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

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

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[1]. 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.

[1] 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 on email complaining that the house would 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.

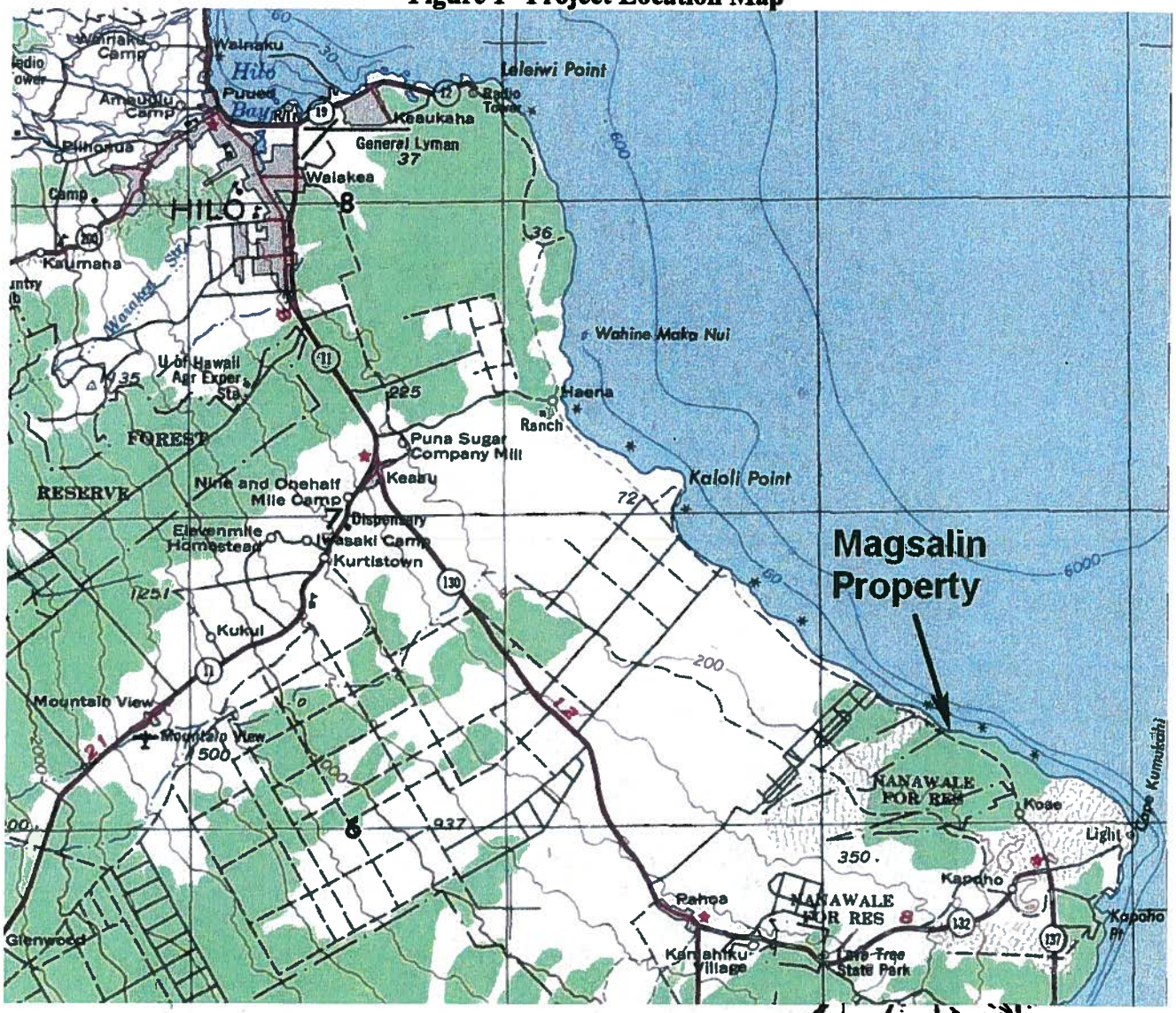
Respectfully submitted,

Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

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

Figure 1 Project Location Map



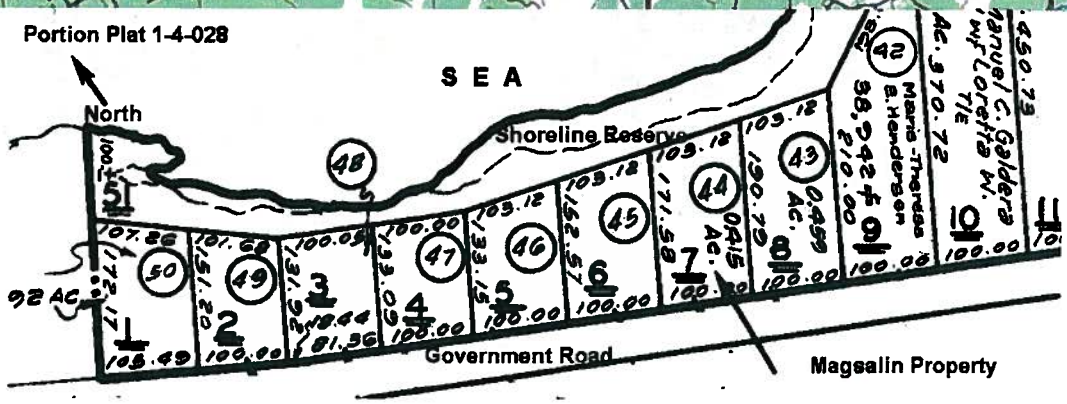
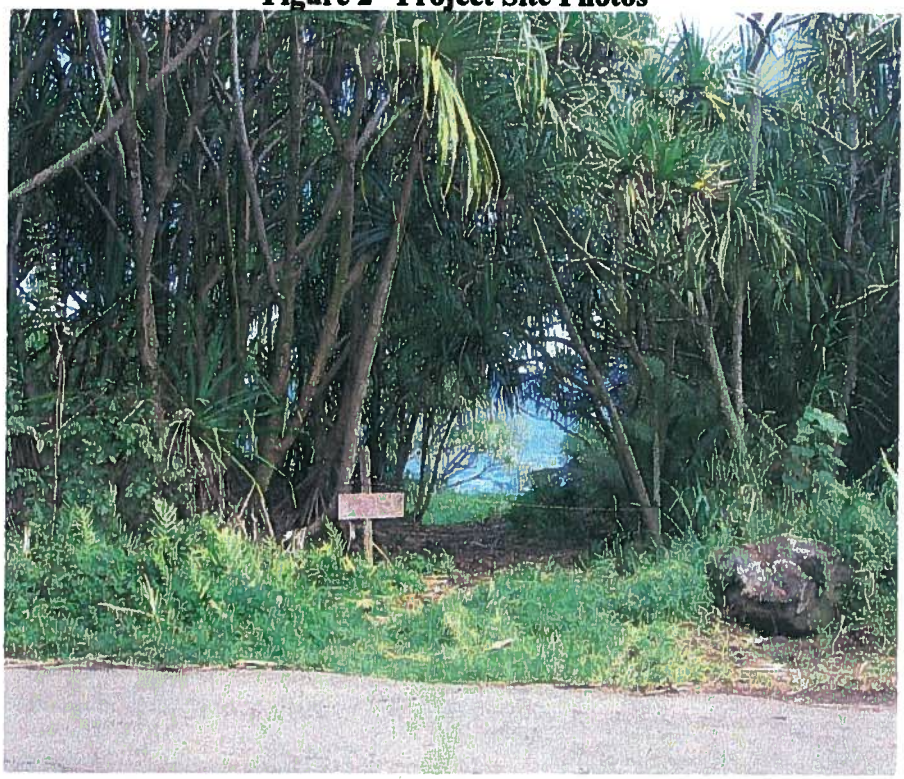


Figure 2 Project Site Photos



Driveway Entrance on Government Road ▲ ▼ Vegetation East of Driveway

Figure 2 Project Site Photos, continued

Driveway ▲ ▼ Northeast Area of Lot

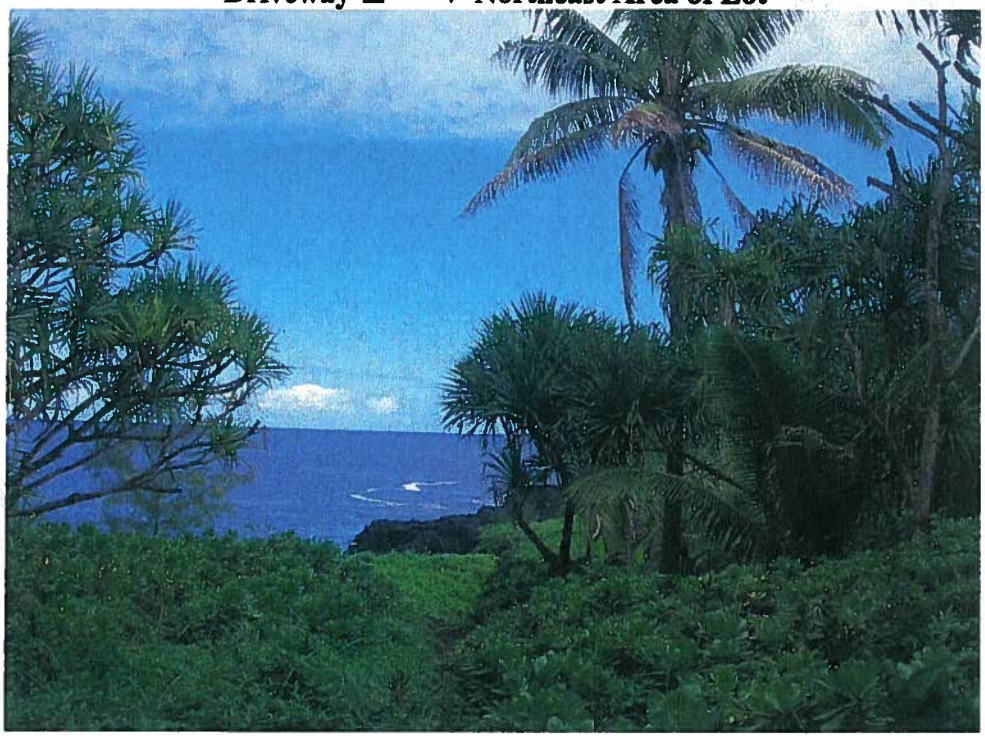


Figure 2 Project Site Photos, continued

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

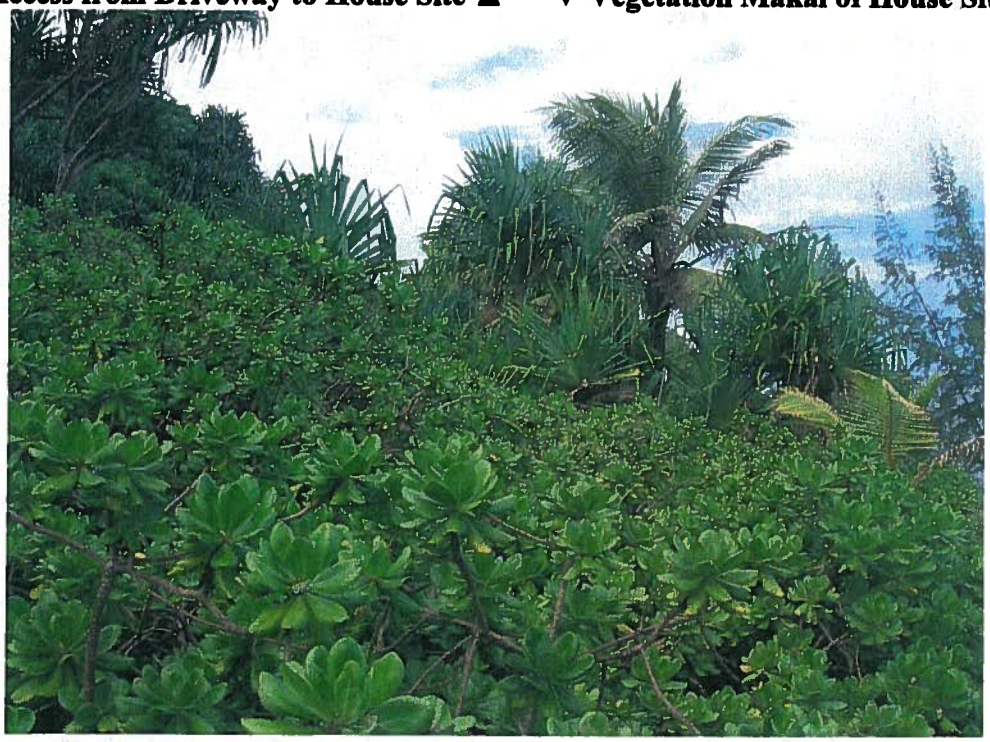
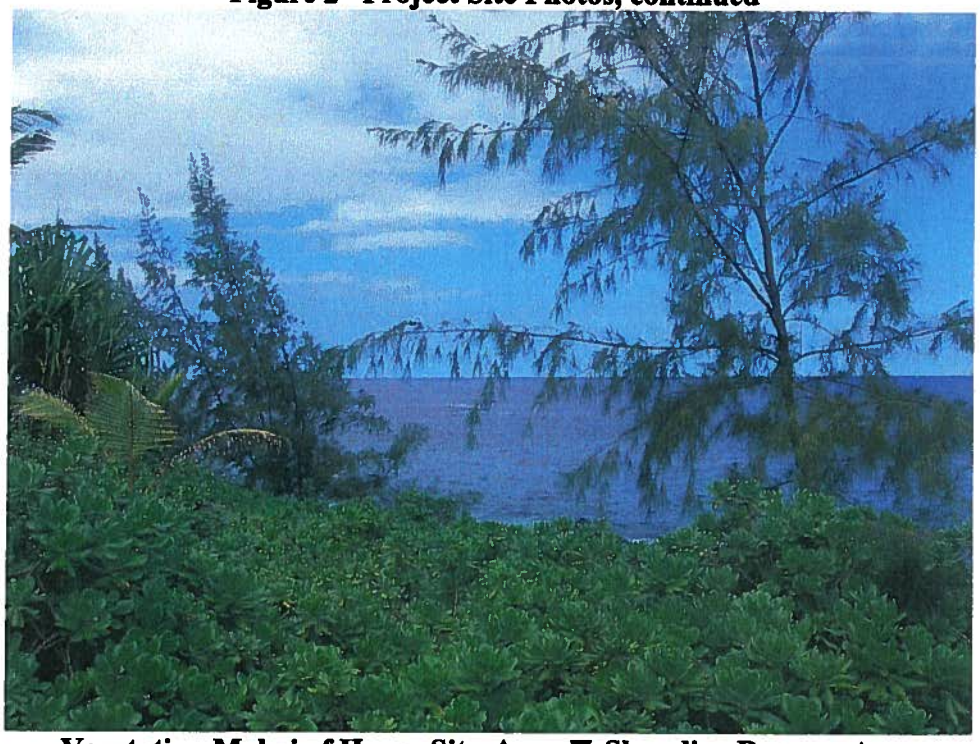
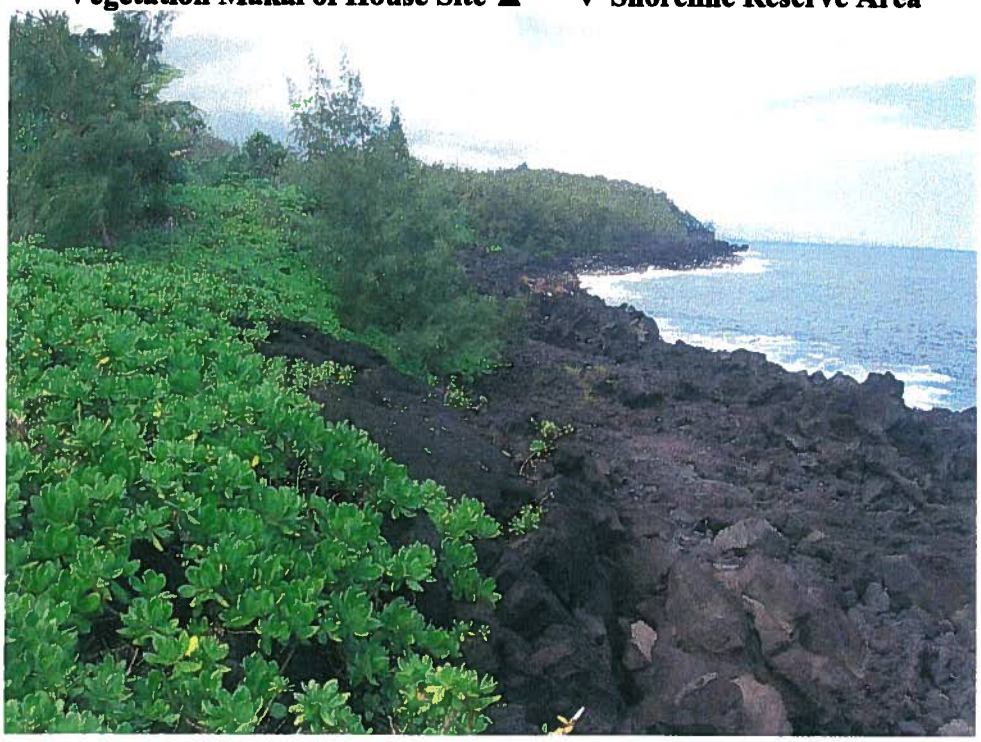
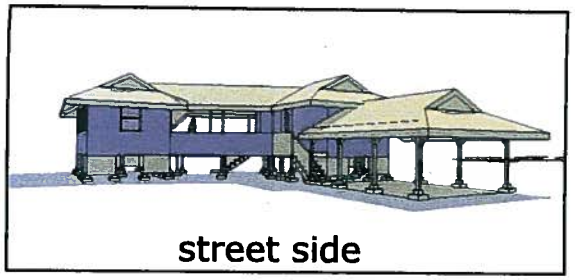


Figure 2 Project Site Photos, continued

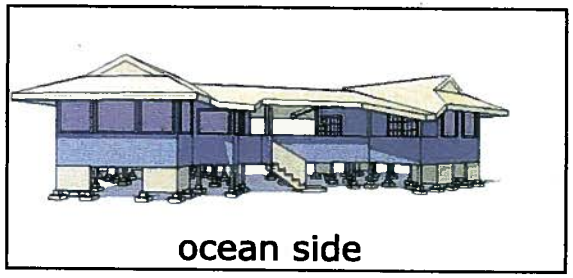


Vegetation Makai of House Site ▲ ▼ Shoreline Reserve Area

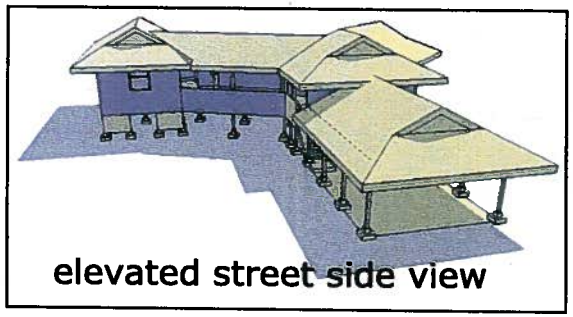




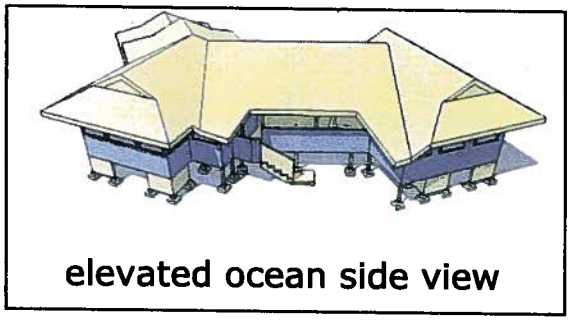
street side



ocean side



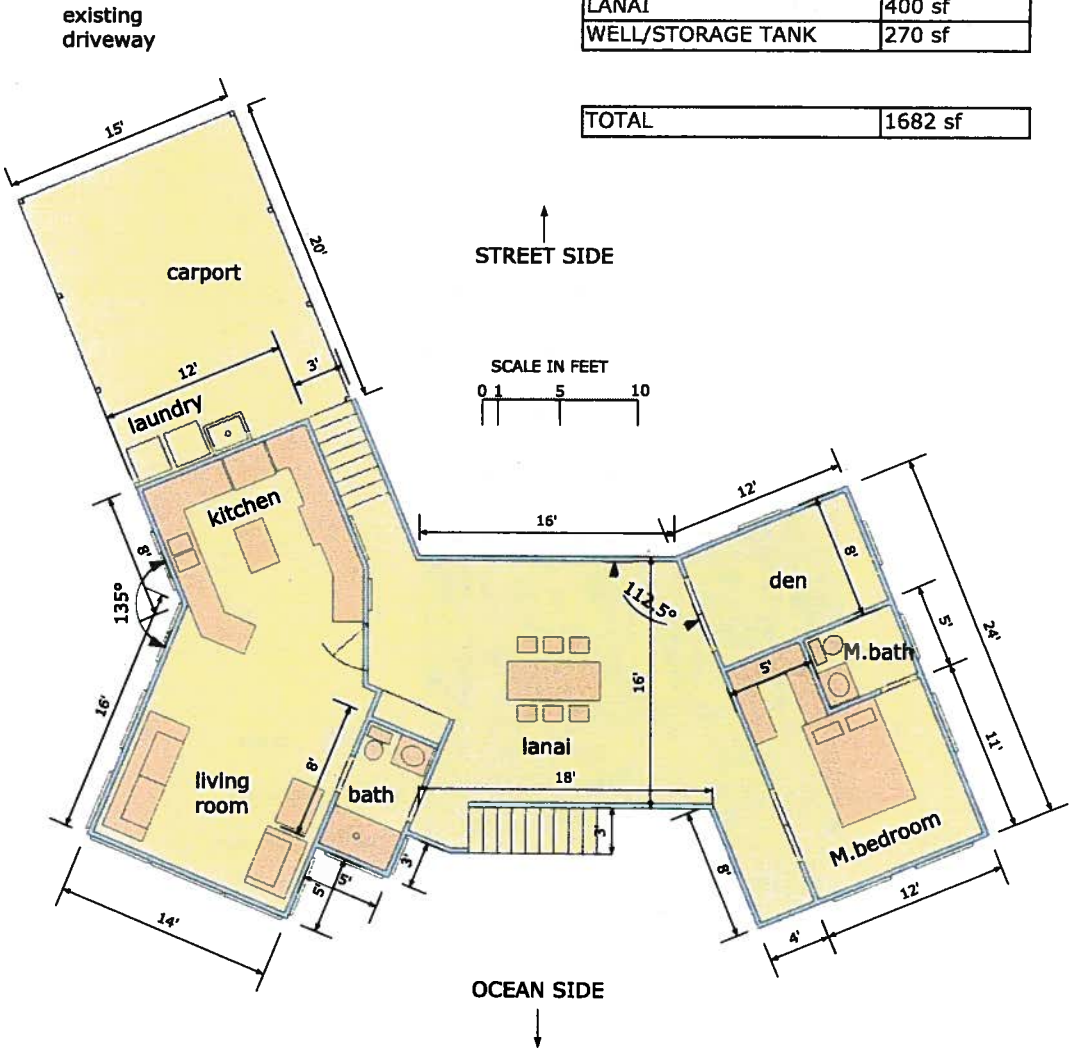
elevated street side view



elevated ocean side view

AREA CALCULATIONS:	
LIVING AREA	712 sf
CARPORT	300 sf
LANAI	400 sf
WELL/STORAGE TANK	270 sf

TOTAL	1682 sf



FLOOR PLAN

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

Drawn by Matt Purvis. 808-960-4555 mattpurvis@amail.com

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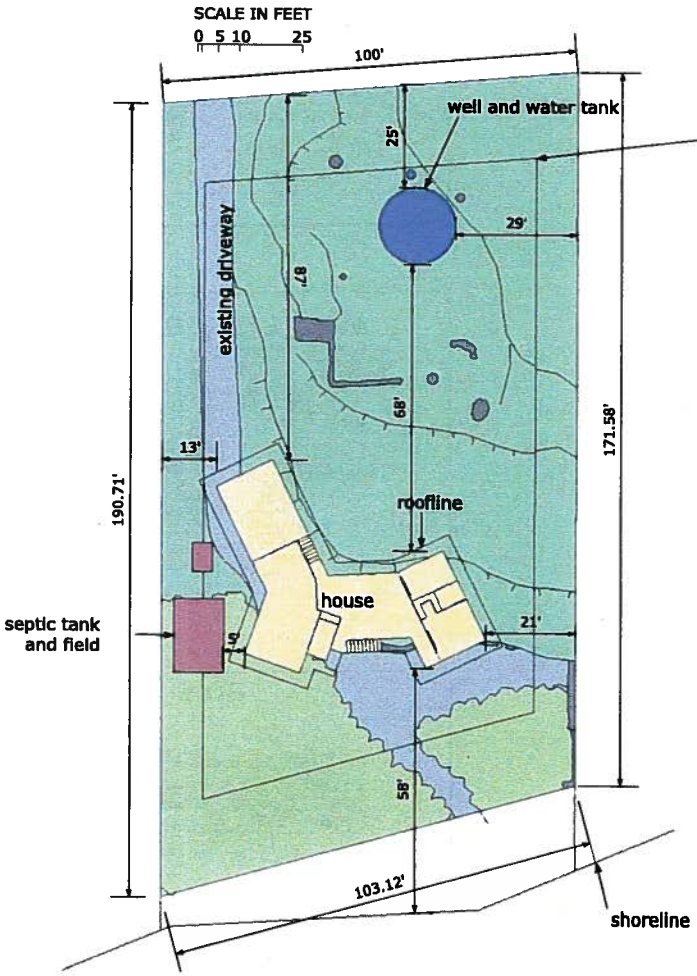
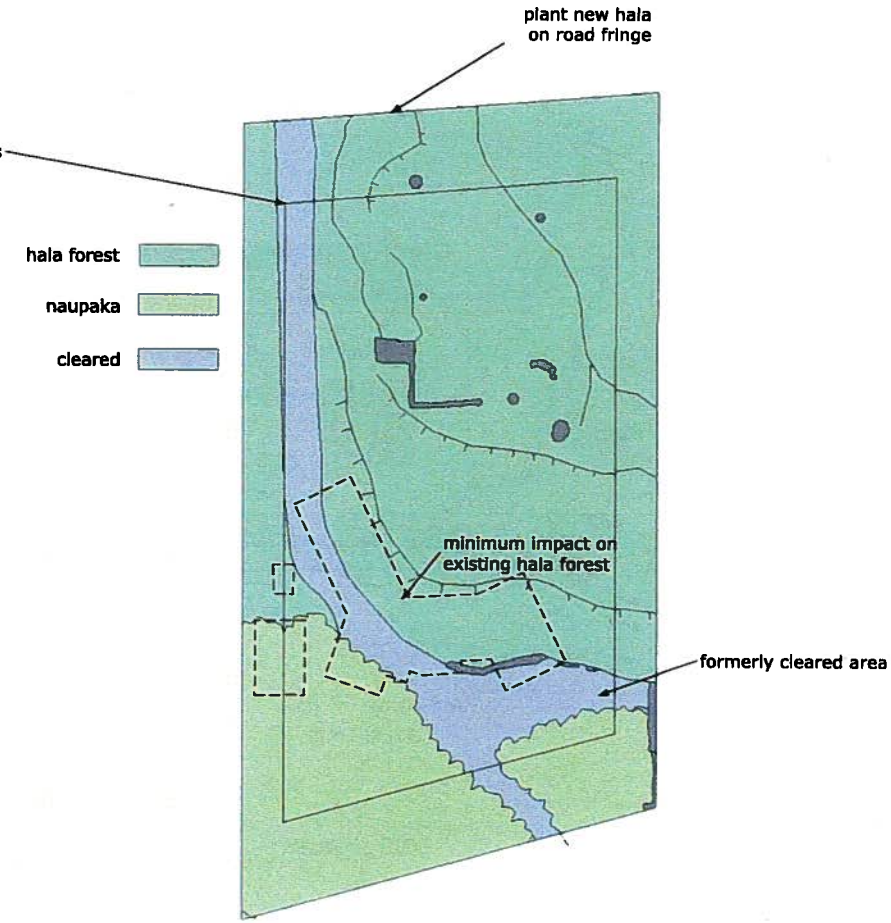


SITE PLAN
sc. 1"=30'



LANDSCAPING PLAN
sc. 1"=30'

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

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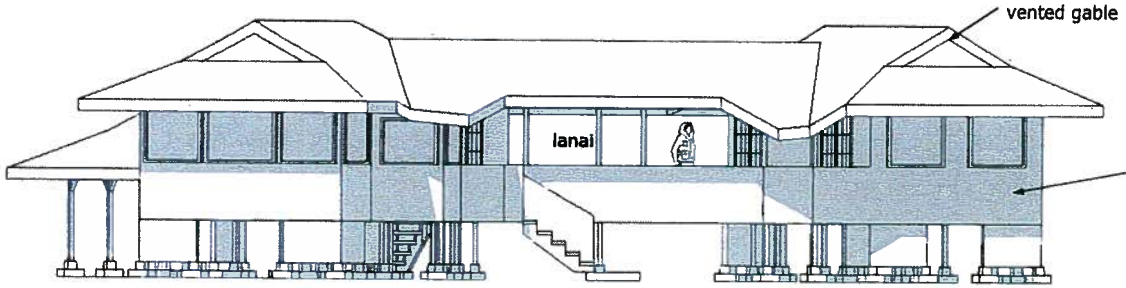
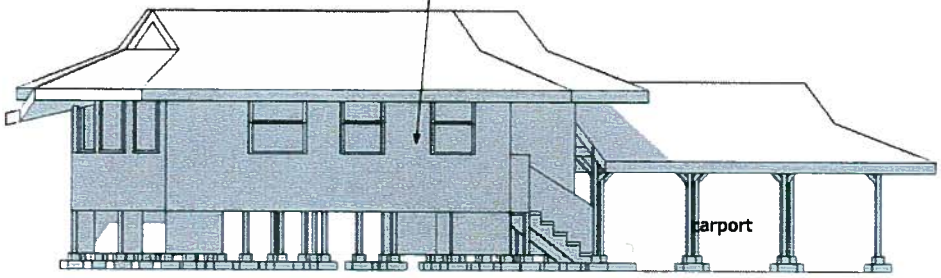
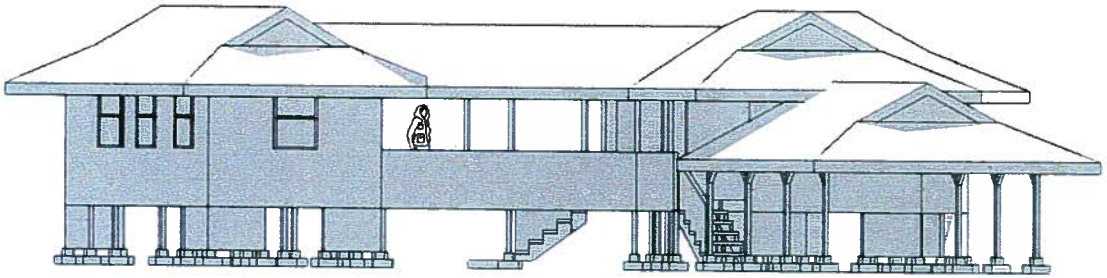


ELEVATION FRONT(OCEAN SIDE)

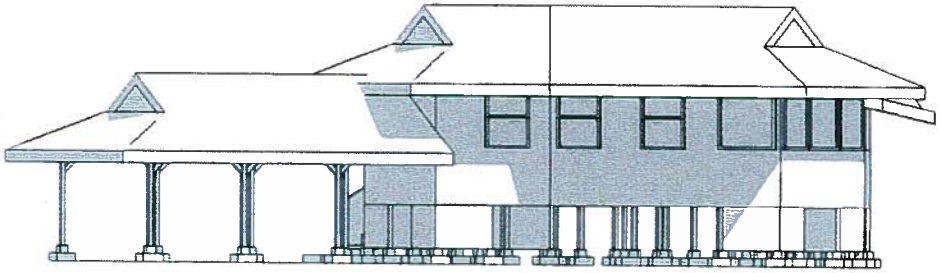
NOTE: many faces are turned at 22.5 deg to elevation view (see floor plan)



ELEVATION RIGHT



ELEVATION REAR(STREET SIDE)



ELEVATION LEFT

SCALE IN FEET

0 1 5 10

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

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