

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

180-Day Exp. Date: Aug 7, 2013

July 12, 2013

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

REGARDING: Conservation District Use Application (CDUA) HA-3661: Single Family Residence

APPLICANT: George Schattauer, Member-Manager, Kainaliu Kahakai LLC

AGENT: Ali Ghalamfarsa Ali`i Architects, 75-5742 Kuakini Highway, Suite 205, Kailua Kona, 96740

LOCATION: Honua`ino, North Kona, Hawaii`i

TMKs: (3) 7-9-006:014

AREA OF PARCEL: 2.35 acres

AREA OF USE: 2448 ft²

SUBZONE: Limited

DESCRIPTION OF AREA AND PROPOSED USE

The applicant proposes to build a one-story two-bedroom single family residence with a developed area of 2448 square feet. The foundation will be a combination of post and concrete piers and shear footings. The finished height will be nineteen feet above grade. Access will be via an unpaved driveway that passes through an opening in an existing stone wall. No additional landscaping is proposed.

The proposed residence will be set back 40 feet from the shoreline, and 33 feet mauka from an existing rock wall that runs parallel to the shore. A Shoreline Certification, dated February 6, 2012, was submitted with the Environmental Assessment. The certification was still valid when the CDUA was received on January 3, 2013.

The soil in the area is stony silt loam with underlying pāhoehoe lava. The slope ranges from six to twelve percent, with a maximum height of 14-feet above mean sea level. The vegetation is dominated by non-native grasses, kiawe, koa haole, `opiuma (*Manila tamarind*), and coconut palms. A stone wall in various states of repair surrounds the property.

An archaeological survey identified ten sites of interest. These include a well system, stone walls, a house platform, and pre-Contact papamū (checkers-like game), poho (mortar for grinding food), water basins, and petroglyphs. Six of the sites were recommended for preservation in the associated Preservation Plan.

The applicant has proposed passive protection of these sites through the establishment of two preservation easements. The first will encompass the entire shoreline area makai of a reconstructed stone wall, and the second will cover two inland sites, the space between, and a fifteen-foot buffer around the perimeter. Vegetation maintenance in the easements will only be done with the use of hand tools, and no ground altering activities will occur.

The subject parcel contains flood zones VE (coastal areas with a 1% or greater chance of flooding), AE (base flood plains where base flood elevations are provided), X, and A (areas with a 1% chance of flooding and a 25% chance of flooding over the life of a 30-year mortgage).

Flood Zones VE, AE, and A all contain county regulations regarding development, as outlined in Hawai'i County Code Chapter 27, FLOODPLAIN MANAGEMENT.

Cultural and traditional uses of the property include pole fishing, throw net fishing, `opihi gathering, crabbing, and diving. The applicant states that they both support and participate in these activities.

The following exhibits have been included with this report:

- Topographic Map
- Site Plan
- Site Photos
- Floor Plan
- Kona Elevation
- Preservation Easements

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), L-3, SINGLE FAMILY RESIDENCE¹, (D-1), *A single family residence in a flood zone or coastal high hazard area defined by the boundaries of the Flood Insurance Rate Map (FIRM) that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential 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;

¹ OCCL originally notified the applicant that the project location was in the Resource Subzone and thus subject to a different section of HAR §13-5; we corrected this to Limited in a later correspondence.

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 June 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; County of Hawai'i NFIP Coordinator, 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 Kailua-Kona Public Library. Notice of the application was published in the March 27, 2013 edition of the *Environmental Notice*.

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

Office of Hawaiian Affairs (OHA)

OHA reviewed the CDUA and the draft Preservation Plan for this historic sites, and offered the additional recommendations that the shoreline boundary of the easements also be demarcated during construction, that the buffers around the inland sites be increased to 25-feet during construction, and that the wastewater treatment system not be located in the vicinity of either of the preservation easements.

OHA relies on the applicant's assurances that should any undocumented archaeological or cultural resources be identified that work will stop and the State Historic Preservation Division be contacted to determine appropriate actions.

DLNR – Historic Preservation Division (HPD)

HPD concurs with the findings in of the Preservation Plan that, of the ten sites of interest, six be protected through preservation easements. Protecting the sites in two large easements will offer greater protection than protecting each through smaller individual easements. Interim measures, including the placement of orange plastic fencing around the sites during construction, are also in place. According to the plan, the preservation easements and associated buffers will be recorded with the Bureau of Conveyances.

HPD believes that no historic properties will be impacted if the preservation plan is adhered to.

DLNR – Land Division

A cursory search of the Real Property Tax Assessment's 1958 Route History Sheet reveals that the TMK parcel is a portion of the Ahupua'a of Honua'ino 1st, awarded to William C. Lunalilo

under Land Commission Award 8559-B, `Āpana 7. The subject parcel is a portion of the konohiki land of Honua`ina, and is not a kuleana.

DLNR – Conservation and Resource Enforcement

No comments

County of Hawai`i Planning Department

The County notes that, according to Chapter 205A-22, HRS and Planning Commission Rule 9 relating to Special Management Area, “development” does not include *Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development.*

Office of Conservation and Coastal Lands (OCCL)

OCCL requested clarification on the project’s siting in relation to the flood zone, and how it is consistent with the applicable County Regulations regarding the National Flood Insurance Program.

Applicant’s Response

The applicant submitted a letter from Bruce Witcher, a licensed professional engineer with Witcher Engineering, affirming that the residence is in the ‘A’ Zone, and that the house finished floor will be above the base flood elevation (BFE) in accordance with the established FEMA criteria and Chapter 27 of the Hawai`i County Code.

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 project 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 Limited Subzone is *to limit uses where natural conditions suggest constraint on human activities.*

Staff notes that the SFR is an identified land use in the Limited Subzone, which is restrictive in nature regarding land use development. Land is classified as Limited due to potential natural hazards, and the applicant must show that they have addressed and mitigated the risk factors.

The parcel in question is in a Flood Zone A. The applicant will need to comply with federal, state, and county regulations for building in a flood zone, including the regulations of the National Flood Insurance Program and Ordinance No. 1145 of the Hawai'i Revised Statutes. OCCL has reviewed the plans, and finds that they appear consistent with the established FEMA criteria and Chapter 27 of the Hawai'i County Code.

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.

Historic resources: Six historic sites of interest will be preserved through the Preservation Easements.

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

Coastal Ecosystems: The shoreline is pāhoehoe lava; there are no sandy beaches and the coastal erosion rate is negligible. The project will be set back 40 feet from the certified shoreline, and is not anticipated to have any impact on coastal processes. Construction will not require grading, thus minimizing the risk of sedimentation entering near-shore waters.

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, as the post and pier foundation will require a minimum of excavation, there is no land clearing or mass grading associated with the project, an individual waste water treatment plan will be utilized per the requirements of the State Department of Health, and the house pad will be located on a fairly level piece of the property.

The house will be set back from the shoreline, and so will not impede coastal access by community members. It is not sited on any major natural drainage systems or water features.

Two preservation easements will be established on the property to allow for the passive protection of six historic sites of interest. No ground disturbing activities will occur in the easements, and any vegetation clearing will be done with hand tools. There will be a

pre-construction briefing to all members of the construction team, and orange construction fencing will be placed around the sites during construction.

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 two-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, day lighting, and using photo-voltaic generated electricity.

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.*

The site will be cleared of debris, broken branches, and dead trees that have accumulated over the years. The existing rock walls will be repaired. All native vegetation will remain.

The house will not block any public viewplains.

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 two-bedroom residence is 2448 square feet. The proposed residence will be set back forty feet from the shoreline, the minimum required. The height of the proposed residence is nineteen feet.

OCCL had two major concerns regarding the initial application: the presence of a residence in the Limited Subzone, and the existence of pre- and post-contact artifacts of historic interest.

Land uses in the Limited Subzone are constrained by geographic hazards or natural constraints. Floods are the identified hazard in this parcel, which contains flood zones VE (coastal areas with a 1% or greater chance of flooding), AE (base flood plains where base flood elevations are provided), X, and A (areas with a 1% chance of flooding and a 25% chance of flooding over the life of a 30-year mortgage).

HAR §13-5 allows landowners to apply for single family residences in the flood zone where the risk to the property has been mitigated through conforming to the relevant County code. The applicant has shown that the project will be in the FIRM Flood Zone A, and that the proposal is consistent with the established FEMA criteria and Chapter 27 of the Hawai'i County Code for this flood zone. This addressed OCCL's concerns about building in the Limited Subzone.

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

OCCL will recommend that the Board make a condition of the permit be that the landowner execute a waiver and indemnity prior to submitting construction plans for approval that is satisfactory to the Department. This has been a condition that the Board has imposed on other CDUP for residences in the Limited Subzone.

Both the Office of Hawaiian Affairs (OHA) and the State Historic Preservation Division (HPD) have reviewed the applicant's Preservation Proposal for six sites of historic interest. HPD concluded that no historic sites will be affected if the Preservation Plan is followed, and OHA suggested that additional safeguards be enacted during the construction phase to protect the sites.

OCCL appreciates the comments from OHA and SHPD, and would recommend that the Board incorporate the following elements of the Preservation Plan, as well as some of the suggestions by OHA and SHPD, as specific conditions of a permit if issued:

- The applicant will protect six historic sites of interest through the establishment of two Preservation Easements;
- The applicant will record the Preservation Easements and associated buffers with the Bureau of Conveyances;
- The applicant will ensure that all members of the construction team attend a pre-construction briefing; and
- Orange construction fencing will be placed around the preservation easements during the construction phase.

OCCL concurs with SHPD's finding that no historic sites will be threatened if the Preservation Plan is followed.

There were no other concerns raised regarding the proposal.

RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application for a Single Family Residence as described in CDUA HA-3661 located at Honua'ino, North Kona, Hawai'i, TMK: (3) 7-9-006:014, subject to the following conditions:

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

3. The applicant/landowner shall execute a waiver and indemnity prior to submitting construction plans for approval that is satisfactory to the Department;
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 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. 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; and
21. The applicant will protect six historic sites of interest through the establishment of two Preservation Easements;
22. The applicant will record the Preservation Easements and associated buffers with the Bureau of Conveyances;
23. The applicant will ensure that all members of the construction team attend a pre-construction briefing; and
24. Orange construction fencing will be placed around the preservation easements during the construction phase.
25. Other terms and conditions as may be prescribed by the Chairperson; and
26. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

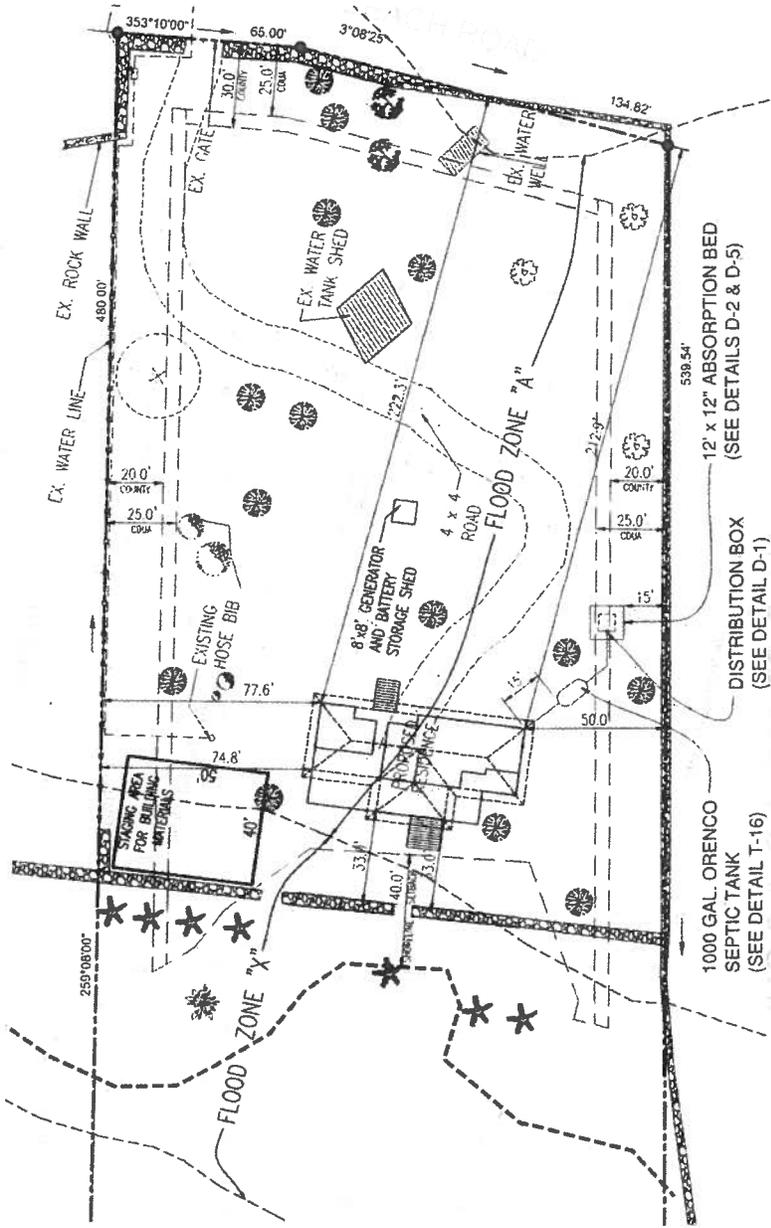


Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



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



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION SHALL BE UNDER MY OBSERVATION.

WARNING: THE ORIGINAL DOCUMENT CONTAINS A PAPER COLOR PROFESSIONAL SEAL.

SIGNATURE _____ DATE _____

SITE PLAN
SCHATTAUER RESIDENCE
 TMK: (3)6-8-040-024

WITCHER ENGINEERING LLP
 Consulting Civil Engineers
 Construction Managers
 P.O. Box 348
 Honolulu, HI 96725
 (808) 334-0322

SCALE 1" = 40'

GENERAL NOTES

1. SEPTIC TANK AND LEACH FIELD ARE TO BE PLACED NOT LESS THAN 5 FEET FROM ANY STRUCTURE OR PROPERTY LINE NOR LESS THAN 10 FEET FROM ANY TREE WHICH IS APPROXIMATELY 4 INCHES MINIMUM DIAMETER. SEPTIC SYSTEM SHALL ALSO BE LOCATED NOT LESS THAN 1000 FEET FROM ANY POTABLE WATER SOURCE (WELL).
2. THE DEPTHS TO THE PIPE INVERTS OF THE SEPTIC TANKS, DISTRIBUTION BOX AND THE BUILDING SEWER ARE CONTROLLED BY TOPOGRAPHIC FEATURES AND THE INVERTS OF THE BUILDING SEWER WHICH MAY IMPACT THE DEPTHS SHOWN ON THE DRAWINGS.
3. ENGINEER MUST APPROVE ALL CHANGES PRIOR TO CONSTRUCTION.
4. PROVIDE 1/4" PER FOOT MINIMUM SLOPE ON ALL SEWER LINES AND C.O.T.G. AT ALL BENDS.
5. WORK SHALL BE DONE BY A LICENSED CONTRACTOR.

NOTE:

1. CONTRACTOR TO CONTACT ENGINEER FOR PRE-CONSTRUCTION MEETING PRIOR TO GROUND DISTURBANCE.
2. ENGINEER RESERVES RIGHT TO REJECT ANY WORK ON THE #15 SYSTEM INSTALLATION PERFORMED PRIOR TO PRE-CONSTRUCTION MEETING.



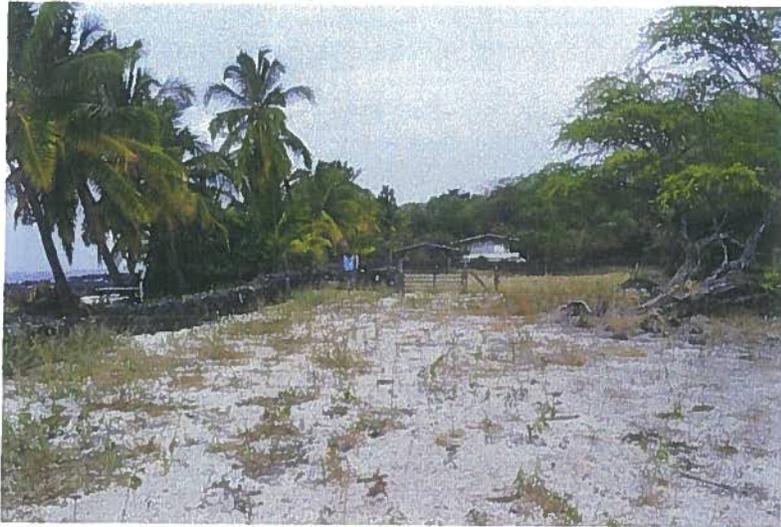
View "A"



View "B"



View "C"



View "D"



View "E"



View "F"

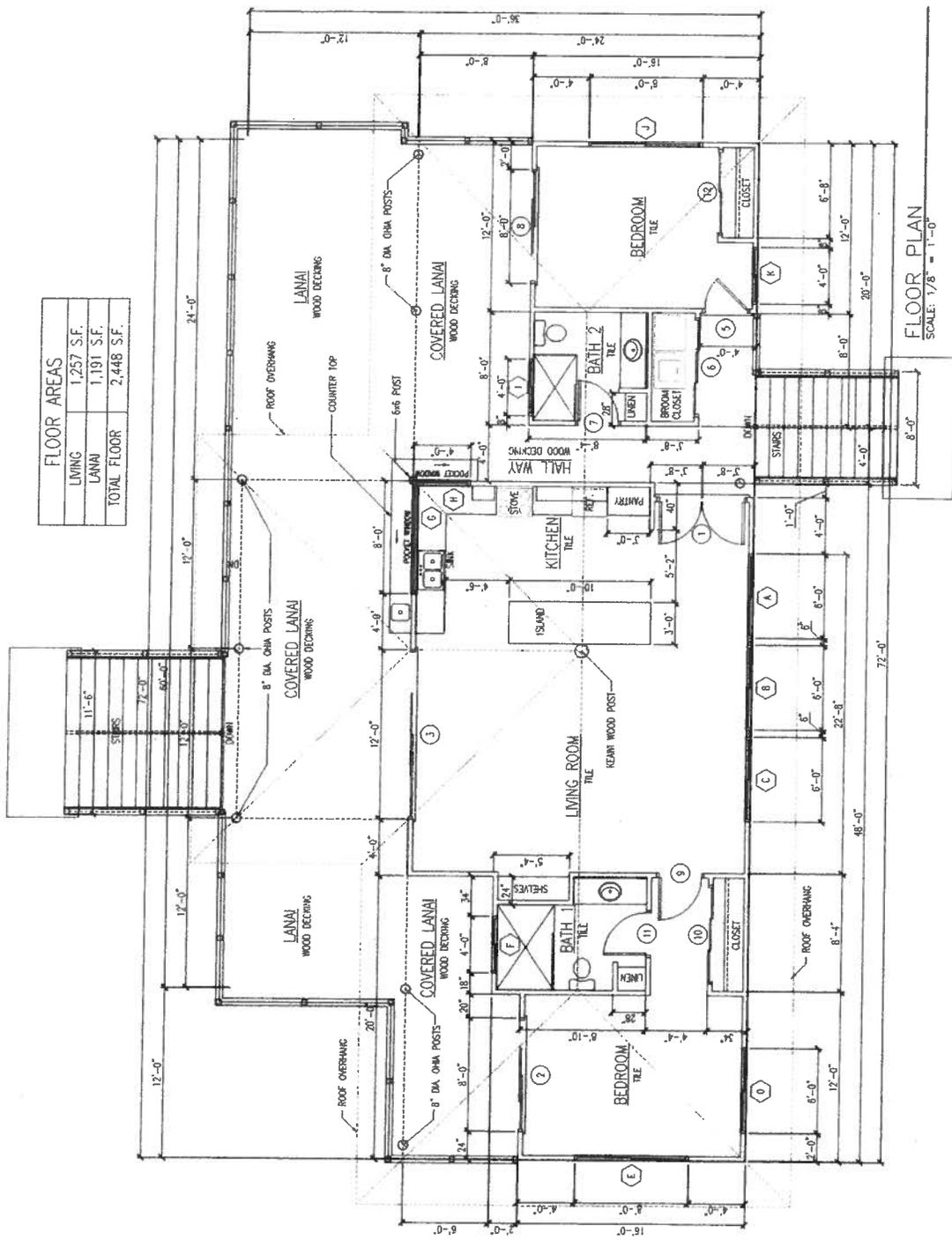


Figure 7a – Floor Plan

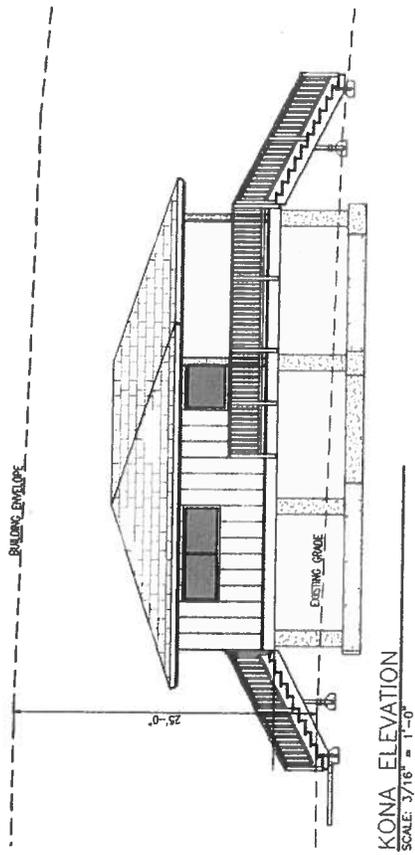


Figure 6 – Kona Elevation

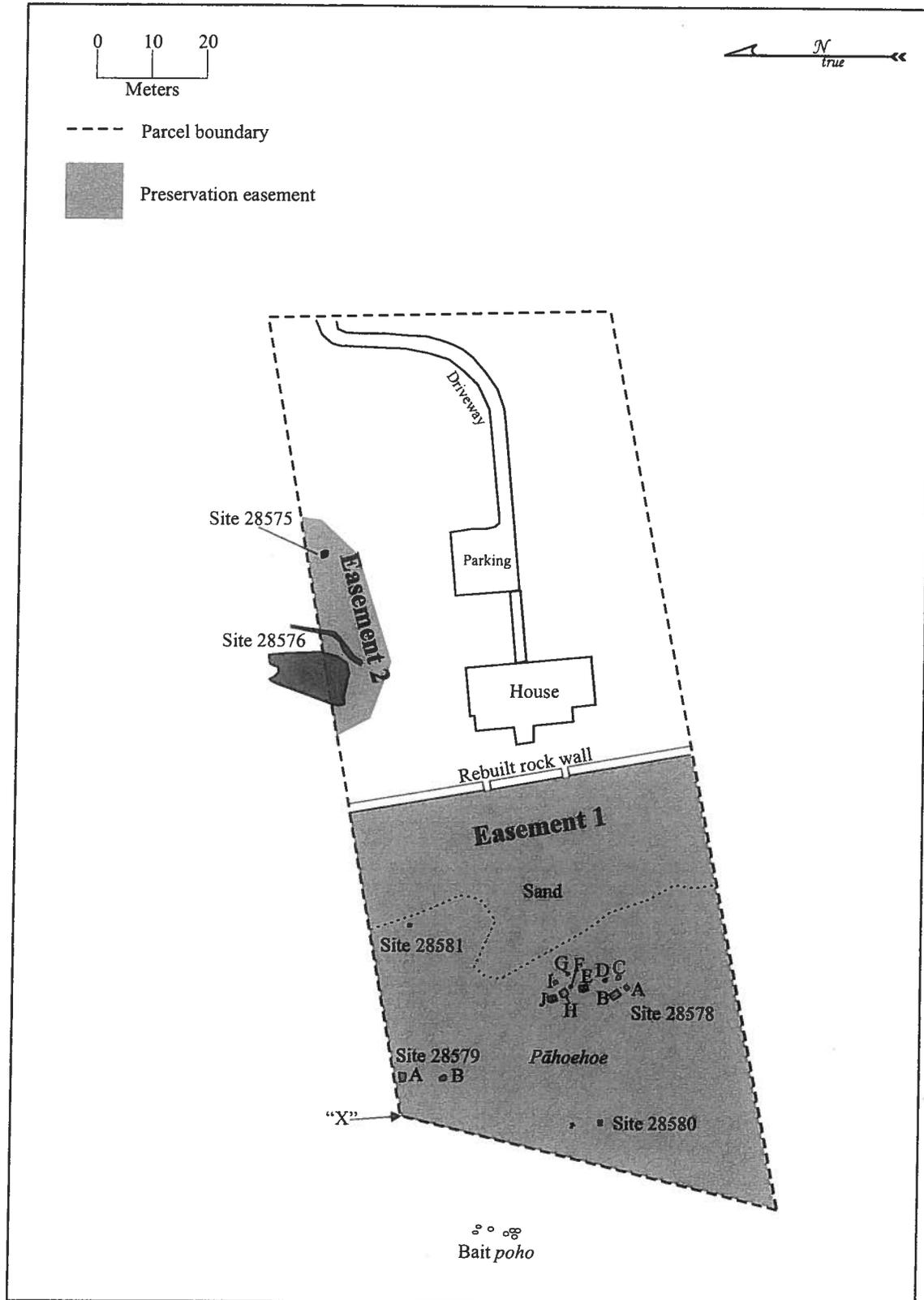


Figure 38. Archaeological preservation easements.