

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawaii**

**April 27, 2018**

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

**REGARDING:** Extension Request HA-18-08, Time Extension Request for Conservation District Use Permit (CDUP) HA-3682 regarding a single-family residence

**PERMITTEE:** Maria Shon Magsalin

**LOCATION:** Wa`awa`a, Puna, Hawaii

**TMK:** (3) 1-4-028:007

**AREA OF USE:** 1412 ft<sup>2</sup>

**SUBZONE:** Resource

**BACKGROUND**

On December 13, 2013, the Board of Land and Natural Resources issued Conservation District Use Permit (CDUP) to Maria Shon Magsalin to build a one-story single family residence on post-and-pier with a developed area of 1365 square feet on the above subject parcel.

The residence will be set back 58 feet from the shoreline, at an elevation of 30 to 35 feet above sea level. It is not in a tsunami or large-wave inundation zone. A parcel owned communally by the Wa`awa`a subdivision-owners separates the subject parcel from the pāhoehoe shelf along the coast.

As a condition of the permit, work was to be initiated within one year (December 12, 2014) and completed within three years (December 12, 2016).

The staff report on CDUP HA-3682 is attached as **Exhibit 1**.

The location of the parcel is shown on **Exhibit 2**.

In October 2014 the permittee notified the Department that she was experiencing delays in finalizing the construction plans for the residence, and requested a one-year extension of the deadlines. The Department had no objections to the request, and the Chair of the Board of Land and Natural Resources approved a one-year extension to the construction deadlines pursuant to Hawai'i Administrative Rules (HAR) § 13-5-43 Time Extensions (a) *Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit*, and (b) *Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.*

The permit was amended to read that the work must be initiated before December 13, 2015 and be completed by December 13, 2017. The permittee was notified that further extensions would require approval by the full Board of Land and Natural Resources.

#### **SECOND TIME EXTENSION REQUEST**

In October 2017 the permittee applied for a second-time extension. She reported that she had initiated work on the property, and had cleared the property and installed the permitted septic tank. However, she stated that she was having trouble securing financing and finding a contractor for the project, and requested a three to five-year extension on the deadline for completing the residence.

This request is attached as **Exhibit 3**.

In reviewing the request, OCCL learned that the property was for sale, and that the MLS listing disclosed the existence of a one bedroom 360 square-foot cottage on the property. OCCL notified that the permittee that we were unable to consider the time extension request, as there appeared to be a potential violation of the permit conditions.

MLS# 610242 for the property is attached as **Exhibit 4**.

OCCL's response to the permittee regarding the request is attached as **Exhibit 5**.

The permittee submitted her response to OCCL on January 8, 2018. She stated that the County Planning Department had approved the temporary dwelling, and that she was not aware that any permit would be needed from DLNR.

The permittee's response is attached as **Exhibit 6**.

## **BASIS AND AUTHORITY FOR GRANTING TIME EXTENSIONS**

A time extension may be sought when a permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a permittee demonstrates some sort of hardship or delay in initiating work on a particular project. The permittee should be able to demonstrate that the hardship or delay was not self-imposed and that a good faith effort had been made to undertake the project.

The authority for the granting of time extensions is provided in §13-5-43, Hawaii Administrative Rules (HAR), which allows for a permittee to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

The relevant sections are §13-5-43:

*(a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.*

...

*(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.*

... and

*(f) Temporary variances are excluded from this provision.*

## **DISCUSSION**

As the Board has the authority to grant or deny time extension requests, OCCL is forwarding the permittee's request for review. The extension request was submitted in a timely manner pursuant to HAR §13-5-43.

We note that the existing 'temporary' residence on the property does not appear to be consistent with the permit that was approved by the Board. In addition, this structure is inconsistent with the project detailed in the Final Environmental Assessment and FONSI as published in the Environmental Notice on September 24, 2013, which was approved by the Board.

In addition, OCCL has not approved any building plans for such a structure, as required pursuant to condition 7 of CDUP HA-3682, which reads *"Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application"*

OCCL has consulted with the County of Hawai'i Planning Department, who stated that they did not approve the construction of the current dwelling.

**RECOMMENDATION**

Based on the above, OCCL recommends that the Board of Land and Natural Resources defer the request for an extension of the deadlines of CDUP HA-3682 for the Magsalin Single Family Residence in Wa'awa'a, Puna District, Hawai'i, TMK (3) 1-4-028:007 until the issues regarding potential permit and land use violations are resolved.

OCCL also recommends that the permit be voided if the issues are not resolved within one year of this date.

Respectfully submitted,



Michael Cain  
Office of Conservation and Coastal Lands

Approved for submittal:



Suzanne D. Case, Chairperson  
Board of Land and Natural Resources

**STATE OF HAWAI'I**  
**DEPARTMENT OF LAND AND NATURAL RESOURCE**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawai'i**

180-Day Exp. Date: Jan 21, 2014

December 13, 2013

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawai'i**

<b>REGARDING:</b>	Conservation District Use Application (CDUA) HA-3682: Single Family Residence
<b>APPLICANT:</b>	Shon Magsalin
<b>AGENT:</b>	Ron Terry, Geometrician Associates
<b>LOCATION:</b>	Wa'awa'a, Puna, Hawai'i
<b>TMKs:</b>	(3) 1-4-028:007
<b>AREA OF PARCEL:</b>	0.415 acres
<b>AREA OF USE:</b>	1412 ft <sup>2</sup>
<b>SUBZONE:</b>	Resource

**DESCRIPTION OF AREA AND PROPOSED USE**

The applicant proposes to build a one-story two-bedroom single family residence on post-and-pier with a developed area of 1365 square feet. This total includes a master bedroom, covered lanai, and an at-grade carport. Energy will be provided by a rooftop solar-voltaic system with a generator back-up. Access will be via an existing driveway off of Old Government Road.

The residence will be set back 58 feet from the shoreline, at an elevation of 30 to 35 feet above sea level. It is not in a tsunami or large-wave inundation zone. A parcel owned communally by the Wa'awa'a subdivision owners separates the subject parcel from the pāhoehoe shelf along the coast.

The shoreline for the Beach Lot Reserve was certified on September 11, 2009. A coastal erosion study completed in January 2013 concluded that there has been no measurable change in the location of the vegetation line or sea-cliff since 1954.

The coastal area of Wa'awa'a consists of pockets of older lava substrate surrounded by younger lava flows. The area is a littoral lowland native forest dominated by hala (*Pandanus tectorius*) and naupaka. The federally-listed Hilo beach grass (*Ischaemum byrone*) may be present throughout this coastal area. Several endangered native terrestrial vertebrates may be present in the general area and may fly over, roost, nest, or utilize resources of the property, including the

ITEM K-1

endangered Hawaiian Hawk, the endangered Hawaiian Hoary Bat, the endangered Hawaiian Petrel and the threatened Newell's Shearwater. The continual removal of forest cover in Wa'awa'a threatens the natural and cultural resources of the area.

The applicant proposes to limit clearing to 5000 square feet. Approximately 80% of the hala trees will remain, and the applicant will clear out the weedy vegetation and plant additional hala fronting the Old Government Road.

An archaeological survey identified five features of potential interest: a retaining wall of indeterminate age, remnants of a hippy camp, and the base of a memorial erected to Dana Ireland. The monument itself no longer exists. No significant archaeological features were uncovered.

No known cultural and traditional uses occur on the property, although community members have used it to access the coast. There is an official public access to the shoreline on a State-owned parcel in the Nānāwale Forest Reserve, 500 feet from the subject lot.

The following exhibits have been included with this report:

- Project Location
- Project Site Photos
- Floor Plan
- Site Plan and Landscaping Plan
- Elevation

#### ACCEPTANCE

After reviewing the application, the Department notified the applicant that:

1. The proposed use was an identified land use in the Resource Subzone of the Conservation District, pursuant to §13-5-23, Hawaii Administrative Rules (HAR R-8, SINGLE FAMILY RESIDENCE (D-1), *A single family residence that conforms to design standards as outlined in this chapter*. This use requires a permit from the Board of Land and Natural Resources, who have the final authority to grant, modify, or deny any permit
2. Pursuant to §13-5-40 of the HAR, a Public Hearing would not be required;
3. In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project;
4. It is the applicant's responsibility to comply with the provisions of Hawaii's Coastal Zone Management law (HRS Chapter 205A) pertaining to the Special Management Area (SMA) requirements administered by the various counties.

A FONSI for the project was published in the October 8, 2013 *Environmental Notice*.

#### SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: Office of Hawaiian Affairs; DLNR – Land Division, Historic Preservation Division, Division of Forestry and Wildlife, Division of Conservation and Resource Enforcement, and Division of Aquatic Resources; and the County of Hawai'i Department of Planning.

In addition, the application and Environmental Assessment were available for review at the Hawai'i State Library and Keaau Public Library. Notice of the application was published in the August 8, 2013 edition of the *Environmental Notice*.

Responses were received and have been summarized from the following agencies:

DLNR – Land Division

No comment

The applicant's agent also received the following email from Cory (Martha) Harden:

*Please acknowledge ... comments on Magsalin project from Greg Smith & Joyce Folena. Greg says he does not like because too close to the shore for safety sake and pollution from the house to the sea. Joyce is in agreement. (sic)*

The email was received over thirty days after the public comment period had closed, and was not included in the project's final environmental assessment. Staff note that the proposed housing site exceeds the required shoreline setback for a residence in the conservation district where the erosion rate is negligible, and that it is not in a wave or tsunami high-hazard area.

**ANALYSIS**

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. It is consistent with the standards set forth in 13-5, HAR, and it has associated management regimes in place to protect the historic resources found on the property.

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

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

A Single Family Residence is an identified land use in this subzone pursuant to HAR, §13-5-24, R-8, SINGLE FAMILY RESIDENCE, (D-1) *A single family residence that conforms to design standards as outlined in Chapter 13-5, HAR.*

Pursuant to the design standards, the maximum developed area for a lot this size would be 5000 square feet. The proposed residence is 1412 square feet<sup>1</sup>. As the average annual erosion rate for the parcel appears to be negligible, the minimum setback from the shoreline is 40 feet. The proposed residence will be set back 58 feet.

The proposed residence is setback 87 feet from the front, and 13 and 21 feet from the east and west boundaries, respectively. The minimum setbacks for lot under one acre are 15 feet on either side. The parcel on the east, TMK (3) 1-5-009:057, is undeveloped.

The Board has the authority to adjust the minimum setbacks based upon site characteristics and lot shapes. OCCL notes that this is a relatively narrow lot, and that the applicant has adjusted the design once, based upon OCCL's request, to minimize the amount of landscaping and hala clearing. The current proposal reflects this, and thus OCCL has no objections to adjusting the side setback in this case.

The residence is single story, contains one kitchen, and has no detached structures. The house has been sited so that grading is kept to a minimum, and an existing driveway will be utilized.

OCCL feels that the residence is in conformance with the single family residential standards.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Staff finds that the project is consistent with the following §205A objectives:

**Recreational resources:** Shoreline access will remain unchanged. There is an official public access to the shoreline on a State-owned parcel in the Nānāwale Forest Reserve, 500 feet from the subject lot. Development of the subject lot is thus unlikely to impede access rights.

**Historic resources:** An archaeology survey did not uncover any sites of historic significance.

**Scenic and open space resources:** The project will have a minimal impact on open space, and will not impact any important view planes.

**Coastal Ecosystems:** The shoreline is pāhoehoe lava; there are no sandy beaches and the coastal erosion rate appears to be negligible. The project will be set back 58 feet from the shoreline, and is not anticipated to have any impact on coastal processes. Construction will not require significant grading, and the application discusses a number of Best Management Practices that will be followed during construction; thus minimizing the risk of sedimentation entering near-shore waters.

There is an official public access to the shoreline on a State-owned parcel in the Nānāwale Forest Reserve, 500 feet from the subject lot. Development of the subject lot is unlikely to impede access rights.

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<sup>1</sup> The application lists the developed area as 1682 square feet. However, this calculation appears to include the well / storage tank. This is not normally considered counting towards the maximum developable area, and OCCL has subtracted this from the total.



4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area. The project is relatively small in scope, and staff notes that other proposed residences have sought to maximize the developed area right up to the limit established by §13-5; we appreciate that this proposal is more modest.

The site does not contain rare native eco-systems, nor threatened and endangered species. The hala-dominated littoral lowland native forest is a valued resource, and the residence has been sited in order to preserve as much of the hala as possible.

Any potential impacts to roaming bats and hawks will be minimized by conducting a hawk nest surveys prior to construction, and by timing vegetation removal so that it is outside the nesting season.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion that the proposed project will be compatible with the locality and surrounding areas and is appropriate to the physical conditions and capability of the specified parcels. The one-bedroom house is modest in scale, and the building is designed to provide for as much of its own energy as possible via natural ventilation and day lighting.

There will be a minimum of landscaping, and no new community infrastructure will be required to support the residence.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

While some vegetation will be removed for the residence, the landowner will plant additional hala along the road as mitigation.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed for this project.

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

Other than potential short-term nuisances and safety issues associated with construction there are no detrimental public health, safety or welfare concerns foreseen.

## DISCUSSION

Based upon the above analysis, staff feels that the proposal is consistent with the State's Conservation Criteria. The maximum developable area for the parcel is 5000 square feet; the proposed one-bedroom residence is 1412 square feet. The proposed residence will be set back fifty-eight feet from the shoreline, more than the minimum required.

One of the side setbacks is thirteen feet, which is less than the standard fifteen feet setback. Pursuant to §13-5-42 STANDARD CONDITIONS (c) *Deviation from any of the standard conditions, standards, or criteria provided in this chapter may be considered by the board, only when supported by satisfactory written justification stating:*

- (1) The deviation is necessary because of the lack of practical alternatives;*
- (2) The deviation shall not result in any substantial adverse impacts to natural resources;*
- (3) The deviation does not conflict with the objectives of the subzone; and*
- (4) The deviation is not inconsistent with the public health, safety, or welfare.*

OCCL notes that only a corner of the carport extends beyond the minimum setback. An earlier proposal submitted by the applicant had the carport as a detached structure sited closer to the road; OCCL did not accept that proposal for processing due to the amount of landscaping that was required, and as the detached structure would also require a variance.

The current proposal places the carport at the end of an existing driveway, and the proposed residence was sited in order to minimize landscaping and clearing. As the deviation is intended to reduce the amount of potential adverse impacts, and as the side lot is undeveloped, OCCL believes that it meets the criteria of §13-5-42 (c).

Twenty to thirty hala trees will be removed for the residence; approximately 200 will remain untouched. The coastal vegetation will not be altered.

OCCL did not receive comments from agencies regarding the proposal. We received an email complaining that the house would be too big and too near the shore. OCCL notes that the proposed residence would be smaller, and set back more, than other residences in the Puna District.

The application discusses a number of best management practices that will be followed, including: construction activities will be limited during heavy rains, cleared areas will be re-vegetated as soon as possible, spill treatment, storage, and disposal of hazardous materials will be required to meet all State, County, and 'Good Housekeeping' guidelines, and the construction contractor will delineate the work site prior to commencing work.

There are no known significant hazards or natural resource constraints on the parcel.

There are no known significant cultural, recreational, historic, or natural resources that will be hindered by this residence.

## RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for a Single Family Residence, along with a two-foot variance on the eastern side setback, as described in CDUA HA-3682, located at Wa'awa'a, Puna, Hawai'i, TMK: (3) 1-4-028:007, subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, 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 permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
4. The permittee shall comply with all applicable department of health administrative rules;
5. The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;
6. The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
7. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
8. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
9. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
10. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
11. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the 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 the department may, in addition, institute appropriate legal proceedings;
12. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
13. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

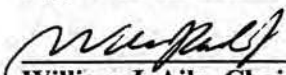
14. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
15. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
16. Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;
17. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
18. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
19. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
20. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
21. Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;
22. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
23. Other terms and conditions as prescribed by the chairperson.
24. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Respectfully submitted,



Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:

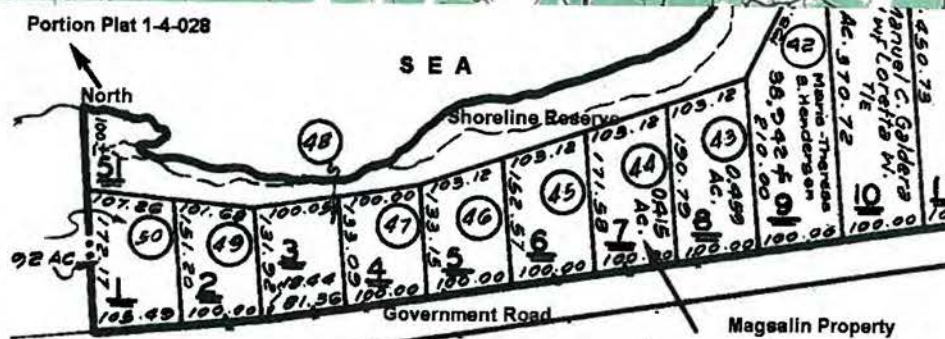
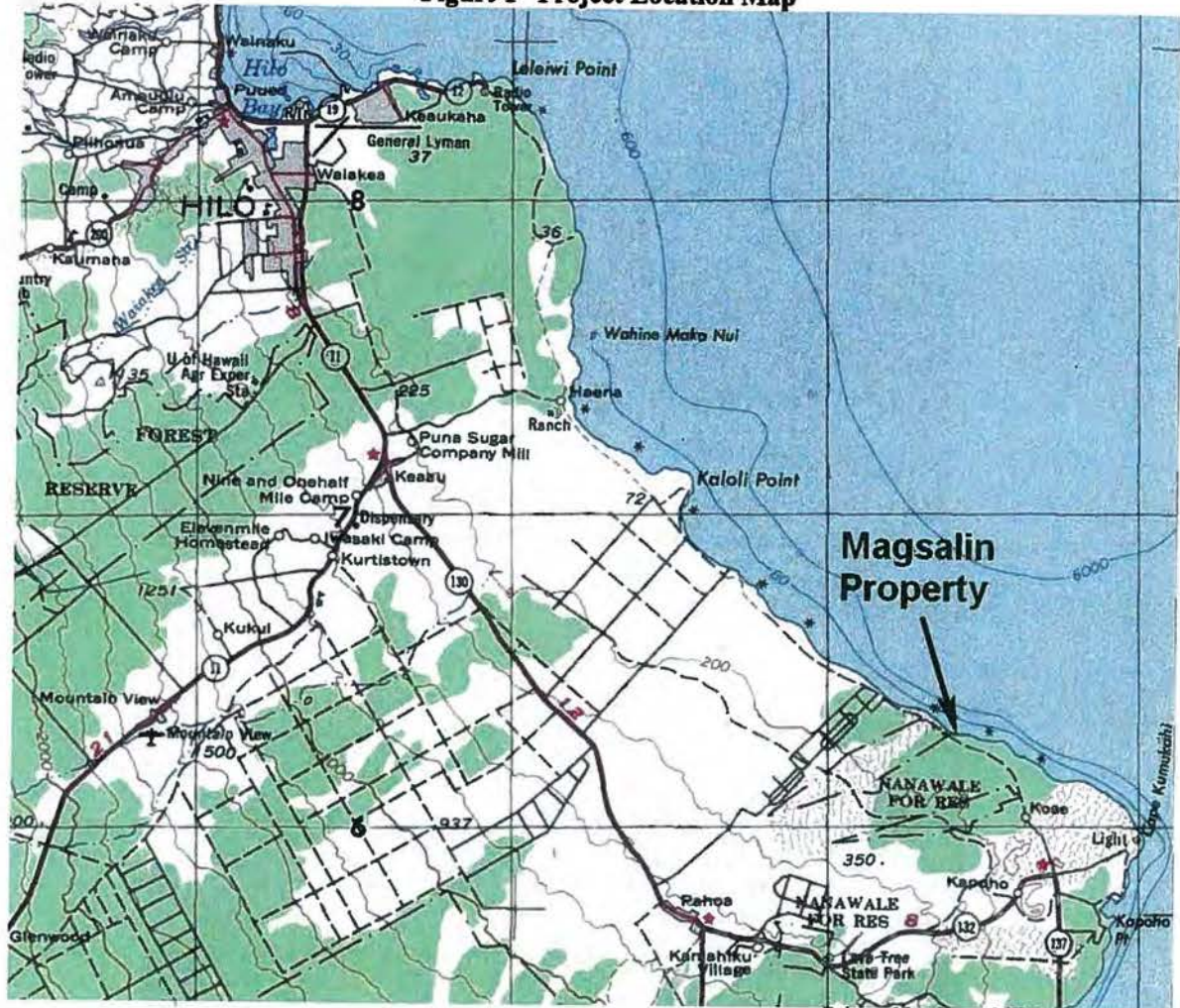


William J. Aila, Chairperson  
Board of Land and Natural Resources



*Magsalin Single-Family Residence Environmental Assessment*

**Figure 1 Project Location Map**





*Magsalin Single-Family Residence Environmental Assessment*

**Figure 2 Project Site Photos**



**Driveway Entrance on Government Road ▲ ▼ Vegetation East of Driveway**



*Magsalin Single-Family Residence Environmental Assessment*

**Figure 2 Project Site Photos, continued**



**Driveway ▲ ▼ Northeast Area of Lot**





*Magsalin Single-Family Residence Environmental Assessment*

**Figure 2 Project Site Photos, continued**



**Access from Driveway to House Site ▲ ▼ Vegetation Makai of House Site**





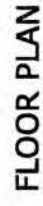
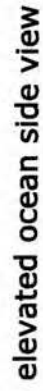
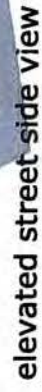
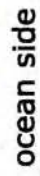
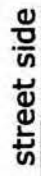
*Magsalin Single-Family Residence Environmental Assessment*

**Figure 2 Project Site Photos, continued**



**Vegetation Makai of House Site ▲ ▼ Shoreline Reserve Area**





TOTAL	1682 sf
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existing  
driveway

STREET SIDE

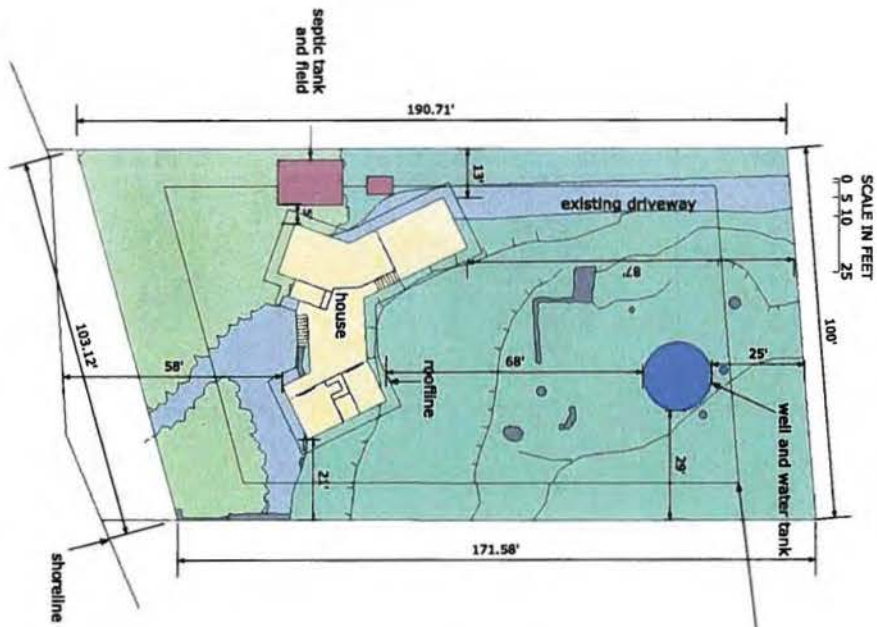
SCALE IN FEET

**OCEAN SIDE**

NEW RESIDENCE for Shon Magsalin, TMK # 3-1-4-028-007



# **SITE PLAN** SC. 1"=30'



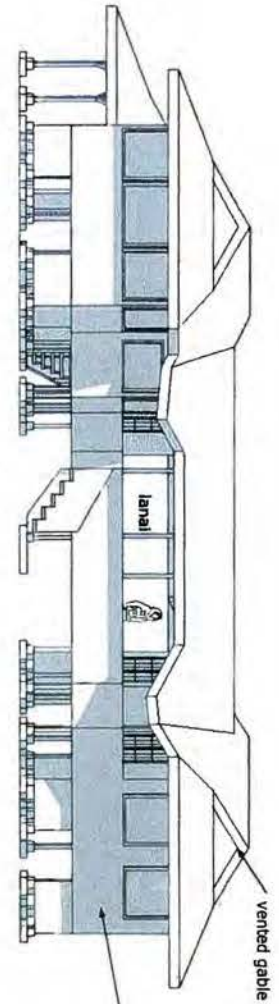
# **LANDSCAPING PLAN** SC. 1"=30'



NEW RESIDENCE for Shon Magsalin, TMK # 3-1-4-028-007  
 page 2 | Drawn by Matt Purvis, 808-960-4555, mattpurvis@gmail.com

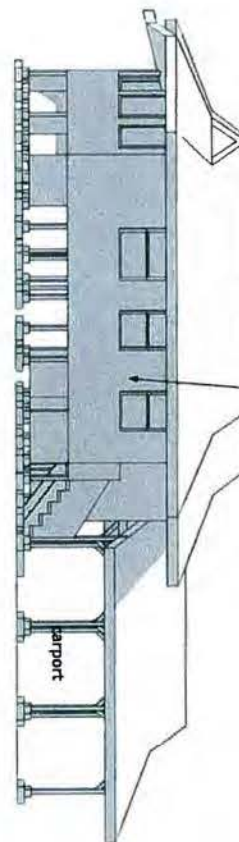




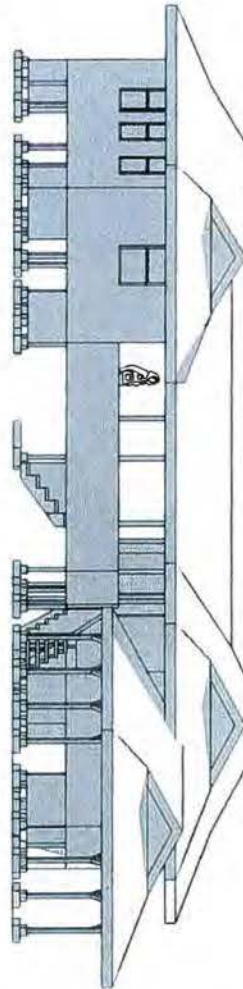


ELEVATION FRONT(OCEAN SIDE)

NOTE: many faces are turned at 22.5 deg to elevation view (see floor plan)

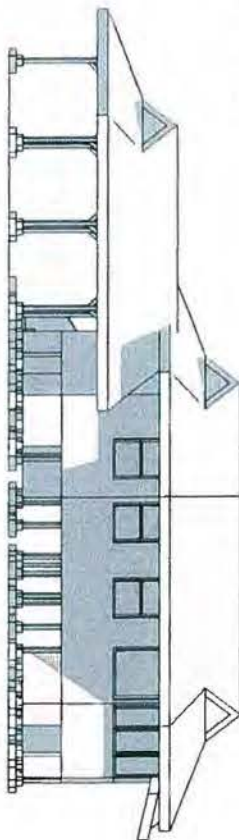


ELEVATION RIGHT



ELEVATION REAR(STREET SIDE)

SCALE IN FEET  
0 1 5 10



ELEVATION LEFT



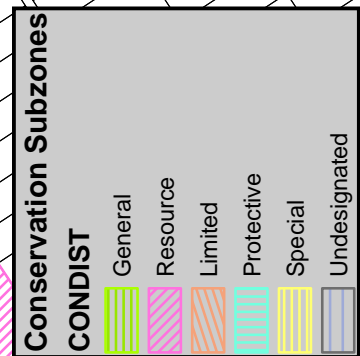
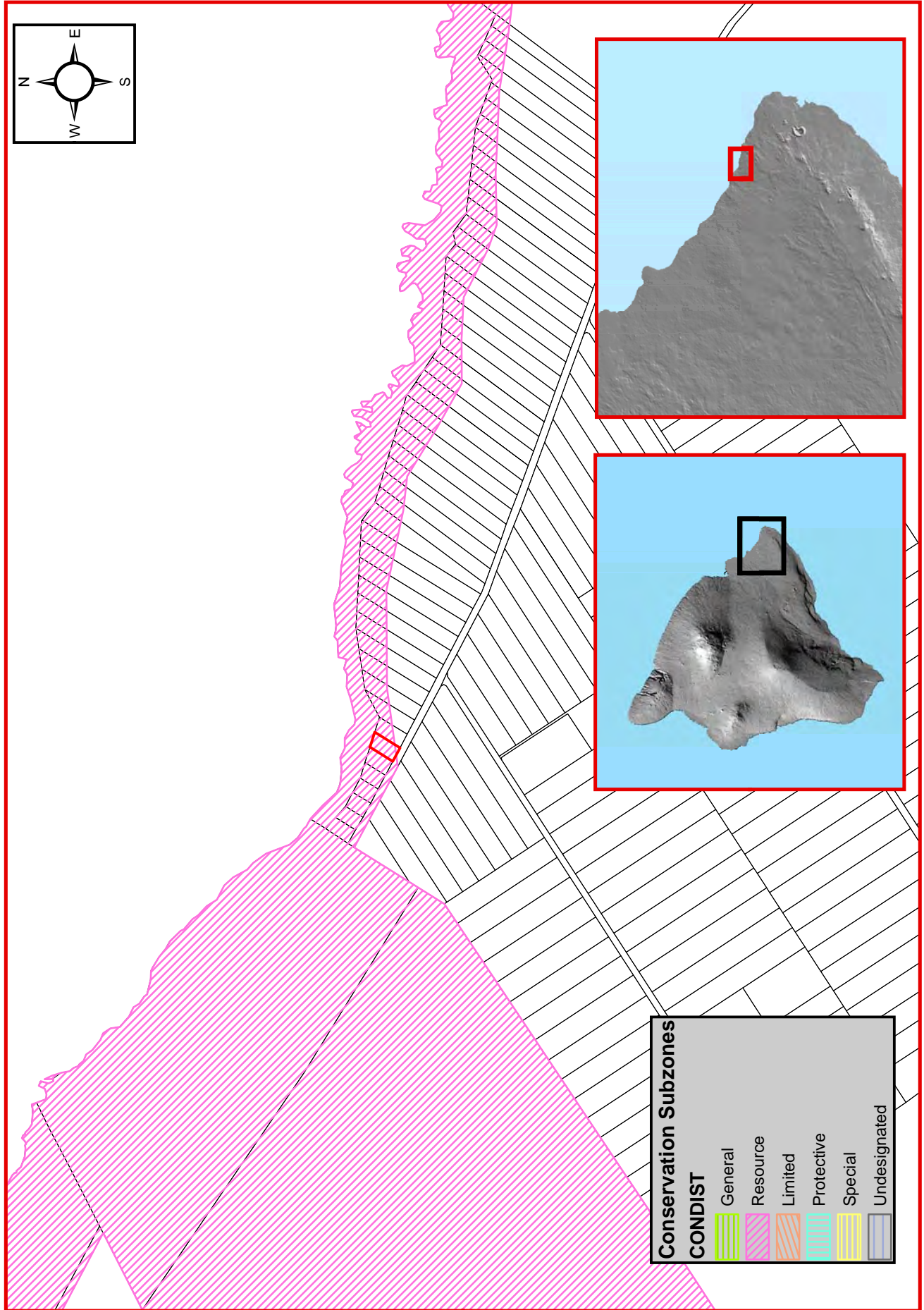
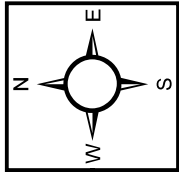


Exhibit 2 - Parcel location

Ex 1 HA-18-8

William J. Aila, Interim Chair  
Board of Land and Natural Resources  
Po Box 621  
Honolulu, Hawaii 96809  
October 11, 2017

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2017 OCT 13 A 8:48

Dear Mr. Aila,

SUBJECT: Request to extend Permitting Deadlines  
Conservation District Use Permit (CDUP) HA-3682

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Magsalin Single Family Residence  
Wa'awa'a, Puna, Hawaii  
TMK (3) 1-4-028:007

I hereby am requesting another extension, if possible, at least three years. I am unable to meet the deadline of finishing this project on December 2017.

For several reasons I will be mentioning here, these project has been challenging for a single senior woman like me.

I have cleared the property and the permitted septic tank has been completed.

I have lived in Hawaii for more than 30 years and retired from Hilo Medical Center in 2015. Other than my financial challenges a few events have occurred this year. I have been robbed twice in the building process. I am attaching 2 police reports on these events. My partner of 7 years recently passed after a 2 months battle with cancer in September, 2017.

Factors that have slowed down this project:

Financial lack (retired in 2015); the lot is in lava zone 2, no banks will finance.

Personal (I am learning in this senior life, decisions can be difficult without much knowledge on building)

I have submitted my house plan to three builder contractors and unfortunately no one has accepted to do the project due to following reasons

1. Custom home, will be difficult to build
2. Waawaa in Puna has had a lot of robberies, security an issue if no one lives in the property
3. Building market is at its height, there are numerous jobs out there
4. Unexpected cost of what was budgeted for

If you would please allow me a 3-5 year extension, I would greatly appreciate it.

Sincerely,

*Maria Shon Magsalin*  
Maria Shon Magsalin  
Successor to the Kurt E Nelson Trust  
Po Box 172  
Ninole, HI 96773

CC: Sam Lemmo  
Michael Cain  
Duane Kanuha  
Ron Terry



# HAWAII POLICE

Incident ID: C16011940

## Incident Data Sheet Report

ORI Number: HAWAII

Page: 1

Printed On: 2/3/2017 15:04 (Fri)

Incident ID: C16011940	Offense Code: THEFT 2 (708-0831)		
Occurred Address: 143533 GOVERNMENT BEACH RD PAHOA, HI 96778			
District: PN	Post: 836	Source:	
Log#:	File#:	Case#:	
Situation Found:		Disposition:	
Date Reported: 5/2/2016 10:12		Disp Date:	
Date Occurred: 4/29/2016 00:00 TO 4/30/2016 00:00		Case Status: Suspended	
		Status Date: 5/22/2016 09:16	
Shooting: <input type="checkbox"/>	Domestic Violence: <input type="checkbox"/>	Hate Crime: <input type="checkbox"/>	Follow-Up: <input type="checkbox"/> Reclassify: <input type="checkbox"/>
Date Approved By Supervisor: 5/3/2016 12:41		Supervising Officer: DERR, WILLIAM # 181676	
Division:		Reporting Officer: KALILOA, BRONSON # 5312	
Date Assigned To Investigator: 5/2/2016 13:33		Investigator Assigned: KALILOA, BRONSON # 5312	
Synopsis: MAGSALIN, F-63, REPORTED THAT UNKNOWN PERSON(S) USING UNKNOWN MEANS UNLAWFULLY REMOVED HER NEW GALVANIZED GATE FROM HER PROPERTY AT 14-3533 GOVERNMENT BEACH ROAD. THE VALUE OF THE GALVANIZED GATE PLUS INSTALATION: \$375.00.  INV. CONTIUIING  WPC: 5-02-2016/1741 HRS / JOB NO. 395653			

## Clearance Information

Clearance Date	Incident Reference	Cleared By	Clearance Type
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# HAWAII POLICE

Incident ID: **C17000492**

## Incident Data Sheet Report

ORI Number: **HAWAII**

Page: **1**

Printed On: **1/21/2017 01:18 (Sat)**

Incident ID: <b>C17000492</b>		Offense Code: <b>BURGLARY 1 (708-0810)</b>	
Occurred Address: <b>143533 GOVERNMENT BEACH RD PAHOA, HI 96778</b>			
District: <b>PN</b>	Post: <b>835</b>	Source:	
Log#:	File#:	Case#:	
Situation Found:		Disposition:	
Date Reported: <b>1/7/2017 09:29</b>		Disp Date:	
Date Occurred: <b>1/5/2017 10:00</b> TO <b>1/7/2017 09:20</b>		Case Status: <b>Investigation Continuing</b>	
		Status Date: <b>1/7/2017 00:00</b>	
Shooting: <input type="checkbox"/>	Domestic Violence: <input type="checkbox"/>	Hate Crime: <input type="checkbox"/>	Follow-Up: <input type="checkbox"/> Reclassify: <input type="checkbox"/>
Date Approved By Supervisor: <b>1/21/2017 01:18</b>		Supervising Officer: <b>DERR, WILLIAM # 181676</b>	
Division:		Reporting Officer: <b>AURELLO, KAIPOKOKA # 7292</b>	
Date Assigned To Investigator: <b>1/7/2017 11:00</b>		Investigator Assigned: <b>AURELLO, KAIPOKOKA # 7292</b>	
<p>Synopsis:</p> <p><b>01-07-2017: 0929 HRS:</b> [REDACTED] REPORTED A BURGLARY AT THE RESIDENCE LOCATED AT 14-3533 GOVERNMENT BEACH ROAD. [REDACTED] IS A CONTRACTOR HIRED BY THE HOMEOWNER, MARIA MAGSALIN, TO INSTALL SOLAR PANELS. [REDACTED] RELATED THAT THE LAST TIME HE SAW THE PROPERTY INTACT WAS ON 01-05-2017 AT APPROXIMATELY 1000 HOURS AND RETURNED ON 01-07-2017 AT APPROXIMATELY 0920 HOURS TO DISCOVER ITEMS MISSING. THE ITEMS REPORTED MISSING UPON INITIAL CONTACT WAS A DEEP CYCLE BATTERY (\$125), 4 SOLAR PANELS (\$100), INVERTER (\$60), BATTERY CHARGER (\$20), HONDA GENERATOR (\$200), CHAINSAW (\$200).</p> <p>CONNECT-UP REPORT C17000539/PN/THEFT 1 - APPROX. 1430 HRS: UPON CONTACT WITH THE VICTIM, MAGSALIN, SHE REPORTED THAT HER SHOTGUN WAS STOLEN AS WELL.</p> <p>CONNECT-UP REPORT C1700583/PN/THEFT 3 - [REDACTED] DOES NOT LIVE AT THE ABOVE MENTIONED RESIDENCE, HOWEVER, HE STAYS THERE ON OCCASION WITH PERMISSION FROM THE OWNER. [REDACTED] REPORTED THAT THE MASTERLOCK (\$30.00) HE PURCHASED TO SECURE THE FRONT GATE AND HIS IHOME CHARGING DOCK (\$250.00), WHICH WAS LOCATED IN THE RESIDENCE WAS ALSO TAKEN DURING THE INCIDENT.</p> <p>THIS IS THE MASTER REPORT NUMBER TO CONNECT-UP REPORTS: (C17000539/PN/THEFT 1) AND (C17000583/PN/THEFT 3). ALL INVESTIGATIONS WILL BE CONDUCTED UNDER THE MASTER REPORT NUMBER.</p> <p>INV. CONTINUING</p> <p>WPC: 01-08-2017 0324 HRS J# 290567</p>			

## Clearance Information

<u>Clearance Date</u>	<u>Incident Reference</u>	<u>Cleared By</u>	<u>Clearance Type</u>
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# 143533 GOVERNMENT BEACH RD PAHOA, HI 96778

**\$339,000**

Active

MLS# 610242 | RESIDENTIAL | 1 BED | 1 FULL BATH | 360 SQFT | PUNA



✕ Expand Slideshow

3 of 24

Show Thumbnails ▾

REQUEST MORE INFO

REQUEST A SHOWING



SAVE TO ACCOUNT



PRINTER FRIENDLY



NOTES

---

## DETAILS

---

MAP & COMMUNITY

MORTGAGE CALCULATOR

SIMILAR PROPERTIES

FANTASTIC PRICE on this cozy OCEAN VIEW home on the stunning East Hawaii coastline. This 18,077 sqft of tropical Hawaiian property, with super cute home, is located in the beautiful coastal community of Waa Waa where you will find one of the best micro climates on the Big Island. Here you will experience plenty of sun, enough rain and the incredible trade winds East Hawaii is famous for.

The OCEAN VIEWS from this property are breathtaking. With approximately 100 feet of ocean coastline frontage you are poised to experience the unparalleled beauty of the azure blue Pacific Ocean and its seasonal whales, turtles, dolphins and occasional monk seal. Fee Simple property, no HOA, no gated communities. This is Old Hawaii at its best - warm, tropical, quiet and away from it all.

This property has a great 1 bedroom 360 sqft home parked on it, totally comfortable and livable. The front entrance is gated and about 1/3 of the lot is cleared. The cozy cottage is a great place to live while building your permanent home. Electric is through solar panels and batteries. Internet/TV is through Satellite – all currently hooked up. Water is through catchment tank. The seller has completed all the needed SMA (special management area), Conservation and Archaeological studies to the county's approval (no small task). The property was properly surveyed with a high-water-mark survey and the permitted septic tanks was installed. House plans have been completed and permits opened. This property is

ready to build on!!

Within the Waa Waa community coastal area are natural pools for dipping in. To the South of the property down the Red Road/ HWY 137 is the famous hot ponds in Kapoho and Pohoiki with its community parks, boat ramp and surfing areas. Pahoia town is about a 15 minute drive where you can find shops, restaurants, groceries stores and more.

An ocean front property of this beauty, at this price, in this location is an opportunity you will not want to miss.

---

**PRESENTED BY**

**Clark Realty**  
CORPORATION

855-472-1944

[CONTACT US](#)

---

<b>Days On Market</b>	196
<b>Price Per Square Foot</b>	\$942
<b>Assessed Value</b>	\$88,300
<b>Annual Property Tax</b>	\$825
<b>Tenure</b>	Fee Simple
<b>Tax Key (TMK)</b>	<u>3-1-4-28-7</u>
<b>Acres</b>	0.41
<b>Subdivision</b>	Waa Waa
<b>Ocean View</b>	Yes
<b>Oceanfront</b>	Yes

---

— INTERIOR

## Flooring

---

Laminate

## Appliances

---

Gas Grill

Microwave

Refrigerator

Other (remarks)

---

## — EXTERIOR

## Zoning

---

A-3A

## Flood Zone

---

X

## Garage Spaces

---

None

## Parking

---

Other (remarks)

## Lot Description

---

Clear

Wooded

## Topography

---

Fairly Level

## Frontage

---

## — BUILDING FEATURES

### **Year Built**

---

2017

### **Kitchen**

---

None

### **Countertops**

---

Granite Solid

### **Fireplace Location**

---

None

### **Roof Design**

---

None

### **Exterior Finish**

---

None

### **Driveway**

---

Gravel

### **Other Features**

---

None

### **Basement**

---

None

## Water Heater

---

Tankless

---

## — UTILITIES

### Power

---

Solar/Photovoltaic

### Water

---

Catchment

### Wastewater

---

Septic

### Telephone

---

Cell

Satellite

### TV

---

Satellite

### Internet

---

Satellite

Wireless

---

**Listed By**     Hilo Bay Realty LLC

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

ref:OCCL:MC

Extension Request HA-18-08

Marie Shon Magsalin  
P.O. Box 172  
Ninole, HI 96773

DEC 21 2017

Dear Ms. Magsalin,

**SUBJECT: REQUEST TO EXTEND PERMITTING DEADLINES**  
CONSERVATION DISTRICT USE PERMIT (CDUP) HA-3682  
Magsalin Single Family Residence  
Wa`awa`a, Puna, Hawai`i  
TMK (3) 1-4-028:007

The Office of Conservation and Coastal Lands (OCCL) has received your request for an extension on the deadlines for the completion of the single-family residence on the above subject parcel. The parcel is in the Resource Subzone of the State Land Use Conservation District.

In October 2013 a Final Environmental Assessment / Finding of No Significant Impact (FONSI) was published for the project, and on December 13, 2013 the Board of Land and Natural Resources approved CDUP HA-3682 for the residence. In October 2014 the Chair of the Board of Land and Natural Resources approved a one-year extension to the construction deadlines so that construction would need to commence by December 13, 2015 and be completed by December 13, 2017.

In 2015 you submitted plans to the County Department of Planning that differed from the plans approved by CDUP HA-3682, and showed an increase in the developed area of 359 square feet, increasing the total developed area from 1365 square feet to 1724 square feet. OCCL determined that the changes appear to be consistent with the permit and the FONSI, and notified you in October 2017 that the office had no objections to amending CDUP HA-3682 to reflect the revised building plans.

According to the information you provided, work on the parcel has commenced with the clearance of the property and the installation of a septic tank. You have reported that you are having difficulty securing financing for the construction of the residence, and have asked for a three to five year extension of the deadlines to complete the residence.

OCCL notes that the property is currently for sale, and that the Hawai'i Real Estate MLS listing includes descriptions and photos of a 360 square-foot home that is currently 'parked on the parcel.'

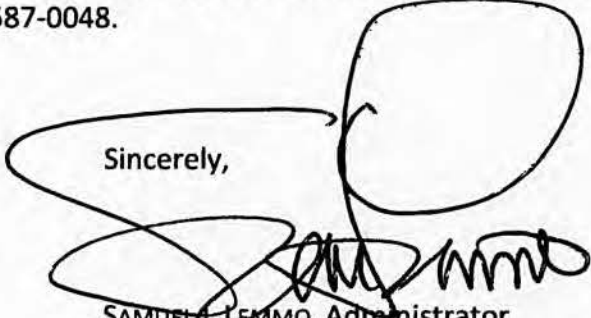
The home as described does not appear to be consistent with the permit that was approved by the Board. In addition, OCCL has not approved any building plans for such a structure, as required pursuant to condition 7 of CDUP HA-3682, which reads *Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application*

Due to this apparent permit discrepancy, and potential violation of the permit conditions, OCCL is unable to consider your request for a time extension on the permit at this time.

We recommend that you, as landowner, provide our office with a statement regarding the activities on the parcel. Failure to resolve this issue in a timely manner could result in the expiration of the permit.

Should you have any questions regarding this application, please contact Michael Cain of our Office of Conservation and Coastal Lands Staff at 587-0048.

Sincerely,



SAMUEL LEMMO, Administrator  
Office of Conservation and Coastal Lands

c: Chair; Hawaii County Planning Department



Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands  
PO Box 621  
Honolulu, Hawaii 96809  
January 5, 2018

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2018 JAN -8 A 8:14

Dear Mr. Lemmo,

OFFICE OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Subject: Request to Extend Permitting Deadlines  
Conservation District Use Permit (CDUP) HA-3682  
Wa'awa'a, Puna, Hawaii  
TMK (3) 1-4-028: 007

I am writing to let you know I have been following the rules from the start, from getting the permit and building my home. It is unfortunate, but I may have to give up my dream of having a home by the ocean. I placed my property for sale on September 7, 2017 after many months of futile efforts to raise the funds.

In June 2016 when I actively start clearing property, etc. (I am the owner-builder, by the way). I was told by 3 different contractors I seek to hire that the area is going to be difficult to secure. And with my experience on the first theft, I totally agree.

On my several trips to Planning Department in Hilo, meeting with Esther Iwamura and others, I was informed I can build a temporary dwelling while constructing. (see attached page of my diary dated June 22, 2016). At that time, I spoke to Jessica Andrews. Hence the decision of putting a structure, a 360 sq ft container/house on wheels. A temporary dwelling to keep construction site secured, and something that can be removed easily. Please note photos enclosed of house on wheels.

On another visit to Planning Department, Mr. Nathan MK Osorio, spoke to me re: no expiration on the building permit. (attached page of my diary dated Oct. 27, 2016). He even gave me his personal card. That made me feel better as the next step is to request DLNR for construction extension.

For several months I have dealt with a few life challenges. Due to financial hardships I come to realize that I might have to let go of my dreams. To keep all my options open I put the property on the market with Hilo Bay Realty, Cathy Fedak as my realtor.

I have invested years of time and much money to prepare the property for building, I would not want the new owner to have to repeat all I have already done in order for them to build their dream home. I want to make it easy for the next person to continue with ease where I left off.

I am very sorry. I was not even aware I have violated a law or procedure by putting a temporary home on site.

From the time I was seeking for a permit there are a few things that happened that cost me money and time because of the lack of communication/knowledge between the departments in Hilo and Oahu.

This may not be in DLNR records but in May 2003, I was given a permit to build a home in my lot.

June 22  
2016

Met Esther Imanura @  
Planning Dept. I was informed  
they do not have to check  
the after the clearing of lot.  
They will go and check when  
construction fencing / shield is  
erected.

Met Jessica Andrews, Planning  
Examiner. I was told it is  
ok to build a temporary dwelling  
on the lot for construction &  
(RV option was discussed)

Aug

July  
August

Looking for a temporary dwelling  
for Waiwaka. Saw a trailer  
Frank is selling. Not interested.  
Went on internet to check on  
Tiny Homes. Pacific Homes in Cairns

Sept  
2016

Aug 3

Saw Habitat Homes on Holo Sunday  
paper. Called lady contractor  
named Johanna.

Johanna  
Bonnie

960-4027  
960-6785

Aug 14

Waiwaka

Pass membership on R  
then Opela (R)

2nd yr → Lailani P  
(10pm - Sunday) Lailani W.

Sept

2016



NATHAN MK OSORIO  
Building Inspector Aid

County of Hawaii  
Department of Public Works  
Building Division  
Aupuni Center  
101 Pauahi Street, Suite 7  
Hilo, Hawaii 96720-4224

Telephone: (808) 961-8510

Fax: (808) 961-8410

E-mail: Nathan.Osorio@hawaiicounty.gov

Website: www.hawaiicounty.gov/public-works-building

Oct 21: Went to Building Permit about  
extension & expiration of my building  
permit. Mr. Nathan Osorio came out  
specifically to talk to me.  
He said there is no expiration.

---

11-18 HELP FOR LIFTING 24 foundation  
pier blocks

Richard - \$ 20.00

Brandon - \$ 60.00

Mike woofr - \$ 60.00

Sam - FREE HELP ALWAYS

11-19 TINY HOME transported @ 10km  
to lots of challenges - more trees  
need to be cut down.

Fees: \$ 640.00 transport

\$ 1500.00 excavation rent / dump

police escort fee to follow

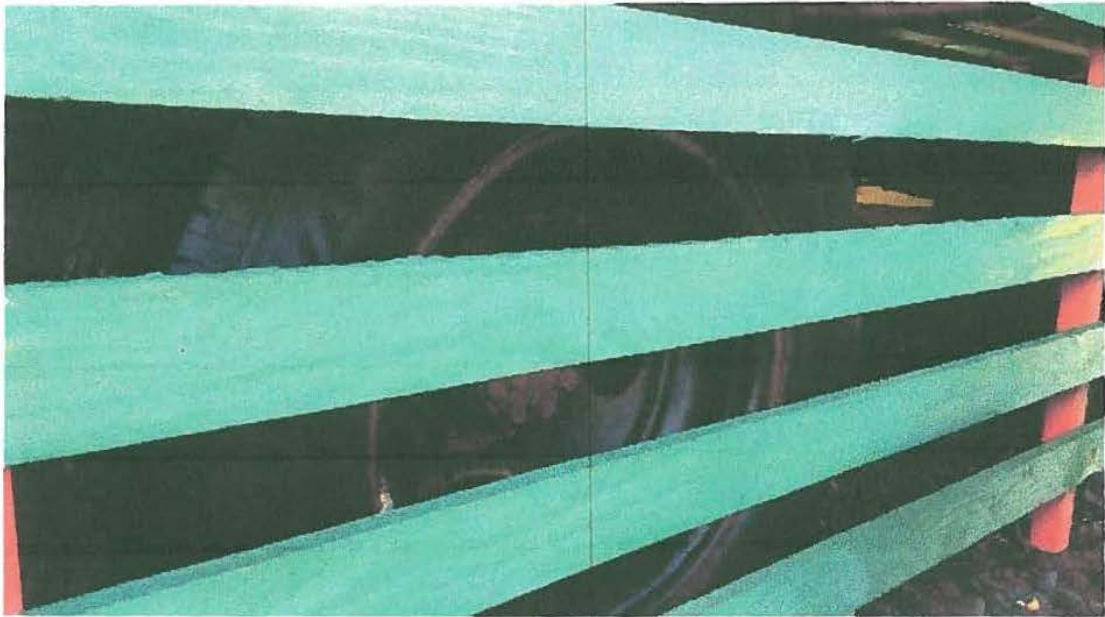


Exhibit 6 - Permittee response to OCCL





Exhibit 6 - Permittee response to OCCL



# BUILDING PERMIT

## BUILDING DIVISION DEPARTMENT OF PUBLIC WORKS COUNTY OF HAWAII

A PERMIT HAS BEEN ISSUED FOR THE PERFORMANCE OF CERTAIN BUILDING WORK IN ACCORDANCE WITH ALL COUNTY AND STATE LAWS AS FOLLOWS:

PERMIT NO. 031102 DATE MAY 28 2003 TMK 3-2-004-035  
OWNER/TENANT Maria Shon Magsalin BUILDER Owner  
LOCATION 32-460 Piha Kahuku Homestead Road FOR BUILDING DIVISION CHIEF *Emmanuel*

### NOTICE TO BUILDERS

The following phases of construction are required to be inspected by the Building Division. Please notify the inspector at least 48 hours prior to each desired inspection. (A FEE OF \$50 PER INSPECTION MAY BE ASSESSED WHEN THE REQUESTED PHASE OF CONSTRUCTION IS NOT COMPLETE OR READY)

1. FOUNDATION/SLAB INSPECTION - Termite treatment certificate. After footing excavations are complete and required reinforcing steel forms are in place. After all in-slab or under-floor ancillary items are in place.
2. FRAME INSPECTION - After the roof, all framing, fire blocking, bracing, and metal connectors are in place; all pipes, chimneys and vents are completed; and the rough electrical, plumbing or mechanical installations are approved.
3. SHEAR WALL INSPECTION - Inspection for complete load path and uplift prevention.
4. FINAL INSPECTION - After finish grading and the building is completed and ready for occupancy.
5. In addition to the required inspections specified above, the Building Official may require other inspections to ascertain compliance with applicable building regulations.

THIS NOTICE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE SITE DURING THE PROGRESS OF WORK AS REQUIRED BY LAW.

HILLO: (808) 961-8331

KONA: (808) 327-3520