

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

File No: KA-3744  
180-Day Exp. Date: September 29, 2015

September 11, 2015

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

**REGARDING:** Conservation District Use Application (CDUA) KA-3744 for a Single Family Residence (SFR) and Related Improvements

**APPLICANT/  
LANDOWNER:** Mark J. Maxson and Robert E. Shaw

**AGENT:** Mr. Walton D.Y. Hong  
Law Offices of Walton D.Y. Hong  
3135-A 'Akahi Street  
Līhu'e, Kaua'i, Hawai'i 96766

**LOCATION:** Hā'ena, District of Hanalei, Island of Kaua'i

**TAX MAP KEY:** (4) 5-9-002:067

**AREA OF PARCEL** 26,371 Square Feet

**USE:** 3,492 Square Feet

**SUBZONE:** Limited

**DESCRIPTION OF AREA AND CURRENT USE:**

The project site is located at 5-7655 Kuhio Highway in the Hanalei District, on the island of Kaua'i (see Exhibit 1). The project site is further identified as Tax Map Key (TMK) (4) 5-9-002:067. The property is approximately 26,371 square feet in size and is located within the Limited Subzone of the Conservation District (see Exhibit 2).

The subject property is currently vacant and primarily consists of manicured lawn area with two rolling dune formations towards the north and the east (see Exhibit 3). There are several palm trees located around the center of the property, while the area along the western

boundary of the property is currently overgrown. Access to the property is provided via a private road (Road "H") located along the eastern boundary of the property.

Electricity, water, phone and cable services are available at the site. No municipal wastewater disposal is available to the project area.

The property is bounded to the north by Kuhio Highway, to the south by a residential property, to the east by the private road "H", and to the west by an unnamed ephemeral stream.

Soil within the area is comprised of Mokulē'ia fine sandy loam (Mr). The Mokulē'ia series consists of well drained soils that formed in recent alluvium deposited over coral sand. Mokulē'ia soils are found on coastal plains and have slopes of 0 to 2 percent.

The nearest coastal waters is Mākua beach which is located approximately 0.15 miles northwest of the project site. According to the Federal Flood Insurance Rate Maps (FIRM), the project site is located in Zone VE which is defined as areas subject to inundation by the 1-percent-annual-chance flood event with additional hazards due to storm-induced velocity wave action. The project site is also within the tsunami evacuation zone.

The vegetation in the area can be described as a coastal alien wet forest comprised of a plant community that is completely non-native and is anthropogenic. Vegetation found consists of a closed canopy forest dominated by Indian almond, Java Plum, and coconut palms, all common in the Hā'ena area. Near the roadside are several 'true kamani' (Alexandrian laurel) trees. In addition, plant species on the ground mainly include castor bean, wedelia, indigo, Spanish clover, candle bush, and several species of introduced grass. The parcel is a habitat for a number of non-native bird species such as Japanese white-eye, red-crested cardinal, and wild jungle fowl. No native flora or fauna species were observed. The survey did not observe any flora or fauna species that are Federally Listed as Threatened or Endangered Species, or any species that are candidates for Federal Listing.

An Archaeological Inventory Survey (AIS) was prepared for the property in November 2000. No archaeological resources were encountered during the survey. However, due to concerns expressed by the Office of Hawaiian Affairs (OHA) and the State Historic Preservation Division (SHPD) regarding the possibility of remains in the area, a supplemental archaeological inventory survey (AIS) was prepared for the property in July 2015. The AIS consisted of trenching within the proposed location of the SFR and its associated septic system and leach field. The Kaua'i lead archaeologist for SHPD was present during the testing. No burial remains or cultural deposits were discovered. In view of the negative findings, no monitoring plan is proposed. The AIS will be provided to SHPD upon completion.

A Cultural Impact Assessment (CIA) was also prepared for the property in May 2005. The CIA found that while there are no definite resources identified, it is possible that the dune in the northeastern portion of the property may contain human burials; and, based on oral information, that an ancient trail may have once bisected the parcel. The trail is not a

physical trail, but an esoteric trail that was used by the "night marchers." It was recommended that the SFR be designed to avoid substantial surface work in the dune areas, and that an archaeological (and perhaps cultural) monitor be present during subsurface development activities. To mitigate potential impacts to the possible ancient trails, it is recommended that the house be designed with these potentials in mind, and that the parcel be appropriately blessed prior to commencement of development activities.

**PROPOSED USE:**

The landowners are proposing to construct a 3,492 square foot single family residence (SFR) on the subject property (see Exhibit 4, 5, 6, & 7). The proposed SFR is a linear post on pier construction and will be built 23 feet above grade to comply with the requirements of the Federal Emergency Management Agency (FEMA) and with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken.

The proposed SFR consists of two bedrooms, two and a half baths, a kitchen/dining/living room, a storage/laundry area, and a lanai area (see Exhibit 8). A septic tank and leach field will be located on south western side of the property (refer back to Exhibit 5). The septic tank will be approximately 1,500 gallons and the leach field absorption bed will be approximately 420 square feet (12' x 35') in size. It is anticipated that soil disturbance will be six (6) inches deep (maximum) and the area will be re-grassed upon installation completion.

While no archaeological resources were discovered, should any artifacts or remains be uncovered during the course of construction, work will immediately cease and SHPD notified.

While no threatened or endangered flora and fauna species were found on the property, to protect the Newell Shearwaters and other sea birds that may fly over the area, the *Avoidance and Minimization of Seabird Light Attraction Strategies* will be followed and only down facing lights will be used on the property.

Short term impacts from the construction of the proposed project may include fugitive dust which will be mitigated through watering and/or dust screens around the proposed work. It is unlikely that heavy equipment will be used due to the remoteness of the site and the necessity to cross weight-limited bridges to access the property. Disturbed areas will be re-grassed once work is completed. Noise due to construction can also be anticipated, however, construction will be limited to normal working hours, five days a week to minimize any inconvenience to neighboring properties. Construction may also result in an increase of traffic along Kuhio Highway, however, the impact is not anticipated to be significant.

OTHER ALTERNATIVES CONSIDERED:

Alternative 1: No Action alternative. This alternative would preserve the status quo of the property which would remain an undeveloped, maintained grass lawn area. This alternative would not be viable as it would deprive the landowners of a reasonable use of their property.

Alternative 2: Reduce the overall size of the SFR. This alternative is not desirable as the proposed SFR complies with the requirements set forth under Hawai'i Administrative Rules (HAR) Chapter 13-5 and landowner does not wish to downsize the home.

**SUMMARY OF COMMENTS**

The Office of Conservation and Coastal Lands referred the application to the following agencies and organizations for review and comment:

State

DLNR, Division of Aquatic Resource  
DLNR, Division of Conservation and Resource Enforcement  
DLNR, Division of Forestry and Wildlife  
DLNR, Engineering Division  
DLNR, Historic Preservation Division  
DLNR, Land Division  
Department of Health  
Office of Hawaiian Affairs

County

Planning Department

Organizations

Hanalei-Hā'ena Community Association

**Department of Land and Natural Resources (DLNR)-**

*Division of Aquatic Resources (DAR):* As the western boundary of the property lies within an intermittent drainage channel (stream), caution should be exercised to minimize runoff, and to prevent any pollutants from entering the drainage channel where it could reach the ocean during times when water is flowing in the drainage channel. During construction, areas denuded of vegetation should be planted or covered as soon as possible to prevent erosion. Construction materials, debris, and landscaping products should be kept away from the drainage channel where it could empty into the ocean during the periods when water flows in the drainage channel.

*Applicant's Response:* The drainage channel will be corrected in the Final EA to be described as an ephemeral stream as it is transitory in nature and flows for short periods of time in very heavy rainfall conditions. The applicant will exercise caution to minimize runoff and prevent any pollutant from entering into the stream and ocean. During construction, uncovered areas will be replanted as soon as reasonably possible to prevent erosion. Construction materials,

debris and landscaping products will be kept away from the ephemeral stream to minimize the chances of such material falling into the stream bed.

Division of Forestry and Wildlife (DOFAW): No Comments

Engineering Division: Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is VE. The National Flood Insurance Program (NFIP) regulates developments within this flood zone. The project must comply with the rules and regulations of the NFIP presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may provide to be more restrictive and thus take precedence over the minimum NFIP standards.

Applicant's Response: The applicant acknowledges and agrees that, except for a small portion in the southeastern corner, the subject parcel is within the "VE" zone as shown on the FIRM map for the area. The FIRM also shows that a small portion of the southeast corner is located within the "AE" zone. However, as the proposed SFR and septic system is located in the "VE" zone, the applicant will comply with all requirements, rules, and regulations of the NFIP.

Land Division Comments: No Comments

State Historic Preservation Division (SHPD): Review of the construction plans reveals that the footprint of the house site has not been tested to determine whether historic properties are likely to be affected. We recommend that an amended AIS be conducted as an amended AIS may allow the landowner to plan for house site and subsequent outbuildings or utilities on the property, and would inform the need for archaeological monitoring. The amended AIS would include subsurface testing at the house site, as well as the area where the septic tank and leach field will be, and previously untested areas of the property. Finally, as a point of clarification, the historic trail reference in the CIA does not refer to a physical trail, rather an esoteric trail of the "night marchers," and documentation or material evidence of the trail is not possible.

Applicant's Response: The applicant recognizes SHPD's concerns and as recommended, a supplemental AIS has been prepared. Trenching was conducted in the areas of the proposed SFR and septic system. The work was conducted in the presence of the SHPD Kaua'i Archaeologist. No remains or artifacts were uncovered and it was recommended that no monitoring plan be required. The applicant realizes the responsibility of immediately ceasing work and informing SHPD should any iwi kūpuna or Native Hawaiian cultural deposits be uncovered during construction and necessary protocols for inadvertent discoveries followed before work can be resumed.

**Office of Hawaiian Affairs (OHA) –**

Based on the close proximity of identified traditional Hawaiian burials on neighboring parcels, the proximity to the Hā'ena Archaeological Complex, and testimonies recorded in the CIA, OHA recommends that a supplemental or addendum AIS be conducted and focused on the areas subject to construction related excavation. In addition, OHA supports the recommendation that archaeological monitoring be conducted during any excavation associated with project construction. The archaeological monitoring plan prepared for the project should include full time monitoring of all project related excavation and a monitor should be assigned to each piece of ground disturbing equipment should multiple ground disturbing machines be operable at the same time. OHA requests assurances that should iwi kūpuna or Native Hawaiian cultural deposits be identified during any ground altering activities, all work will immediately cease and the appropriate agencies, including OHA, will be contacted pursuant to applicable, law.

*Applicant's Response:* The applicant recognizes OHA's concerns, and as recommended, a supplemental AIS has been prepared. Trenching was conducted in the areas of the proposed SFR and septic system. The work was conducted in the presence of the SHPD Kaua'i Archaeologist. No remains or artifacts were uncovered and it was recommended that no monitoring plan be required. The applicant realizes the responsibility of immediately ceasing work and informing SHPD should any iwi kūpuna or Native Hawaiian cultural deposits be uncovered during construction and necessary protocols for inadvertent discoveries followed before work can be resumed.

**County of Kaua'i**

Planning Department: No Comments

**Organizations**

*Hanalei-Hā'ena Community Association:*

- Correct and clarify the NFIP flood designation from AE to VE.
- Correct and clarify that the "drainage channel" referred to throughout the document is a perennial stream that meets the ocean and reef at Mākua.
- To avoid a substantial degradation of environmental quality, the septic system and leach field should be redesigned with an above ground contained system required that will not pollute the stream, reef, and Class AA waters of Mākua. It should be directed away from the natural drainage to avoid septic or sewage discharge into the stream and ocean.
- Please add conditions to address night lights in regards to endangered Newell's shearwaters.
- Please detail what archaeology studies an excavations have been performed in the dune areas. Please detail what part, if any, of the dune areas are proposed to be built on. Did the AIS include a study of the large dune area for burials? Did the AIS area of study include archaeological excavations where the building and footings are



currently proposed to be located or where the septic tank and leach filed are proposed to be located? As nearby lots have found numerous burials, if the above were not addressed, a revised AIS should be done to ensure that the proposed project will not be constructed on any *Iwi Kūpuna*. This should be done prior to construction, not during construction. Dune systems are known burial sites and an adequate AIS is essential to protect historical burials.

- Consider downsizing the structure to avoid building on dune area.
- What outreach has been done to local residents to locate and/or identify the traditional trail? To mitigate cultural impacts, further study and outreach to local families to locate the trail should be required.
- There is no mention that the ahupua'a of Hā'ena is a proposed Community-Based Subsistence Fishery Management Area. This area is well used by traditional cultural practitioners and contamination or pollution of the stream and ocean would impact the traditional fishery.
- The size of the proposed SFR does not fit in with the traditional character of Hā'ena or this small lot. Please consider reducing the size to maintain the rural character of the community.
- Please clarify if the stairway goes to both the house and bedroom or only the main house. Please clarify if the bedroom or bedrooms will be lockout units or only accessed from the main entrance.
- Please clarify if there will be a gate or entrance directly from Kuhio Highway.
- Please consider adding another alternative for a smaller house, more in character with Hā'ena, that does not build on the dunes, with a redesigned above ground wastewater system.
- We request that explicit conditions be included in the CDUA to the effect that no commercial uses are permitted (i.e. transient vacation rentals, homestays, B&B's, are prohibit on the property. This condition shall be incorporated into the conditions of approval and recorded at the Bureau of Conveyances.
- Require a condition and deed restriction to prevent the applicants or future owners from constructing a separate stairwell to access the bedroom.
- Require a condition prevent enclosure of the downstairs area below the NFIP Base Flood Elevation.

*Applicant's Response:*

- We have reviewed the County's FIRM maps and have confirmed that the makai portion of the subject property is within the "VE" zone, while a small portion in the southeastern corner of the property is within the "AE" zone. As the proposed use will occur within the "VE" zone, all requirements for constructing in the "VE" zone will be met.

- We will correct the reference to the drainage channel to an ephemeral stream. As defined in Webster's II New Riverside University Dictionary, "perennial" is defined as "lasting or active through the year or through many years." "Ephemeral," on the other hand, is defined as "lasting a short time; transitory." The applicant believes that ephemeral better describes the condition of the stream. The stream is mainly dry except during periods of unusually heavy rainfall. The applicant is aware of only several instances over the last twenty years where storm runoff flowed through the stream and into the ocean at Mākua beach. The ephemeral stream returns to its normal dry state within days after the rainfall event.
- Sewage will be disposed of in accordance with the requirements of the State Department of Health (DOH). The septic tank and leach field are located in the southeast corner of the property which as far as reasonably possible (100+ feet) from the stream. This increases the distance over which contaminants, if any, must travel to influence the stream. The DOH has advised that a septic system is required to be no closer than fifty feet from any body of water. An above ground wastewater system is not intended, unless required by law.
- The proposed residence is located in the center of the lot in an effort to avoid the sand dune located at the northeastern corner of the lot.
- The AIS prepared in November 2000 included an intensive surface survey of the subject parcel, and excavating a series of backhoe trenches. No midden deposits nor burials were encountered in the substantial subsurface testing carried out as a part of the investigation. It was therefore recommended that no further archaeological work need to be conducted prior to development. In addition, the AIS was recently updated to include trenching investigations in the areas of the proposed SFR and septic system. The survey did not uncover any remains or artifacts.
- The applicant has no intention of downsizing the proposed residence. The proposed use is consistent with, if not smaller than other dwellings on neighboring properties in Hā'ena and complies with the applicable size requirements for the Conservation district.
- No further outreach to local residents has been made to locate and/or identify the possible trail as the trail was not a physical trail, but a spiritual one. The applicant will adhere and follow the advice of the kapuna that proper blessing be conducted prior to development.
- The Final EA will mention that Hā'ena is a proposed Community-Based Subsistence Fishery Management Area. While the applicant agrees that pollution of the stream and ocean would impact the traditional fisher, the proposed use is anticipated not to result in any such impact. The applicant is unaware of such impact caused by other residences having septic systems adjacent to the subject property and stream.
- There is a singular stairway leading to the entry to the main house and the guest bedroom wing. The main house and guest bedroom can only be accessed from the main entrance. There will be no other entry to access the guest bedroom except through the main house, removing the possibility of any lockout.



- A condition will be added that only down facing lights will be permitted to protect the Newell shearwaters and other seabirds. The applicant intends to follow the Avoidance and Minimization of Seabird Light Attraction Strategies as promulgated by the Kaua'i Seabird Habitat Conservation Program.
- There will be no gate or entrance to the subject property directly from Kuhio Highway. Ingress and egress to the property will be via a private road "H."
- The Applicant is agreeable to a condition that there shall be no lockouts in the proposed residence, unless lockouts are expressly allowed by applicable law.

### ANALYSIS

Following review of the application, representatives of the Applicant were notified by letter dated April 2, 2015, of the following:

1. The proposed use is an identified land use in the Limited subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), L-3, SINGLE FAMILY RESIDENCE, (D-1) *A single family residence in a flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM) that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter.* Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii 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; and
4. The subject area is within the Special Management Area (SMA). The applicant's responsibility includes complying with the provisions of Hawai'i's Coastal Zone Management law (Chapter 205A, HRS) that pertain to the Special Management Area (SMA) requirements administered by the various counties. Negative action on this application can be expected should you fail to obtain and provide us, at least forty-five (45) days prior to the 180-day expiration date, one of the following:
  - An official determination that the proposal is exempt from the provisions of the county rules relating to the SMA;
  - An official determination that the proposed development is outside the SMA; or
  - An SMA Use Permit for the proposed development.

The Final EA/Finding of No Significant Impact (FONSI) was issued by the DLNR Chairperson and published in the September 8, 2015 edition of the Office of Environmental Quality Control's *The Environmental Notice*.

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 and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The proposed use is an identified land use in the Limited subzone 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.

No rare, threatened or endangered plant or animal species or significant habitats are known to exist on the subject property. No Archaeological and cultural resources have been identified 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 project site is located in the Limited subzone. The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

The proposed project is an identified land use within the Conservation District, pursuant to HAR §13-5-24 *Identified land uses within the limited subzone, L-3 SINGLE FAMILY RESIDENCE; (D-1) A single family residence in a flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM) that conforms to applicable county regulations regarding the national Flood Insurance Program and single family residential standards as outlined in this chapter.*

As the project is located within an established neighborhood in the "VE" flood zone and has been designed to meet all applicable rules and regulations as set forth by the NFIP as well as the design standards set forth in HAR, Chapter 13-5, Staff believes the proposed project is consistent with the objectives of the subzone.

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

The project area is located within the Special Management Area (SMA). The applicant received a SMA determination letter from the County of Kaua'i, Planning Department which stated that the proposed project is not considered "Development"

as defined in Section 1.4H of the County's SMA Rules and Regulations. However, the proposed land use complies with following Coastal Zone Management guidelines as follows:

- (1) *Recreational Resources:* The nearest recreational resource in the vicinity of the project site is Mākua beach located approximately 1.5 miles to the north of the project site. As the proposed project is a SFR, no recreational resources are anticipated to be impacted as a result of the proposed project.
- (2) *Historic Resources:* As mentioned earlier, an AIS was prepared for the project site in November 2000. No archaeological resources were encountered during the survey. However, due to concerns expressed by the Office of Hawaiian Affairs (OHA) and the State Historic Preservation Division (SHPD) regarding the possibility of remains in the area, a supplemental archaeological inventory survey (AIS) was prepared for the property in July 2015. The AIS consisted of trenching within the proposed location of the SFR and its associated septic system and leach field. The Kaua'i lead archaeologist for SHPD was present during the testing. No burial remains or cultural deposits were discovered. In view of the negative findings, no monitoring plan is proposed. However, should any artifacts or remains be uncovered during the course of construction, work will immediately cease and SHPD notified.

A CIA was also prepared for the property in May 2005. The CIA found that while there are no definite resources identified, it is possible that the dune in the northeastern portion of the property may contain human burials; and, based on oral information, that an ancient trail may have once bisected the parcel. The trail is not a physical trail, but an esoteric trail that was used by the "night marchers." It was recommended that the SFR be designed to avoid substantial surface work in the dune areas, and that an archaeological (and perhaps cultural) monitor be present during subsurface development activities. To mitigate potential impacts to the possible ancient trails, it is recommended that the house be designed with these potentials in mind, and that the parcel be appropriately blessed prior to commencement of development activities.

- (3) *Scenic and Open Space Resources:* The property does not present any unique scenic or open space resource. The existing vegetation along Kuhio Highway will not be disturbed and, will in large part, block the proposed SFR from view of people driving, bicycling, or walking past the property.
- (4) *Coastal Ecosystems, (6) Coastal Hazards, (9) Beach Protection, & (10) Marine Resources:* The proposed project will use BMPs during construction and uncovered areas will be replanted as soon as reasonably possible to prevent erosion to minimize any potential erosion which could be released into a stream or beach during a heavy rain event. Sewage will be disposed of in accordance with the requirements of the State Department of Health (DOH). The septic tank and leach field are located in the southeast corner of the property which as

far as reasonably possible (100+ feet) from the stream. This increases the distance over which contaminants, if any, must travel to influence the stream. The DOH has advised that a septic system is required to be no closer than fifty feet from any body of water.

- (5) *Economic Uses:* The proposed project will provide support to public facilities by providing an additional, secure municipal water storage source for local customers.
- (7) *Managing Development & (8) Public Participation:* As a part of this permit process, the State and County agencies, as well as the public was notified of this application and was given the opportunity to comment.

- 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, community or region provided that mitigative measures are implemented and the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard that the project may cause. Short-term impacts associated with construction activities such as potential noise and air quality are anticipated, however BMPs shall be implemented to mitigate any potential impacts.

- 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 parcel.

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

The site does not contain unique features either topographically or geologically. Although a structure will exist where no structure existed before, the proposed SFR does not encompass the entire property. Preserving and supplementing the existing flora after construction will maintain the natural beauty and open spaces characteristic of the area. In addition, the existing vegetation along Kuhio Highway will not be disturbed and, will in large part, block the proposed SFR from view of people driving, bicycling, or walking past the property.

- 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.

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

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare as mitigated. With the incorporation of an appropriately designed and operated individual wastewater system, combined with other BMPs identified, the proposed residential land use will not result in materially detrimental impacts to public health, safety and welfare.

#### CULTURAL IMPACT ANALYSIS:

In *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, 94 Haw. 31 (2000), the Hawai'i Supreme Court laid out a framework for assessing cultural impacts. An assessment must include:

- (1) The identity and scope of "valued cultural, historic, or natural resources" in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
- (2) The extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and
- (3) The feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist.

As discussed earlier, an AIS was prepared for the property in November 2000. No archaeological resources were encountered during the survey. However, due to concerns expressed by the Office of Hawaiian Affairs (OHA) and the State Historic Preservation Division (SHPD) regarding the possibility of remains in the area, a supplemental archaeological inventory survey (AIS) was prepared for the property in July 2015. The AIS consisted of trenching within the proposed location of the SFR and its associated septic system and leach field. The Kaua'i lead archaeologist for SHPD was present during the testing. No burial remains or cultural deposits were discovered. In view of the negative findings, no monitoring plan is proposed. However, should any artifacts or remains be uncovered during the course of construction, work will immediately cease and SHPD notified.

A CIA was also prepared for the property in May 2005. The CIA found that while there are no definite resources identified, it is possible that the dune in the northeastern portion of the property may contain human burials; and, based on oral information, that an ancient trail may have once bisected the parcel. The trail is not a physical trail, but an esoteric trail that was used by the "night marchers." It was recommended that the SFR be designed to avoid substantial surface work in the dune areas, and that an archaeological (and perhaps cultural) monitor be present during subsurface development activities. To mitigate potential impacts to the possible ancient trails, it is recommended that the house be designed with these potentials in mind, and that the parcel be appropriately blessed prior to commencement of development activities.



Based on the information provided by the applicant as well as the AIS, supplemental AIS and the CIA that was prepared for the property, Staff believes that the project will have no significant impacts on cultural or historical resources in the project area.

## **DISCUSSION**

The proposed 3,492 square foot SFR is a linear post on pier construction to be built 23 feet above grade to comply with the requirements of the Federal Emergency Management Agency (FEMA) and with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken.

The proposed SFR consists of two bedrooms, two and a half baths, a kitchen/dining/living room, a storage/laundry area, and a lanai area. A septic tank and leach field will be located on south western side of the property. The septic tank will be approximately 1,500 gallons and the leach field absorption bed will be approximately 420 square feet (12' x 35') in size. The septic system has been designed to be located over 100 feet from the stream bordering the western side of the property to reduce the possibility of contaminants entering the stream and being carried out to Mākua beach. Staff notes that the DOH requires septic systems to be located no closer than 50 feet from any body of water.

During construction, BMPs will be observed and implemented. Within the Environmental Assessment, the applicant has identified a number of mitigative measures, conditions, and practices to ensure that the proposal will have minimal effect on the natural resources that may be impacted by the proposed project. As such, these proposed measures, conditions and practices are incorporated into the permit. In addition, the proposed SFR is consistent with Chapter 13-5, Hawaii Administrative Rules, Exhibit 4, Single Family Residential Standards.

In 1967, the Kauai courts approved the Haena Hui subdivision. This was done without the consent of the Board. The Board considered this issue in 1980 and determined that the individuals involved acted in good faith by applying to and following the dictates of the courts in the matter, albeit the oversight of the Board's requirements to first obtain a permit for subdivision.

Following this chain of events, the Board adopted a policy that residential lots within the Haena Hui subdivision (save for certain lots with poor developmental qualities, such as some beach lots), would qualify for one residential structure, subject to some special and standard conditions, that are herein incorporated. Notwithstanding this policy, and notwithstanding a change in the policy by the Board, the Board still retains its discretionary authority over all matters with respect to land use within the Conservation District.

The Haena area, which includes both Urban and Conservation District land, has essentially been developed as a residential neighborhood and the proposed SFR is, therefore, consistent with historic uses of the area. The proposed structure is similar in scale to many of the neighboring houses and the structure has been designed to comply with the relevant flood hazard requirements.



Staff believes that the project will have negligible adverse environmental or ecological effects provided that best management practices and mitigation measures as described in the application and environmental assessment, and as required by rule or laws, are fully implemented.

### **RECOMMENDATION**

That the Board of Land and Natural Resources APPROVE Conservation District Use Application KA-3744 for a Single Family Residence (SFR) and Related Improvements located at Hā'ena, island of Kaua'i, TMK: (4) 5-9-002:067, subject to the following conditions:

1. The Board's approval is temporarily stayed until the 30-day challenge period is over. However, should an appeal be filed, approval will be stayed indefinitely until the appeal has been resolved.
2. 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;
3. 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;
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 application and environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
  10. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;
  11. The permittee shall notify the Office of Conservation and Coastal Lands (OCCL) in writing prior to the initiation and upon completion of the project;
  12. 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 SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
  13. The permittee shall utilize Best Management Practices for the proposed project;
  14. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;
  15. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Chapter 13-5;
  16. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
  17. 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;
  18. 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;

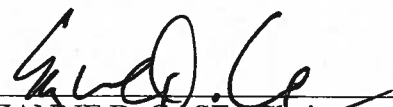
19. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
20. Obstruction of public roads, trails, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, or pathways acceptable to the department;
21. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
22. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
23. 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. All exterior lighting shall be shielded to protect the night sky;
24. 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;
25. Any landscaping will shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawai'i. The introduction of invasive plant species is prohibited;
26. Failure to comply with any of these conditions shall render this Conservation District Use Permit void under Chapter 13-5, as determined by the chairperson or board.

Respectfully submitted,



Lauren Yasaka  
Office of Conservation and Coastal Lands

Approved for submittal:



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SUZANNE D. CASE., Chairperson  
Board of Land and Natural Resources



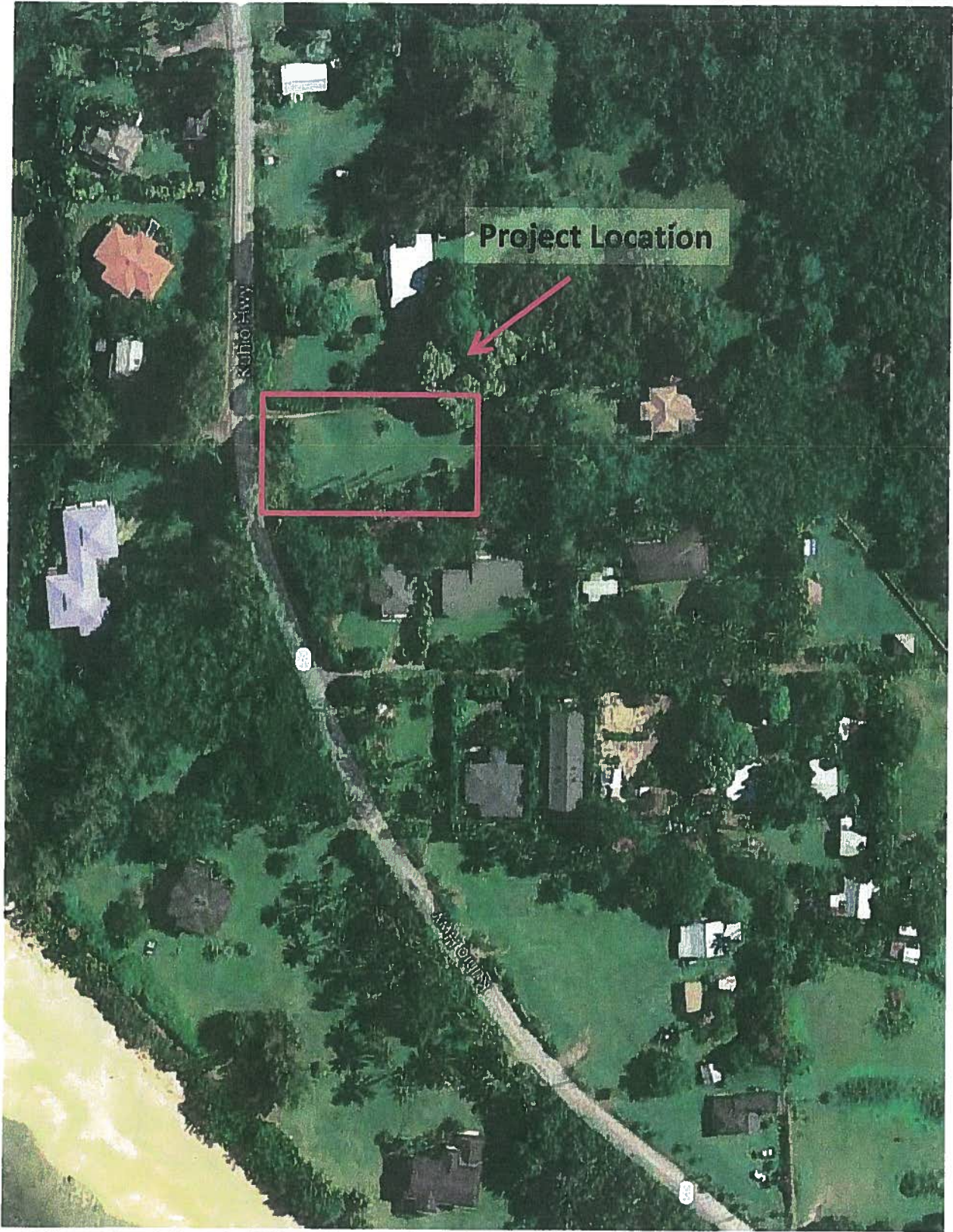
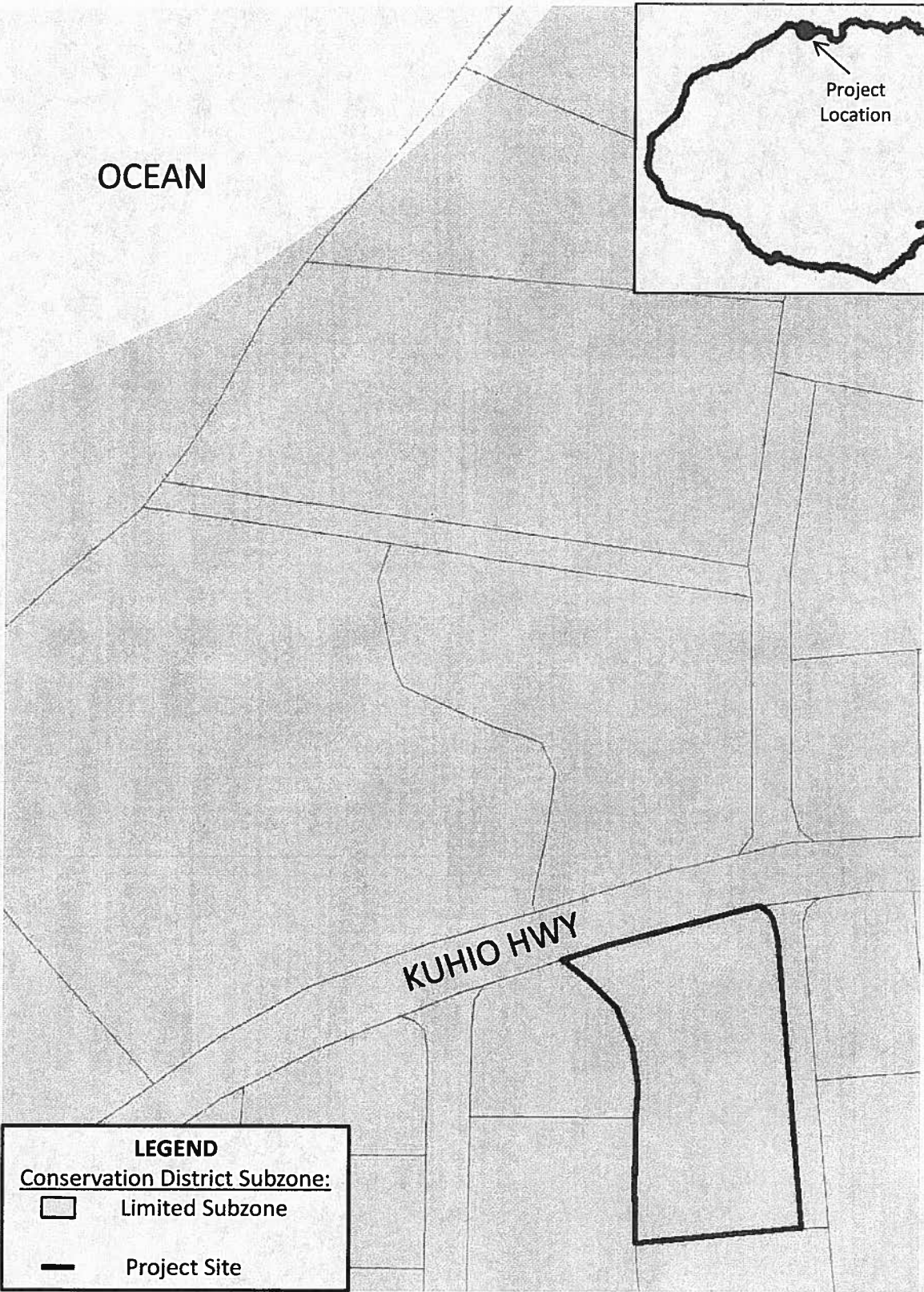
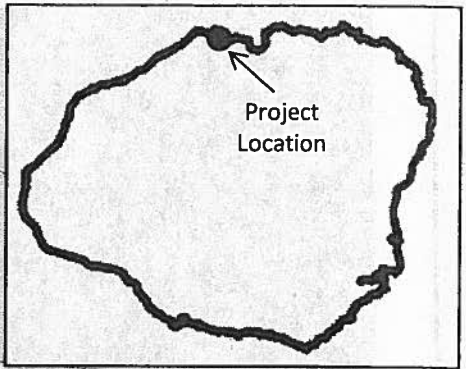


Image Courtesy of Google Maps

**AERIAL VIEW OF PROJECT SITE**



OCEAN



**LEGEND**  
Conservation District Subzone:  
□ Limited Subzone  
— Project Site



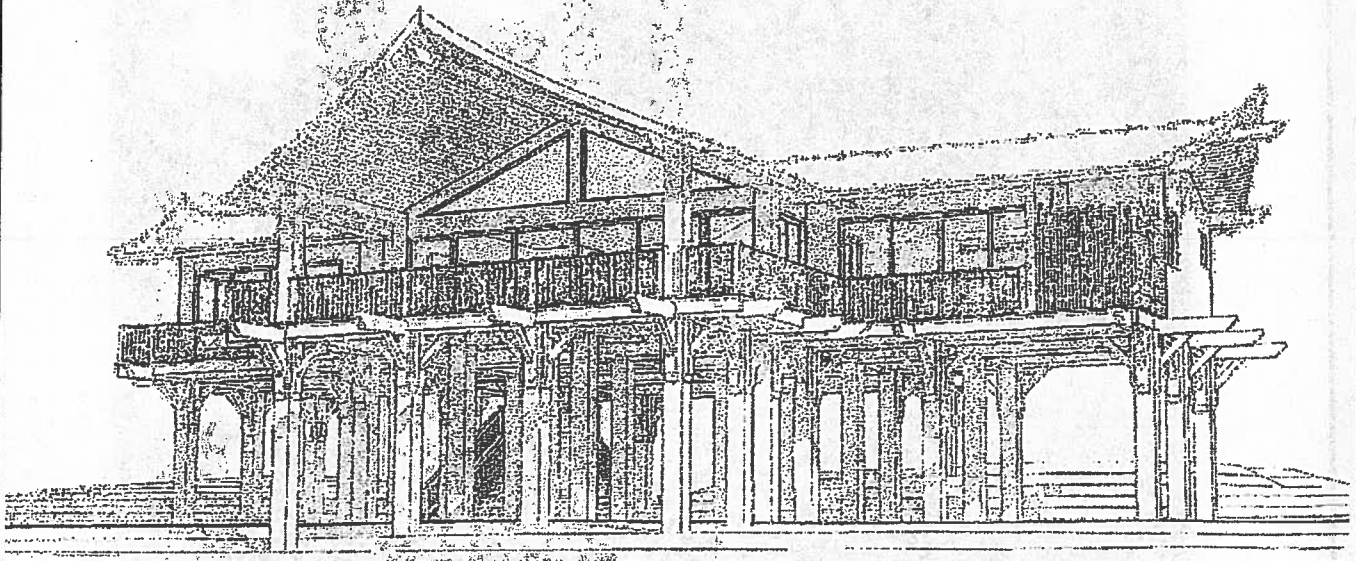
**PROJECT SITE & CONSERVATION DISTRICT SUBZONE MAP**



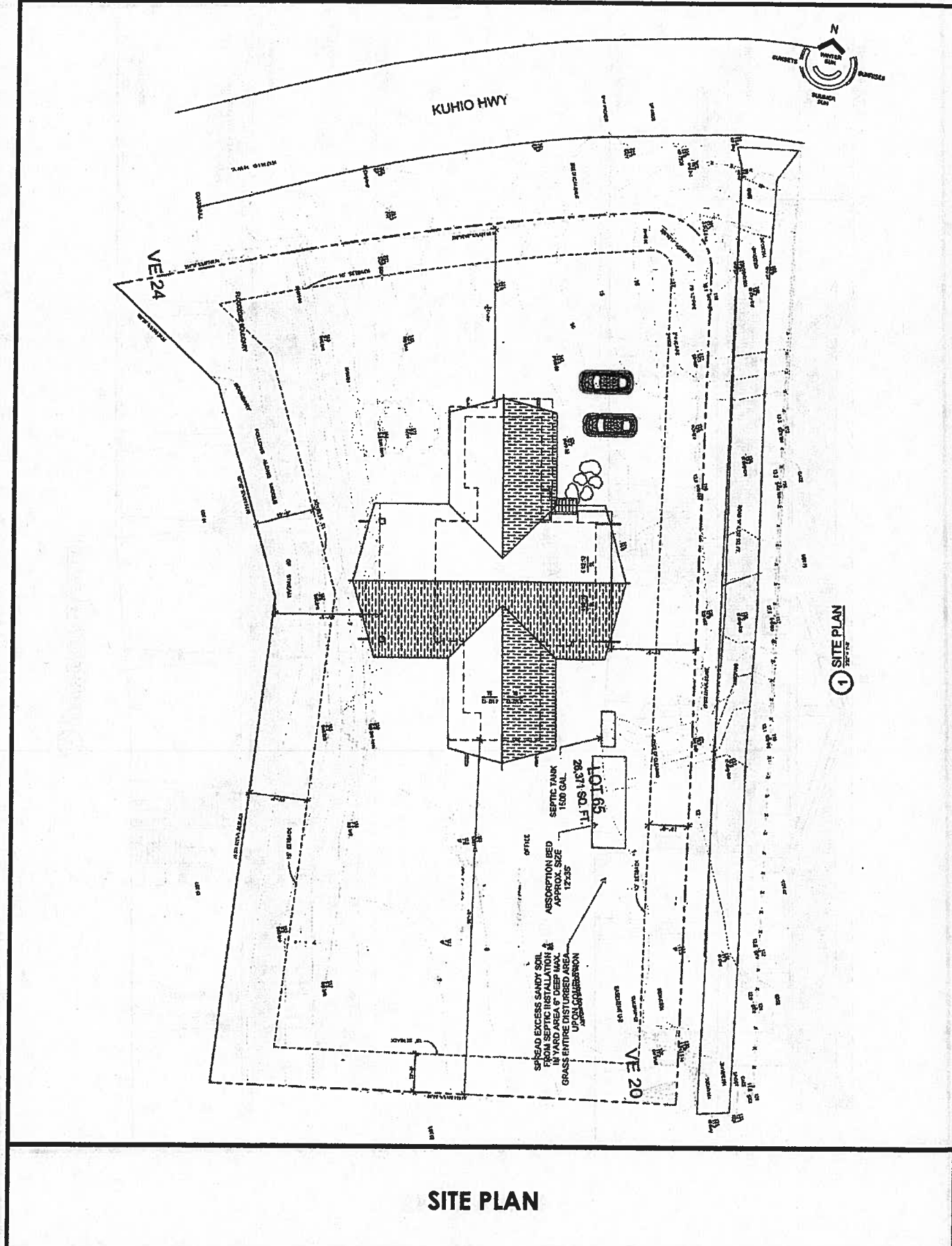


**PHOTOS OF EXISTING SITE**



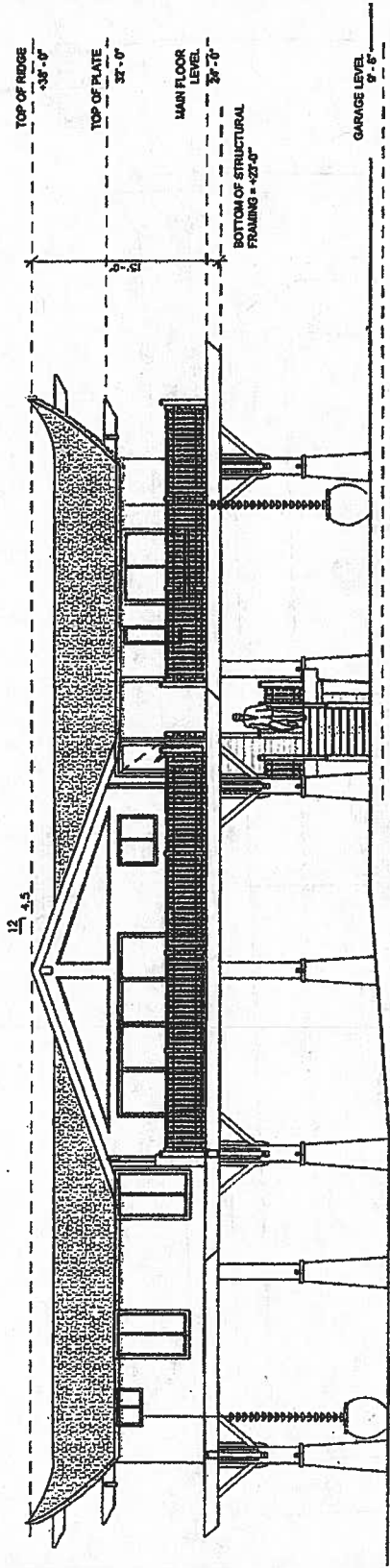


**ARCHITECT RENDITIONS OF PROPOSED SFR**

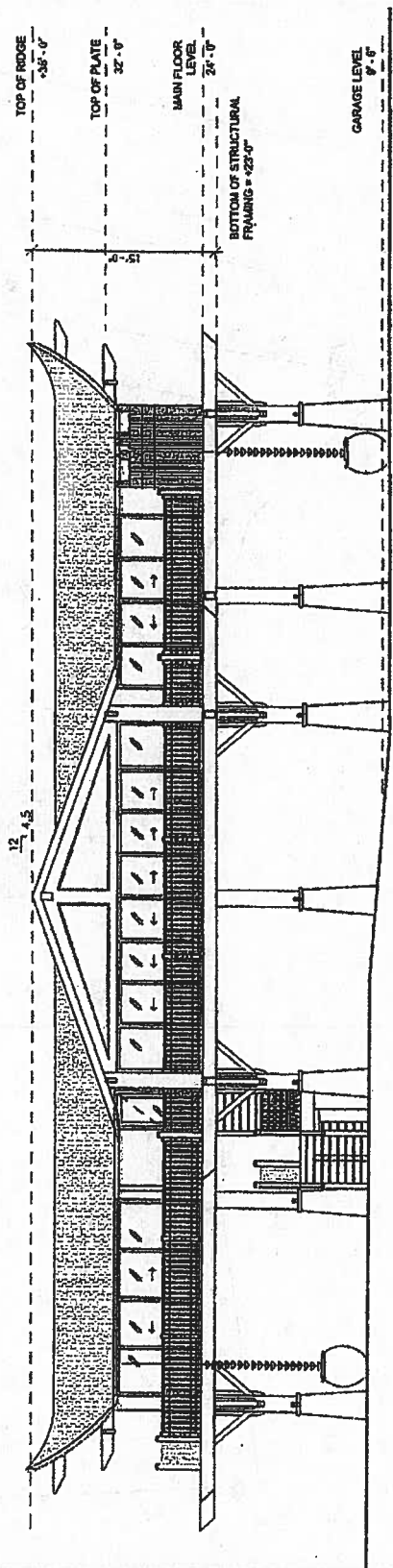


1 SITE PLAN

SITE PLAN

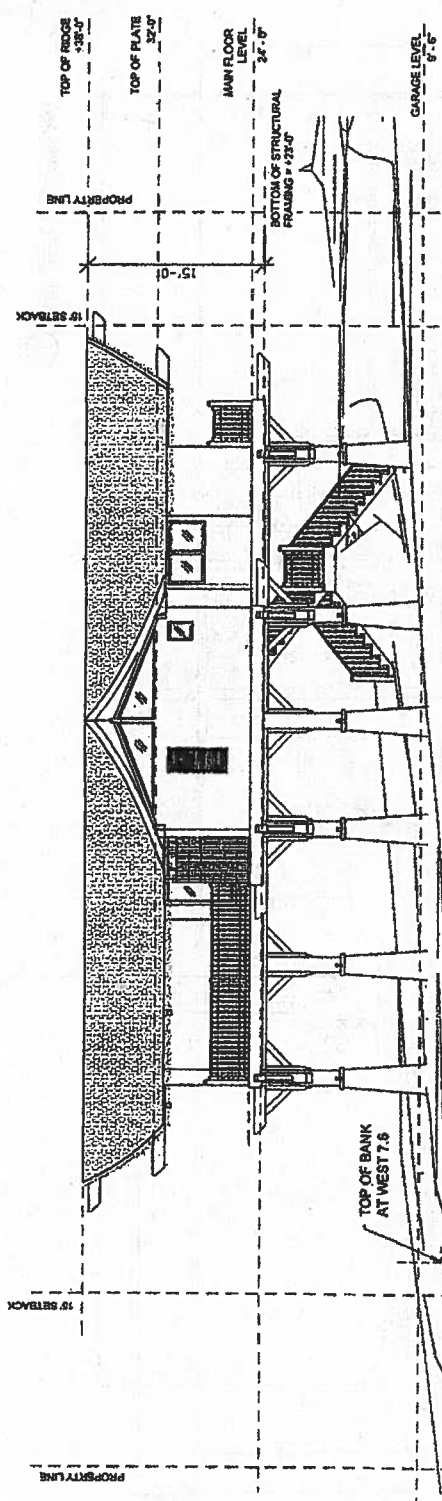


1 NORTH (REAR) ELEVATION  
3/28/12

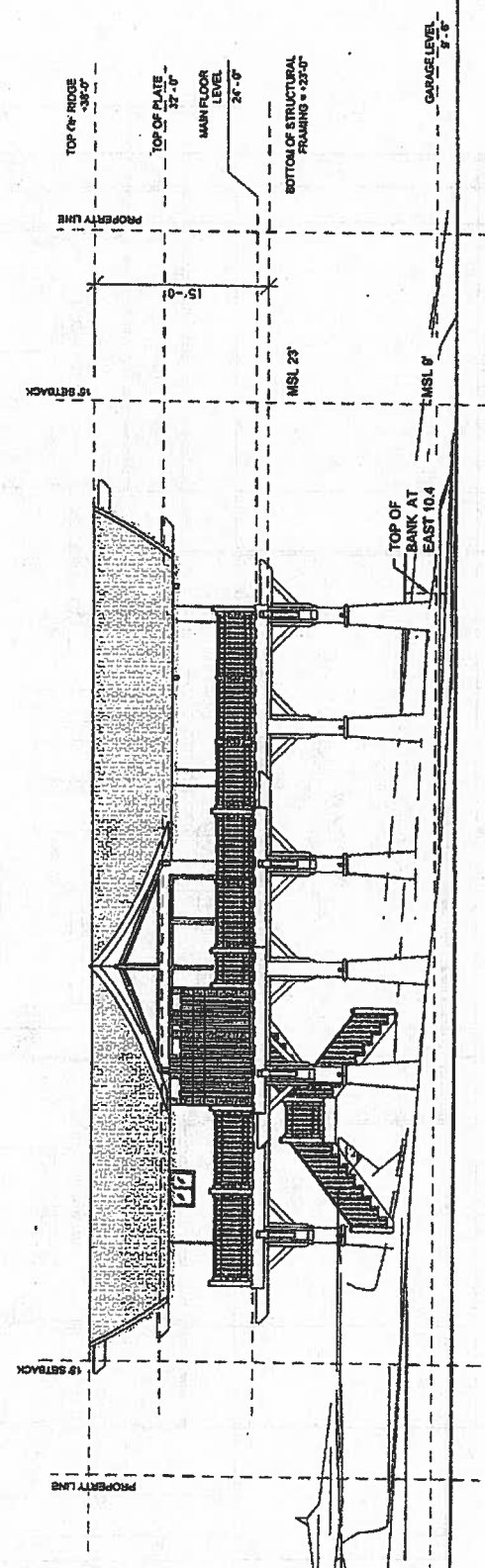


2 SOUTH (FRONT) ELEVATION  
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ELEVATIONS

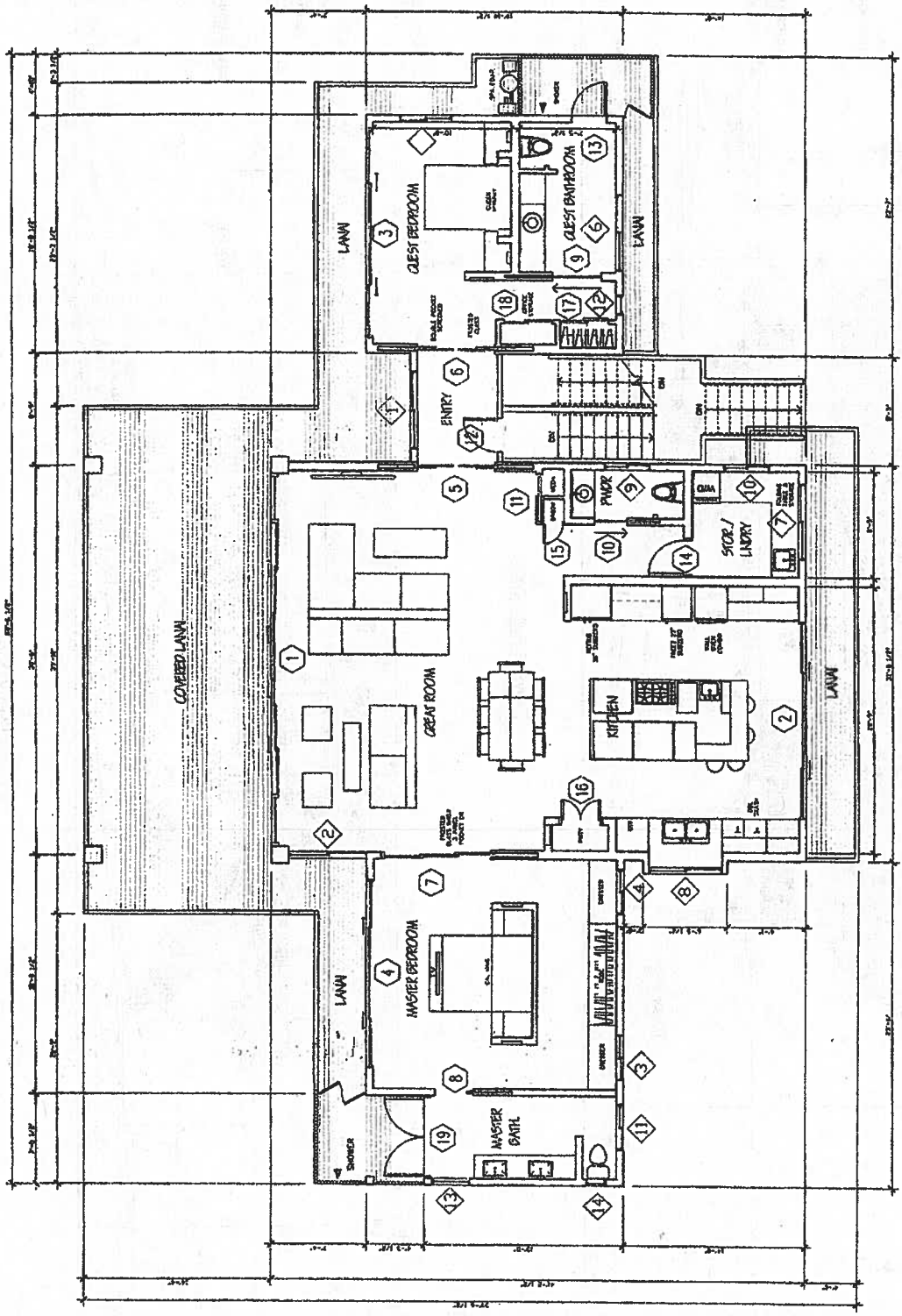
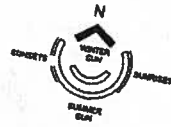


1 WEST ELEVATION  
SEP-19-07



2 EAST ELEVATION  
SEP-19-07

ELEVATIONS



1 MAIN LEVEL FLOOR PLAN

FLOOR PLAN