National Flood Hazard Layer Flood Zones



Parcels (current boundary lines)

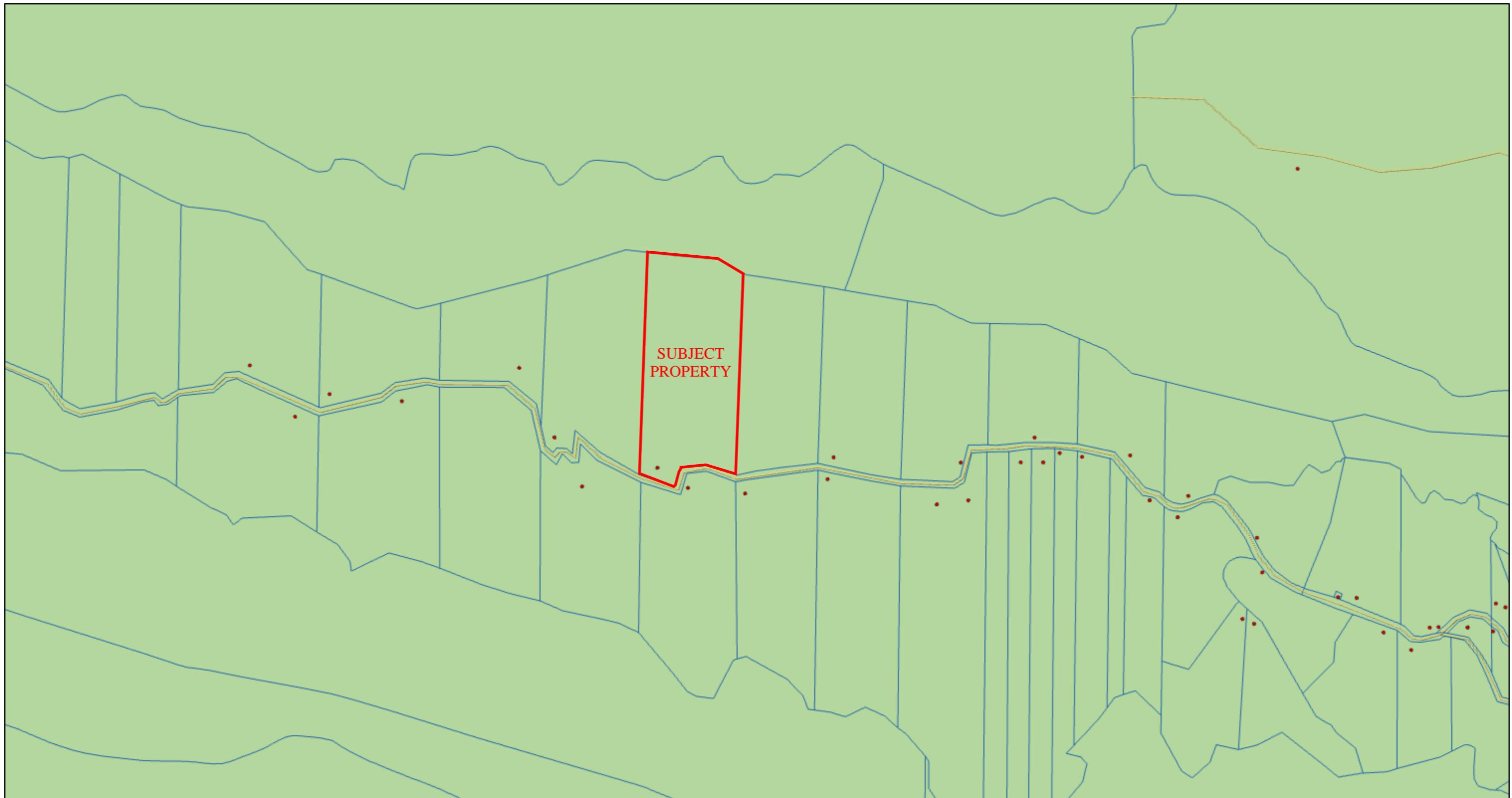
Street Centerlines

Hawaii County District Boundary

Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, US Census Bureau, USDA, USFWS, Esri, NASA, NGA, USGS, County of Hawaii IT Department

FIGURE 9

Lava Hazard Zone Map of TMK (3) 2-6-011: 022



3/28/2024, 2:01:02 PM

1:9,028

Volcano Hazard Zones



Address Points

Parcels (current boundary lines)

Hawaii County District Boundary

0 0.1 0.2 0.3 0.4 mi
0 0.15 0.3 0.6 km

Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, US Census Bureau, USDA, USFWS, Esri, NASA, NGA, USGS, County of Hawaii IT Department

FIGURE 10

The contents of this map were prepared for informational and planning purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes.

Web AppBuilder for ArcGIS

h. Historic and Cultural Resources

With regard to the Hawai‘i State Supreme Court’s “PASH” and “Ka Pa‘akai O Ka‘Aina” decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed. This necessitates an overview of the cultural, historical, and natural resources present in the area, as well as any associated traditional practices on the site. The subject property is not adjacent to the shoreline, located approximately 5 miles from the coast. Therefore, the issue of gathering marine life and coastal access is not relevant. The applicant has not observed any plant gathering, hunting, or access trails, so it is unlikely that the property is currently a site for cultural resources. However, in the event that legitimate gathering claims are made by Native Hawaiians, the applicant intends to honor the claims and provide access to the property.

According to CDUP HA-2474 and the EA done in 1991, no known historical sites or resources are present on the parcel. Additionally, this application requests an after-the-fact approval and no further development is proposed on the property, making any possible impacts on historic resources more unlikely. However, in the unlikely event that any historic resources are discovered on the property, the County and State Historic Preservation Division will be notified immediately.

II. EVALUATION CRITERIA

The Department or board will evaluate the merits of a proposed land use based upon the following eight criteria (ref § 13-5-30(c)).

1. How is the proposed land use consistent with the purpose of the conservation district?

The purpose of the Conservation District is to conserve, protect, and preserve the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare (ref § 13-5-1).

The proposed project will practice an overall conservation ethic by implementing mitigating measures and Best Management Practices to prevent impacts to soil, water and air quality on the property and to the surrounding watershed. The proposed use will not have any impact to coastal or public access, or scenic views.

Vegetation removal necessary for the deck expansion is minimal. The affected areas are only below the new pier block footings. As shown in site photos, this removal was minimal and likely only affected grass. Additionally, no soil or vegetation disturbance has or will take place near the stream.

The deck addition has not changed the existing land use, but does promote basic land stewardship, with negligible impact due to the small nature of the expansion.

2. How is the proposed land use consistent with the objectives of the subzone of the land on which the use will occur?

Ref §13-5-11 through §13-5-15.

The project area lies within the Resource Subzone. According to HAR §13-5-13, the objective of the Resource Subzone is to “develop, with proper management, areas to ensure sustained use of the natural resources of those areas.” The proposed project is consistent with the following identified land uses in the Resource Subzone as outlined in §13-5-24:

P-13 LAND AND RESOURCE MANAGEMENT

(B-1) Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area greater than one acre. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources, or the surrounding community.

Discussion: The applicant has not cleared any additional land outside of what had been cleared by the previous landowner and approved by CDUP HA-2474. He has been engaged in basic land management surrounding the existing SFR. This is consistent with HAR §13-5-22 and does not require a permit.

L-2 LANDSCAPING

(C-1) Landscaping (including clearing, grubbing, and tree removal), including chemical and mechanical control methods, in accordance with state and federal laws and regulations, in an area of less than 10,000 square feet. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited.

Discussion: CDUP HA-2474 authorized the clearing of a 1-acre area for the purpose of cultivating experimental crops. This was to take place within the previously cleared area of the property and away from any stream banks. Primary vegetation on the property at the time of the original CDUP was Strawberry guava (*Psidium cattleianum*), Uluhe fern (*Dicranopteris linearis*), Wainaku grass (*Panicum repens*), rose apple (*Syzygium jambos*), Koa (*Acacia koa*), Hapu‘u fern (*Cibotium menziesii*), and ‘Ohi‘a lehua (*Metrosideros polymorpha*). The permit also authorized the planting of additional Koa seedlings. At this time, the applicant has maintained the property in its current state and does not propose any changes to existing landscaping.

3. Describe how the proposed land use complies with the provisions and guidelines contained in chapter 205A, Hawai‘i Revised Statutes (HRS), entitled “Coastal Zone Management”.

The subject parcel is located 5 miles inland from the shoreline and is outside of the Special Management Area (SMA). However, Hawai‘i Revised Statutes Chapter 205A-1 defines “Coastal Zone Management Area” as all lands of the State and the area extending seaward from the shoreline to the limit of the State’s police power and management authority, including the United States territorial sea.” The project is consistent with pertinent policies and objectives of the State’s Coastal Zone Management requirements under Chapter 205A, (HRS) as follows:

Recreational Resources: *Provides coastal recreational opportunities accessible to the public.*

The subject site is not a shoreline parcel; it is located roughly 5 miles inland from the coast. The proposed action will therefore have no impact on coastal recreation opportunities accessible to the public. Additionally, there are no access points to mountainous regions from the site.

Historic Resources: *Protect, preserve, and where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.*

The performed development outside of uses approved by CDUP HA-2474 are minimal, being restricted to a 220.2 sq ft deck addition which has not had impact on historic resources. The area of the dwelling was cleared prior to building the house and no new clearing is proposed at this time.

Scenic and Open Space Resources: *Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.*

This development does not impact any scenic beauty or open space resources. The subject property is located 5 miles inland from coastal resources. Visual impact of the deck is very modest given its small size and connection to the existing dwelling. Further, the deck is not readily visible from Kaiwiki Road or from neighboring properties.

Coastal Ecosystems: *Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.*

The subject site is not a shoreline parcel; it is located roughly 5 miles inland from the coast. The proposed action will therefore have no direct impact on coastal ecosystems including reefs, beaches, and coastal dunes. A tributary of Maili Stream is located on the subject site, which runs from west to east. The after-the-fact deck work is roughly 745 feet away from the stream.

In the event of a spill or any other unforeseen release of materials into the surrounding area does occur, the Department of Land and Natural Resources, Division of Aquatic Resources, will be contacted immediately so an assessment of the potential impact to the nearby aquatic environment can be made.

Economic Uses: *Provide public or private facilities and improvements important to the State's economy in suitable locations.*

The work has already been performed on the subject property, as this is an after-the-fact CDUA. Therefore, this criterion is not applicable to this application.

Coastal Hazards: *Reduce hazard to life and property from coastal hazards and, stream flooding.*

The subject property is not expected to be impacted by significant flooding. The entire property is located in Flood Zone X according to the FEMA FIRM map. The property is roughly 5 miles inland from the shoreline and thus will not be affected by coastal hazards.

Managing Development: *Improve the development review process, communication, and public participation in the management of coastal resources and hazards.*

The managing development policies relate to use, implementation and enforcement of laws, processing of applications for development permits and communication of coastal development impacts to the public. As these are managing authority related policies, they are not entirely applicable to this application.

Public Participation: *Stimulate public awareness, education, and participation in coastal zone management.*

The public participation policies relate to promoting public involvement and dissemination of information with respect to coastal zone management are managing authority related policies and are not applicable to this project.

Beach Protection: *Protect beaches and coastal dunes for public use and recreation; the benefit of coastal ecosystems; and use as natural buffers against coastal hazards.*

The subject property is not a shoreline parcel and will therefore not impact beaches, public dunes, public use, or recreation. The proposed action does not pose an adverse risk to water quality, aquatic, or marine habitats.

Marine Resources: *Promote the protection, use, and development of marine and coastal resources to assure their sustainability.*

The subject property is not a shoreline parcel and will not impact beach or marine resources.

4. Describe how the proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region.

The proposed land use will not cause substantial adverse impact to existing natural resources. The applicant intends to utilize the land for residential purposes, which is consistent with the current land use designation. The proposed land use is compatible with the locality and surrounding areas, which support small-scale residences. The home will operate entirely off-grid, which will have no impact to air or water quality, scenic or other natural resources. Mitigating measures and Best Management Practices will protect all existing flora and fauna, soil, and water resources. Further, no significant secondary or cumulative impacts are expected with the request.

The deck has already been constructed with minimal impact to existing natural resources within the surrounding area, community, and region. Deconstructing the deck would cause greater adverse impacts than allowing it to remain after-the-fact, due to the construction waste that would be generated.

5. Describe how the proposed land use, including buildings, structures, and facilities, is compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.

The addition of the deck constitutes a moderate alteration to the structure approved by CDUP HA-2474 that does not have a major effect on the surrounding areas and is appropriate to the physical conditions and capabilities of the specific parcel. Minimum setbacks and height restrictions will be met for the proposed single-family residence. Setback and height specifics are outlined in Section VI.

6. Describe how the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics will be preserved or improved upon.

The enlarged deck does not affect the essential character of the property and has no impact on the existing and unique topography, natural beauty, and open space characteristics of the surrounding area. The deck cannot be readily seen from Kaiwiki Road, or by any current neighbor. There is no access to mountainous regions from the site that could be impacted by the request.

7. If applicable, describe how subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.

Subdivision of land is not proposed under this request. The parcel will remain as one (1) lot totaling 25.48 acres. The proposed action will not increase the intensity of land use beyond the approved residential nature.

8. Describe how the proposed land use will not be materially detrimental to the public health, safety, and welfare.

The existence of the deck on the subject parcel has not had a substantial adverse effect on public health, safety, or welfare. Additionally, the area is rural and there is a notable distance between neighboring homes. No other aspect of this development is expected to impact public health, safety, or welfare.

III. CULTURAL IMPACTS

Articles IX and XII of the State Constitution, other state laws, and the courts of the State, required government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups.

a. Please provide the identity and scope of cultural, historical, and natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

While there has not been a formal Archaeological Assessment or Cultural Impact Assessment conducted on the subject property, the SHPD stated in the CDUP HA-2474 that the likelihood of the parcel containing historic resources is relatively low due to its location within a high elevation forest. Therefore, it is not likely that the parcel was a site for cultural use in the past. No further development of the property is proposed, however, if any historic resources are found on the property the SHPD will be notified immediately. Additionally, no gathering of plant material, hunting, or access trails have been observed on the subject property.

b. Identify the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action.

It is not likely that the proposed action will have any effects on traditional or customary Native Hawaiian rights. The deck extension addressed by this application has already been constructed and has had no impact on any type of resources.

c. What feasible action, if any, could be taken by the Board of Land and Natural Resources regarding your application to reasonably protect Native Hawaii rights?

No action by the Board of Land and Natural Resources is expected to be necessary to protect Native Hawaiian rights. The applicant is aware of the State's constitutional and legal protections for the exercise of traditional practices of Native Hawaiians and intends to fully comply with the requirements and conditions of the CDUP.

IV. OTHER IMPACTS

a. Does the proposed land use have an effect (positive/negative) on public access to and along the shoreline or along any public trail?

The land use will not impact public access to the shoreline as the parcel is roughly 5 miles inland and is not adjacent to the shoreline. There are no public trails from the property that lead to mountainous regions used for recreational activities.

b. Does the proposed use have an effect (positive/negative) on beach processes?

Again, the property is located 5 miles inland from the shoreline. As such there are no foreseeable effects on beach processes.

c. Will the proposed use cause increased sedimentation?

The deck has already been constructed and has had no impact on sedimentation. This CDUA seeks after-the-fact approval.

Hawai‘i Administrative Rules Chapter 11-55, Appendix C, under Special Conditions for Land Disturbances, describes the following construction management techniques to protect soil and sedimentation:

- a. Clearing and grubbing shall be held to the minimum necessary for grading and equipment operation.
- b. Construction shall be sequenced to minimize the exposure time of the cleared surface area.
- c. Erosion and sediment control measures shall be in place and functional before earth moving operations begin. These measures shall be properly constructed and maintained throughout the construction period.
 - i. Minimize soil loss and erosion by revegetating and stabilizing slopes and disturbed areas of soil.
 - ii. Minimize sediment loss by placing structural controls including silt fences, gravel bags, sediment ponds, check dams, and other barriers.
- d. Construction activities with the potential to produce ground disturbance will not be allowed during unusually heavy rains or storm conditions that might generate storm water runoff.
- e. Cleared areas will be replanted or otherwise stabilized as soon as possible.
- f. All control measures shall be checked and repaired as necessary, for example, weekly in dry periods and within twenty-four hours after any rainfall of 0.5 inches or greater within a 24-hour period. During prolonged rainfall, daily checking is necessary. Record of checks and repairs must be maintained.
- g. Records of the duration and estimated volume of storm water discharge must be maintained.
- h. A specific individual shall be designated to be responsible for erosion and sediment controls on the project site.

d. Will the proposed use cause any visual impact on any individual or community?

The proposed development will not impact scenic beauty or open space resources in any way. The expanded deck is screened by thick existing vegetation and cannot be seen from the road, or by any current neighbor.

e. Please describe any sustainable design elements that will be incorporated into the land use.

E.g., the use of efficient ventilation and cooling systems; renewable energy generation; sustainable building materials; permeable paving materials; efficient energy and water systems; efficient waste management systems; etc.

The deck extension covered a small ground area and was constructed using minimal materials and without grading. It provides additional open air covered space for off grid residential uses, reducing any need for energy intensive heating or cooling.

f. If the project involves landscaping, please describe how the landscaping is appropriate to the Conservation District.

E.g., use of indigenous and endemic species; xeriscaping in dry areas; minimizing ground disturbance; maintenance of restoration of the canopy; removal of invasive species; habitat preservation and restoration, etc.

Hawai‘i Administrative Rules §13-5 strictly prohibits the planting of invasive plant species in a Conservation District. There are no changes to the existing landscaping proposed at this time.

g. Please describe Best Management Practices that will be used during construction and implementation of the proposed land use.

As discussed, the deck has already been constructed and this CDUA seeks after-the-fact approval. Additionally, there has been minimal soil disturbance in the form of only that which is necessary for the new pier block footings. This is in addition to general worksite hygiene, such as the cleaning of any digging tools to prevent introduction of ROD pathogens, etc.

Best Management Practices for construction activities will be strictly followed according to Hawai‘i Administrative Rules Chapter 11-55, Appendix C. These include:

- Clearing and grubbing shall be held to the minimum necessary for grading and equipment operation.
- Construction shall be sequenced to minimize the exposure time of the cleared surface area.

A list of Best Management Practices will be established to properly manage storm water runoff. These BMPs may include, but are not limited to:

- Minimizing soil loss and erosion by revegetating and stabilizing slopes and disturbed areas of soil.

In the event of a spill or any other unforeseen release of materials into the surrounding area does occur, the Department of Land and Natural Resources, Division of Aquatic Resources, will be contacted immediately so an assessment of the potential impact to the nearby aquatic environment can be made.

This project would not impact air quality or noise levels in any significant way. All noise restriction guidelines, outlined by the County Department of Health, will be followed. Dust during construction and standards for keeping air pollutants down will also be rigorously followed. The State of Hawai‘i Air Pollution Control Regulations outlined in HAR §11-60 on Fugitive Dust prohibit visible emissions of dust from construction activities at the Property boundary. Reasonable measures to control airborne, visible fugitive dust from roadways are outlined in the Department of Health’s Clean Air Branch Standard Comments for Land Use Reviews. These measures include, but are not limited to:

- Planning the different phases of construction, focusing on minimizing the amount of airborne, visible fugitive dust-generated materials and activities, centralizing on-site vehicular traffic routes, and locating potential dust-generating equipment in areas of the least impact.
- Providing adequate water source at the site prior to start-up of construction activities; Landscaping and providing rapid covering of bare areas, including slopes, starting from the initial grading phase.
- Minimizing airborne, visible fugitive dust from shoulders and access roads.
- Providing reasonable dust control measures during weekends, after hours, and prior to daily start-up of construction activities.
- Controlling airborne, visible fugitive dust from debris being hauled away from the project site.

The construction of the deck has not noticeably affected the appearance of the area.

Light pollution is another important aspect of maintaining scenic resources, the visibility of the night sky, and the protection of seabirds that may utilize resources near the subject Property. Therefore, the following guidelines to minimize light pollution will be adhered to:

1. Any outdoor lighting must conform to the standards established by DLNR DOFAW as discussed in Section 3.1.4, Hawai‘i Revised Statutes Chapter 205A-7, and the Night Sky Protection Strategy outlined in HRS Chapter 201-8.5.
2. The minimum possible amount of outdoor/exterior lighting should be used and should be turned off when not needed. Motion sensor activated lighting will be used wherever feasible.
3. All exterior lighting should be fully shielded. This means that all lighting fixtures must emit zero light above the horizontal plane.
4. Conformity to the Outdoor Lighting Ordinance also requires the use of blue-deficient exterior lighting. This means that exterior LED lighting must emit less

than 2% of its total energy at wavelengths less than 500 nm. The best choice for this is either filtered LED lights, or amber LED lights.

5. White light should be avoided. Any white light used should have Correlated Color Temperature of 2700 K or below.

The State listed Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) has the potential to occur in the vicinity of the project area and may roost in nearby trees. Hoary Bats may be sensitive to disturbance between June 1st and September 15th, throughout which no shrubs or trees taller than 15 feet may be disturbed, removed, or trimmed without consulting the DLNR Division of Forestry and Wildlife (DOFAW). The State listed Hawaiian Hawk, or ‘Io (*Buteo solitarius*) is also known to occur in the project vicinity. If any tree cutting occurs between March and September, DOFAW must be consulted first. A pre-construction hawk nest search by a qualified ornithologist using standard methods must be conducted. If nests are found, no land clearing is permissible until October.

The presence of ‘Ōhi‘a lehua on the property means mitigating measures must be adopted. The movement of plant or soil material between worksites, such as fill, must be minimized. Soil and plant material may contain invasive fungal pathogens such as Rapid ‘Ōhi‘a Death (ROD), vertebrate and invertebrate pests such as Little Fire Ants (*Wasmannia auropunctata*), or invasive plant parts that could harm native species and ecosystems. All equipment, materials, and personnel should be cleaned of excess soil before leaving the site. Gear that may contain soil, such as work boots and vehicles, should be thoroughly cleaned, and sprayed with 70% alcohol solution to prevent the spread of ROD and other harmful fungal pathogens. If any material removed from the site is moved to areas without fire ants or ROD, the material will be inspected and treated.

h. Please describe the measures that will be taken to mitigate the proposed land use’s environmental and cultural impacts.

The proposed project will practice an overall conservation ethic by implementing mitigating measures and Best Management Practices to prevent impacts to flora and fauna, soil, water, and air quality.

V. SINGLE FAMILY RESIDENTIAL STANDARDS

Single Family Residences must comply with the standards outlined in HAR §13-5, Exhibit 4. Please provide preliminary architectural renderings (e.g., building footprint, exterior plan view, elevation drawings; floor plan, etc.) drawn to scale.

Table 1: Residential Details

	Existing	Proposed	Total
Proposed building footprint	542 sf.	220.2 sf.	762.2 sf.

Paved areas/impermeable surface	0	0	0
Landscaped areas	~8,500 sf.	0	~8,500 sf.
Unimproved areas	24.4-acres		24.4acres

a. Setbacks

Front: 100 ft.

Side: 33 ft.

Side: 600 ft.

Back: 1,300 ft.

b. Shoreline Properties

The subject property is not a shoreline parcel, therefore, shoreline properties are not applicable.

c. Maximum Developable Area

The Maximum Developable Area includes all floor areas under roof, including first, second, and third stories, decks, pools, saunas, garage or carport, and other above ground structures.

a. Maximum Developable Area based on Exhibit 4: 5,000 sf.

b. Actual Developable Area of Proposed Residence: 762.2 sf.

c. Actual height of the proposed building envelope as defined in Exhibit 4: 20'-11"

d. Compatibility

a. Provide justification for any proposed deviation from the established residential standards.

The residence will be consistent with all established residential standards outlined in HAR §13-5.

b. How is the design of the residence compatible with the surrounding area?

The single-family dwelling on the property is consistent with development on surrounding parcels. The deck expansion resulted in no additional clearing, minimal construction, and was built with materials consistent with the original building.

Additionally, the deck is not visible from either the road or adjacent properties, thus not changing the effect of the property's land use on the surrounding area.

c. **If grading is proposed, include a grading plan which provides the amount of cut and fill. Has grading or contouring been kept to a minimum?**

No grading was/is required for the proposed action.

EXHIBIT A

RECEIVED

'91 OCT 25 AM 9:51



WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

KEITH W. AHUE
MANABU TAGOMORI
Dan T. Kochi

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DINP
OCEA

P. O. BOX 621
HONOLULU, HAWAII 96809

REF:OCEASKK

AUG 15 1991

FILE NO.: HA-3/13/91-2474
180-Day Exp. Date: 9/9/91
DOCUMENT NO.: 1387E

Ms. Annie Brach
P.O. Box 4572
Hilo, Hawaii 96720

Dear Ms. Brach:

We are writing to inform you that the Board of Land and Natural Resources took the following action on your Conservation District Use Application for commercial agricultural production, and after-the-fact single family residence at South Hilo, Hawaii (TMK: 2-6-11: 22).

A. VIOLATION

1. The Board imposed a fine of \$500.00 for having violated the provisions of Title 13, Chapter 2, Administrative Rules of the Department; and
2. That failure on the part of the landowner/applicant to comply with Section A, "Violation" within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of Attorney General for disposition to include all administrative costs.

B. APPLICATION

Single Family Residential Use

The Board denied the Single Family Residence unless compliance with Part A, "Violation," occurs, at which time the **after-the-fact single family residential use (including the water tank and gravel parking area)** is approved subject to the following:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health Administrative Rules;
4. The single family dwelling shall not be used for rental or any other commercial purposes;
5. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as a part of the deed instrument;
6. If historic remains, such as artifacts, shell or charcoal deposits, burials, and stone platforms, paving, or walls are found during construction or use of the property, the applicant shall stop work in the immediate area and contact the State Historic Preservation Division at 587-0047 immediately. The State Historic Preservation Division will assess the situation and make recommendations for mitigative action, if needed;
7. That the roof be painted to blend in with the surrounding environment;

8. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
9. That all representation relative to mitigation set forth in the accepted Environmental Assessment for this proposed use are hereby incorporated as conditions of this approval;
10. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and
11. Other terms and conditions as prescribed by the Chairperson.

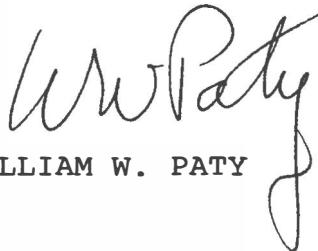
Agricultural Production

1. The Board authorized the clearing of one (1) acre for experimental crops. The clearing is to take place within the previously cleared area on the subject property, and away from the stream bank.
2. Prior to any commercial agricultural production use, the applicant is to submit an amendment to this Conservation District Use Permit that includes a commercial plan of the proposed commercial agricultural production.

Please acknowledge receipt of this permit with the above noted conditions in the space provided below. Please sign two copies. Retain one and return the other.

Should you have questions on any of these conditions, please contact Cathy Tilton of our Office of Conservation and Environmental Affairs staff at 548-7837.

Very truly yours,


WILLIAM W. PATY

Receipt acknowledged:



Applicant's Signature

Date 10/13/91

cc: Hawaii County Board Member
Hawaii District Land Agent
Hawaii Planning Dept.
Hawaii Dept. of Water Supply
Hawaii Dept. of Public Works
DOH/OHA/OSP/DOT/DAG



DEPUTIES

Keith W. Ahue
Manabu Tagomori
Dan T. Kochi

AQUACULTURE DEVELOPMENT
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

File No.: HA-3/13/91-2474
180-Day Exp. Date: 9/9/91
Doc. No.: 1103E

August 9, 1991

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING: Conservation District Use Application for
Commercial Agricultural Production, and an
After-the-fact Single Family Residence at
South Hilo, Hawaii

APPLICANT: Annie Brach
P.O. Box 4572
Hilo, Hawaii 96720

LANDOWNER: Private/Annie Brach

LOCATION/
TMK: South Hilo, Hawaii
2-6-11: 22

AREA OF PARCEL/USE: 25.48 acres

SUBZONE: Resource

DESCRIPTION OF AREA/CURRENT USE:

The subject parcel is located in the Resource subzone of the Conservation District in South Hilo, Hawaii (Exhibits 1 - 4).

Vegetation on the subject property primarily consists of strawberry, guava, uluhe fern, wainaku grass, and rose apple. According to the applicant, these plants are introduced species to the Hilo Forest area and are considered noxious pests to the native Hawaiian flora and fauna. There are also some stands of Koa, Hapu'u Fern and Ohia Lehua on the property.

There are two streams that traverse the property (Exhibit 5). One stream runs from west to east approximately 1,000 feet from the southern property boundary. This west-east stream flows year-round and feeds into the Kaiwiki Stream at about the 1,800 to 1,900 foot elevation. The other stream runs from the western boundary through the southern boundary and flows intermittently during the rainy season.

ITEM H-5

No known historic sites are present on the subject property or on any of the adjacent properties.

Existing structures on the property include a single family residence consisting of approximately 400 square feet (SF) and a water tank (Exhibit 5). Additionally, the applicant developed a small gravel parking area.

Access to the subject property is via Kaiwiki Road. This roadway has a hand-laid rock base that was built in the early 1900's, when the original homesteads were established. Gravel has been added to the roadway by the County of Hawaii, who, (according to the applicant), is responsible for the maintenance of this road. The gravel roadway extends approximately 1.5 miles from the end of the pavement and the last electric pole. The subject property is located one mile from the end of the paved roadway and electric lines.

Utilities serving the residence include a small gasoline generator for electricity, a small water tank, a cellular phone, and cesspool.

Surrounding land uses include residential and agricultural uses.

PROPOSED USE:

The applicant originally proposed the construction of a single family residence; conversion of the existing residence into a farm storage, packing shed, and a bunkhouse for agricultural workers; commercial agricultural production; and aquaculture use (Exhibit 6).

Subsequently, the applicant has revised the application by withdrawing the request for the construction of a new residence and aquaculture use, and retaining the existing after-the-fact single family residence and commercial agricultural production as discussed below.

Single Family Residential Use

The applicant proposes to continue the use of the after-the-fact single family residence (Exhibit 7). The existing structure is constructed of cedar. The roof is unpainted corrugated tin.

The 400 SF residence was constructed in the fall of 1987 by the applicant without authorization from the Board or Department. According to the applicant, the residence "...was constructed under emergency conditions..." when the applicant's previous home located in the Royal Gardens subdivision of Puna was lost to lava in 1987. The applicant also installed a small gasoline generator for electricity, a small water tank, and a cesspool.

Bulldozing of the land was not required for the construction of the residence. The applicant claims that the area of the residence had been previously cleared prior to the applicant's purchase of the property. However, the applicant did clear a "few rose apple trees" in order to accommodate a small gravel parking area.

Commercial Agricultural Use

The applicant also proposes to establish a diversified commercial agricultural venture on 8 - 10 acres of the 25.5 acre parcel (Exhibit 8). The applicant proposes to grow citrus trees including oranges, lemons, tangelos, and grapefruit. Banana, and ginger are also proposed. Additionally, a plant sanctuary to collect, isolate, and cultivate over 20 varieties of native Hawaiian dry land taro is also proposed. Any bulldozing, farming and terracing of the property will be done according to the guidelines set by the Agricultural Conservations program of the U.S. Department of Agriculture.

According to the applicant, only crops that do not require irrigation will be planted. No water from the streams will be used, or is necessary, as the average rainfall in this area exceeds 150 inches annually.

The proposed agricultural venture will not use pesticides, herbicides, or chemical fertilizers. Only fertilizers derived from organic sources will be used. Green fertilizers, such as clover, oats, and legumes will be grown between crops to regenerate the soil. Ground covers and mulching will be used for weed control.

There will be no need to fumigate the soil for nemotodes (a method which is used in the normal cultivation of ginger root). By using a ground crab shell product this process is not required.

The foods produced will be sold to buyers of organically grown produce. No crops will be sold directly from the parcel to the public.

Additionally, no bulldozing along the stream banks or inclines bordering the streams is proposed to accommodate the development. All healthy and substantial koa and ohia trees will remain. Koa seedlings will be planted in areas-to-be-determined once the property has been cleared.

According to the applicant, Hawaiian Telephone has agreed to bring service up to the end of the road. HELCO has also been contacted and an agreement for a grant of easement for construction and servicing has been reached.

The remainder of the property not used for the proposed development will be set aside as a wilderness area.

SUMMARY OF COMMENTS:

This application was referred to the following agencies for review and comment: the State Department of Health, Department of Transportation, the Office of Hawaiian Affairs, the Office of State Planning, the Department of Transportation, and the Department of Agriculture; the Department of Land and Natural Resources, Aquaculture Development Program, Division of Aquatic Resources, Division of Forestry and Wildlife, Division of Land Management, Division of State Parks, the Historic Preservation Division, Division of Conservation and Resources Enforcement, the Division of Water Resource Management, and the Natural Area Reserves System; and the County of Hawaii Planning Department, Department of Water Supply, and the Department of Public Works. Summary of comments to date include the following:

It should be noted that the following agency comments were in response to the original proposal that included the following components: the construction of a single family residence; conversion of the existing residence into a farm storage, packing shed, and bunkhouse for agricultural workers; commercial agricultural production; and aquaculture use.

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

The proposed project will not impact our State highway facilities.

DEPARTMENT OF AGRICULTURE

According to the application, the applicant seeks to grow a variety of non-irrigated commodities including citrus, banana, ginger, and taro on eight to ten acres of the subject property. An existing dwelling is to be converted into a storage and packing shed and a bunkhouse for agricultural workers.

The property is situated at about 1,900 feet elevation. Annual median rainfall at the Kaiwiki gage (number 89.40) is 193 inches with the driest month being June (9.30 inches). The parcel is not classified according to the agricultural Lands of Importance to the State of Hawaii (ALISH) system. Lands situated about one-half mile east are classified "Prime" according to the ALISH system.

According to the Soil Conservation Service Soil Survey, the property is comprised of Akaka soils (rAK) with 3 to 20 percent slopes. The soil is continually wet and has an acid pH range of 5.1 to 6.0. This soil is commonly in woodland and pasture use. The property has a Land Study Bureau Overall Productivity Rating and Land Type of "D-5." This designation indicates that the soil is poorly drained, non-stoney, and poorly suited to machine tilling.

The Department of Agriculture is supportive of bona fide attempts to establish agricultural uses in agriculturally suited areas. The applicant may wish to contact the Cooperative Extension Service in Hilo to confirm the suitability of the site for the proposed crop types. If the application is approved, any clearing and grading of the property should be closely monitored.

DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF AQUATIC RESOURCES

Our Big Island biologist reports that a detailed description of the aquaculture venture was not provided in the application. Therefore, comments on the aquaculture proposal will be delayed until additional information is submitted to the Department for review.

During heavy rainfall, an intermittent stream on the property would empty into Kaiwiki Stream, a tributary of the Honolii Stream, where Lentipes were noted at the 470 ft. elevation. Therefore, activities planned may effect the aquatic resource values unless precautions are taken to prevent agriculture chemicals, debris, construction materials and other potential contaminants from blowing, flowing, or leaching into the intermittent stream bed.

DIVISION OF WATER RESOURCE MANAGEMENT

A Stream Channel Alteration Permit will be required for any stream diversion or stream alteration, in accordance with the provisions of the State Water Code.

DIVISION OF FORESTRY AND WILDLIFE

We have no objections to the purpose and intent of the proposed project.

HAWAII LAND AGENT

We have reviewed the subject application and believe it is consistent with other CDU Applications previously approved by the Board. The only inconsistency is Ms. Brach's admission that a temporary structure was constructed without benefit of Board approval.

HISTORIC PRESERVATION DIVISION

We believe that the proposed use of this parcel for agriculture, aquaculture and a single family residence is likely to have "no effect" on historic sites. Although the parcel has never been surveyed for historic sites, we feel that the likelihood of historic remains is relatively low because areas at this elevation were in forest during the prehistoric period. Evidence of forest exploitation sites is possible, but rare.

If, however, historic remains, such as artifacts, shell or charcoal deposits, burials, and stone platforms, paving, or walls are found during construction or use of the property, please direct the applicant to stop work in the immediate area and contact the State Historic Preservation Division at 587-0047 immediately. Our office will assess the situation and make recommendations for mitigative action, if needed.

DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT

The Division of Conservation and Resources Enforcement (DOCARE) conducted a site visit on the subject property and confirmed that the following work has been conducted:

A structure approximately 400 sq. ft., water tank, small gravel laid area used by the owner as a parking area and an open area that may have been a forested area prior to putting up the structure used for the dwelling.

Additionally, DOCARE reported that the applicant stated "...that those items were done by (the applicant) without a permit because she lost her house due to lava in the Royal Gardens Subdivision."

DOCARE also noted a discrepancy between the applicant's description and actual site condition/situation as described below:

The applicant stated that she will not build the home as stated in this application as well as the driveway to the proposed packing shed and to the proposed house. All she is now going to do is clear five acres to plant avocados. She ended by stating that at this date she does not know what she wants to do with the land.

Additionally, DOCARE reported that the applicant "...appears to be unsure on what she wants to do with the property. Stated that she might sell it."

COUNTY OF HAWAII

PLANNING DEPARTMENT

In response to the subject CDU application, we have no objections to the proposed agricultural uses on the subject property. According to the CDU application, the applicant proposes to construct a new residence and use the existing dwelling as a farm storage and packing shed, and as a bunk house for agricultural workers.

The subject property is situated outside the Special Management Area (SMA) of the County of Hawaii; and therefore, the proposed action is not subject to SMA review.

DEPARTMENT OF WATER SUPPLY

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

PUBLIC HEARING:

On June 13, 1991, a public hearing was held on the subject application in Hilo, Hawaii. Questions and concerns that were raised during the hearing are summarized below.

Question: Why didn't the applicant apply for a CDUA?

Answer: Staff explained that it was an emergency situation resulting from the 1987 lava flow on the applicant's previous property.

Q: If there were a violation of county ordinances, and the county were to require that the structure be torn down, then would there be any issue before the Board?

A: Yes. The issue before the Board would be to act on the Conservation District Use Application by either approving or denying the permit for the house and/or commercial agricultural production.

Q: What is the difference between this CDUA and others approved in the area?

A: The Department has processed CDUAs for houses and commercial crop production in the area. This application, absent the violation, is not significantly different from others that have been processed and approved by the Board.

Applicant's testimony: The applicant testified that she proposes to bulldoze about three to five acres in order to produce organic ginger, "maybe" taro, and avocados.

Additionally, the applicant testified that the reason she did not obtain a permit for the house was "...because (she) was losing (her) house in Royal Gardens at the same time (she) was purchasing the property in Hilo, and (she had) heard that it takes about six months to get a permit." The applicant further stated that she could not afford to pay for rent while the house was being built.

A: Did you obtain a county building permit for the existing dwelling?

Q: The applicant stated that she contacted either the building department or her realtor in which she was informed that she needed approval from the Department of Land and Natural Resources first.

Additionally, the applicant stated that she was aware that she needed a permit from the building department but was "...in a desperate moment at the time," because she could not afford to pay both rent and construction costs of the residence at the same time.

Q: Would you review again what your plans are?

A: The applicant responded by saying that she would like to farm in order to produce an income. The applicant intends to clear about three acres first, and then "maybe" another two acres next year. She stated that she does not want to clear eight acres as indicated in the application.

Q: Have you done this kind of work before?

A: The applicant responded by saying she has helped two farmer friends grow organic ginger, citrus, and pineapple.

Q: Have you had an opportunity to contact the State Extension Service and Agriculture about growing crops in your area? The soil is very acidic for crops and you are going to have a problem. Are you familiar with that? Are they growing those kind of crops up where you live?

A: The applicant responded by saying that her neighbor next door has been working on his farm for about the past three years.

Q: Do you have a water tank?

A: The applicant responded by stating that she has "...a small water tank...(j)ust enough for (her) house. We get plenty of rainfall."

Q: Is there a good market for organic products?

A: The applicant responded by stating that there is an "excellent market."

Q: How many years have you been farming?

A: The applicant responded by saying that she hasn't done any farming but would like to try. Additionally, she states that she has a friend who will be helping her farm.

ANALYSIS TO DATE:

Following review and acceptance of the application for processing, the applicant, by letter dated April 22, 1991, was notified that:

1. The proposed use is a conditional use in the Resource Subzone of the Conservation District according to Administrative Rules, Title 13, Chapter 2, as amended;
2. A public hearing pursuant to Chapter 183-41, Hawaii Revised Statutes, as amended, is required because portions of the proposed use are of a commercial nature; and
3. In conformance with Title 11, Chapter 200 of the Administrative Rules, a negative declaration was determined for the proposed action.

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. Section 13-2-21(b)(1) relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

The County of Hawaii has determined that the subject property is situated outside the Special Management Area.

A. VIOLATION

By submitting the Conservation District Use Application (CDUA) after-the-fact, the applicant has acknowledged that the existing structures, gravel parking area, and clearing were conducted without obtaining the appropriate authorization from the Board or the Department. Additionally, the Division of Conservation and Resources Enforcement (DOCARE) confirmed the presence of the after-the-fact structures, parking area, and clearing.

Furthermore, testimony at the public hearing indicates that the applicant was aware that a permit was required prior to conducting any work. However, the applicant asserts that the residence was constructed under "emergency conditions" when her home in Puna was destroyed by lava in 1987. The applicant claims that she was unable to pay both rent and construction costs at the same time.

Unauthorized use of Conservation District lands is a violation of Section 13-2-19, Hawaii Administrative Rules (HAR). It is also subject to a fine of up to \$500.00 per violation pursuant to Section 183-41, Hawaii Revised Statutes (HRS).

A total of four (4) violations of Title 13-2 and 183-41 HRS have been identified and are subject to a \$500.00 fine. The violations identified include the following: (1) single family residence, (2) water tank, (3) gravel parking area, and (4) clearing of the site.

B. APPLICATION

The application consists of two components: (1) single family residential use, and (2) commercial agricultural production, as discussed below.

SINGLE FAMILY RESIDENTIAL USE

The proposed single family residential use is consistent with the surrounding land uses of the area. The following list and Exhibit 9 show Conservation District Use Applications within the surrounding area that were approved by the Board.

TAX MAP KEY: 2-6-11:

PARCEL 3:

CDUA HA-2428: On March 8, 1991 the Board approved HA-2428 for a single family residence and experimental orchard subject to 12 conditions.

PARCEL 8:

CDUA HA-2023: On September 11, 1987, the Board approved HA-2023 for a single family residence and agricultural use subject to 9 conditions. The permit was later declared invalid by the Department due to the applicant's non-compliance with several of the conditions contained within the permit.

CDUA HA-2354: On June 22, 1990, the Board approved HA-2354 for a single family residence and farm subject to 13 conditions.

PARCEL 23:

CDUA HA-2096: The Board approved CDUA HA-2096 for a single family residence and storage building on April 22, 1988 subject to a \$1,000 fine (13 violations) and 11 conditions.

CDUA HA-2270: On September 22, 1989, the Board approved CDUA HA-2270 for commercial property development (commercial agriculture) and single family residence subject to 13 conditions. (Note, the single family residence approved in CDUA HA-2096 was converted into a farm shed.)

PARCEL 25:

CDUA HA-2031: On October 23, 1987, the Board approved HA-2031 for a single family residence (including a house, orchard, and garden) subject to a \$500.00 fine (5 violations) and 14 conditions.

PARCEL 32:

CDUA HA-2274: On October 13, 1989 the Board approved HA-2274 for a single family residence and commercial agricultural development subject to 11 conditions.

PARCEL 34:

CDUA HA-2022: On September 11, 1987, the Board approved HA-2022 for a single family residence, children's play area, cesspool and water catchment system subject to 11 conditions.

PARCEL 35:

CDUA HA-1946: On January 23, 1987, the Board approved HA-1946 for a shelter for meteorological recording equipment and lodging use subject to 10 conditions.

PARCEL 36:

CDUA HA-1934: On January 23, 1987, the Board approved CDUA HA-1934 for a single family dwelling, garden and orchard subject to 12 conditions.

The majority of these CDUAs are a combination of single family residential use and agricultural use. Additionally, 2 of the 10 applications were found to be in violation of Title 13-2, HAR and 183-41, HRS and fines were imposed by the Board.

The subject after-the-fact single family residence appears to be consistent with the existing surrounding land uses as well as with past Board's actions in the area. Additionally, the applicant has retained the majority of the open-space characteristics of the subject property. However, staff notes that the roof is unpainted corrugated tin. In order to ensure that the structure will harmonize with the existing surrounding environment, staff recommends that the roof be painted to blend in with the environment.

Commercial Agricultural Use

The applicant's original proposal contemplated a diversified commercial agricultural venture on 8 - 10 acres of the 25.5 acre parcel. The applicant's proposal included growing citrus trees (such as oranges, lemons, tangelos, and grapefruit), banana, and ginger. Additionally, the applicant also proposed a plant sanctuary to cultivate over 20 varieties of native Hawaiian dry land taro.

The applicant has since testified at the public hearing that the scope of the commercial agricultural enterprise has been reduced to farming organic ginger, and "maybe" taro and avocados on about 3 - 5 acres.

Staff is concerned with this proposal for commercial agricultural production as currently represented by the applicant. The original proposal clearly stated the purpose, intent and scope of the commercial agricultural production. However, during the processing of this CDUA, the original proposal has eroded to such an extent that staff is uncertain as to what the applicant is proposing at this time. Moreover, DOCARE's report further substantiates the applicant's apparent ambiguity regarding the potential use of the subject property. The applicant has not clearly demonstrated to staff the components, extent, and methods to carry out the revised proposal for commercial agricultural production.

Although commercial agricultural use is consistent with the existing surrounding land use approved by the Board in the past, staff is reluctant to recommend approval to the Board at this time. However, we do recommend that the applicant contact the Cooperative Extension Service for assistance with regards to the suitability of the project site for the proposed crop types.

Comments from the various agencies indicate no objections to the proposed single family residential use or agricultural use. Additionally, staff notes the compatibility and consistency of the applicant's proposal to other surrounding areas. The proposal also is consistent with the objective of the Resource subzone.

Staff, therefore, recommends the following:

RECOMMENDATION:

A. Violation

1. That the applicant be assessed a fine of \$500.00 each for four (4) violations of Chapter 183-41 HRS, and Title 13 Chapter 2 of the Department's Administrative Rules, as follows:
 - a. single family residence;
 - b. water tank;
 - c. gravel parking area; and
 - d. clearing of the project site.
2. That the applicant be assessed a fine totaling \$2,000.00 for those identified violations; and
3. That failure on the part of the applicant to comply with Section A, "Violation," within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of Attorney General for disposition to include all administrative costs.

B. Application

Single Family Residential Use

That upon compliance with Part A, "Violation," the Board approve the after-the-fact single family residential use (including the water tank and gravel parking area) at Hilo, Hawaii, TMK: 2-6-11: 22, subject to the following:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health Administrative Rules;

4. The single family dwelling shall not be used for rental or any other commercial purposes;
5. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as a part of the deed instrument;
6. If historic remains, such as artifacts, shell or charcoal deposits, burials, and stone platforms, paving, or walls are found during construction or use of the property, the applicant shall stop work in the immediate area and contact the State Historic Preservation Division at 587-0047 immediately. The State Historic Preservation Division will assess the situation and make recommendations for mitigative action, if needed;
7. That the roof be painted to blend in with the surrounding environment;
8. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
9. That all representation relative to mitigation set forth in the accepted Environmental Assessment for this proposed use are hereby incorporated as conditions of this approval;
11. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and
12. Other terms and conditions as prescribed by the Chairperson.

Commercial Agricultural Production

That the Board deny without prejudice, the applicant's proposal for commercial agricultural production use for the following reason:

The components, extent, and methods to carry out the revised proposal for commercial agricultural production have not been clearly stated.

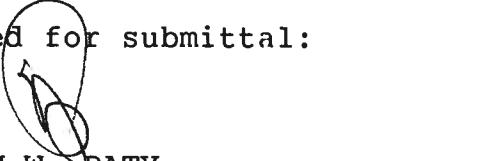
Respectfully submitted



Catharine Tilton
Staff Planner

Attachments

Approved for submittal:



WILLIAM W. PATY

LIST OF EXHIBITS

1. Island Location
2. Regional Location
3. Tax Map Key
4. Subzone
5. Existing Conditions on the Subject Parcel
6. Original Proposal
7. Construction Plans for the After-the-fact Single Family Residence
8. Diversified Commercial Agricultural Venture
9. Surrounding Land Use

HAWAII

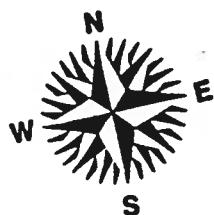
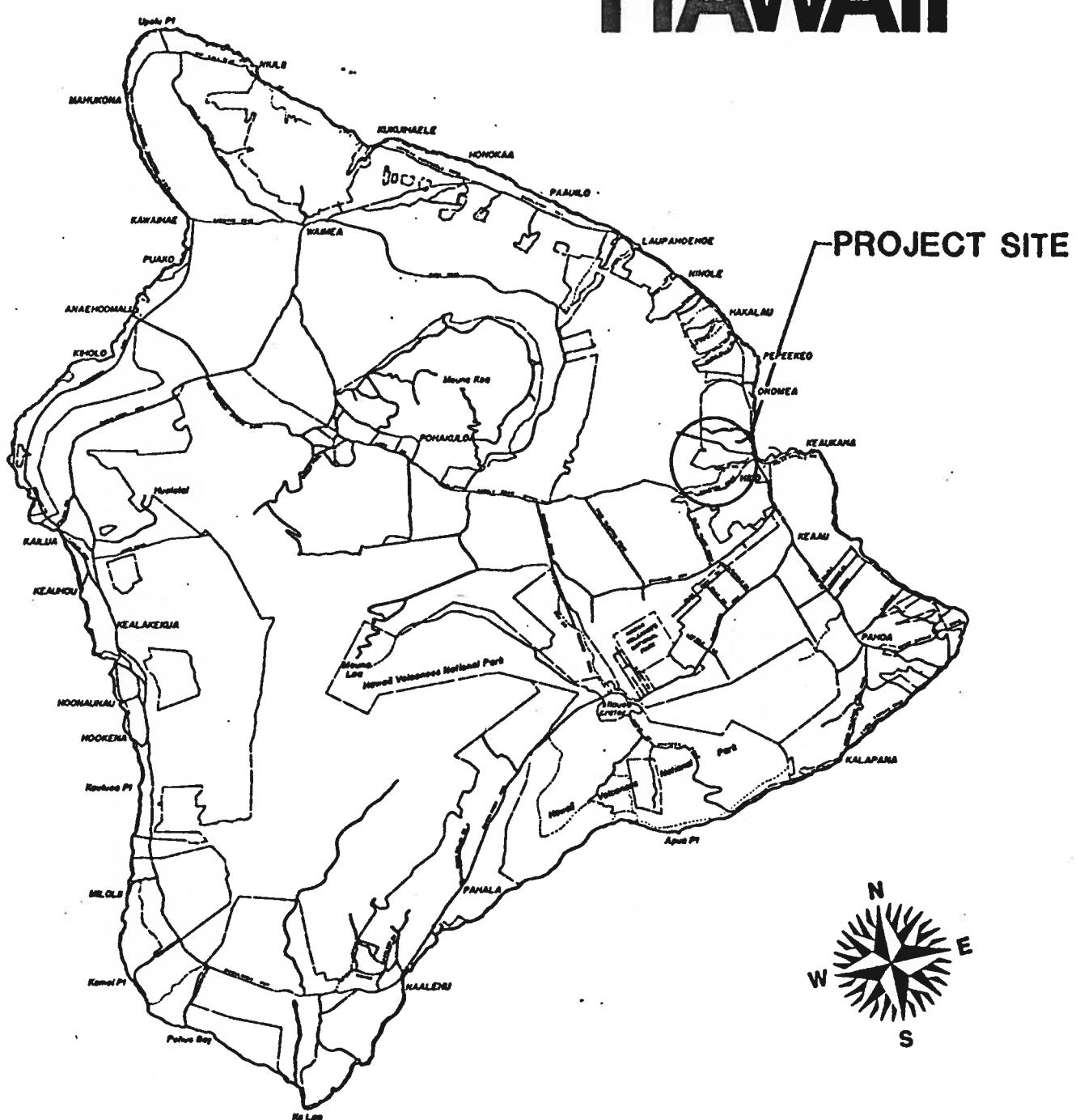


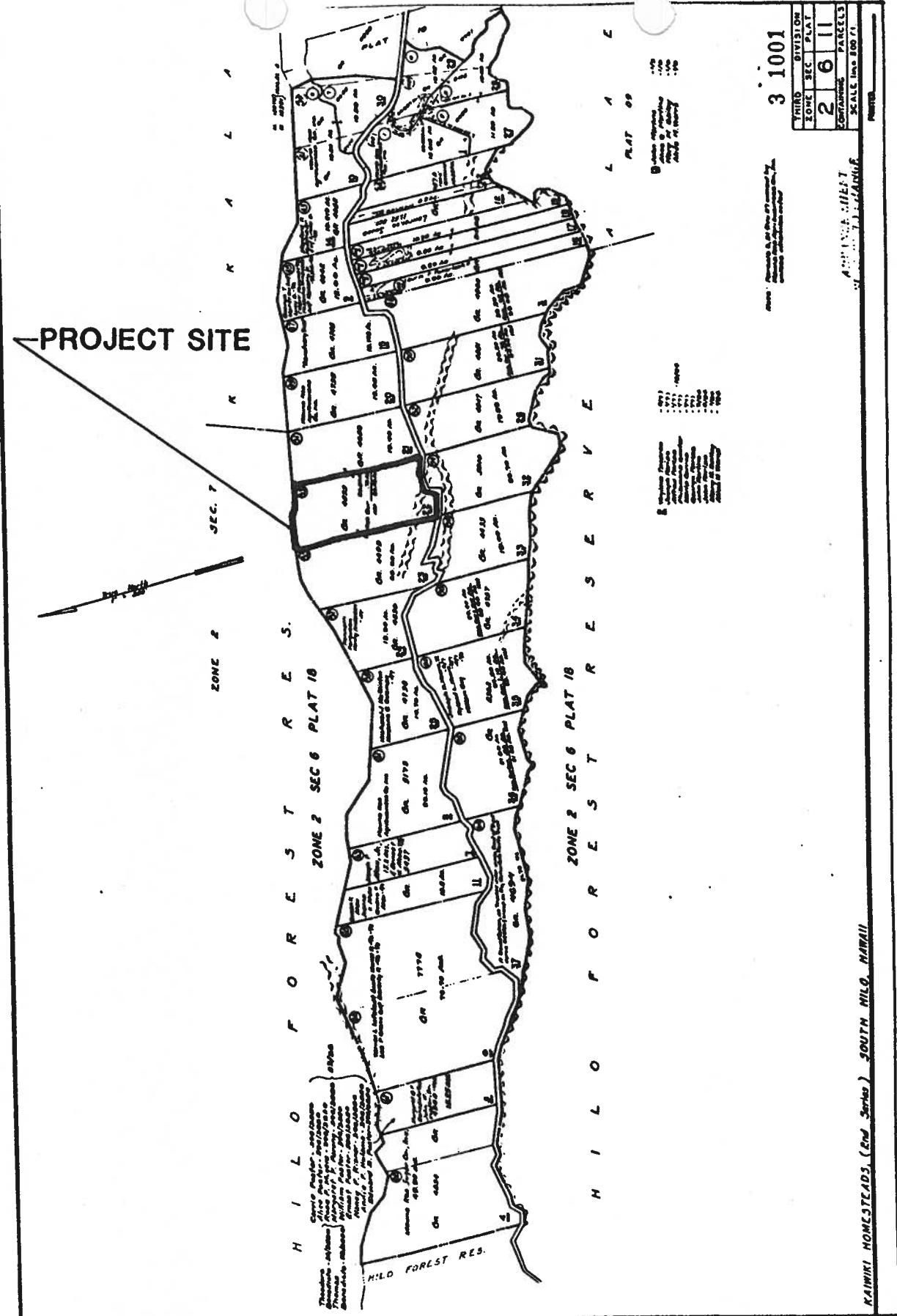
EXHIBIT 1



NORTH

CDUA NO. HA-2474
 APPLICANT Annie Brach
 AGENT
 TMK 2-6-11: 22

PROTECTIVE
 RESOURCE
 LIMITED
 GENERAL

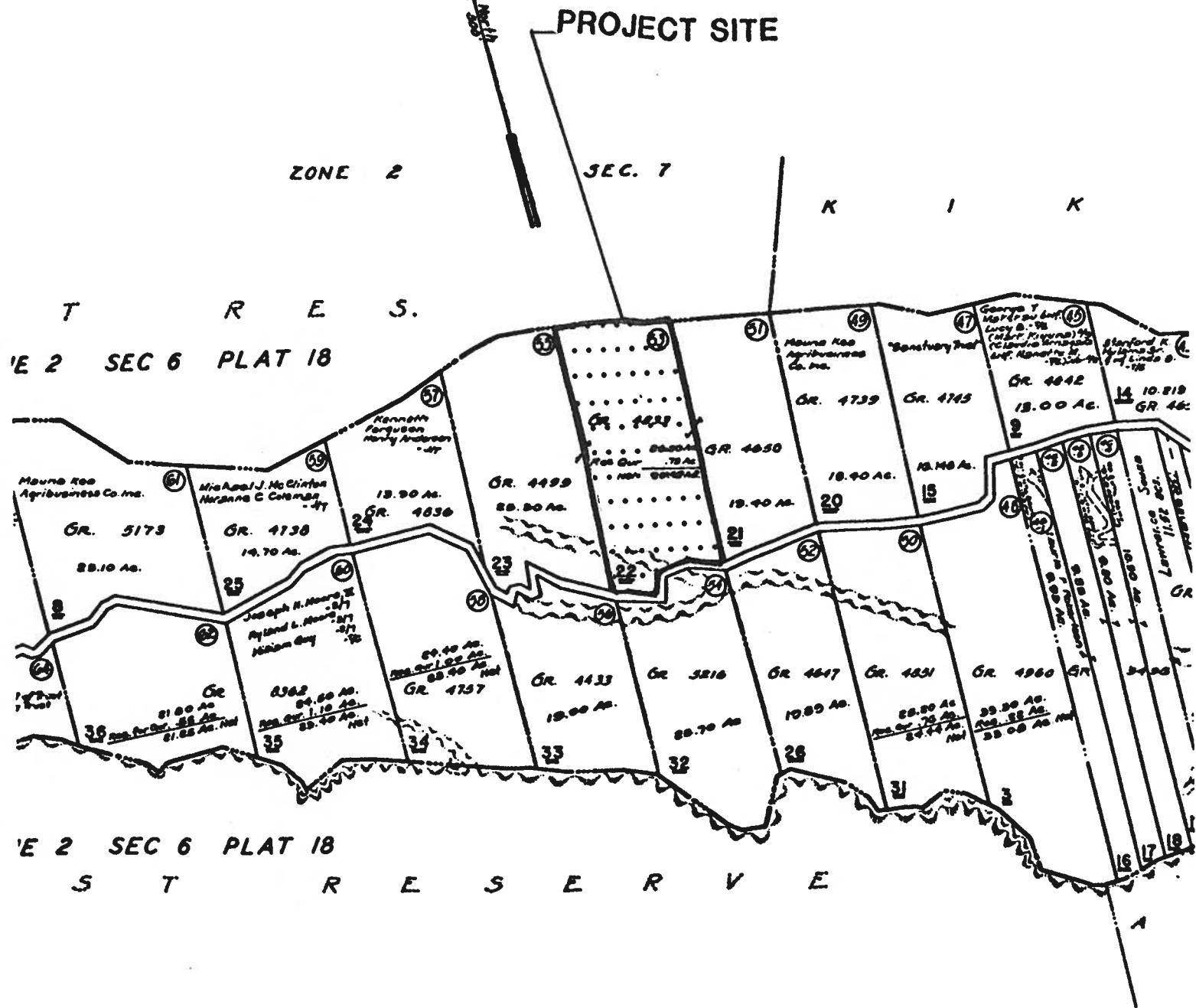


NORTH

CDUA NO. HA-2474
APPLICANT Annie Brach
AGENT
TMK 2-6-11: 22

EXHIBIT 2

SUBZONE **PROTECTIVE**
 RESOURCE
 LIMITED
 GENERAL



2	Virginia Fariss	- 8/2
	Joseph Fariss	- 9/2
	Alfred Fariss	- 1/1
	Philomena Ginter	- 1/1
	Barbie Carter	- 9/1
	George Fariss	- 7/2
	John Martinez	- 3/2
	John Fariss	- 6/24
	Mary M. Bailey	- 1/24
	Alice M. Fariss	- 1/24

Note: Parcels 8, 31 thru 37, Mounka Kao Agriculture, uniting otherwise as

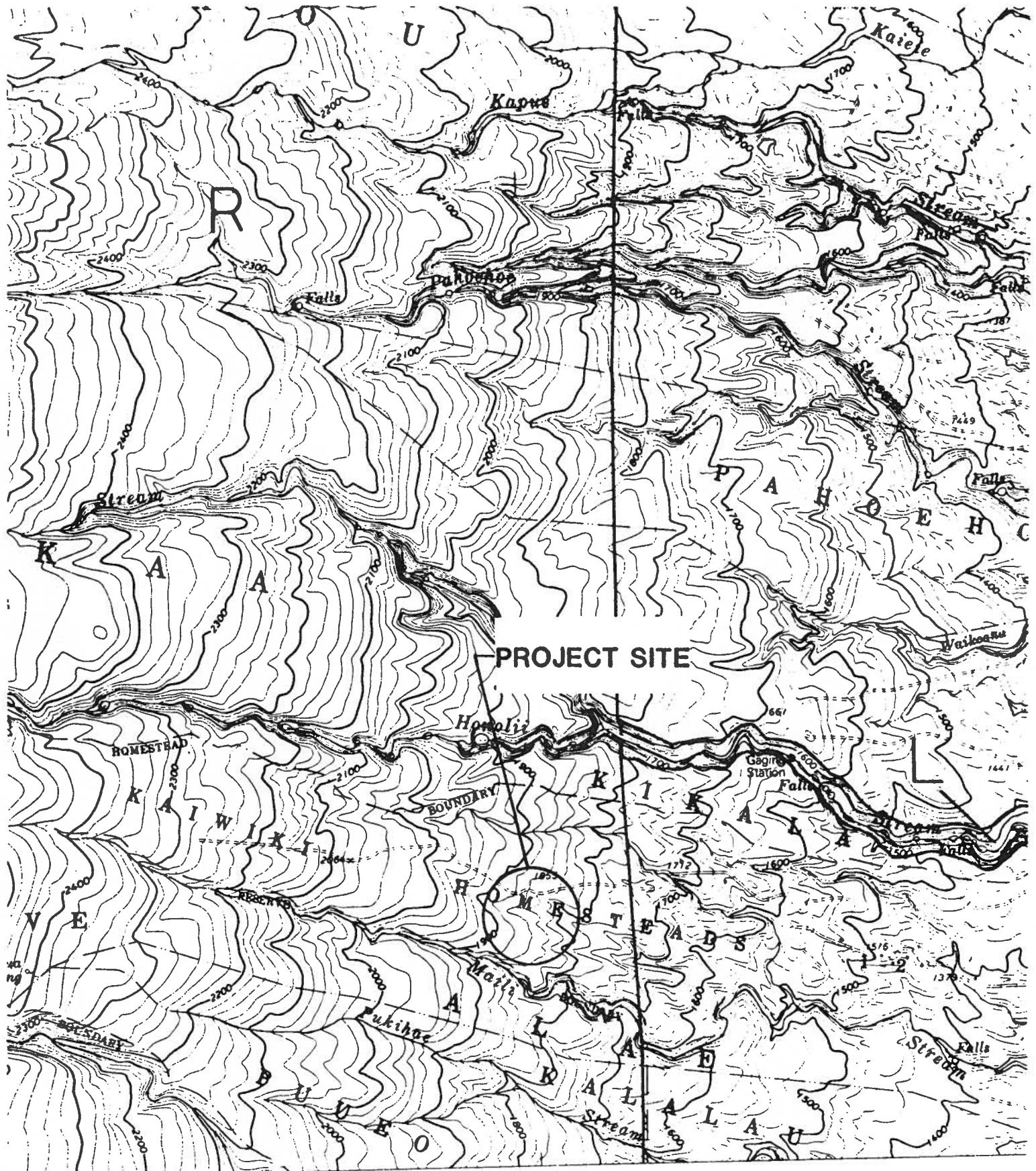
A circular compass rose with a crosshair pattern. The word "NORTH" is printed in capital letters below the circle.

NORTH

CDUA NO. HA-2474
APPLICANT Annie Brach
AGENT _____
TMK 2-6-11: 22

EXHIBIT 3

SUBZONE PROTECTIVE
 RESOURCE
 LIMITED
 GENERAL



CDUA NO. HA-2474
APPLICANT Annie Brach
AGENT
TMK 2-6-11: 22

EXHIBIT 4

SUBZONE **PROTECTIVE**
 RESOURCE
 LIMITED
 GENERAL

25.5 acres
TMK. 3-2-6-11-22
Lot # 53

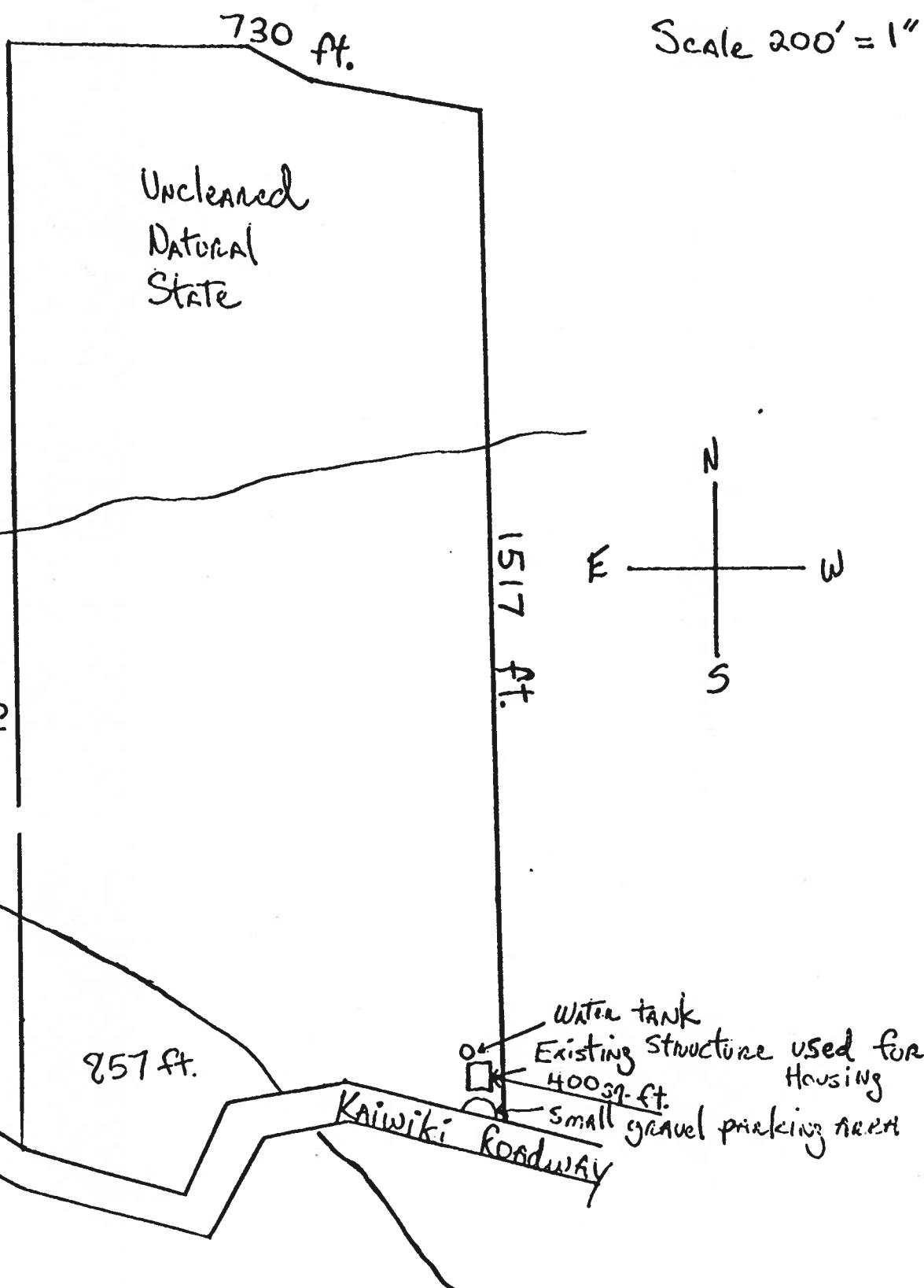


EXHIBIT 5

CDUA NO. HA-2474
APPLICANT Annie Brach
AGENT _____
TMK 2-6-11: 22

PROTECTIVE
RESOURCE
LIMITED
GENERAL

NORTH

25.5 acres
TMK. 3-2-6-11-22
Lot # 53

Scale 200' = 1"

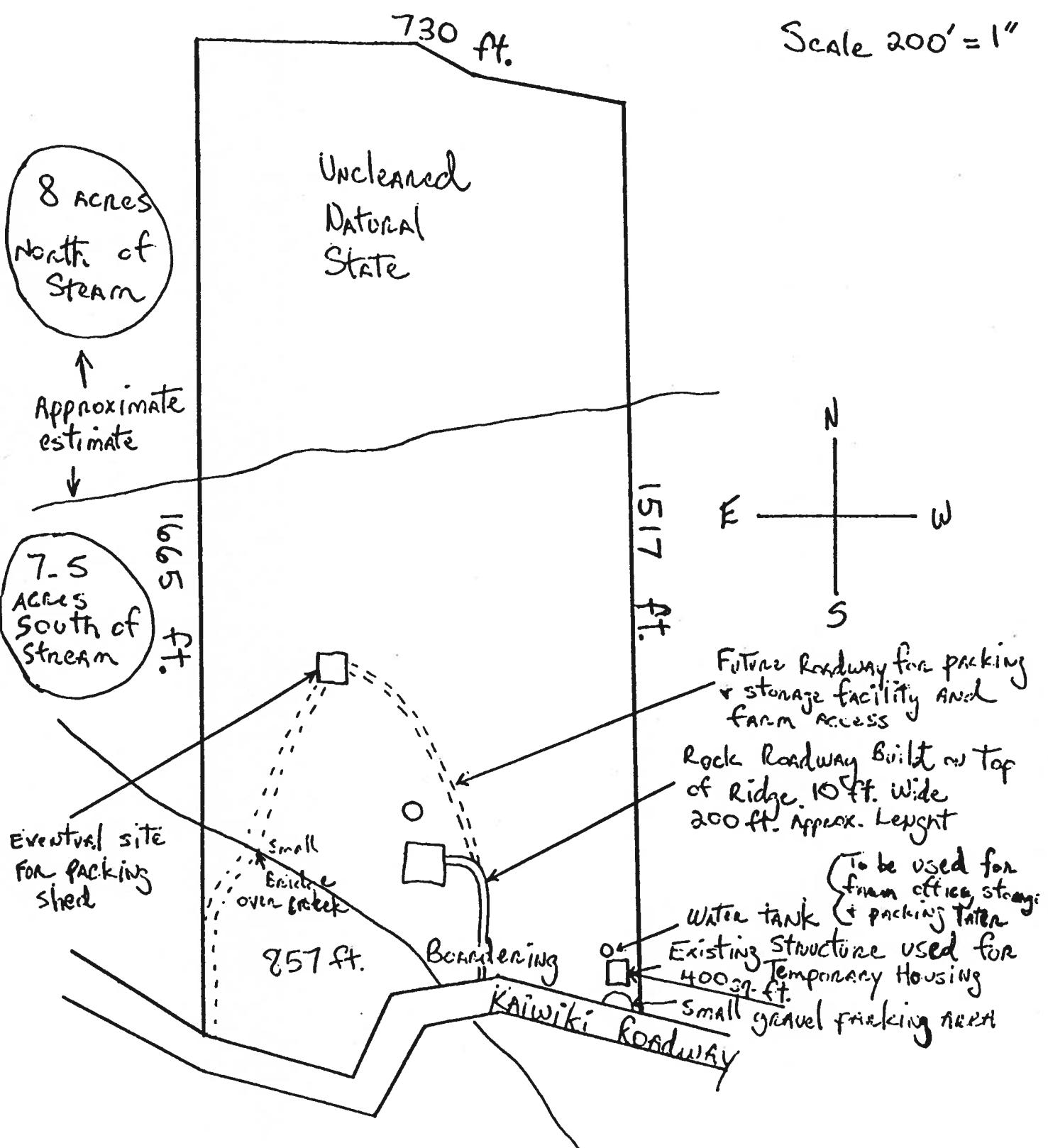
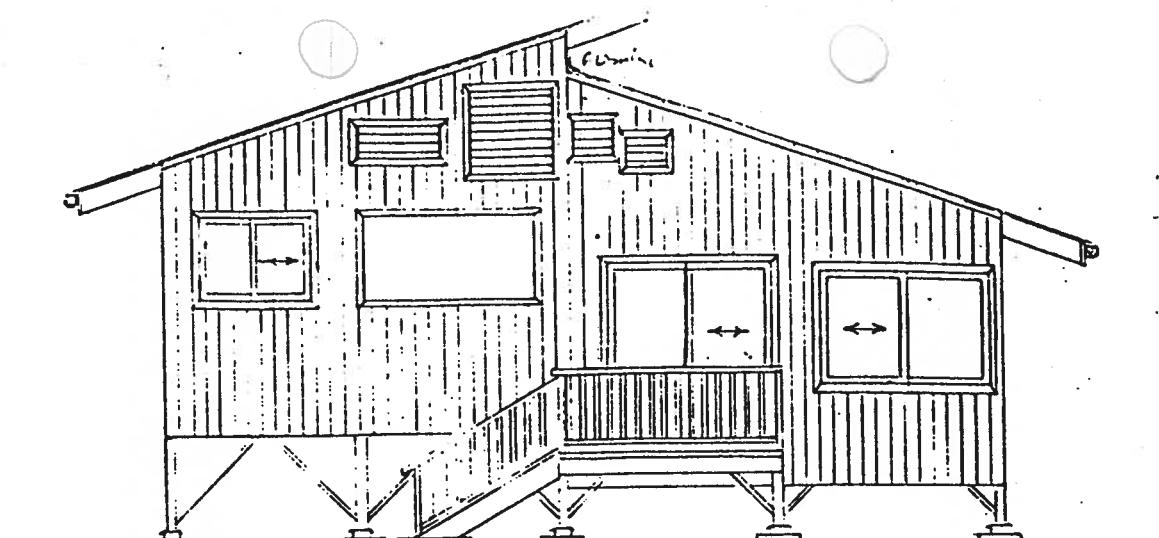


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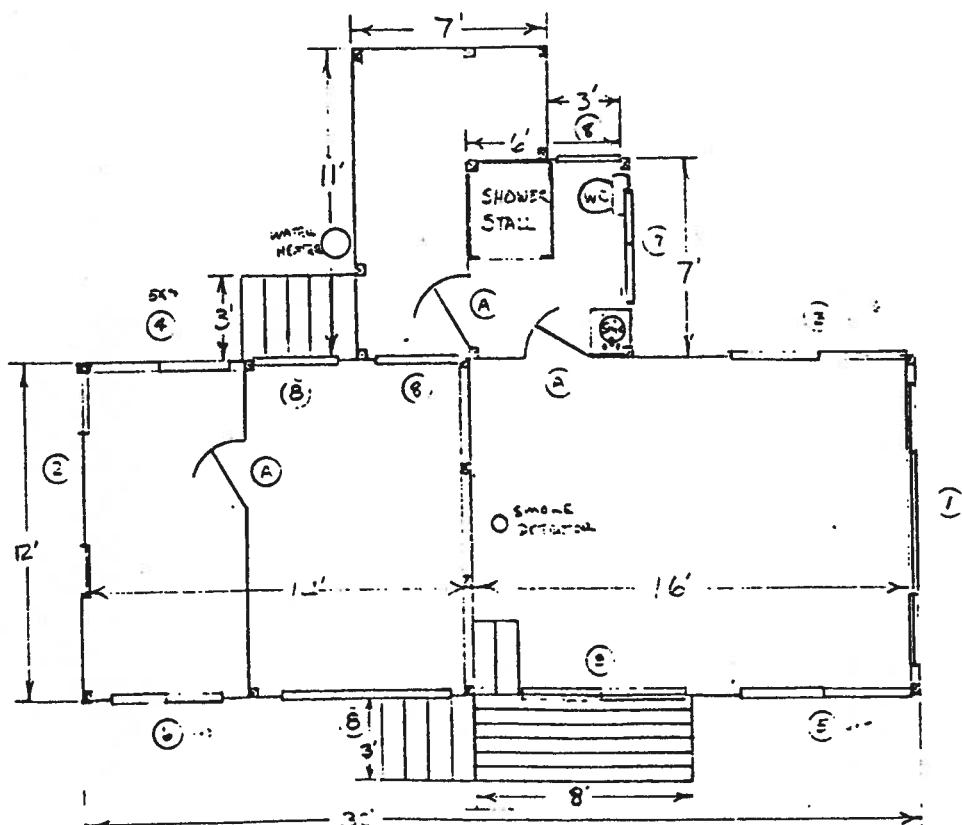
CDUA NO. HA-2474
APPLICANT Annie Brach
AGENT _____
TMK 2-6-11-22

PROTECTIVE
RESOURCE
LIMITED
GENERAL

NORTH



FRONT Elevation



FLOOR PLAN

SCALE: 1/4

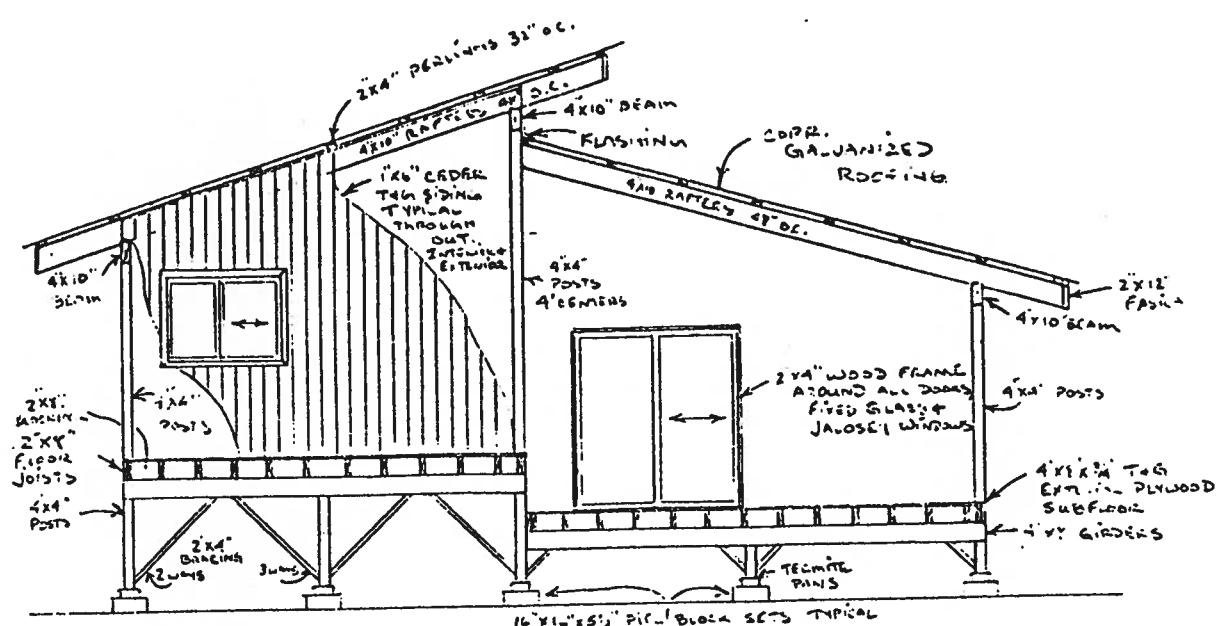
EXHIBIT 7

CDUA NO. HA-2474
 APPLICANT Annie Brach
 AGENT _____
 TMK 2-6-11: 22

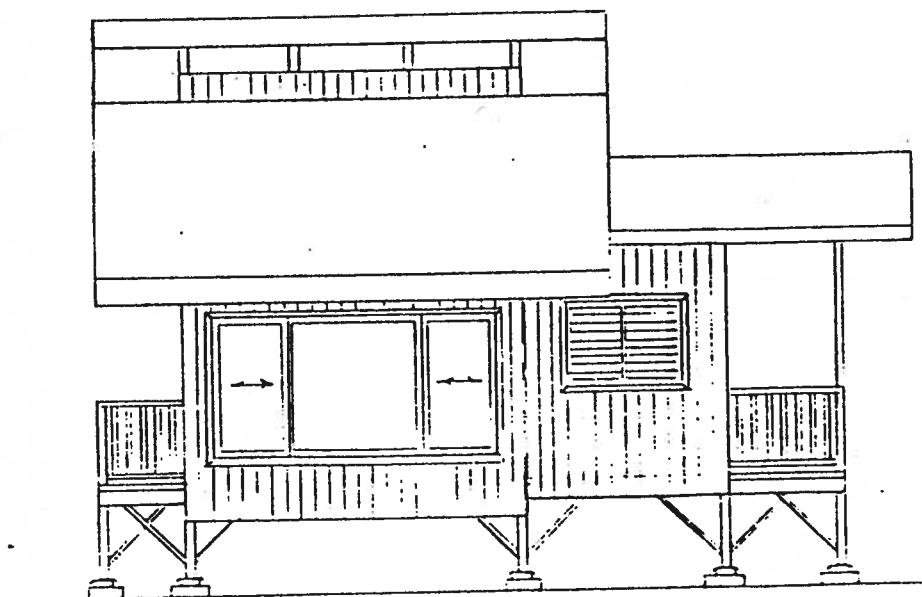
NORTH

Page 1 of 4

SUBZONE	<input type="checkbox"/>	PROTECTIVE
	<input type="checkbox"/>	RESOURCE
	<input type="checkbox"/>	LIMITED
	<input type="checkbox"/>	GENERAL



TYPICAL CROSS SECTION POST & BEAM CONSTRUCTION



LE: X1" = 1 FT.

Page 2
of 4

EXHIBIT 7

Page 2 of 4

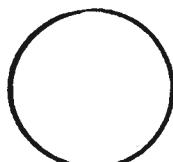
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	<input type="checkbox"/>	GENERAL

CDUA NO. HA-2474

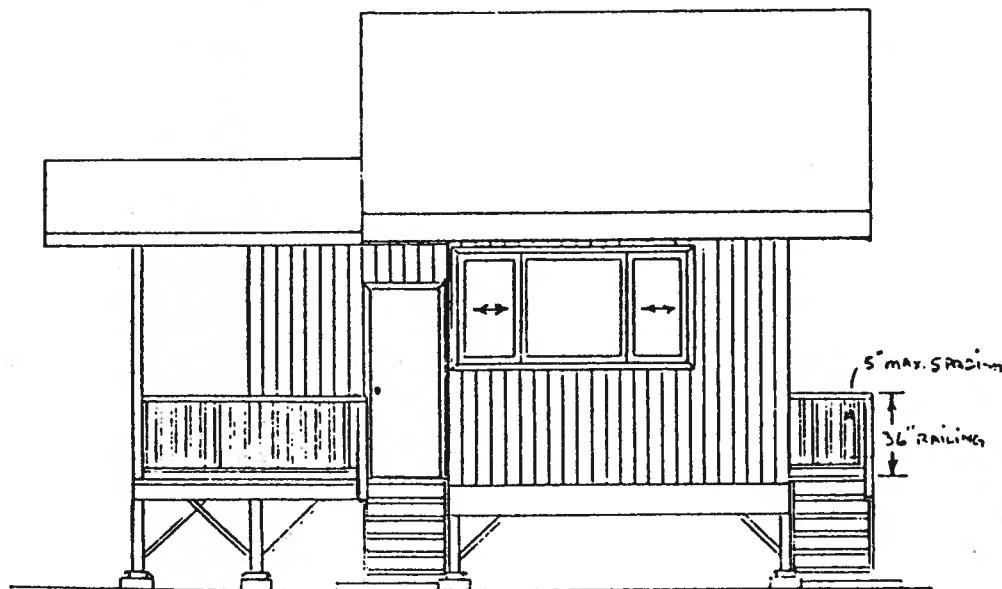
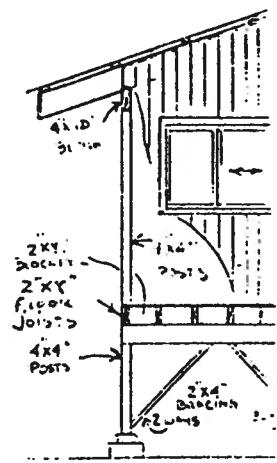
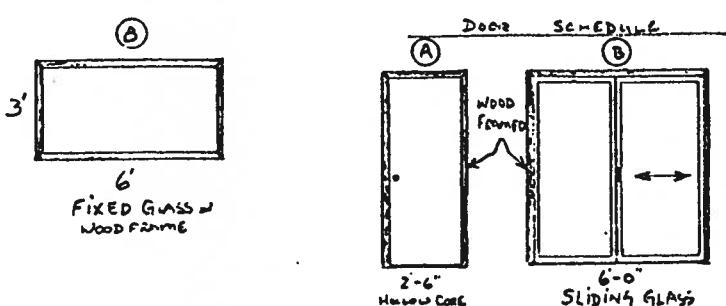
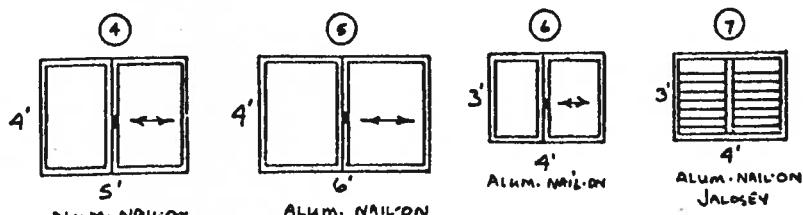
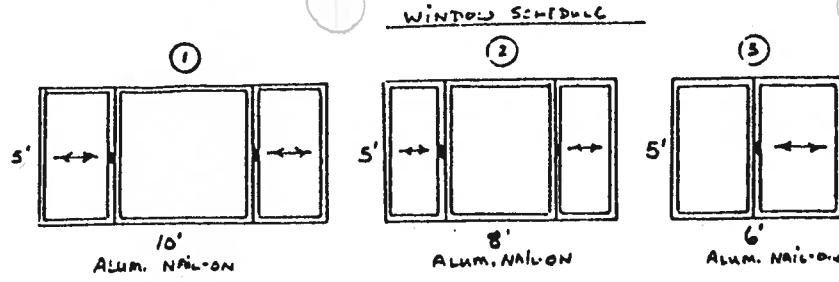
APPLICANT Annie Brach

AGENT _____

TMK 2-6-11: 22



NORTH



LEFT ELEVATION

Scale: 1" = 10'

EXHIBIT 7

Page 3 of 4

PROTECTIVE

RESOURCE

LIMITED

GENERAL

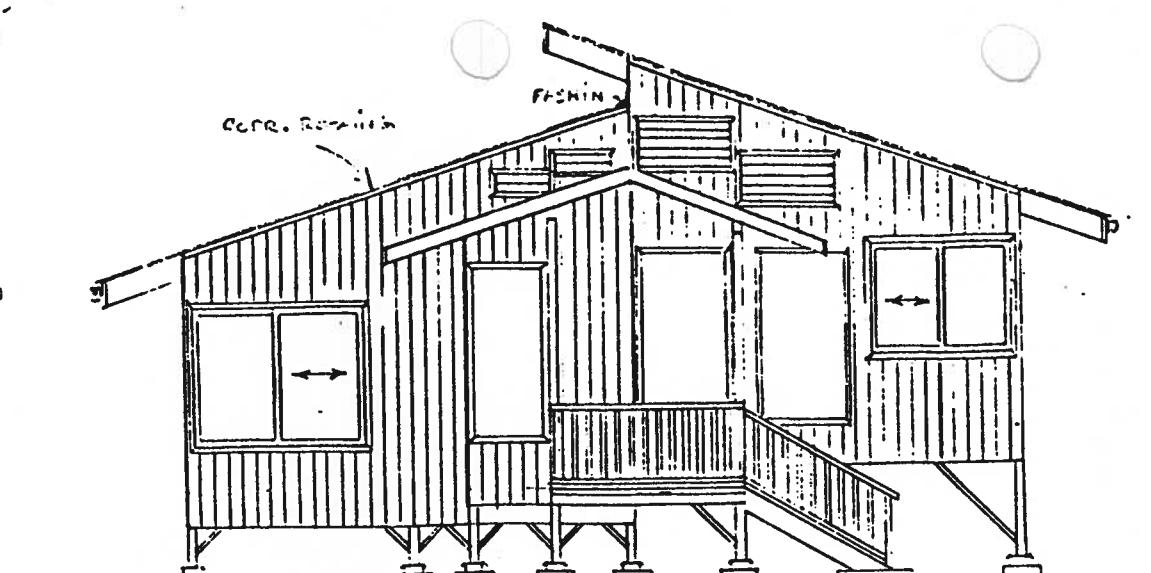
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APPLICANT Annie Brach

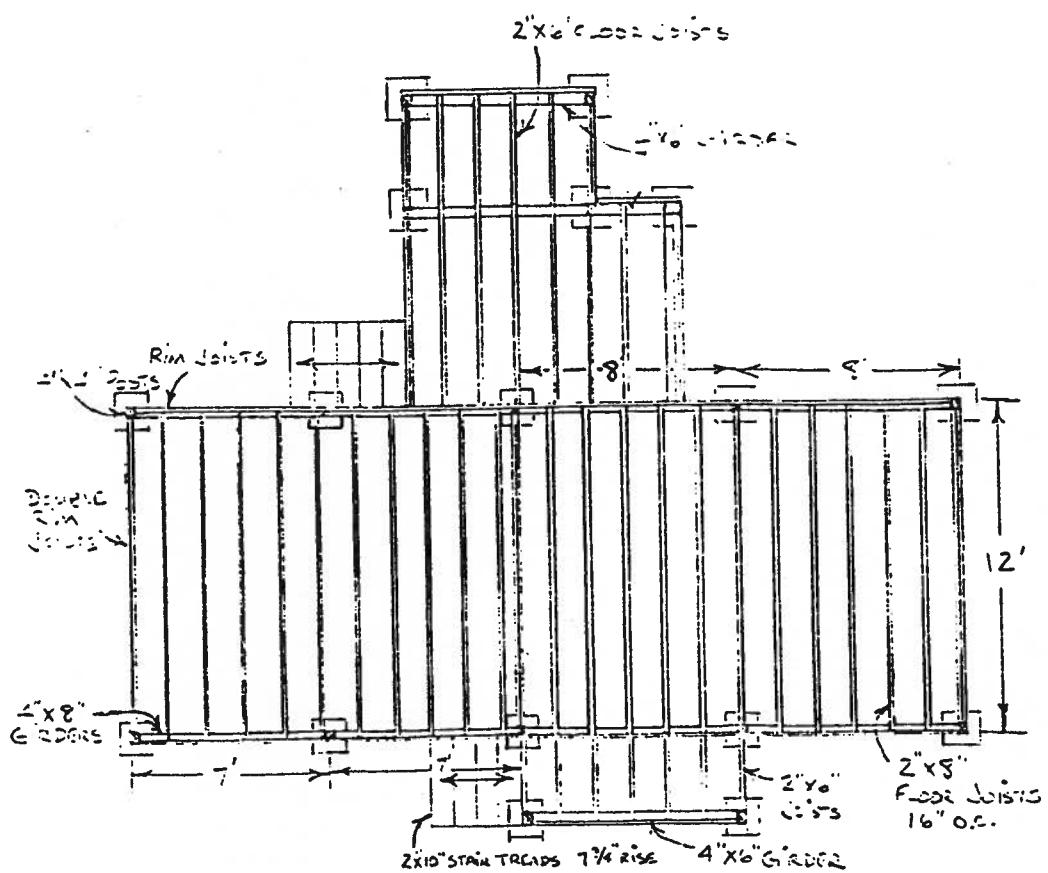
AGENT

TMK 2-6-11: 22

NORTH



REAR ELEVATION



FLOOR FRAMING PLAN

$1/4" = 1'$

PAGE 1
OF 2

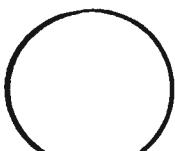
Annie Brach -
Lat #53-Kaiki Homestead, Kauai, Hawaii
TMK: 3-2-6-11-22

EXHIBIT 7

Page 4 of 4

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<input checked="" type="checkbox"/>	RESOURCE
<input type="checkbox"/>	LIMITED
<input type="checkbox"/>	GENERAL

CDUA NO. HA-2474
APPLICANT Annie Brach
AGENT _____
TMK 2-6-11: 22



NORTH

Hilo Forest Reserve

Highlighted Area to be bulldozed

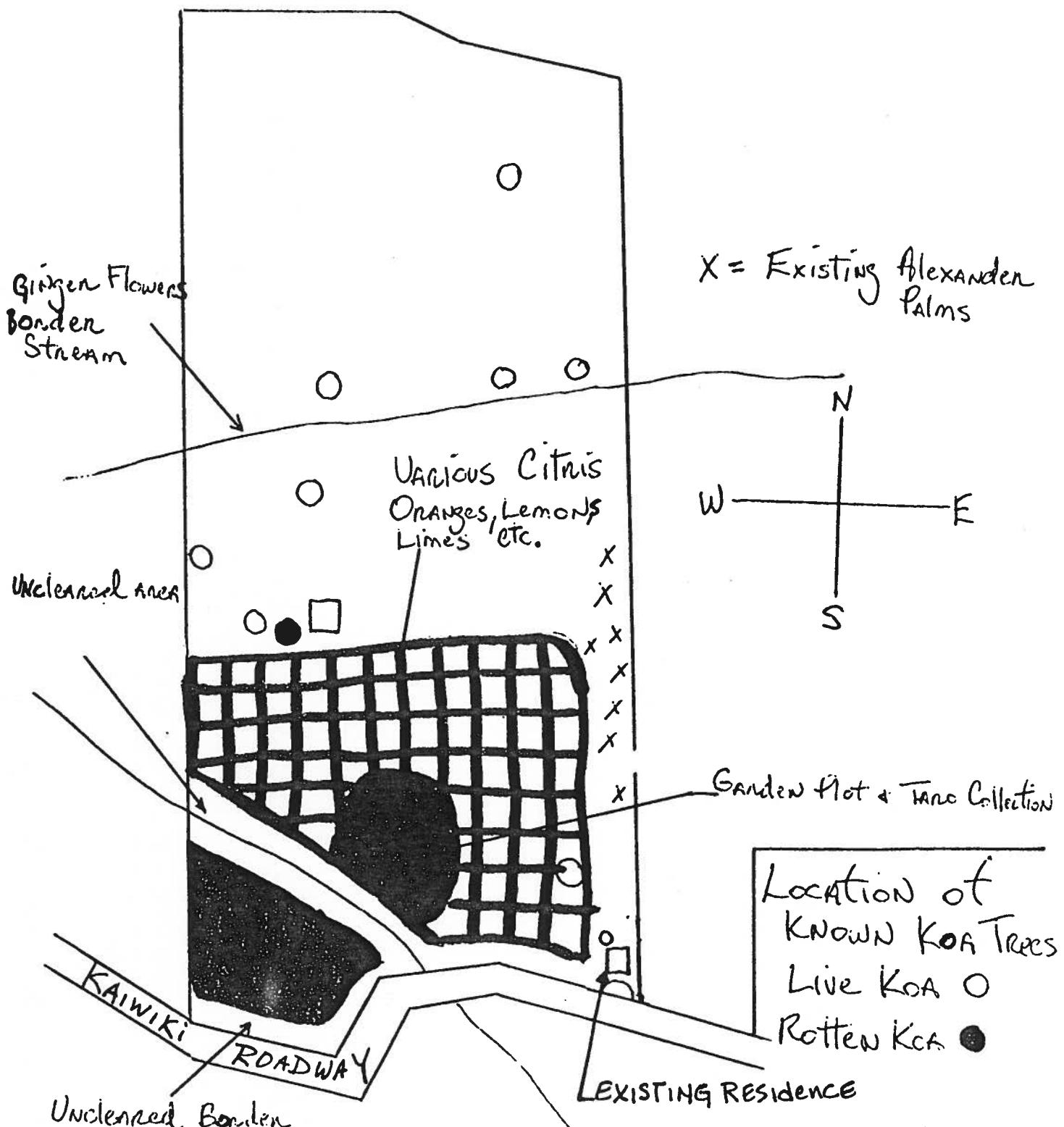
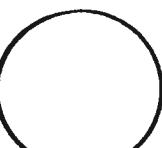


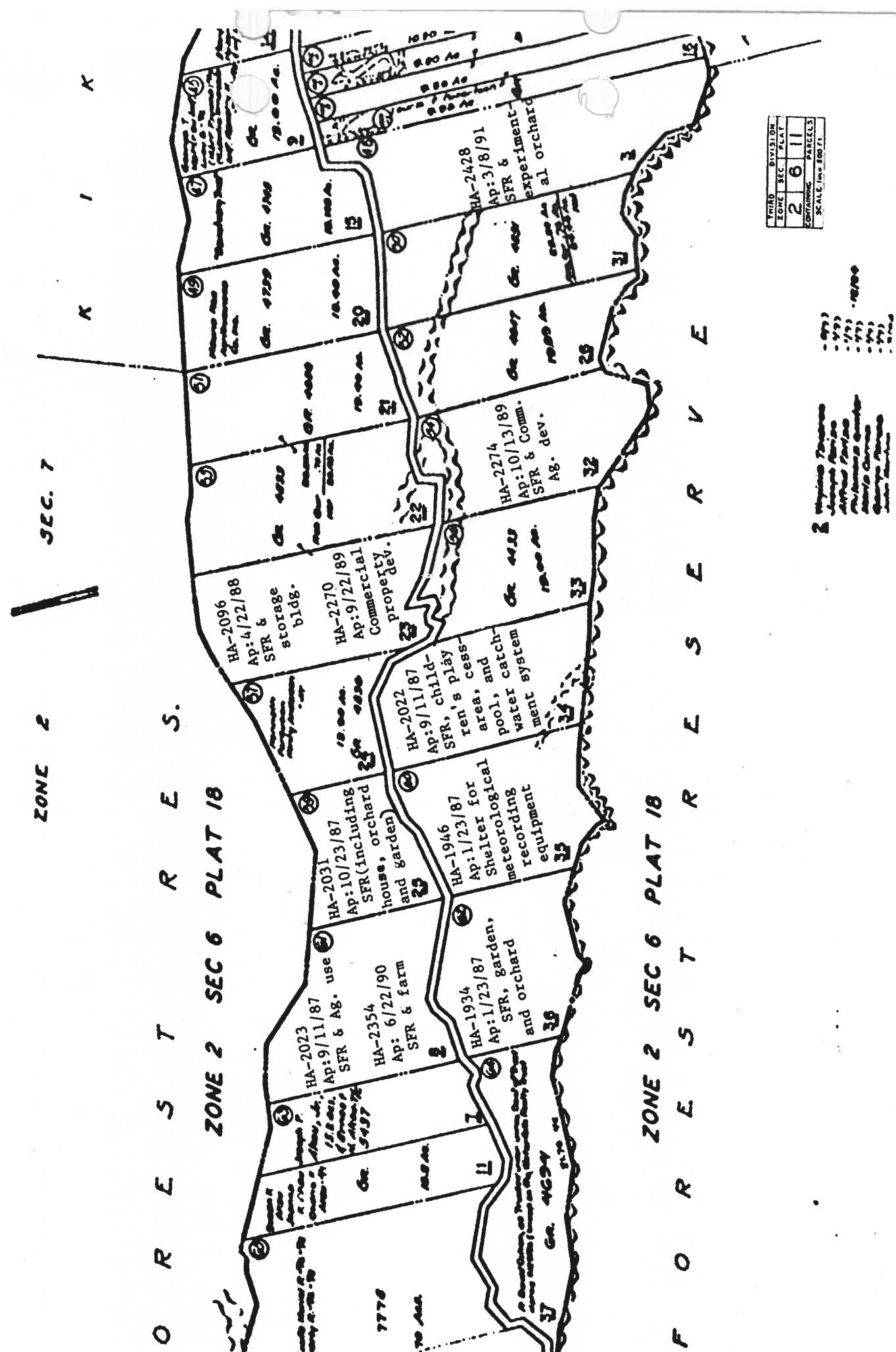
EXHIBIT 8



NORTH

CDUA NO. HA-2474
 APPLICANT Annie Brach
 AGENT _____
 TMK 2-6-11: 22

PROTECTIVE
 RESOURCE
 LIMITED
 GENERAL



CDLIA NO HA-2474

APPLICANT Annie Brach

AGENT

AGENT _____

NORTH

EXHIBIT 9

PROTECTIVE
RESOURCE
LIMITED
GENERAL