# STATE OF HAWAI'I

# DEPARTMENT OF LAND AND NATURAL RESOURCE OFFICE OF CONSERVATION AND COASTAL LANDS Honolulu, Hawai'i

180-Day Exp. Date: Oct. 4, 2014

September 12, 2014

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

**REGARDING:** 

Conservation District Use Application (CDUA) HA-3709: Single Family

Residence, Well Restoration, and Landscaping

APPLICANT:

Charles and Diane Bundrant

LANDOWNER:

Kamehameha Schools

AGENT:

Gregory Mooers, Mooers Enterprises LLC

LOCATION:

Kahauloa, South Kona, Hawai'i

TMKs:

(3) 8-3-005:001, 020, and 021

**AREA OF PARCEL:** 

25,5696 acres

AREA OF USE:

4528 square feet (residence); 2 acres (landscaped areas)

SUBZONE:

Resource

### **DESCRIPTION OF AREA AND PROPOSED USE**

The applicant proposes to build a Single Family Residence (SFR), well restoration, and landscaping located in Kahauloa, South Kona, Hawai'i, TMKs (3) 8-3-005:001, 020, and 021. The parcels are are in the Resource Subzone of the State Land Use Conservation District.

The properties are owned by Kamehameha Schools (KS) and are leased by Mr. and Mrs. Bundrant, who have a home on a directly adjacent property and currently utilize a portion of the lease property for landscaping purposes.

The current proposal calls for:

- A 4528 square-foot two-story four-bedroom, three-bathroom residence to be used as a residence for the family's caretaker. The residence contains 1536 square feet of developed area on the ground floor, 1536 of developed area on the second floor, and a 1456 square-foot wrap around lanai on the second floor. The residence will utilize earth tones to blend with the environment and

- The retrofitting of an existing shallow irrigation well and the reconstruction of a well house. The irrigation well was originally installed between 1928 and 1954. Two 2500-gallon water tanks will be placed adjacent to the pumphouse. This water system will provide approximately 2000 gallons per day of slightly brackish water for use as irrigation for the landscaping project.
- Increased landscaping along the existing access gates, within the access easement, along the roadway, and around the residence. An irrigation line will be installed which will run from the pumphouse to the access gate. The application states that a preference will be given to native and Polynesian-introduced plants.

The applicant anticipates starting work as soon as the necessary permits are issued, and completing the project in 18 months.

The project site is bounded on the west or *makai* side by the Keawaiki Beach Lots subdivision, on the north by Kahauloa Road, on the east or *mauka* side by Pu'uhonua Road and on the south by the Ke'ei properties of Kamehameha Schools. Aside from the unpaved roads, a roughly five-acre, irregular area is for landscaping and the irrigation well and shed, the project site is vacant and unused, with no structures and no farming or other active land uses.

The makai edge of the project site is approximately 200 feet from the coastline. Elevations vary from about 50 feet above sea level at Pu'uhonua Road on the mauka side to about 20 feet above sea level on the makai side.

The area has been partially landscaped, and is crossed by roads that provide access to various properties within Keawaiki Beach Lots. Public access to the shoreline is provided on a Kamehameha Schools-owned property immediately to the south.

The ground is weathered lava with sparse vegetation. Native plants include pua kala (Argemone glauca), kou (Cordia subcordata), ilima (Sida fallax), ala alawainui (Peperomia af. leptostachya), ala alawainui (Plectranthus parviflorus), auhuhu (Tephrosia purpurea) and uhaloa (Waltheria indica). One endangered species, a single loulu palm (Pritchardia maideniana), was found. The dominant fauna on site are introduced birds and feral mammals. No native Hawaiian birds were found on site during a biological survey.

On April 8, 2010 the Board of Land and Natural Resources approved Conservation District Use Permit (CDUP) HA-3530 for two security gates on the properties. Installing these was a condition of the Bundrant's lease, and was intended to limit off-road driving, unauthorized camping, and vandalism to the area's archaeological resources. Pedestrian access continues to be allowed.

A number of sensitive archaeological resources are present on the undisturbed portions of the property. These include  $p\bar{a}hoehoe$  excavations that possibly served as a quarry during the precontact Period and an isolated section of a trail. The archaeologist who conducted the site survey recommended that a preservation plan be prepared and submitted to DLNR's State Historic Preservation Division for review and approval.

The following exhibits have been included with this report:

- 1. Conservation Districts and TMK Map
- 2. General Location Map
- 3. Project Site Photos
- 4. Landscaping Plan
- 5. Floor Plans

#### **ANALYSIS**

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 July 23, 2014 edition of the 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, Commission on Water Resource Management; Kamehameha Schools; 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 May 8, 2014 edition of the *Environmental Notice*.

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

### DLNR - OCCL

OCCL has three questions for the applicant regarding the project:

- The land is under a standard 35-year agricultural lease from Kamehameha Schools. OCCL would like to know the terms of the lease, and what the disposition of the residence will be upon the lease's termination.
- We also note that HAR §13-5-42 (5) states that a 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. While the application states that the four-bedroom three-bath house will be used as the Bundrant family's caretaker's residence, OCCL would like stronger assurances, such as a restrictive covenant, that the residence will be used for housing the caretaker, and not for other uses.

- Finally, we note that there is over 1400 square-feet of "overhang" outside the first floor. This area, which is under the lanai, was not counted towards the total developed area. We trust that the final architectural plans will confirm that this area is, indeed, not developed.

## Applicant's Response

The thirty-five year lease expires on June 30, 2047. A caretaker's cottage is approved as a use under the lease subject to CDUP approval.

Per the lease terms, any improvements to the property must be removed at the termination of the lease. The lease does not have a built-in provision for an option to extend the term, but likewise there is no prohibition for doing so.

The applicant understands that the Board might require a restrictive covenant assuring that the caretaker's cottage will not be used as a rental or for other uses.

The Final EA contains more detailed architectural renderings that demonstrate that the area under the overhanging lanai is not a developed area.

### DLNR - Land Division

No comments

# County of Hawai'i Planning Department

The Planning Department will require the applicant to submit a Special Management Area (SMA) Use Permit Application for review against the SMA guidelines contained in HRS §205A. The application should be submitted after OCCL has issued the Finding of No Significant Impact (FONSI) for the project.

### Applicant's Response

The SMA determination was issued on August 28, 2014. The Department found that the proposal was exempt from the definition of "development."

### Dorian and Joseph Vittek

The Vitteks are concerned about the noise and other impacts of the project. They state that they and their neighbors do not see the need for a "caretaker's residence."

The community as a whole would benefit more from addressing more pressing problems, such as treating all the properties for ground termites, or upgrading the telephone lines. However, they also acknowledge that the Bundrant's hold a lease for the land and they have the right to invest in a project that only they feel is necessary.

They are also concerned with the amount of noise that will be generated by 18 months of construction, and note that their home was built in 1979, before other homes were, and therefore did not inconvenience anyone. They also note that there has been continuing construction and remodeling on the existing residence since 2004, including on weekends and occasionally until dark. They state that there has been no quiet since the Bundrants moved in, and do not believe

that the application's conclusion that "no substantial effects to air, water, or ambient noise would occur."

They ask that a copy of the mitigation plan be contained in the final assessment. In addition, they request that no signs be erected that could raise outside curiosity, increase traffic, and impinge on the privacy of the residents.

# Applicant's Response

The proposed use is an identified land use in the Conservation District, and is similar to other uses on neighboring properties.

Building an additional home in a subdivision that already contains many homes involves temporary impacts similar to those that occurred during the construction of the other homes.

The Bundrant's representative is willing to limit construction to a 7 a.m. to 6 p.m. time frame. The eighteen month time frame is the estimate for the duration of the entire project; the construction of the residence should not take the full period.

The main mitigation measures have been outlined in Section 3.1.2 of the Final Environmental Assessment. The Best Management Practices are regulated by the Hawai'i County Department of Public Works, the Hawai'i County Planning Department, the Hawai'i State Department of Health, and the Department of Land and Natural Resources, Office of Conservation and Coastal Lands and Division of Conservation and Resource Enforcement.

#### SECTION 13-5-30 CRITERIA

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. The Board has approved other single family residences on neighboring parcels.

Pursuant to the design standards, the maximum developed area for a lot this size would be 5000 square feet. The proposed residence is 4528 square feet. The residence will be set back 108 feet from the side of the property, 160 feet from the front, and 700 feet from the back. The proposal contains one kitchen, and has no detached structures apart from the well.

OCCL concludes that the residence is in conformance with the single family residential standards found in §13-5.

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 Chapter 205A objectives:

Recreational resources: Shoreline access will remain unchanged.

**Historic resources:** An archaeology survey confirmed that the property contains sites of historic significance. The survey recommends preparing a preservation plan for two precontact sites, and that the landowner and lease holder avoid landscaping near the other sites.

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: This is not a shoreline parcel, but is adjacent to the Keawaiki Beach Lots. The shoreline there is an a'a lava cliff approximately 20 feet in height. The ground is highly permeable, and runoff and soil erosion hazard are minimal. The project is thus unlikely to generate impacts to the coastal ecosystem.

Coastal Hazards: The proposed residence is set back 200 feet from the shoreline. It is in Flood Zone X, which is outside the 500 year flood plain. It is, however, in an area that the Hawai'i County Civil Defense Agency recommends evacuating during a tsunami warning. It is in Lava Hazard Zone 3, and as such there is some risk of lava inundation.

**Public Participation:** The application was distributed for public comment, and was available for public review both at the nearest library and on OCCL's website.

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.

Due to the lack of native ecosystems and threatened and endangered plant species, no adverse impacts are expected to occur. Construction activities will generate temporary, intermittent, short-term impacts affecting air quality and noise levels. This will be mitigated with established construction practices that will limit the construction activities to day time hours. There will be no development generated runoff directed toward adjacent properties. All construction activities will be conducted in conformance with applicable requirements in the Hawai'i County Code and the Uniform Building Code.

Best Management Practices have been outlined related to potential erosion and runoff into the shoreline area. These include but are not limited to:

1. Schedule construction to avoid periods of heavy rain;

- 2. Apply protective covers to cleared areas, soil and material stockpiles, as necessary and appropriate;
- 3. Store and use fuel storage in manner to prevent leaks, spills or fires;
- 4. Use drip pans beneath heavy vehicles and construction equipment not in use in order to trap vehicle fluids;
- 5. Conduct routine maintenance of BMPs by adequately trained personnel;
- 6. Prevent construction materials, petroleum products, wastes, debris, and landscaping substances (herbicides, pesticides, and fertilizers) from blowing, falling, flowing, washing or leaching into the ocean; and
- 7. Clean-up and dispose at an approved site of any significant leaks or spills, should they occur.

The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved. The construction activities will be confined to the Bundrants' leased lot and will not have any adverse impact on the natural resources of the area, community or region. The physical beauty of the lot will not be affected materially by the home construction and landscaping along the roads, and open space will be preserved.

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.

The single-family residence will utilize earth tones to blend in and will have features such as solar hot water, solar photovoltaic (if permissible), low-flow fixture, passive cooling, etc., that reduces energy use. Solar energy will be considered as a source for the well pump.

These lots are immediately adjacent and mauka of the Keawaiki Beach Lots which were developed as a residential subdivision in 1968.

The native and Polynesian plants that will be used for landscaping are appropriate to the area.

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.

Air quality and noise levels will not be affected, except for minor temporary effects during the construction period. No significant impact to the visual scenery is expected as the home is designed to blend into the surrounding area, which includes many residences. The site is not described in any State or County plan that identifies important views for the area.

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 predicted detrimental public health, safety or welfare concerns foreseen.

### DISCUSSION

The applicant proposes to build a four bedroom caretaker's residence, retrofit an existing well, and conduct landscaping along existing roadways. The applicant himself lives on a neighboring parcel.

The project area lies on land leased from Kamehameha Schools. The lease is set to expire on June 30, 1947, at which time the lease terms dictate that all improvements must be removed.

The proposed residence is in conformance with the single family residential standards found in HAR Chapter 13-5, as discussed on page 5. As this will be a second residence built by the applicant, OCCL would like strong assurances that it will not be used for any other use beyond housing the caretaker. We thus recommend that the Board require that a restrictive convent stating this be a condition of any permit that is granted.

Neighboring parcel owners expressed concern regarding the noise impacts of the property. The applicant has agreed to limit construction times to the period from 7 a.m. to 6 p.m. OCCL notes that there are seventeen other single family residences in the neighborhood and that this current proposal is similar in size and scale these others.

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 revegetated 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 a number of sensitive archaeological resources are present on the undisturbed portions of the property. These include pāhoehoe excavations that possible served as a quarry during the pre-contact period and an isolated section of a trail. The archaeologist who conducted the site survey recommended that a preservation plan be prepared and submitted to DLNR's State Historic Preservation Division for review and approval. OCCL supports this recommendation, and will recommend that the Board make it a condition of any permit that is granted.

OCCL reviewed the application in light of the Coastal Zone Management Act, HRS Chapter 205A, and found that it was consistent with the program's objectives and policies. In addition, the County of Hawai'i Planning Department has concluded that the proposal is exempt from the definition of "development" under Special Management Area (SMA) rules.

OCCL finds that the proposed residence is in conformance with HAR Chapter 13-5 Exhibit 4, SINGLE FAMILY RESIDENTIAL STANDARDS, and §13-5-30, CONSERVATION CRITERIA.

#### RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVES this application for a Single Family Residence, well retrofitting, and associated landscaping at Kahauloa, South Kona, Hawai'i, TMK (3) 8-3-005:001, 020, and 021, 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 execute a Restrictive Covenant that will restrict the use of the residence to that of a "caretaker's cottage" prior to the approval of the construction plans;
- 7. 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;
- 8. 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;
- 9. 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;
- 10. 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;
- 11. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 12. 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;
- 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. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
- 18. 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;
- 19. 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;
- 20. 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;
- 21. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 22. The permitte will develop a preservation plan for two of the pre-contact historic sites, the pāhoehoe excavations and the trail section, and submit it to DLNR's State Historic Preservation Division for review and approval "prior to the approval of the construction plans;
- 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,

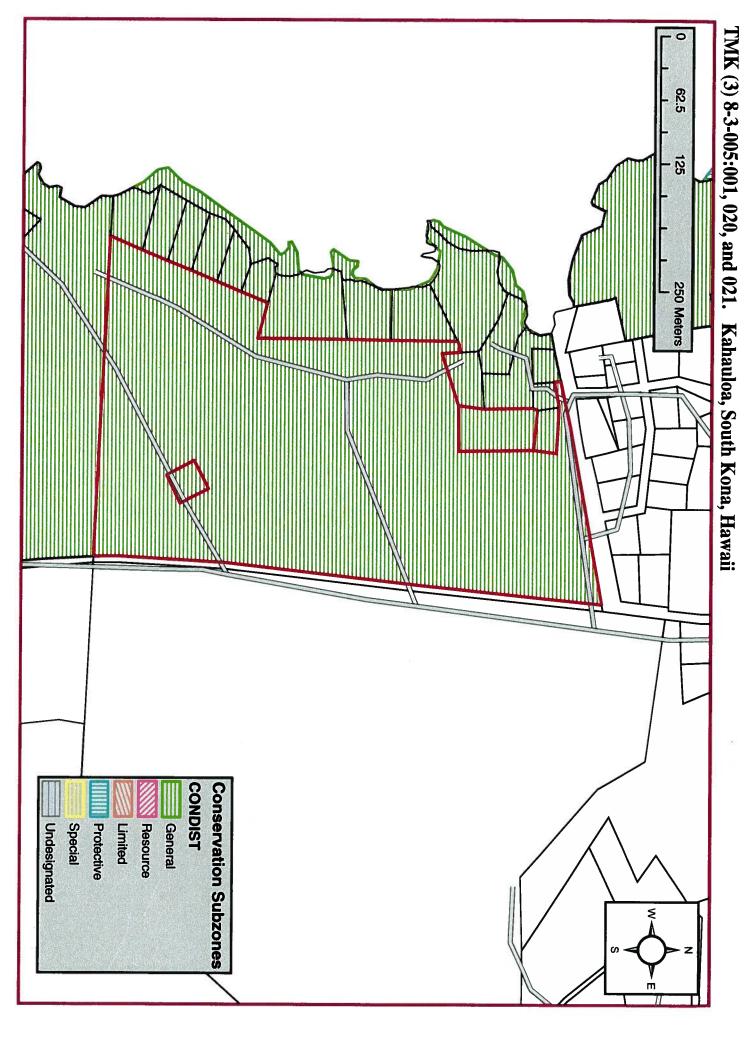
Michael Cain, Staff Planner

Office of Conservation and Coastal Lands

Approved for submittal:

William J. Aila, Chairperson

Board of Land and Natural Resources



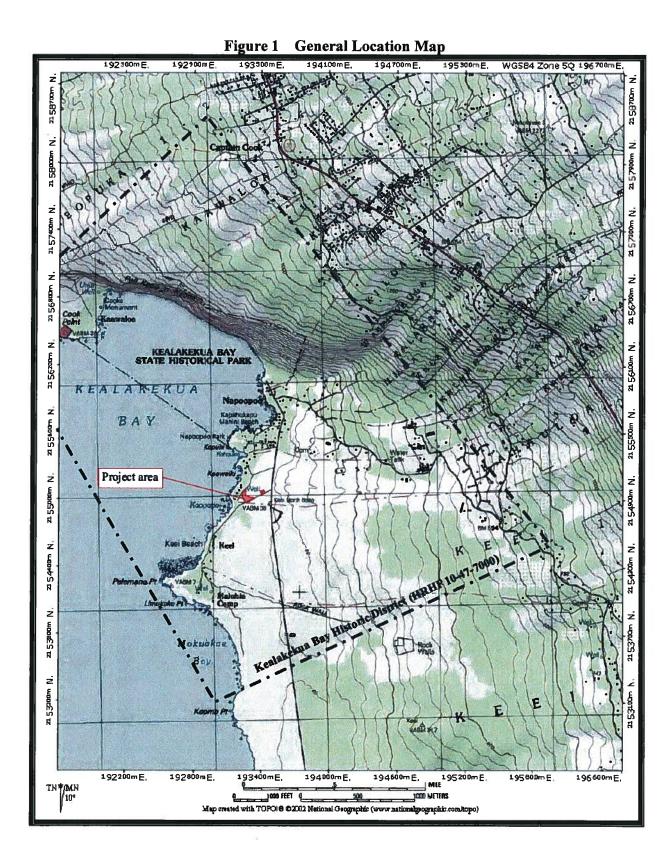


Figure 2 – Project Site Photos

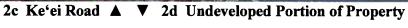


2a Area Proposed for Residence ▲ ▼ 2b Well Site

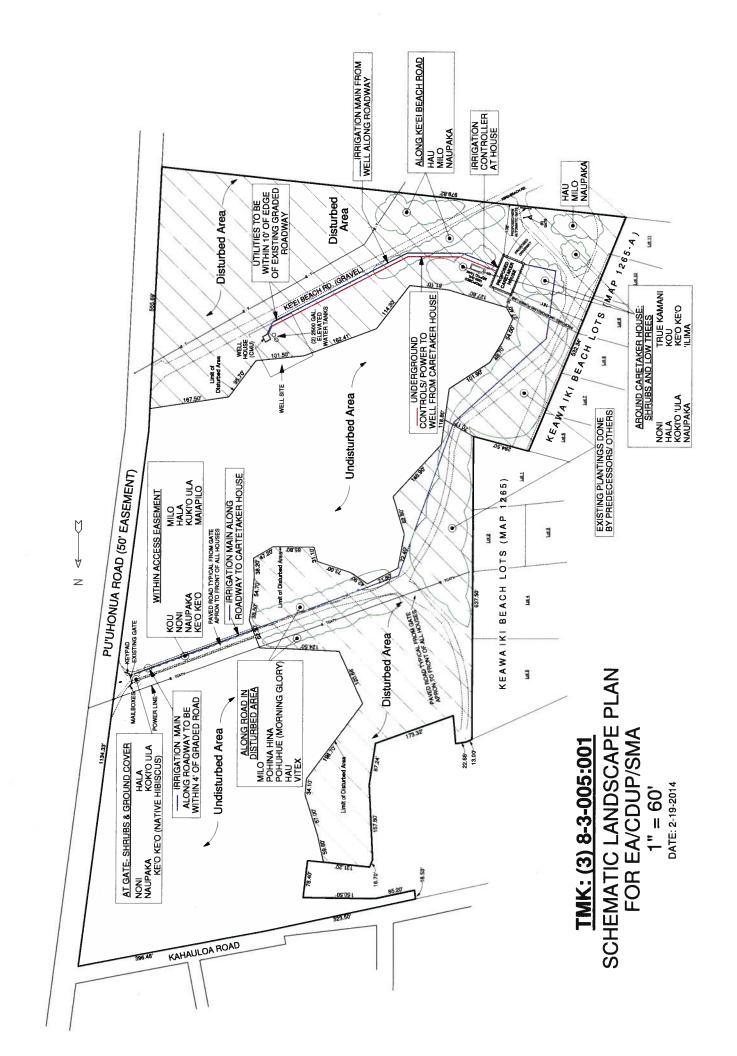


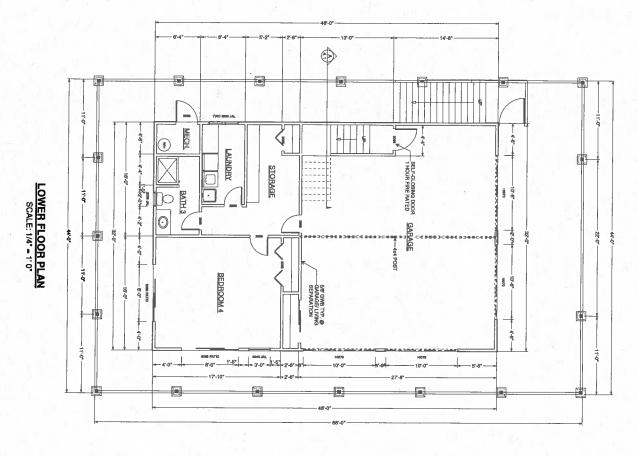
Figure 2 – Project Site Photos















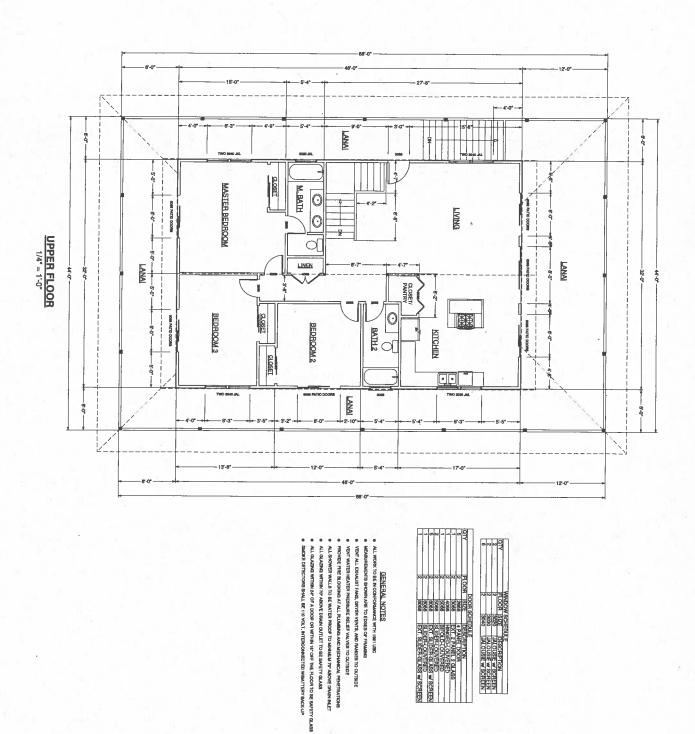




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GENERAL NOTES

ALL WORK TO BE IN CONFORMANCE WITH 1881 UBC





NEW RESIDENCE for: B.P. BISHOP ESTATES TTEES (legal owner) and CHARLES AND DIANE BUNDRANT (lessees) TMK: (3) 8 - 3 - 005:001 SOUTH KONA, ISLAND OF HAWAII

MNDOW SCHEDULE
LOOR ISIZE DISSORIPTION
SIZE DISSORIPTION
SIZE DISSORIEW SCREEN
SCHEEN
JALOUSIE W SCREEN
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THE CONTROL OF STREET

SUBSTRIPTION

SUBSTRI