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

REF:OCCL:DH

FILE NO: CDUA KA-3509
Acceptance Date: June 1, 2009
180-Day Exp. Date: November 28, 2009

October 23, 2009

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

REGARDING:	Conservation District Use Application (CDUA) KA-3509 Malerich Single Family Residence (SFR)
APPLICANT:	Matt Malerich, P.O. Box 1649, Hanalei, Hawaii, 96714
LANDOWNER:	Same as Above
LOCATION:	Haena, Island of Kauai
TMK:	(4) 5-9-005:025
AREA OF PARCEL:	14,513 Square Feet
USE:	3,268 Square Foot
SUBZONE:	Limited

DESCRIPTION OF AREA/CURRENT USE:

The proposed project is located on an 14,513 square foot (8,855 square foot pending Shoreline Certification) parcel TMK: (4) 5-9-005:025, in Haena, Island of Kauai. Access to the parcel is provided by Kuhio Highway. The vacant subject parcel is bounded on the south by Kuhio Highway, to the north by the ocean, and to the east and west by private landowners. The parcel is located in the State Land Use (SLU) Conservation District, Limited subzone (**Exhibits 1, 2 & 3**).

PROPOSED PROJECT:

The applicant, Matt Malerich, proposes to construct a SFR in Haena, Kauai, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1, "a single family residence in a floodplain or coastal high hazard area that conforms to applicable

county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter."

The applicant proposes to construct a 3,268 square foot elevated SFR, which includes 1,864 square feet of living area, 452 square feet of exterior decks, and 952 square foot garage and storage area. The living space consists of three (3) bedrooms, two (2) bathrooms, kitchen, dining/family room. The SFR's architecture is of a Balinese style, and will be painted in earth tone colors. Additional landscaping is also proposed consisting of groundcovers, ornamentals, shrubs, and various trees. Accessory structures include a six foot high rock wall, access gate along the highway boundary, and six foot high fence along the lateral (side) property boundaries to within 40 feet of the shoreline. The proposed SFR will be setback 50 feet back from the certified shoreline, which is currently pending **(Exhibit 4)**.

Existing vegetation consists of an open lawn with a few coco palms (*cocos nucifera*), introduced sea grape trees (*Coccoloba uvifera*), ironwood hedge (*Casuarina equesitifolia*), and beach naupaka (Scaevola sericea). The applicant notes there are no rare or endangered native plants and/or animals present on the subject parcel. An Archaeological Assessment Survey of the subject property was conducted; no archeological resources were present. The State Historic Preservation Division noted via letter that no further archeological work was necessary on the subject parcel. Utilities, such as, electrical, water, and telephone services are available to the subject property. Wastewater will be treated by an individual wastewater system septic tank.

The proposed SFR will not meet the required minimum setback of fifteen feet on the side yards. The proposed setbacks are 10 feet on the eastern side yard boundary and 10 feet on the western side yard boundary. The applicant is also asking for a variance to the minimum setback due to the location of the residence The Board of Land and Natural Resources (BLNR) may grant an adjustment to the minimum setbacks based on site characteristics and lot shape, pursuant to Hawaii Administrative Rules (HAR), Section 13-5-41(a), Exhibit 4.

The SFR is a located in the Conservation District, Limited subzone, and in a coastal high hazard area. On Flood Insurance Rate Map (FIRM) Panel 15000-20030 E (dated September 2005), the subject parcel is located within Flood Zone VE 34, which is designated as a coastal flood area with a velocity hazard due to its potential susceptibility to 100-year inundation by tsunami; Base Flood Elevations (BFE) have been determined at thirty-four (34) feet above mean sea level (MSL).

The existing grade of the subject parcel is approximately 20 feet above MSL, thus the finished floor height of the building will be approximately 14 feet above the existing grade in order to comply with federal flood standards. This would allow the applicant to construct the enclosed living areas, and overlying roof structure of the SFR within a fifteen (15) foot building height envelope above the minimum MSL floor elevation as required by flood elevations. Therefore, the SFR has a maximum height of twenty-nine (29) feet to meet Federal and County flood regulations.

Therefore, the applicant is requesting a variance of four feet from the Maximum Height Limit (MHL) of twenty-five (25) feet, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE

FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building."

AGENCY COMMENTS:

The CDUA was referred for review and comment to the DLNR – Division of Forestry and Wildlife (DOFAW), Historic Preservation Division (HPD), Kauai District Land Office (KDLO), Commission on Water Resource Management (CWRM), Division of Conservation and Resources Enforcement (DOCARE), State Parks Division, Kauai County Planning Department, County of Kauai Council Services, Office of Hawaiian Affairs (OHA), Department of Health (DOH), and Office of Environmental Quality Control (OEQC), Hanalei Haena Community Association, and the Princeville Public Library. The following comments were received:

State Parks Division
No comment.

Kauai District Land Office
No comment.

Engineering Division
According to the Flood Insurance Rate Map (FIRM) the project site is located in Zone VE; the project site must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal regulations whenever developments within a Special Flood Hazard Area is undertaken. For questions about local flood ordinances please contact the County of Kauai, Department of Public Works, NFIP coordinator.

Staff Note: the applicant did not respond however the proposed project meets county and federal flood ordinances.

Historic Preservation Division
HPD believes that "no historic properties will be affected" by this undertaking because an accepted archeological inventory survey (AIS) found no historic properties. In the event that historic resources, including human skeletal remains, are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, and find needs to be protected from disturbance, and the HPD needs to be contacted.

Staff Note: the applicant did not respond as the letter was received after the 30 day comment period which ended on July 23, 2009.

Department of Health
DOH notes the subject parcel is located in the Critical Wastewater Disposal Area (CWDA) as determined by the Kauai County Wastewater Advisory Committee. There are no existing county sewer system in the vicinity, construction and use of treatment individual wastewater system (IWS) is required. As the property maybe located within a 1,000 feet of a public potable well, an aerobic treatment unit and absorption field may be required to be installed for the proposed SFR.

Applicant Comment: we are aware the property is located in a CWDA, the construction and use of an IWS will be required for the SFR. We are aware the property may be within less than 1,000 feet of a public potable well, and that an aerobic treatment unit and absorption field may be required to protect the public drinking water supply. We will submit a wastewater plan to the DOH wastewater branch for review and approval.

Office of Hawaiian Affairs

OHA notes the following: 1) a shoreline determination should be made without the temporary sandbag structure in place; 2) no further approval from Kauai County should be granted for the temporary permit (E) 97-3; 3) the applicant should find design alternatives for the proposal rather than seeking considerations for it; 4) the sandbag revetment should be removed so the shoreline can be stabilized and determined before it is certified; 5) do not separate the CDUA from the sandbag issue; 6) OHA beneficiaries utilize the cultural resource to excerice their constitutionally protected rights; and 7) should iwi or Native Hawaiian cultural deposits be found during ground disturbance, work will cease, and the appropriate agencies will be contacted pursuant to applicable law.

Applicant Response: The Shoreline Certification process is handled be separate application. The sandbag revetment remains valid until a formal notice to rescind or revoke the permit is issued by Kauai County Planning Department. The height limit variance request is consistent with federal and county flood zone requirements. The side yard setback is reasonable and facilitates a greater shoreline setback distance. The SFR is exempt from obtaining a SMA permit pursuant to Section 1.4, Paragraph H (2)(a) SMA rules and Regulations. A statistical analysis is underway to understand the beach dynamics and to inform decisions to protect the public's interest and preserve the impacted integrity of the impacted private properties.

Hanalei Haena Community Association

The Hanelei Haena Community Association notes the following: 1) resolve the final status of the temporary revetment prior to CDUA approval; 2) use the erosion-based setback rates; and 3) add conditions regarding no shoreline hardening/sandbags/structures to fix the shoreline, address public easement, fencing, clearing and growth of naupaka, no commercial use/transient vacation rentals.

Applicant Response: the sandbag revetment's history is addressed in the CDUA and Draft Environmental Assessment (DEA). The application is for a SFR; it does not seek to justify the retention or removal of the sandbag revetment. Permitting matters and associated environmental impacts relative to the revetment are currently being studied and addressed collectively by the five impacted landowners with input from the state, county, and community. The SFR location is proposed 50 feet back from the certified shoreline; it is in compliance with Kauai County Shoreline Setback and Coastal Protection Ordinance No. 863. Public access along the beach is adequately preserved therefore it is not necessary/appropriate to grant a public access easement over the portion of the property mauka of the shoreline. We do not object to a CDUA condition regarding shoreline hardening. All fencing will be held back a minimum of 40 feet from the certified shoreline. The Board of Land and Natural Resources (BLNR) typically prohibits commercial/transient vacation use as a CDUA condition; we will defer to the BLNR's decision.

Sierra Club Kauai Chapter

Sierra Club notes the following: 1) the draft environmental assessment (DEA) is deficient and proposed finding of no significant impact (FONSI) is not justifiable; 2) the DEA mitigation measures are insufficient to protect the public's interest; 3) the CDUA mischaracterizes the project site and project impacts by ignoring the sandbag revetment; 4) the location of the shoreline cannot be certified while the temporary revetment is in place; 5) the CDUA's assessment of historical and cultural impacts is inadequate and deficient; 6) add conditions regarding naupaka growth makai of the certified shoreline, no commercial uses/transient rentals, recordation of terms and conditions.

Applicant Response: Your concerns are grossly overstated and to not respond to the content of the CDUA and DEA. The application is for a SFR, and does not result in significant environmental impacts. The environmental assessment does not seek to justify the retention or removal of the sandbag revetment, or assess the environmental impacts of the permitted shoreline revetment. The SFR location is proposed 50 feet back from the certified shoreline; it is in compliance with Kauai County Shoreline Setback and Coastal Protection Ordinance No. 863. Comments are focused on the sandbag revetment and associated shoreline certification. The DEA and CDUA neither establish the certified shoreline location. The SFR is not inconsistent with the significance criteria contained in Chapter 200 Title 11. Mitigation measures you propose are associated primarily with the sandbag revetment and not for the SFR. If it can be documented the sandbag revetment is not contributing to a long term sustained narrowing of the beach, there may be little if no justification for removing the sandbags. Permitting matters and associated environmental impacts relative to the revetment are currently being studied and addressed collectively by the five impacted landowners with input from the state, county, and community. The Shoreline Certification process is handled by separate application. The SFR will not impact or curtail the use of Haena as a Hawaiian Community Subsistence Fishing Area. Naturally occurring vegetation along the shoreline should be allowed to remain if it is located makai of the certified shoreline. Acceptable landscaping protocols for the shoreline interface will be discussed and determined as part of the sandbag revetment permitting process.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated June 1, 2009 that:

1. The proposed use is an identified land use (L-6, SINGLE FAMILY RESIDENCES, D-1) within the Limited Subzone of the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR); please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and

3. In conformance with Chapter 343, (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be

submitted to OEQC to be published in the June 23, 2009 issue of the Environmental Notice.

Staff notes the FONSI was published in the OEQC's Environmental Notice on October 8, 2009. Staff notes the FEA can be challenged until November 8, 2009, thus CDUA approval is subject to a 30-day waiting period.

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 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.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel. The Haena area has been developed with residential structures due to the 1967 court ordered subdivision and the subsequent BLNR policy of allowing one house per lot. The action is consistent with the existing uses and with the purpose of the Conservation District in this location. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

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 constraints on human activities.

Staff notes the proposed SFR is an identified land use within the Limited subzone, which is restrictive in nature regarding land use development. Staff notes that the proposed project has met the restrictive criteria and adequate mitigation measures have been taken to protect the natural resources of the coastal area. The proposed SFR will need to obtain the BLNR's approval for a variance from the maximum height limit and the minimum side yard setbacks, in order to mitigate potential flooding and erosion. In addition, the applicant will be required to sign and file an indemnity statement due to the potential coastal hazards attendant to the site.

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

The Kauai County Planning Department notes the proposed project lies within the Special Management Area (SMA), but the construction of a SFR's is exempt from the County's SMA Regulations via letter, dated October 2, 2009.

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

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. The site is currently landscaped but the applicant is proposing native landscaping. Staff notes that the proposed project will not detract from the rural character of the area, which is already developed with residential structures.

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

Staff is of the opinion the proposed SFR will fit into the locality and surrounding areas since the area is currently developed with single-family residences.

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

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area.

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

The proposed project does not involve subdivision of Conservation District land.

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

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

Staff reiterates the Board of Land Natural Resources 1981 policy that allows single-family residential use in the partitioned area located in the Limited subzone known as the "Haena Hui Subdivision." Haena Hui is different than other areas within the Conservation District due to its unique history.

In 1967, the Kauai Courts approved the Haena Hui Subdivision. This was done without the consent of the BLNR. The BLNR 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 BLNR's requirements to first obtain a permit for subdivision. Following this chain of events, the BLNR adopted a policy that residential lots within 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, which are herein incorporated.

Notwithstanding this policy, and notwithstanding a change in the policy by the BLNR, the BLNR still retains its discretionary authority over all matters with respect to land use within the Conservation District

The proposed use is an identified land use, pursuant to Section 13-5-23, Hawaii Administrative Rules (HAR), L-6, SINGLE FAMILY RESIDENCES, D-1." The applicant proposes to build a 3,268 square foot elevated SFR, which includes 1,864 square feet of living area, 452 square feet of exterior decks, 952 square feet garage and storage area. The living space consists of three (3) bedrooms, two (2) bathrooms, kitchen, dining/family room. Staff notes the proposed SFR is still less than the maximum allowable size for a residence on a lot of one acre or less in the Conservation District, which is 3,500 square feet.

Staff notes there is one outstanding issue regarding the proposed design of the SFR regarding the bottom level (garage, storage area). The bottom area appears to be enclosed and accessory structures are added (windows, doors). The applicant notes the SFR is approximately 3,268 square feet however the enclosed space would increase the MDA by approximately 1,088 square feet. Staff notes the land uses would increase the MDA, past 3,500 square foot total allowable Maximum Developable Area (MDA), pursuant to HAR, Section 13-5-41, SINGLE FAMILY RESIDENCES; STANDARDS, "single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards, dated September 9, 2005."

Therefore, staff notes the applicant will need to submit SFR construction plans for the bottom floor that meet MDA standards, pursuant to HAR, Section 13-5-41, SFR residential standards prior to construction.

The applicant will preserve the natural beauty and open space characteristics of the subject parcel around the SFR with appropriate building design. Additional landscaping is proposed consisting of groundcovers, ornamentals, shrubs, and various trees. Staff notes should further landscaping occur the applicant will receive our approval. Accessory structures include a six foot high rock wall, access gate along the highway boundary, and six foot high fence along the lateral (side) property boundaries to within 40 feet of the shoreline.

The proposed SFR will not meet the required minimum setback of fifteen feet on the side yards. The proposed setbacks are 10 feet on the eastern side yard boundary and 10 feet on the western side yard boundary. Staff believes the request for the variance is reasonable due to the lot shape, site characteristics, and 50-foot setback of the proposed SFR. Staff notes there is no specific paper trail that indicates the applicant consulted with the neighbors regarding the proposed setbacks. However, staff notes the applicant and four adjacent landowners are working together

on another matter discussed below, so most likely they have been notified of the SFR proposed location.

The applicant also requests a variance of four feet from the Maximum Height Limit of twenty-five (25) feet, pursuant to HAR, Chapter 13-5, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS, which notes "the maximum height of the building shall not exceed twenty-five feet, measured from the highest point of the roof structure, down to the lower of the existing or finished grade at the lowest corner of the building." Staff recommends the BLNR approve the request for a four foot variance to meet Federal and County flood regulations, pursuant to HAR, Chapter 13-5, Section 13-5-41(a). Similar variances have been granted for single-family residences in Haena.

Staff notes the FONSI was published in the OEQC's Environmental Notice on October 8, 2009. Staff notes the FEA can be challenged until November 9, 2009, thus CDUA approval is subject to a 16-day waiting period.

The proposed SFR will be setback 50 feet back from the certified shoreline which would be consistent with the existing erosion rate based setback established by Kauai County. Staff notes the Certified Shoreline for the parcel has been recommended for certification to the Chairperson of the Board of Land and Natural Resources.

Staff notes in December 5, 1996, the County of Kauai issued an Emergency SMA Permit (E)-97-03 to approve temporary shoreline protection for TMK's (4) 5-9-005:23-27 in the form of a sandbag revetment due to a high surf event. Staff notes that the immediate threat to the health and safety to the residents passed after the event. Staff notes there has been sufficient time since the authorization of the issuance the permit by the County of Kauai to develop an alternative erosion control strategy. Staff is concerned: 1) that the subject structure has surpassed the temporary emergency nature (now 12 years old); 2) is concerned with the adherence to the conditions of the emergency SMA related to the shoreline; and 3) about the temporary nature of the structure.

As part of the shoreline certification process, the Land Division wrote to the County of Kauai, Planning Branch regarding the status of Emergency SMA Permit (E)-97-03 and asked whether the permit was still valid, and authorized. In turn, the applicant and four adjacent landowners of TMK's 23-27 coordinated between themselves to address the SMA issues and concerns regarding the sandbags raised by the County of Kauai. Based on landowners responses County of Kauai responded to the applicant (and four adjacent landowners) that SMA Permit (E)-97-03 was granted a time extension until December 31, 2009.

As noted, staff notes the applicant and four adjacent landowners have retained EKNA Services, Inc. and a Ron Wagner, a professional surveyor. Together they will conduct an assessment of the shoreline interface and the littoral cell in an attempt to quantify what effects the sandbags may have on beach processes. The assessment survey will monitor seven separate beach profiles, which will be surveyed at regular intervals three times each year. Three of the profiles will span the five subject properties, and two profiles will be on the east and west sides of the sand bag revetment, approximately equidistant apart. The profiles will extend from the top of the

escarpment to the toe of the beach. Wagner Engineering gathered the initial data set for the study between February 3rd and February 6th of 2009. Once the study has gathered sufficient data to develop statistical confidence the consultants will offer their assessment and recommendations for actions.

Staff notes the issue of the sand bags has yet to be resolved. Staff feels the applicant located the proposed residence as far landward a possible on the lot to avoid erosion hazards. Staff feels that this application may proceed despite the pending issues regarding the sand bag groin. Staff would like to make it clear that this action, if approved by the BLNR, in no way legitimizes the sand bag groin.

Staff comments that there is significant potential for fugitive dust to be generated during the proposed action, and may impact nearby residents. It is recommended that a dust control management plan be developed which identifies and addresses those activities that have a potential to generate fugitive dust. In addition, construction activities must comply with provisions of HAR, Section 11-60.1-33 on Fugitive Dust.

Staff notes the contractor should provide adequate means to control dust from road areas and during the various phases of construction activities, including by not limited to: 1) planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact; 2) providing an adequate water source at the site prior to start-up of construction activities; 3) landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase; 4) controlling of dust from shoulders, project entrances, and access roads; 5) and providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE CDUA KA-3509 for the proposed Malerich Single Family Residence, and accessory structures (rock wall, gate, fence) located in Haena District, Island of Kauai, Subject Parcel TMK: (4) 5-9-005:025, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;

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 shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. The applicant will submit SFR construction plans that meet HAR, Section 13-5-41, SFR residential standards prior to construction;

5. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

6. 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 approved by the Department; further, all work and construction must be completed within three years of the approval;

7. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;

8. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

9. The applicant will use Best Management Practices for the proposed project;

10. The applicant will give preference towards using native plants for the remaining landscape work, and that prior to any construction the applicant will submit a landscape plan for the Office of Conservation and Coastal Land's approval;

11. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

12. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;

13. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;

14. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

14. That the applicant shall execute a waiver and indemnity prior to construction plan approval that is satisfactory to the Department;

15. This action by the Board in no way legitimizes the sand bag groin located on the seaward side of the property, and the Department of Land and Natural Resources has the right to seek the removal of the structure, should the landowner fail to comply with the County of Kauai Emergency SMA Permit (E)-97-03 declarations, or if it is determined that the structure is causing harm to the public beach;

16. That the Board approve the request for a four foot Maximum Height Limit variance to meet Federal and County flood regulations, and a five foot variance from the minimum side yard setbacks to accommodate long-term erosion hazards;

17. Other terms and conditions as may be prescribed by the Chairperson; and

18. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

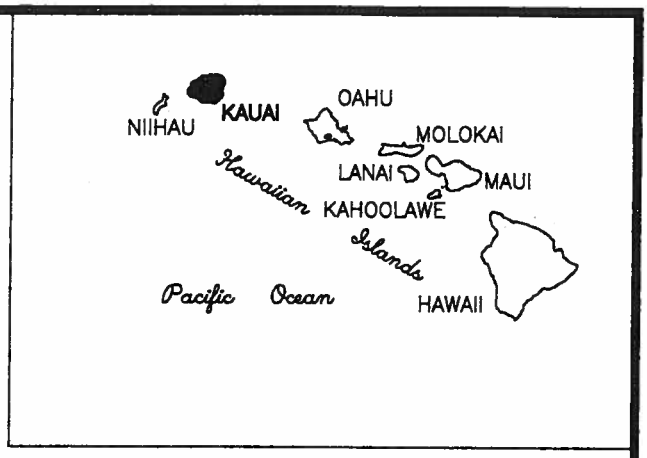
Respectfully Submitted,

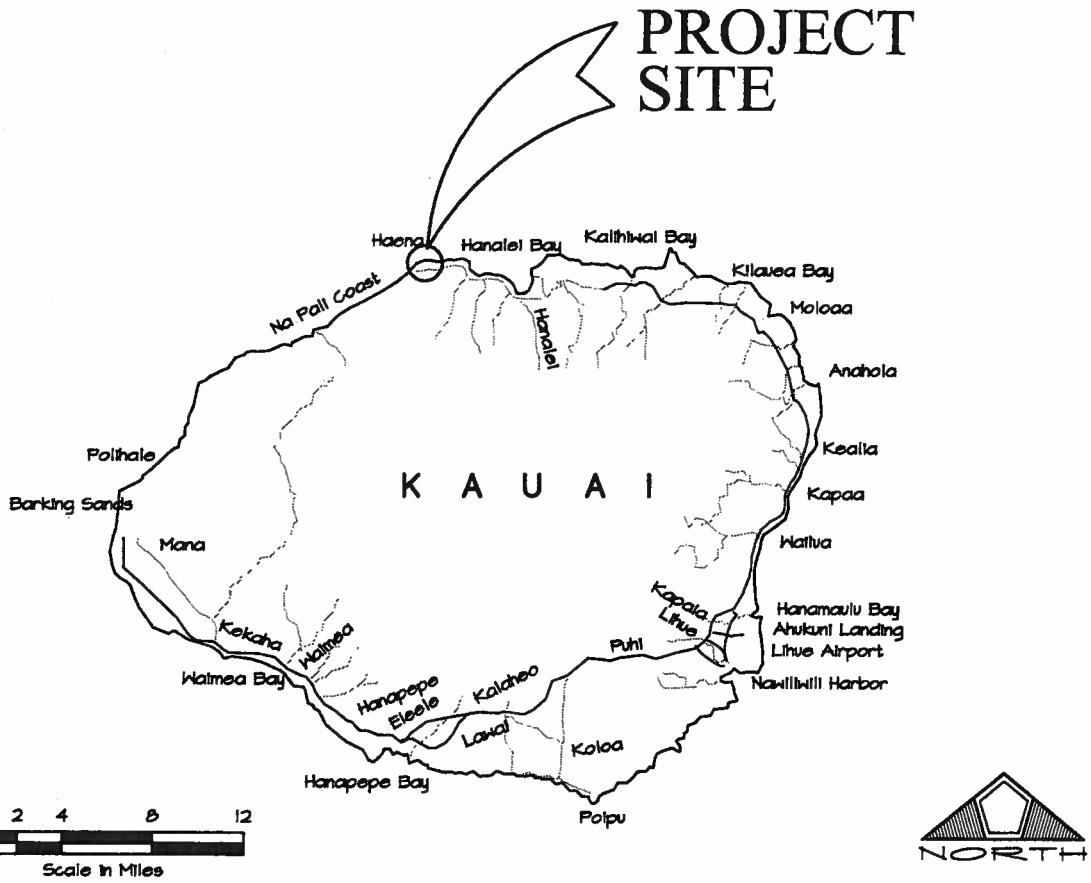
Dawn T. Hegger

Dawn T. Hegger
Senior Staff Planner

By: _____
Laura H. Thielen, Chairperson
Board of Land and Natural Resources

Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256





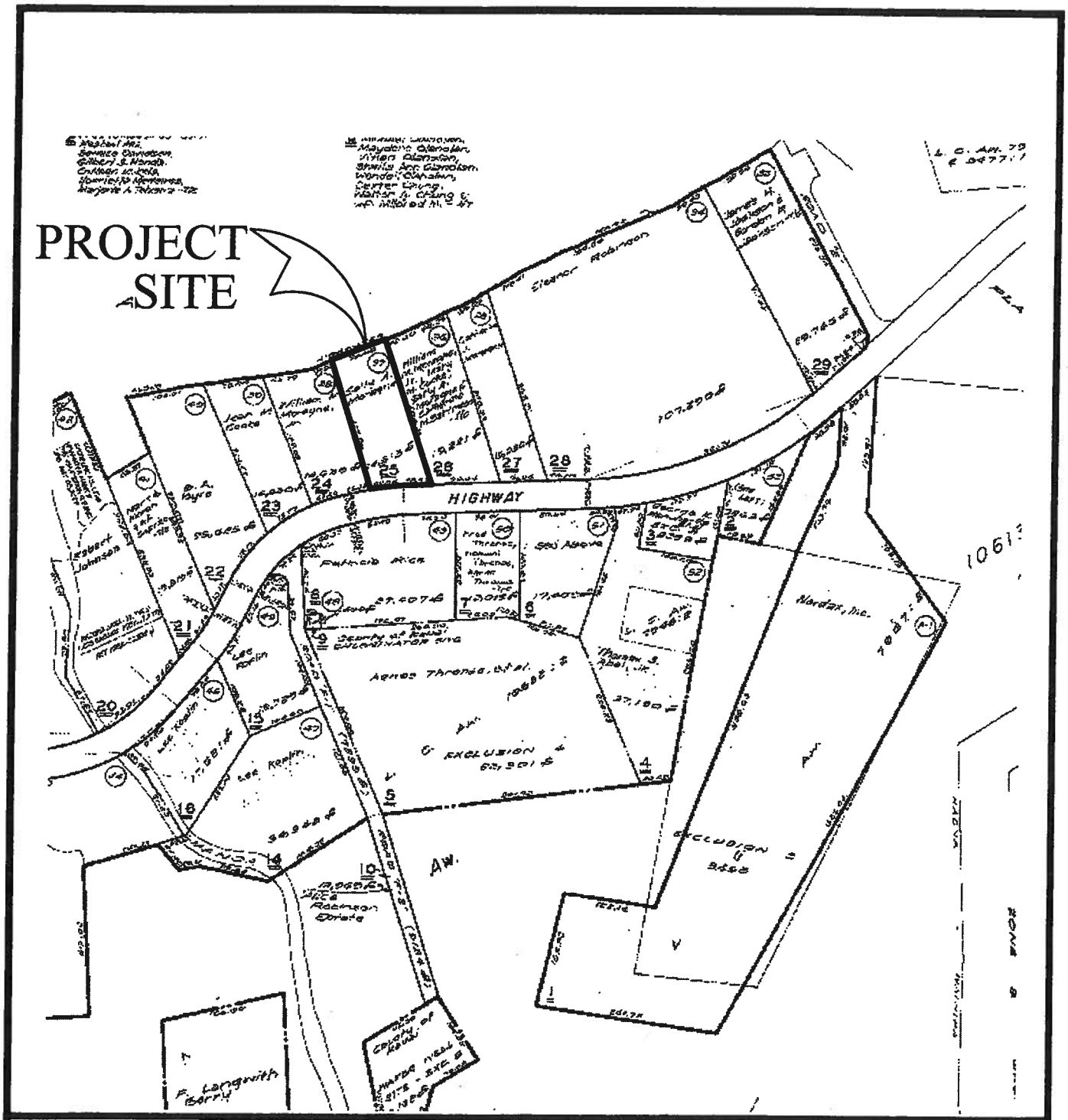
VICINITY MAP

MALERICH SINGLE-FAMILY RESIDENCE
HAENA, KAUA'I, HAWAI'I
T.M.K. (4) 5-9-05:025

EXHIBIT 1

EXHIBIT 1

Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



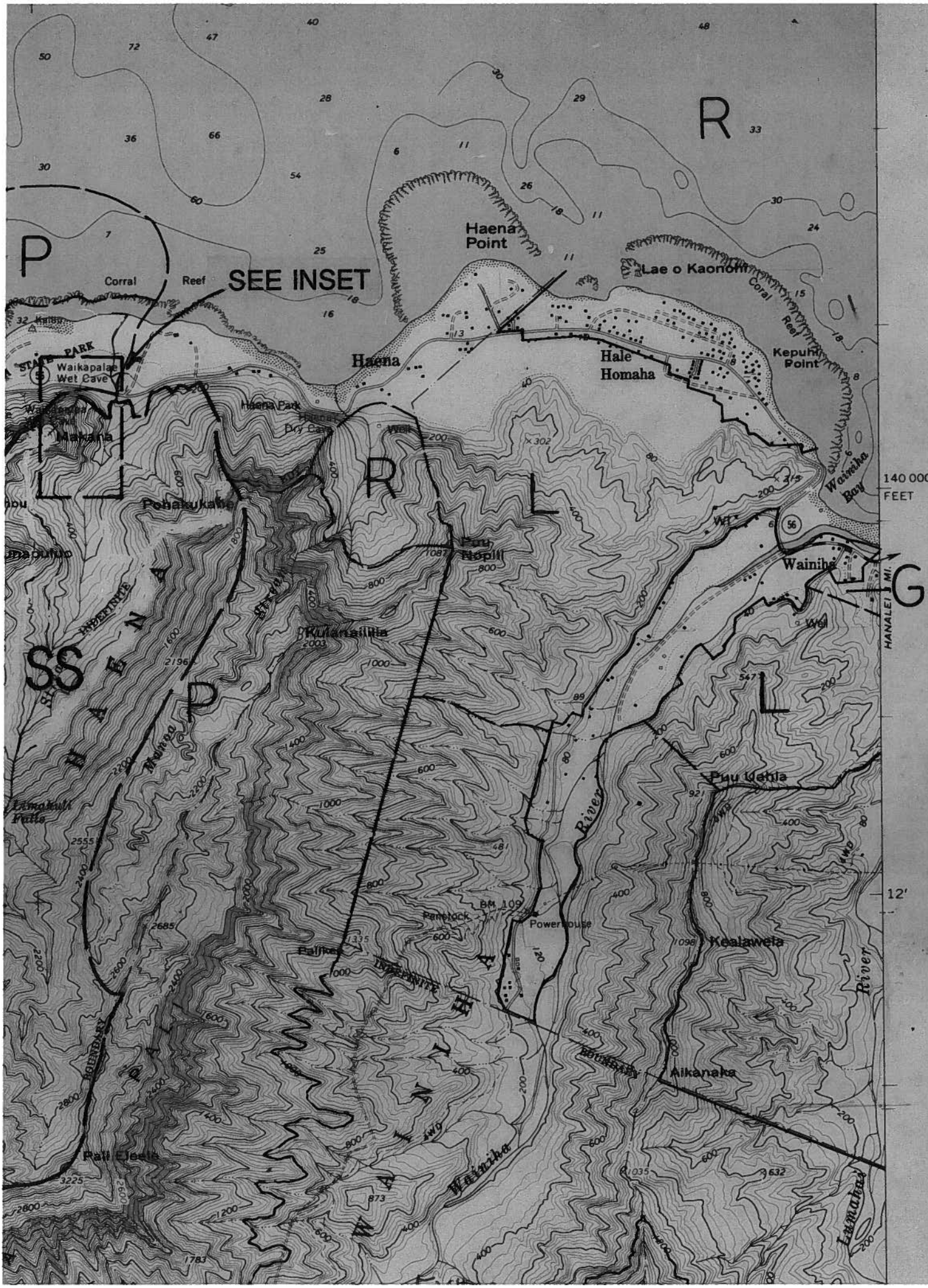
TAX MAP (4) 5-9-05:025

MALERICH SINGLE-FAMILY RESIDENCE
HAENA, KAUA'I, HAWAI'I
T.M.K. (4) 5-9-05:025

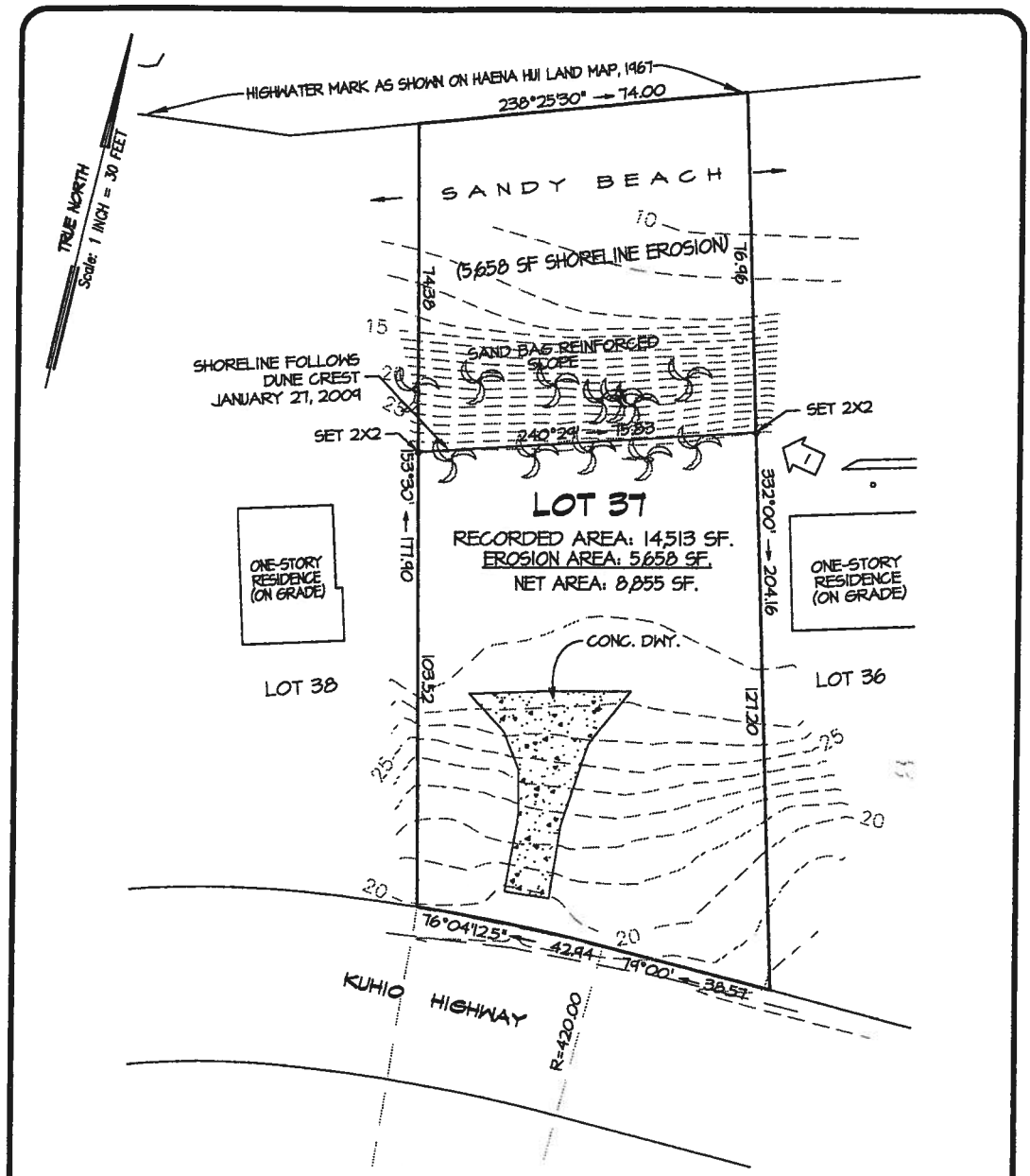
NORTH

EXHIBIT 3

EXHIBIT 2



SEE INSET
Haena Point
Lae o Kaonohi
Coral Reef
Kepuhi Point
Haena
Hale Homaha
Waikapalae Wet Cave
Makana
Haena Park
Pohakukahe
Puu Nopili
Kulanaililia
Wainiha
Wainiha Bay
HANALEI 3 MI.
140 000 FEET
12'
Puu Uahia
Kealawela
Aikanaka
Pali Eleele
Limahuli Falls
Powerhouse
Penstock
Palikea
Wainiha River
Lumahai River
Manoa Stream
INDEFINITE
BOUNDARY



SHORELINE CERTIFICATION
MAP OF
LOT 37
HAENA HUI LANDS
being a portion of
R.P. 3596, L.C. Aw. 10613, AP 6
to A. PAKI
at HAENA, HALELEA, KAUA'I, HAWAI'I

NOTE:
1. FEATURES SHOWN HEREON REFLECT CONDITIONS EXISTING ON JANUARY 27, 2009
2. DENOTES COCONUT TREE

JANUARY 30, 2009

PREPARED FOR:
MATT MALERICK
105 FAIRWAY
BAKERSFIELD, CA 93309

30 0 30
Graphic Scale in Feet

RONALD J. WAGNER
LICENSED PROFESSIONAL LAND SURVEYOR
No. 5074
HAWAII, U.S.A.

THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION
PENDING APPROVAL

RONALD J. WAGNER
Licensed Professional Land Surveyor
Certificate No. 5074

Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256

TMK (4) 5-9-05:25

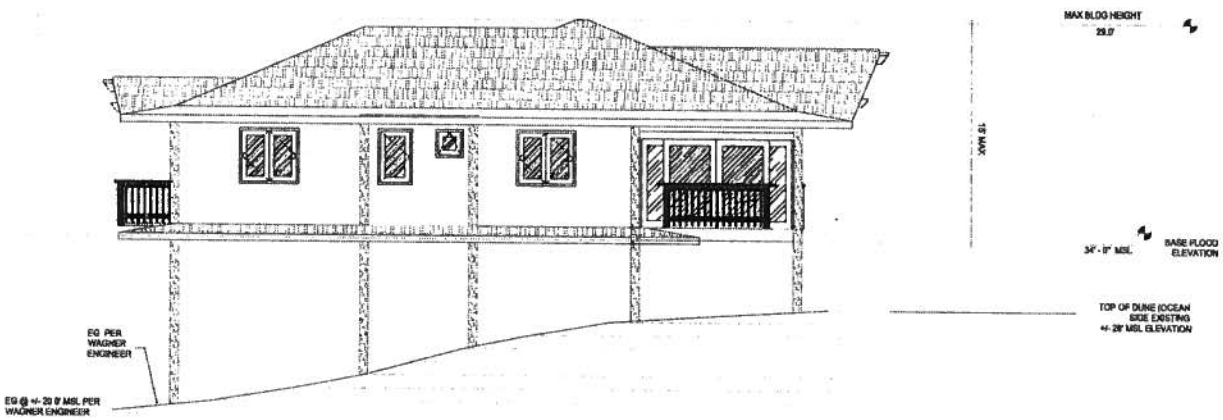
PROJECT NO. 4685

NOT TO SCALE

EXHIBIT 4

WEST (LEFT) ELEVATION

SCALE: 1/4" = 1'-0"



EAST(RIGHT) ELEVATION

SCALE: 1/4" = 1'-0"

General Notes

No.	Revision/Issue	Date

Firm Name and Address

BBH, LLC
5880-L Kahiliholo Road
Kilauea, HI 96754

Project Name and Address

EXHIBIT 15
RIGHT & LEFT ELEV
MALERICH SINGLE FAMILY RESIDENCE

TMK No. (4) 5-9-05:25

Drawing Title

RIGHT & LEFT ELEVATIONS

Project: MALERICH

Date: MARCH 16, 2009

Scale: 1/4"=1'-0"

Drawing No.: # 101-B

Sheet of

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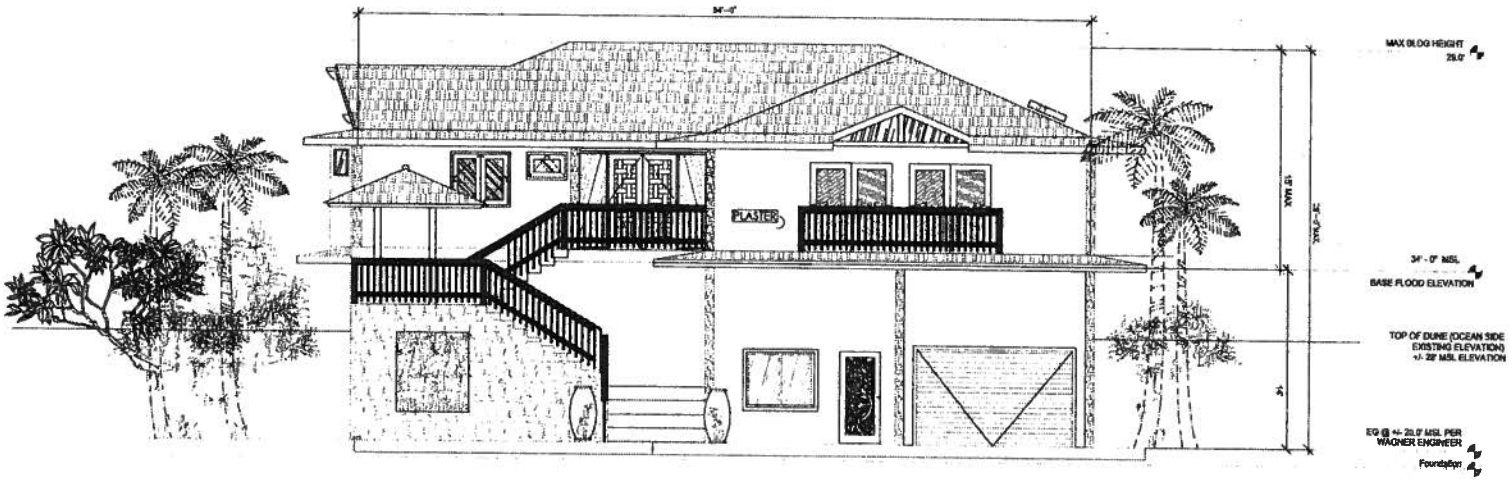
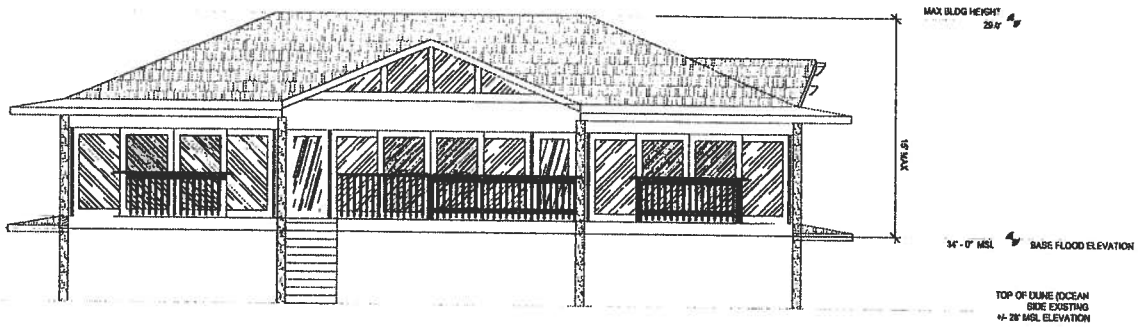


SOUTH (FRONT) ELEVATION

SCALE: 1/8" = 1'-0"



NORTH (REAR) ELEVATION

SCALE: 1/8" = 1'-0"

General Notes

No.	Revision/Issue	Date

BBH, LLC
5880-L Kahiliholo Road
Kilauea, HI 96754

EXHIBIT 14
FRONT & REAR ELEV
MALERICH SINGLE FAMILY RESIDENCE

TMK NO. (4) 5-9-05:25

FRONT & REAR ELEVATIONS

MALERICH	
MARCH 16, 2009	# 101-A
1/4"=1'-0"	

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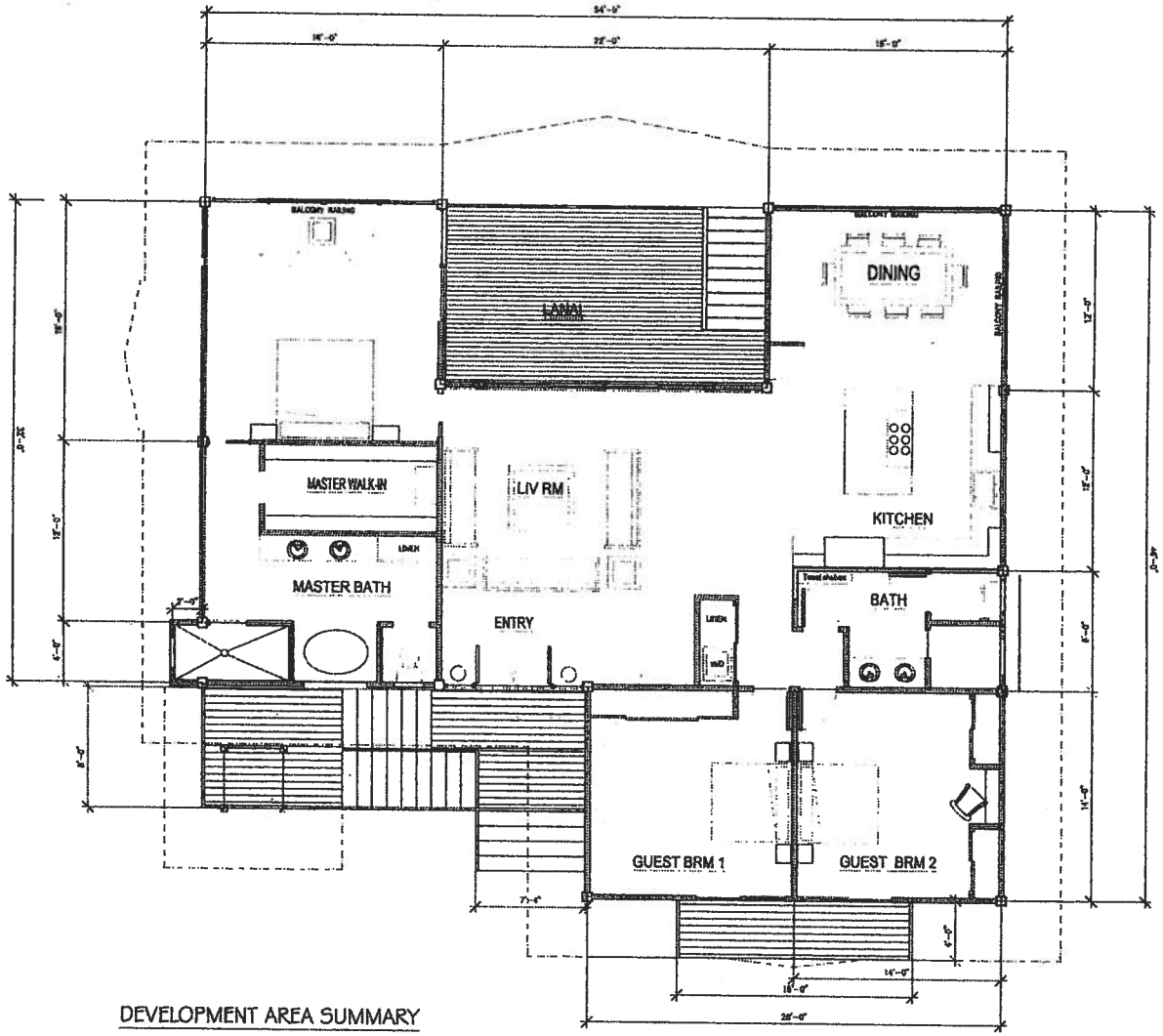


DEVELOPMENT AREA SUMMARY

UPPER LEVEL INTERIOR LIVING SPACE = 1,864 SF
LOWER LEVEL GARAGE & STORAGE SPACE = 952 SF
LANAI & STAIR AREAS IN EXCESS OF 4' = 452 SF
LANAI & STAIR AREAS 4' OR LESS = 122 SF
TOTAL DEVELOPMENT AREA = 3,268 SF

FLOOR PLAN

SCALE: 1/4" = 1' - 0"

General Notes

No.	Revision/Issue

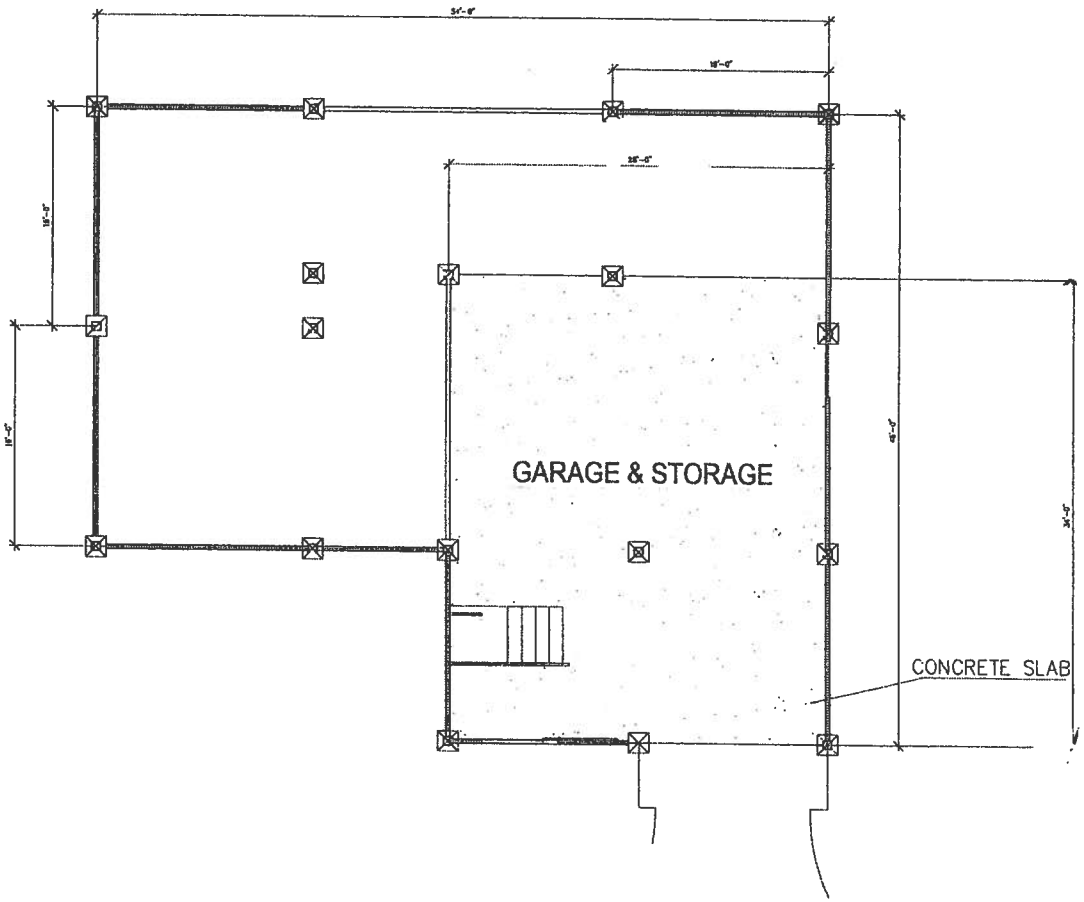
BBH, LLC
5880-L Kahiliholo Rd
Kilauea, HI 96754

EXHIBIT 12
UPPER LEVEL FLOOR PLAN
MALERICH SINGLE FAMILYRES

TMK No. (4) 5-9-05:25

UPPER FLOOR PL

MALERICH
MARCH 18, 2009
1/4"=1'-0"
10



DEVELOPMENT AREA SUMMARY

GARAGE + STORAGE SPACE = 952 SF

FLOOR PLAN

SCALE: 1/4" = 1' - 0"

General Notes

No.	Revision/Issue	Date

Firm Name and Address

BBH, LLC
5880-L Kahiltholo Road
Kilauea, HI 96754

Project Name and Address

EXHIBIT 13
LOWER LEVEL FLOOR PLAN
MALERICH SINGLE FAMILYRESIDENCE

TMK No. (4) 5-9-05:25

Drawing Title

LOWER FLOOR PLAN

Project: MALERICH

Date: MARCH 13, 2009

Scale: 1/4"=1'-0"

Drawing No.: # 100-A

Sheet of

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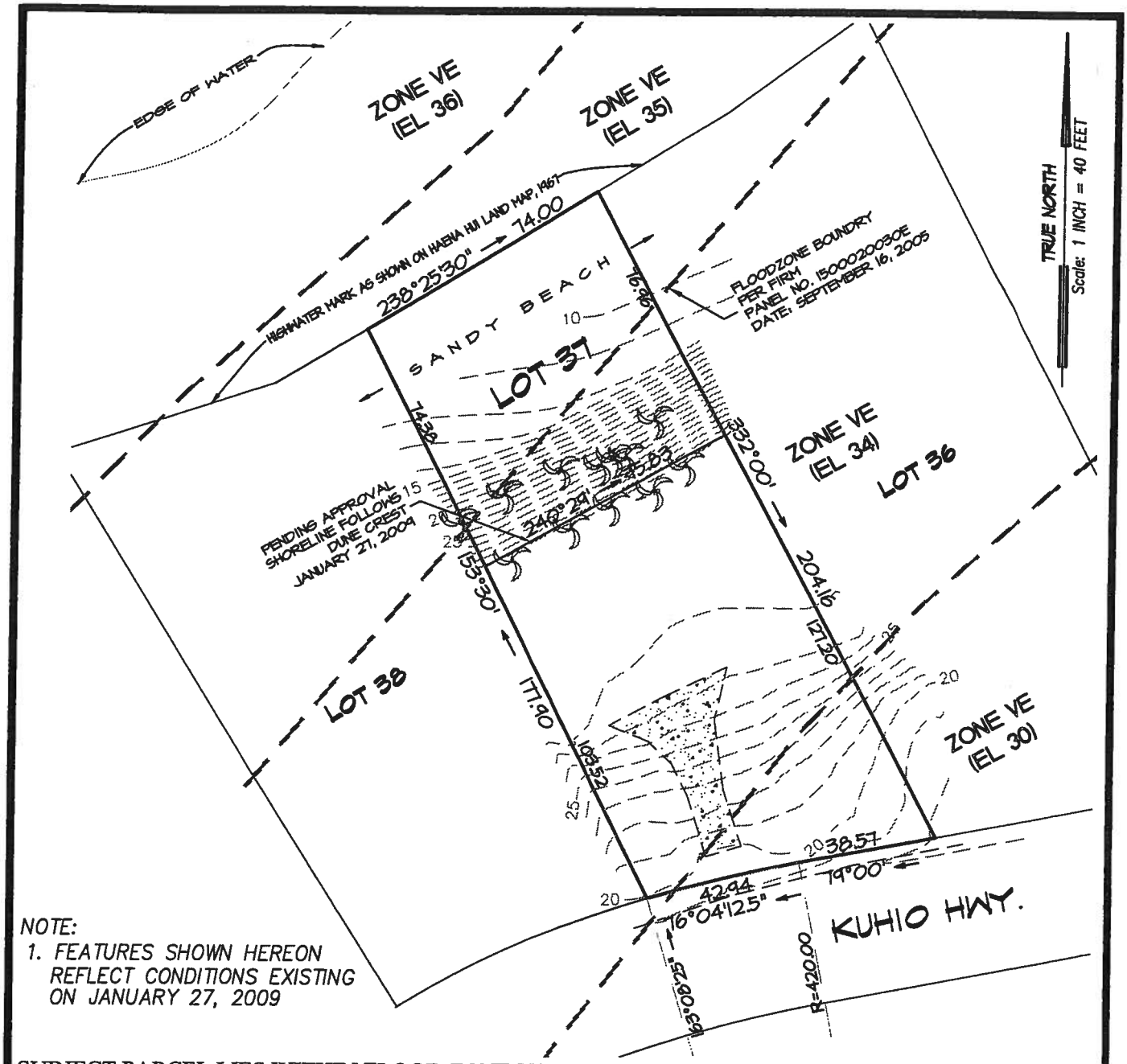


NOTE:
1. FEATURES SHOWN HEREON REFLECT CONDITIONS EXISTING ON JANUARY 27, 2009

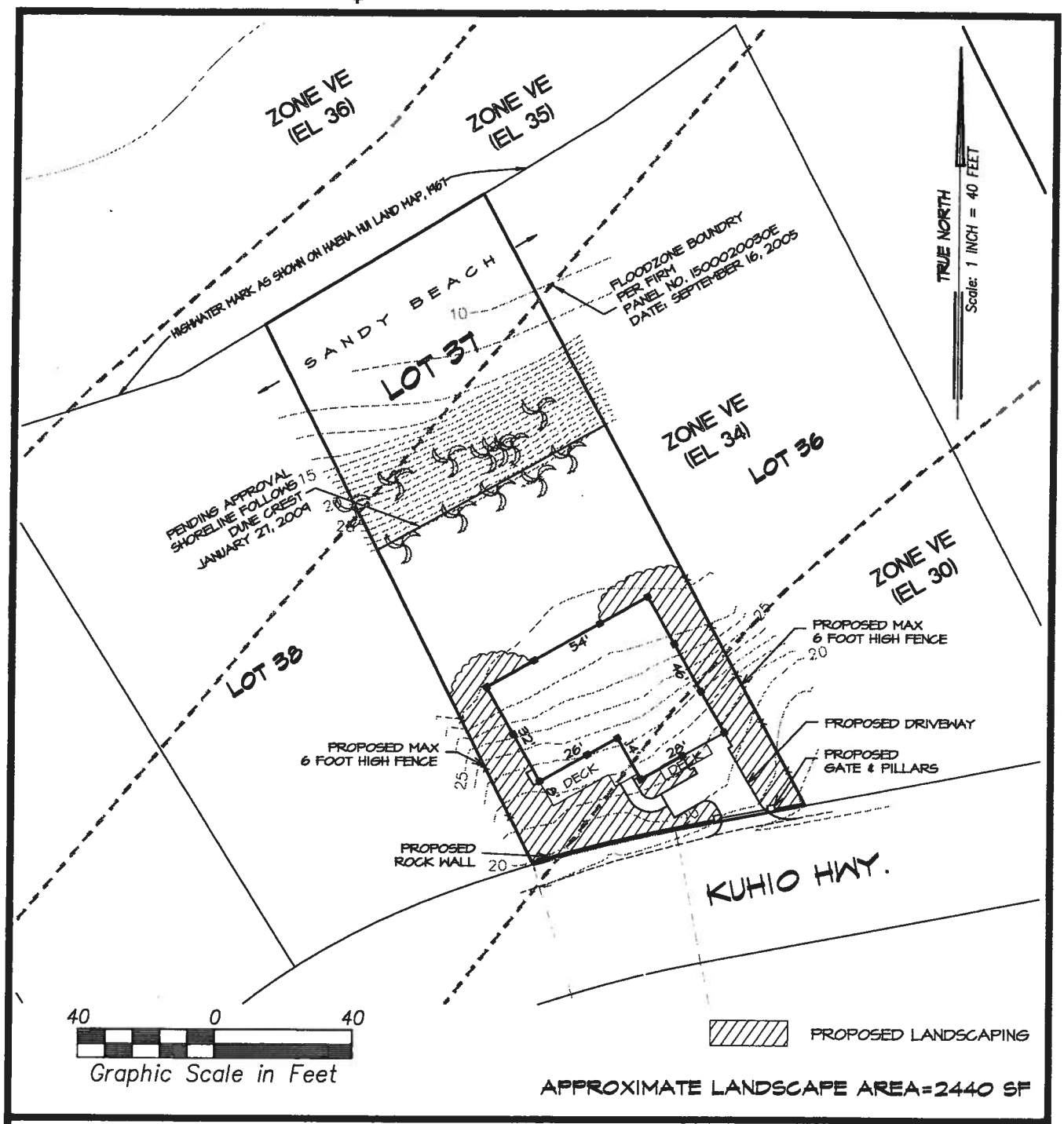
SUBJECT PARCEL LIES WITHIN FLOOD ZONE VE 30, VE 34, AND VE 35, COASTAL HIGH HAZARD AREA SUSCEPTIBLE TO TSUNAMI INUNDATION PER FIRM MAP # 1500020030 E DATED SEPTEMBER 16, 2005

40 0 40
Graphic Scale in Feet

PLOT PLAN

MALERICH SINGLE-FAMILY RESIDENCE
HAENA, KAUA'I, HAWAI'I
T.M.K. (4) 5-9-05:025

Wagner Engineering Services, Inc.
P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



PROPOSED LANDSCAPE AREA

MALERICH SINGLE-FAMILY RESIDENCE
HAENA, KAUA'I, HAWAI'I
T.M.K. (4) 5-9-05:025

Open Lawn & Existing Vegetation

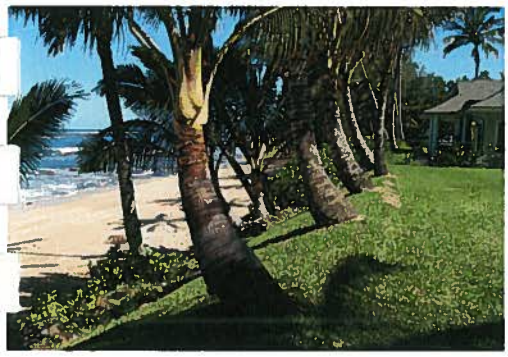
Subject Parcel & Neighboring Home on Parcel to the East

View of Front Lawn & Neighboring House to East

View Toward Roadway & Area of Proposed Construction

View from SE Corner Near Roadway Boundary

View Southwest Toward Mountains



Shoreline Interface at Top of Sandbag Revetment

Beachfront of Subject Parcel

Existing Driveway (To Be Removed)

SITE PHOTOS

Malerich Single Family Residence
TMK (4) 5-9-05: 025
Haena, Kauai, Hawaii

Photo 1 – Large Northeast Swell, Kauai – March 20, 2009

Photo 2 – Beach & Sandbags fronting subject parcel (taken April 1, 2009)

Photo 3 – Beach & Sandbags fronting subject parcel (taken April 1, 2009)