HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. **24-58, CD1**

RESOLUTION

GRANTING A SPECIAL MANAGEMENT AREA MAJOR PERMIT TO ALLOW THE CONSTRUCTION OF TWO NEW SINGLE-FAMILY DWELLINGS WITH ACCESSORY PAVILIONS, A SWIMMING POOL, AND A GARAGE IN KAILUA, O'AHU.

WHEREAS, on November 27, 2023, the Department of Planning and Permitting ("DPP") accepted the application (File No. 2023/SMA-99) of Ohana Makai, LLC (the "Applicant") for a Special Management Area ("SMA") Major Permit to allow for the construction of two new single-family detached dwellings, each with a pavilion structure; a swimming pool and spa with an adjacent accessory equipment structure; and a detached four-car garage and storage structure with a rooftop solar array on approximately 37,180-square-foot shoreline lot zoned R-10 Residential District, located at 126 South Kalāheo Avenue in Kailua, and identified as Tax Map Key 4-3-012:030 (the "Project"); and

WHEREAS, on January 16, 2024, the DPP held a public hearing on the application at the Fasi Municipal Building 6th Floor Conference Room, which was attended by the Applicant's Agent, DPP staff, and two members of the public, and at which one individual testified expressing concerns with the Project; and

WHEREAS, on February 29, 2024, within 45 calendar days after the close of the public hearing, the DPP, having duly considered all evidence and the objectives, policies, and guidelines, as established in §§ 25-3.1 and 25-4.1, Revised Ordinances of Honolulu 2021("ROH"), and §§ 205A-2 and 205A-26, Hawaii Revised Statutes ("HRS"), completed its report and transmitted its findings and recommendation of approval to the City Council ("Council"); and

WHEREAS, the Council, having received the findings and recommendation of the DPP on February 29, 2024, by Departmental Communication 126 (2024), and having duly considered all of the findings and reports on the matter, desires to approve the subject application for an SMA Major Permit, subject to the conditions enumerated below; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that an SMA Major Permit be issued to the Applicant for the Project, subject to the following conditions:

RESOLUTION

A. Except as modified herein, development must be in general conformity with the Project as described in the DPP's findings and recommendation, referenced above, and as depicted in Exhibits A, B, C-1 through C-7, D, E-1 through E-2, and F through M, attached hereto and incorporated by reference herein. Any change in the size or nature of the Project that may have a significant effect on coastal resources addressed in ROH Chapter 25 or HRS Chapter 205A, or both, will require a new application and SMA Major Permit. Any change that does not have a significant effect on coastal resources will be considered a minor modification and may be permitted under this resolution, upon review and approval by the DPP Director.

B. To account for the potential shift of land from the State Land Use Urban District to the State Land Use Conservation District in response to anticipated coastal erosion, the landowner hereby acknowledges (and any successor owner or interested party is hereby notified of) the following:

> *"In choosing to implement construction activities at Tax Map Key 4-3-012:030, the landowner hereby acknowledges that land makai of the regulatory shoreline is State public land, falls within the State Land Use Conservation District, and must remain available for public use and recreational activities. The landowner further acknowledges that should any portion of a structure encroach into State public land, the State Board of Land and Natural Resources may require the removal of the structure or a lease for the encroachments extending into the State public land. As a result of this acknowledgement, successor owners and interested parties are hereby notified of this same information and the landowner shall hold harmless and indemnify the City of any responsibility that may result from adverse impacts associated with sea level rise and coastal erosion."*

This statement must be clearly stated under "Landowner Acknowledgements" on all Project building permit plans.

C. Following approval of this SMA Major Permit, neither the current landowner, nor any successor owner or interested party may claim hardship due to erosion, sea level rise, or any other coastal hazard, in order to obtain approval for a Shoreline Setback Variance ("SSV") for a new shoreline protection structure. All Project

building permit plans must include the following statement under "Landowner Acknowledgements":

> *"In choosing to undertake the development at Tax Map Key 4-3-012:030, the landowner hereby acknowledges that no claim of hardship due to erosion, sea level rise, or any other coastal hazard may be asserted in order to obtain approval for a Shoreline Setback Variance for a new shoreline protection structure."*

D. To minimize the potential for adverse impacts related to coastal hazards, including but not limited to sea level rise, coastal erosion, flooding, wave action, and storm surge, prior to the issuance of any construction permit or building permit for the Project, the landowner hereby acknowledges (and any successor owner or interested party is hereby notified of) the following:

> *"The landowner hereby acknowledges that Tax Map Key 4-3-012:030 is susceptible to coastal hazards, which may result in harm to or loss of life and property."*

This statement must be clearly stated under "Landowner Acknowledgements" on all Project building permit plans.

E. In order to ensure the Applicant is aware that short-term rentals are not allowed on the Project site, the landowner hereby acknowledges (and any successor owner or interested party is hereby notified of) the following:

> *"The landowner hereby acknowledges that short-term rentals, as defined in ROH Chapter 21, the Land Use Ordinance, are not allowed on Tax Map Key 4-3-012:030."*

This statement must be clearly stated under "Landowner Acknowledgements" on all Project building permit plans.

F. In order to preserve underlying beach sands and coastal dunes, all landscaped areas, landscaping, and irrigation must be contained and maintained within the property boundaries of the shoreline lot of origin.

1. Landscaping may not be planted, watered, or maintained so that it acts as a shoreline barrier, such as by planting naupaka, particularly if the landscaping alters or interferes with the natural beach processes;

2. Landscaping may not extend seaward of the shoreline as depicted in the current certified shoreline survey for the shoreline lot, or in the event there is no current certified shoreline survey for the lot, seaward of the shoreline as defined in HRS Chapter 205A;

3. Landscaping may not extend into any adjoining beach access right-of-way, public or private;

4. Landscaping between the makai dwelling and the shoreline must be limited to vegetation that is naturally hardy or endemic in the dune or shoreline area; and

5. Any irrigation systems must be designed so that water does not traverse makai of the shoreline into the State Land Use Conservation District, or otherwise facilitate the growth of vegetation makai of the shoreline as defined in HRS Chapter 205A.

The requirements enumerated in this condition must be clearly stated under "Environmental Notes" on all Project construction permit plans and building permit plans.

G. In order to minimize impacts to known and unknown archaeological, historic, and cultural resources that may be present at the Project site, the Applicant shall comply with the following measures:

1. The Applicant, in consultation with the State Historic Preservation Division ("SHPD"), shall prepare an archaeological monitoring plan that meets the standards of Hawai'i Administrative Rules Chapter 13-279, and shall implement the archaeological monitoring plan during ground-disturbing activity and Project construction to ensure that archaeological and cultural resources are properly identified and treated;

2. The archaeological monitoring plan must include:

a. The onsite presence of a licensed archaeologist during excavation work to ensure that iwi kūpuna and other historic resources are properly handled;

b. If iwi kūpuna are discovered, consultation must take place as required by State law on the treatment of iwi kūpuna;

c. Consideration of Project redesign or relocation to allow any discovered iwi kūpuna to be buried-in-place;

d. Establishment of a temporary curation unit on the Project site if iwi kūpuna are disinterred;

e. Identification of potential reinterment sites on the Project site in the event that iwi kūpuna are discovered and it is determined that burial-in-place is not recommended and onsite reinterment is recommended; and

f. Consultation with the licensed archaeologist to determine whether it is recommended that excavation work be conducted with a specially fitted, flat blade (not the standard toothed blade) on the excavator bucket, which must be operated in a series of shallow scrapes (instead of deep scoops).

3. The Applicant shall consult with SHPD regarding mitigation protocols, and shall implement all mitigation protocols approved or otherwise required by SHPD for all historic properties and cultural resources (including iwi kūpuna) discovered on the Project site. Prior to the commencement of ground-disturbing activity and Project construction, a coordination meeting must be conducted among the Project's archaeological consultants, the construction contractor, and applicable subcontractors to ensure that the construction contractor and applicable subcontractors have been informed of the required mitigation protocols; and

4. If, during construction, any previously unidentified archaeological sites or remains (such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls) are encountered, the Applicant shall stop work, protect the find from further disturbance, and

contact SHPD immediately. Work in the immediate area must be stopped until SHPD is able to assess the impact and make further recommendations for mitigative activity.

The requirements enumerated in this condition and all mitigation protocols approved or otherwise required by SHPD must be clearly stated under "Environmental Notes" on all Project construction permit plans and building permit plans.

H. In order to minimize impacts to endangered, protected, or threatened avian, marine, and terrestrial fauna that may frequent or traverse the vicinity of the Project site, the Applicant is responsible for the following.

1. All new and replacement outdoor light fixtures must not exceed a color temperature of 3,000 degrees kelvin.

2. Artificial light from exterior light fixtures on the zoning lot, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, is prohibited if the light directly illuminates, or is directed across property boundaries toward, the shoreline and ocean waters, except as may otherwise be permitted pursuant to HRS § 205A-71(b).

3. Exterior light fixtures on the Project site must be fully shielded using full cutoff fixtures with the light directed downward so that the light bulb is only visible from below the light fixture.

4. All Project site work and construction activities are limited to daylight hours (sunrise to sunset).

5. Barbless fencing must be used for all fence construction to avoid the entanglement of Hawaiian hoary bats.

6. Woody plants greater than 15 feet in height may not be disturbed, removed, or trimmed during the Hawaiian hoary bat birthing and pup rearing season (June 1 through September 15).

7. All Project-related activities must cease if a Hawaiian monk seal, green sea turtle, or Hawksbill sea turtle is within 150 feet of the work area, or as

recommended by State or Federal regulations. Project activities may only recommence after the animal voluntarily leaves the area. If a monk seal pup is present, a 300-foot buffer must be observed. Any Project-related debris that may pose an entanglement threat to monk seals or turtles must be removed from the work area at the end of each day and at the conclusion of Project-related activities.

8. If Project construction activities are scheduled during the breeding and nesting period from March through December, preconstruction nesting surveys must be conducted by a qualified biologist familiar with the biology of wedge-tailed shearwaters, Hawaiian seabirds, and the Manu-o-Kū (white tern) prior to and during Project construction as follows:

   a. A minimum of three days prior to the initiation of any clearing (including tree trimming or removal), grubbing, grading, excavation, or trenching activities, the qualified biologist must conduct preconstruction surveys for the presence of Hawaiian seabird and migratory bird nests, eggs, or fledglings;

   b. If no nests, eggs, or fledglings are discovered, work may proceed;

   c. If any nests, eggs, or fledglings are discovered, work may not proceed, and:

      (i) The U.S. Fish and Wildlife Service ("USFWS") and the Department of Land and Natural Resources Department of Fish and Wildlife ("DOFAW") must be contacted immediately;

      (ii) Work may only resume upon implementation of any avoidance and mitigation measures recommended by the USFWS and/or DLNR DOFAW; and

      (iii) Written evidence of the survey must be submitted to the DPP Land Use Permits Division.

   d. If there is a delay of three or more workdays during the active construction period, the qualified biologist must conduct a

subsequent preconstruction nest surveys for any new nests that Hawaiian seabirds or protected migratory birds may have attempted to establish.

Pre-construction nesting surveys are not required for construction activities occurring in January or February (outside of the breeding and nesting period of March through December).

The requirements enumerated in this condition must be clearly stated under "Environmental Notes" on all Project construction permit plans and building permit plans.

I. To minimize the spread of invasive pathogens, pests, or plants that may harm native species and ecosystems, the importation of soil material must be minimized to the extent possible. If the importation of fill material is necessary, prior to the importation of any fill material, the Applicant shall submit a materials analysis to the DLNR DOFAW, for review and approval. The materials analysis must show that:

1. All fill materials have similar characteristics and are of similar quality as the existing soil materials on site, and will not adversely impact SMA resources; and

2. All fill materials are clean and do not contain invasive fungal pathogens, vertebrate and invertebrate pests, or invasive plant parts that may harm native species and ecosystems.

Approximately one year after the issuance of a certificate of occupancy for the Project, the Applicant shall submit to DOFAW for its review and approval, a post-construction survey to detect whether the Project site contains any invasive species that have spread from the fill materials, and recommended mitigative measures to address any spread. The Applicant shall implement the recommendations of the post-construction survey.

The requirements enumerated in this condition must be clearly stated under "Environmental Notes" on all Project construction permit plans and building permit plans.

J. **The Applicant shall obtain a construction permit or building permit for the Project within 36 months after the effective date of this SMA Major Permit.** Failure to obtain a construction permit or building permit within this period will render this SMA Major Permit null and void, provided that this period may be extended as follows:

1. The DPP Director may extend this period if the Applicant demonstrates good cause, provided that the DPP Director may not extend the period beyond one year from the initial deadline set by the Council.

2. If the Applicant demonstrates good cause for an extension exceeding one year, the DPP Director shall prepare and submit to the Council a report on the proposed extension, which must include the DPP Director's findings and recommendations thereon. The Council may approve the proposed extension or an extension for a shorter or longer period, or deny the proposed extension, by adoption of a committee report or resolution.

3. If the Council fails to take final action on the proposed extension within the first to occur of:

   a. Sixty days after receipt of the DPP Director's report; or

   b. The Applicant's then-existing deadline for obtaining a construction permit or building permit,

   the extension will be deemed to be denied.

K. Approval of this SMA Major Permit does not constitute compliance with other City ordinances, including but not limited to the Land Use Ordinance ("LUO") and building and construction codes, or other governmental requirements, including but not limited to LUO-related approvals, and building, grading, and grubbing permit approvals, which are subject to separate review and approval. The Project's building permit application must address the lack of a kitchen in Dwelling 2 (currently a multifamily dwelling with three lodging units), exceeding the maximum number of bathrooms permitted on a zoning lot, and parking design provisions that require all vehicles to enter and exit the street in a forward-facing manner. The Applicant is responsible for ensuring that the final plans for

the Project approved under this SMA Major Permit comply with all applicable City ordinances and other governmental provisions and requirements; and

HONOLULU CITY COUNCIL

KE KANIHELA O KE KALANA O HONOLULU

CITY AND COUNTY OF HONOLULU

No. **24-58, CD1**

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to Ohana Makai, LLC, c/o David Banks, Esq., 1000 Bishop Street, Suite 1500, Honolulu, Hawai'i 96813; Mireille Turin, Peter Vincent Architects, 55 Merchant Street, Suite 1430, Honolulu, Hawai'i 96813; Dawn Takeuchi Apuna, Director of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, Hawai'i 96813; and Mary Alice Evans, Director of the State Office of Planning and Sustainable Development, Attention: Coastal Zone Management Branch, P.O. Box 2359, Honolulu, Hawai'i 96804-2359.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

February 29, 2024
Honolulu, Hawai'i

Councilmembers

OCS2024-0331/4/2/2024 2:24 PM

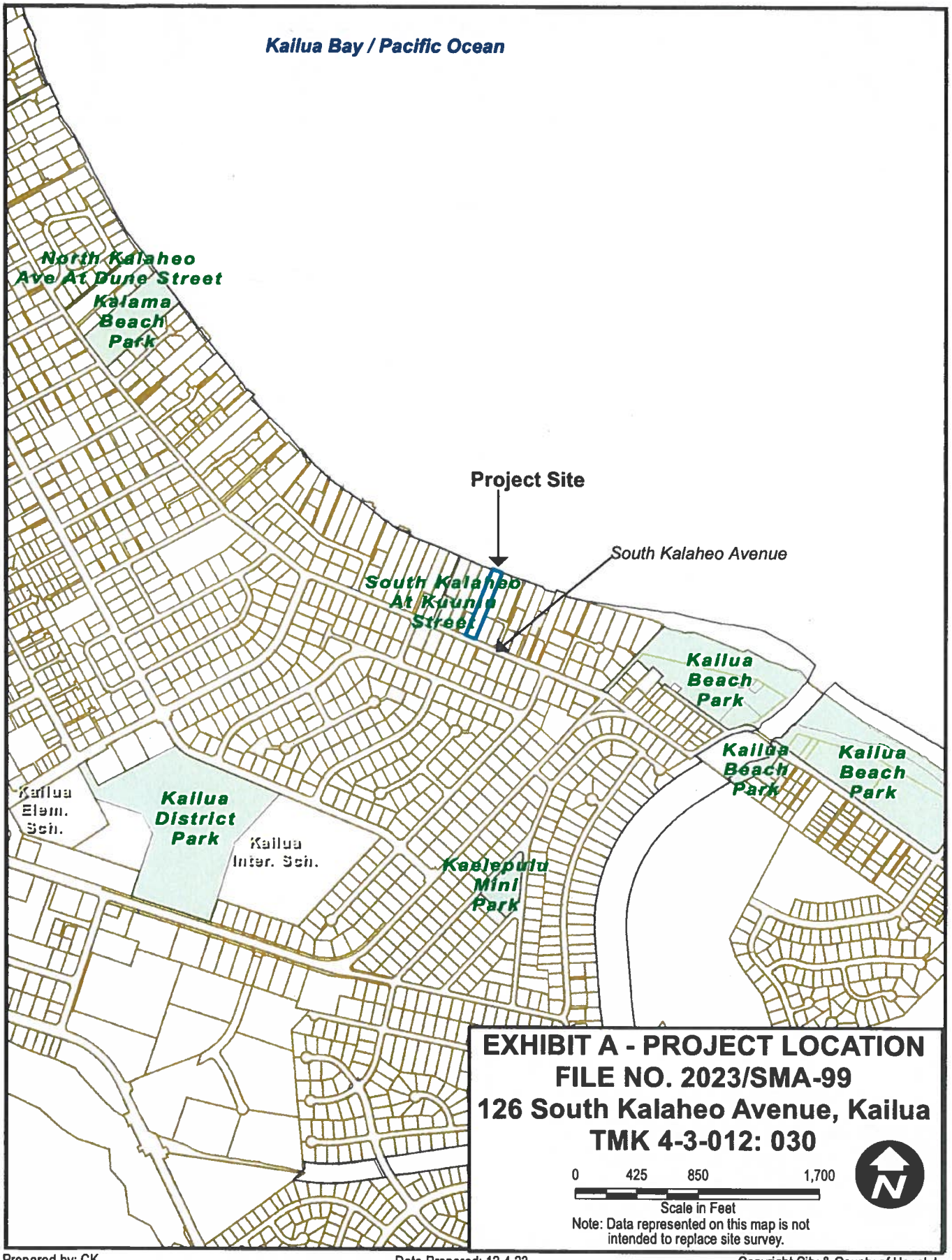

EXHIBIT A - PROJECT LOCATION
FILE NO. 2023/SMA-99
126 South Kalaheo Avenue, Kailua
TMK 4-3-012: 030

Note: Data represented on this map is not intended to replace site survey.

Prepared by: CK

Date Prepared: 12.4.23

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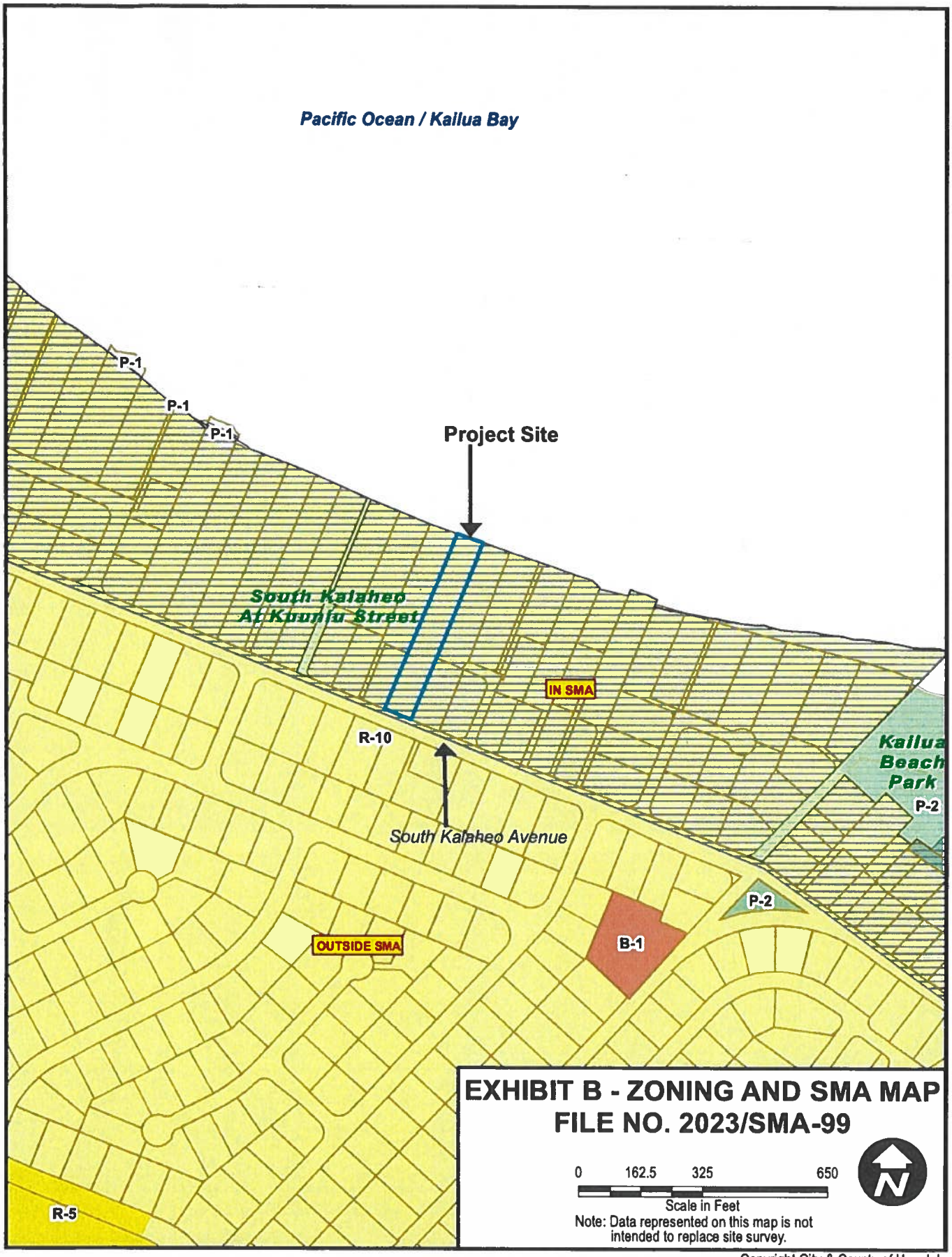

EXHIBIT B - ZONING AND SMA MAP
FILE NO. 2023/SMA-99

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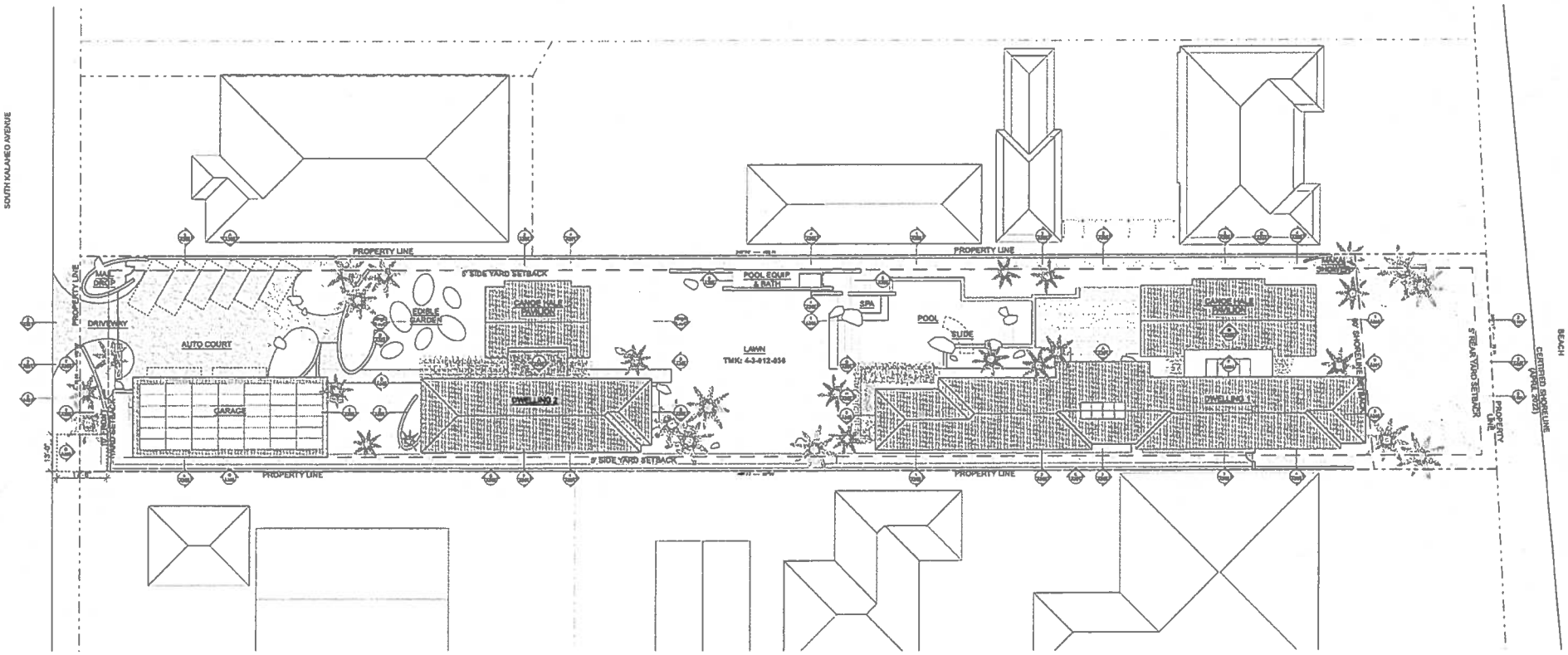


1 Site Plan

EXHIBIT C-1 - SITE PLAN

OHANA MAKAI LLC
126 S. KALAHEO AVENUE, KAILUA, HAWAI'I 96734

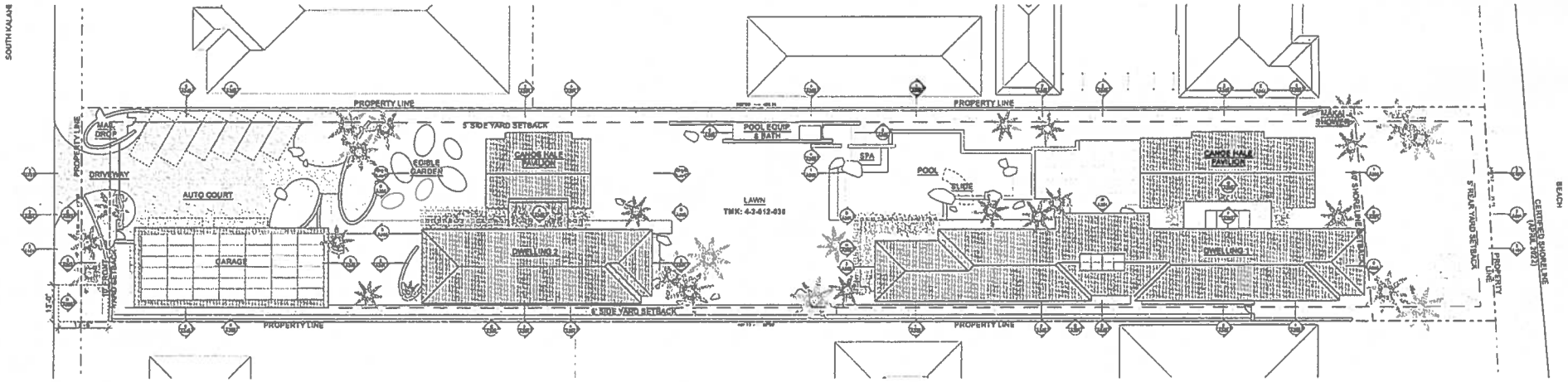
October 31, 2023

A100

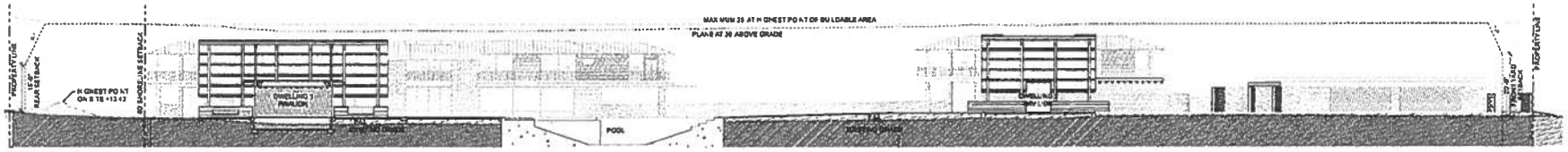
Site Plan

Harbor Court
55 Merchant Street Suite 1430 Honolulu Hawai'i 96813
808.524.8255 | info@pva.com

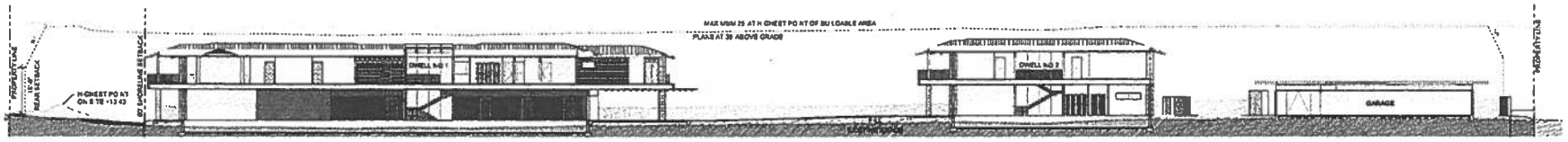
petervincentarchitects



1 Site Plan



2 Site Section Through Pavilions



3 Site Section Through Dwellings

EXHIBIT C-2 - SECTION DRAWINGS

OHANA MAKAI LLC
126 S. KALAHEO AVENUE, KAILUA, HAWAI'I 96734

October 31, 2023

A101

Site Plan + Sections

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55 Merchant Street Suite 1430 Honolulu Hawai'i 96813
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PVA
petervincentarchitects

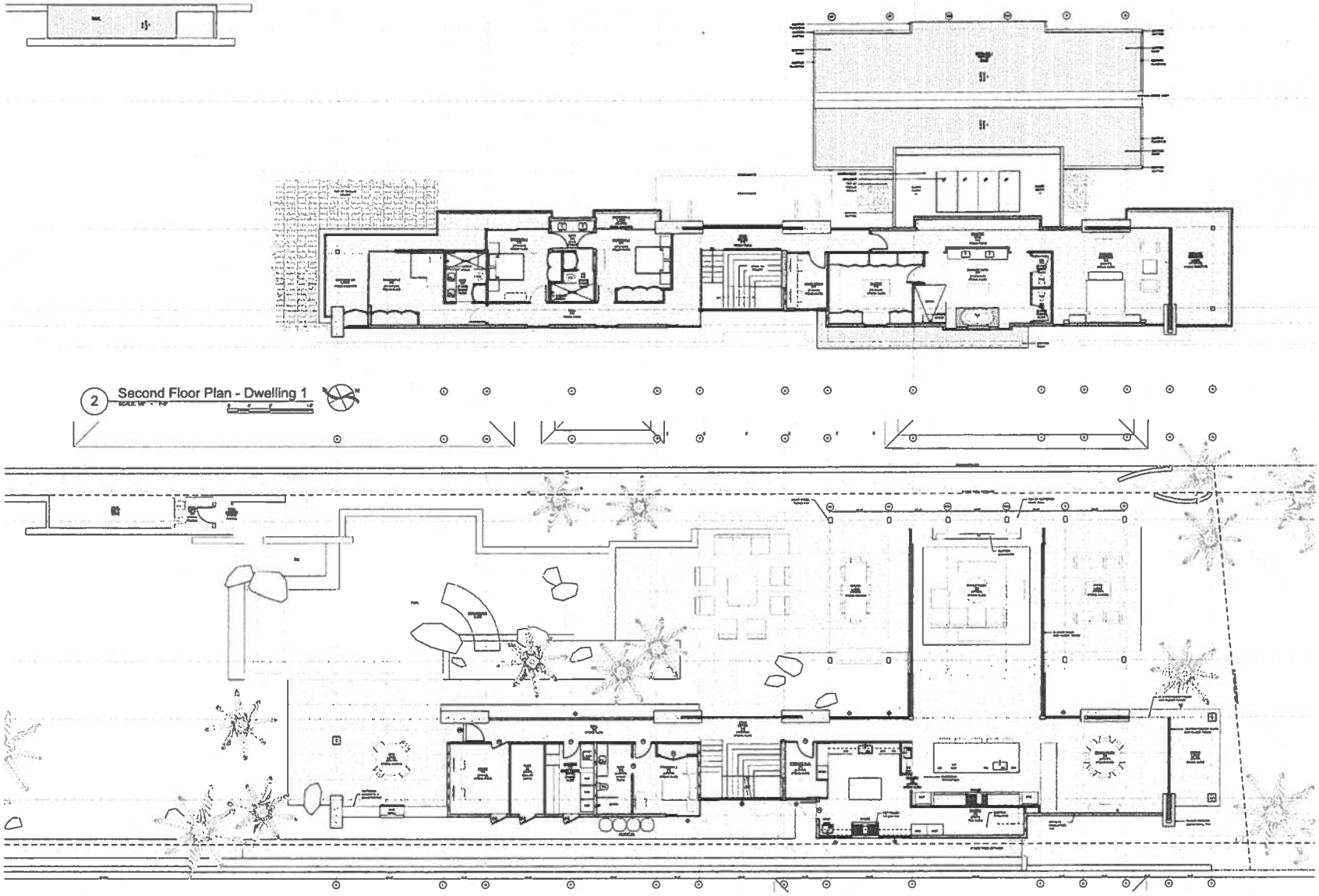

EXHIBIT C-3 - FLOOR PLANS - DWELLING 1

OHANA MAKAI LLC
126 S. KALAHEO AVENUE, KAILUA, HAWAI'I 96734

October 31, 2023

A102

Dwelling 1 Floor Plans

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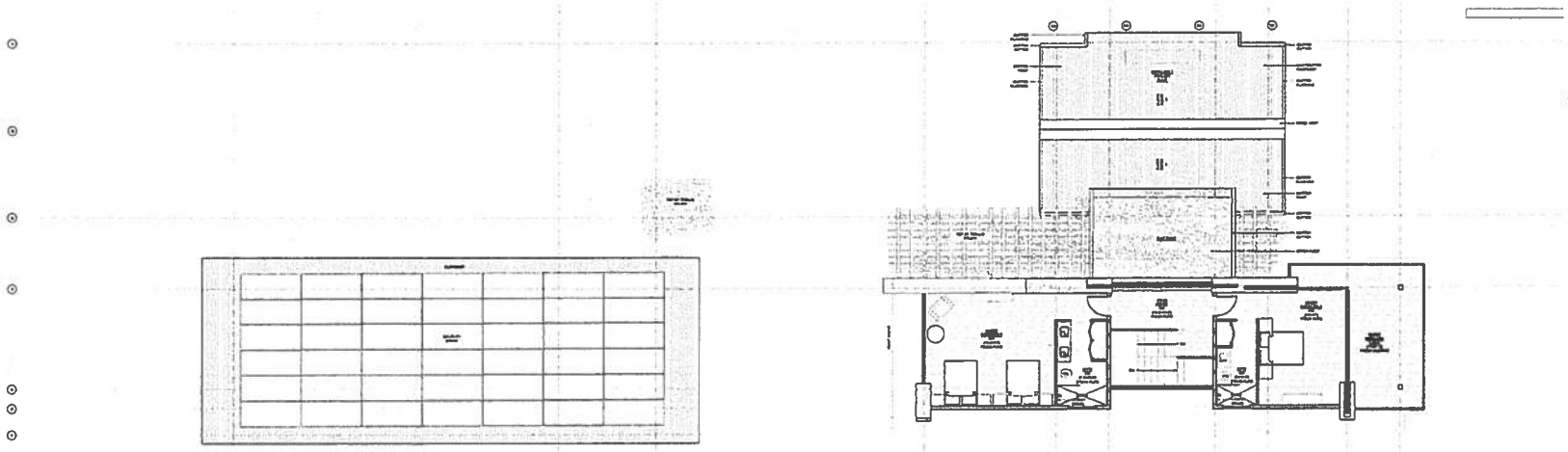
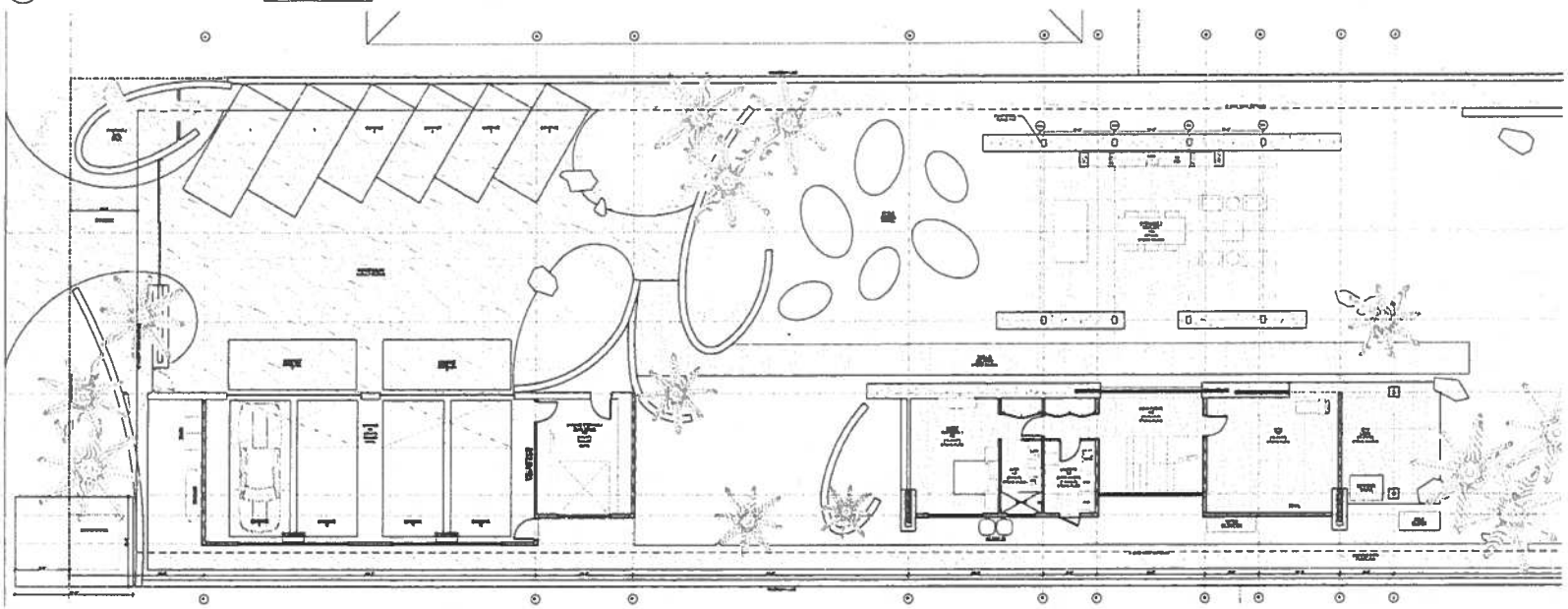


2 Second Floor Plan - Garage + Dwelling 2



1 Ground Floor Plan - Garage + Dwelling 2

EXHIBIT C-4 - FLOOR PLANS - DWELLING 2

OHANA MAKAI LLC
126 S. KALAHEO AVENUE, KAILUA, HAWAI'I 96734

October 31, 2023

A103

Garage + Dwelling 2 Floor Plans

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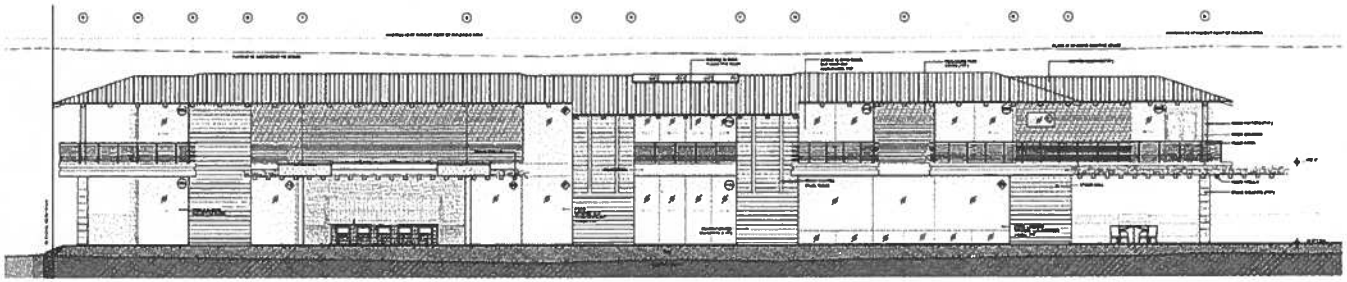
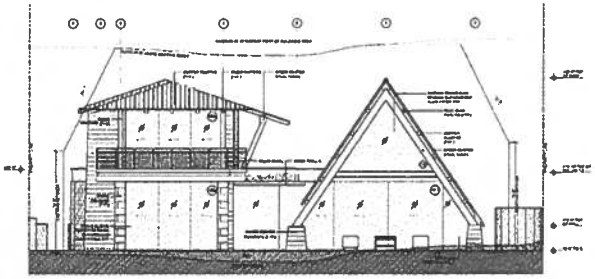
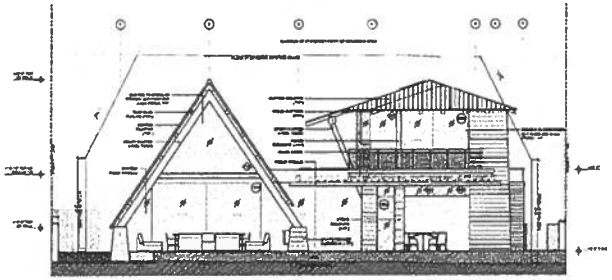


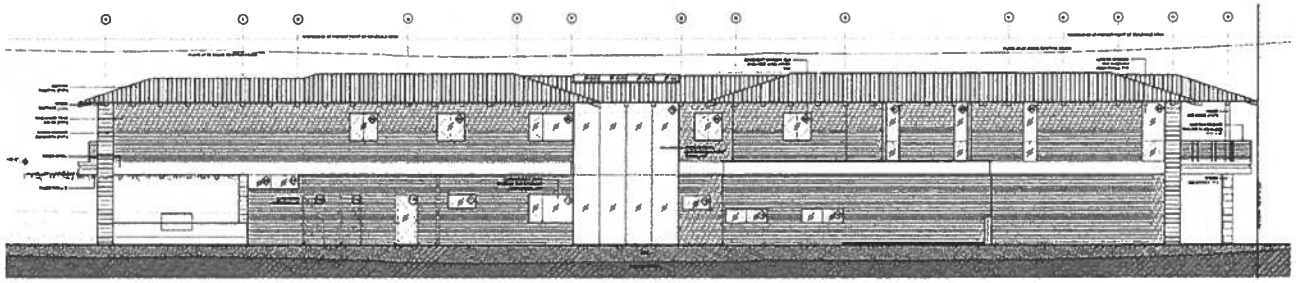
A Dwelling 1 Kaneohe Elevation



B Dwelling 1 Makai Elevation

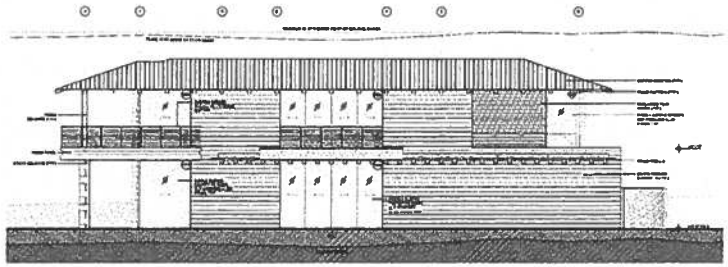


D Dwelling 1 Mauka Elevation

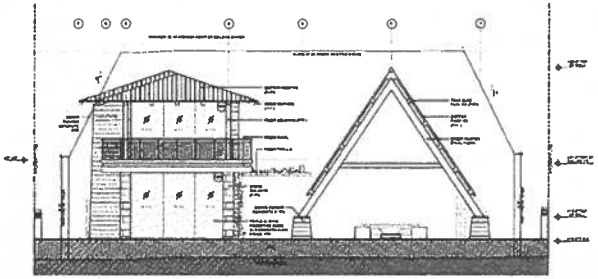


C Dwelling 1 Waimanalo Elevation

EXHIBIT C-5 - DWELLING 1 ELEVATIONS



A Dwelling 2 Kaneohe Elevation



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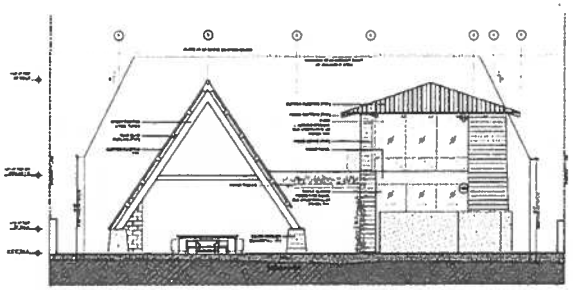

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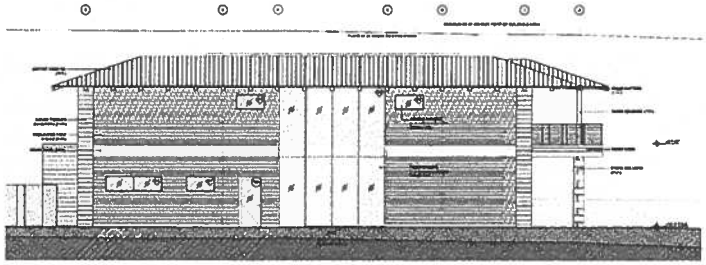
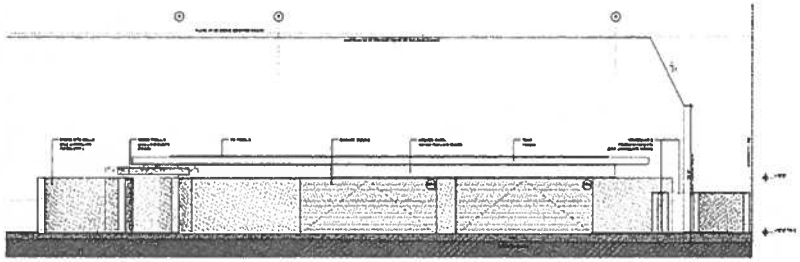
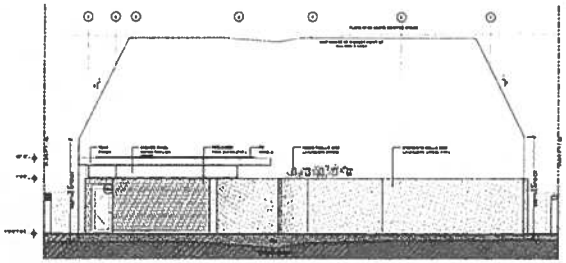


C Dwelling 2 Waimanalo Elevation

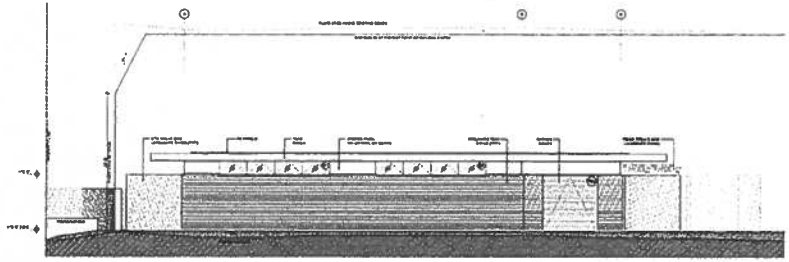
EXHIBIT C-6 - DWELLING 2 ELEVATIONS



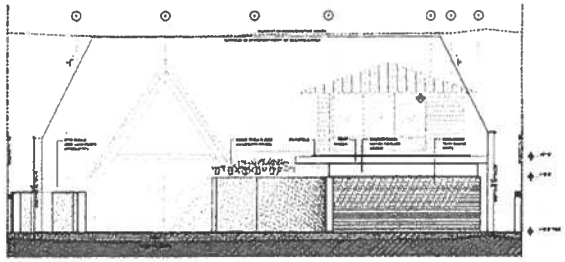
A Garage Kaneohe Elevation



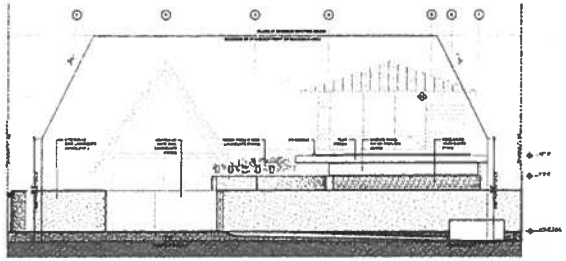
B Garage Makai Elevation



C Garage Waimanalo Elevation

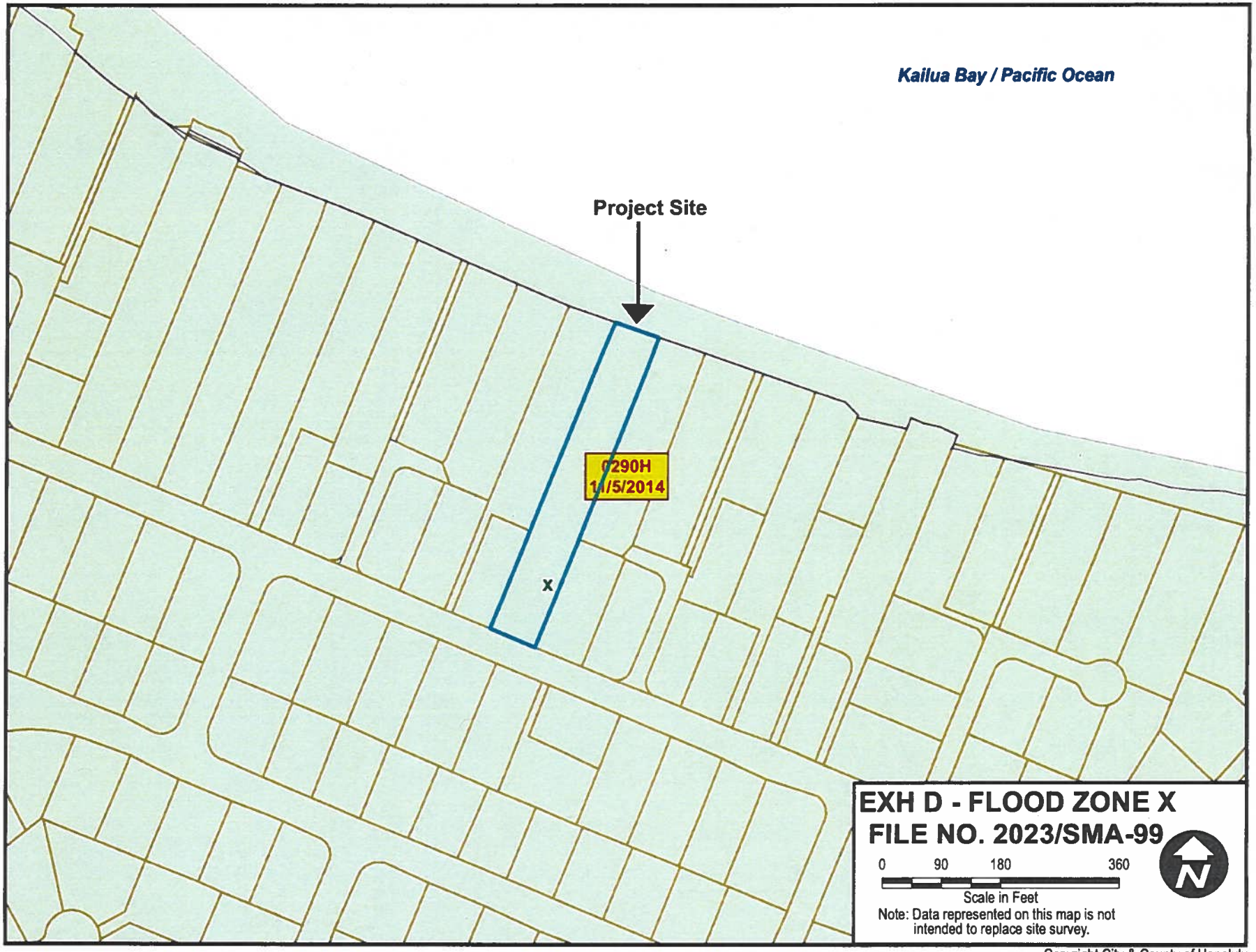


D Garage Mauka Elevation



E Garage Kalaheo St. Elevation

EXHIBIT C-7 - GARAGE ELEVATIONS



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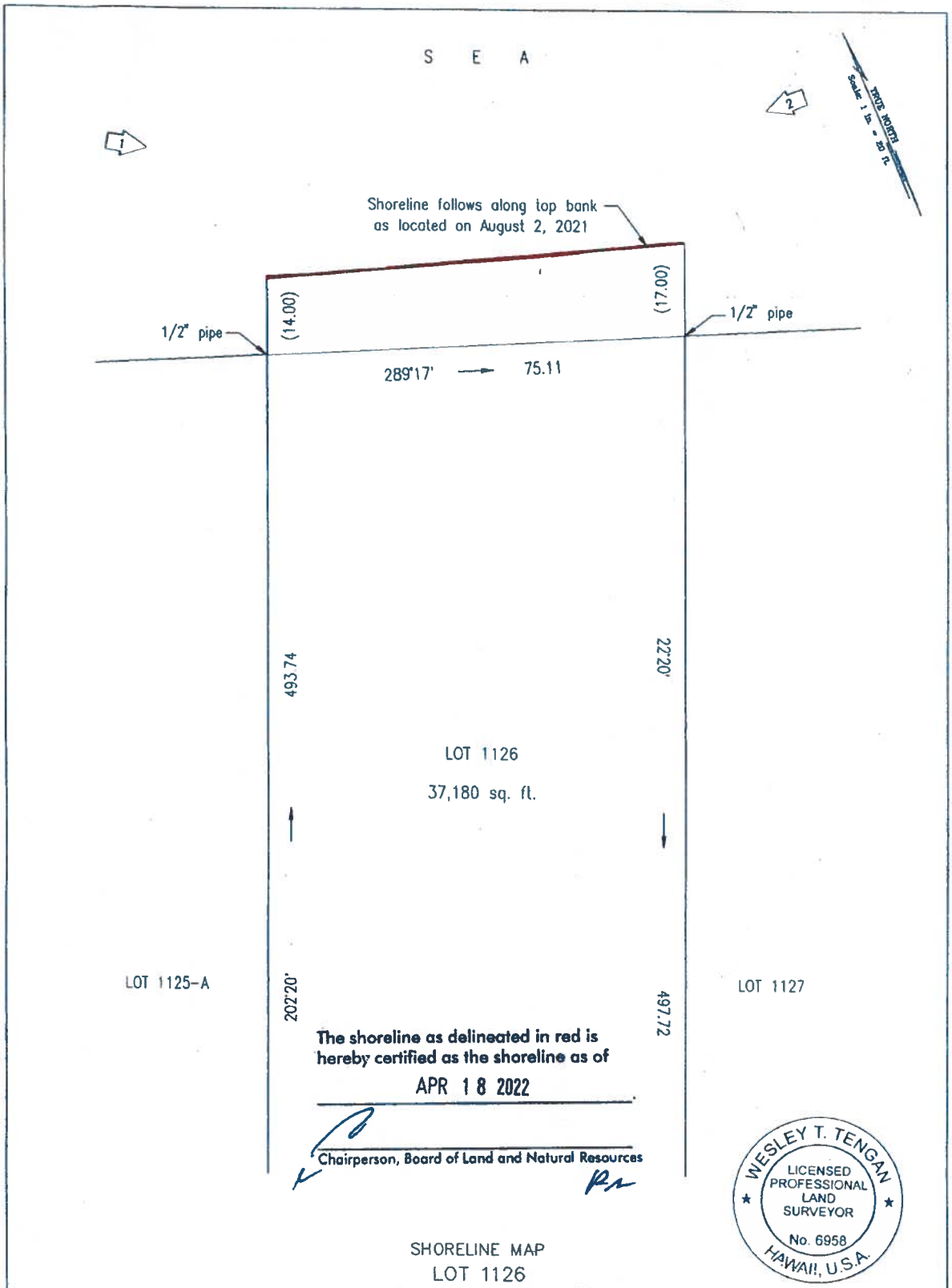
SURVEY OFFICE COPY



WESLEY T. TENGAN
LICENSED PROFESSIONAL LAND SURVEYOR
No. 6958
HAWAII, U.S.A.

SHORELINE MAP
LOT 1126
LAND COURT APPLICATION 677
AS SHOWN ON MAP 255
Kailua, Koolaupoko, Oahu, Hawaii
Date: August 2, 2021
Tax Map Key: (1)4-3-12:30
Owner: Wey Investments F Series

This work was prepared by me or under my supervision

EXP. 4/22
WESLEY T. TENGAN
LICENSED PROFESSIONAL LAND SURVEYOR
Certificate Number 6958

Note: 1 denotes position and direction of photograph

126 S. Kalaheo Ave.

EXHIBIT E-1 - 2022 CERTIFIED SHORELINE SURVEY

SHORELINE PHOTOGRAPHS

PHOTO: 1

PHOTO: 2

126 S. KALAHEO AVENUE

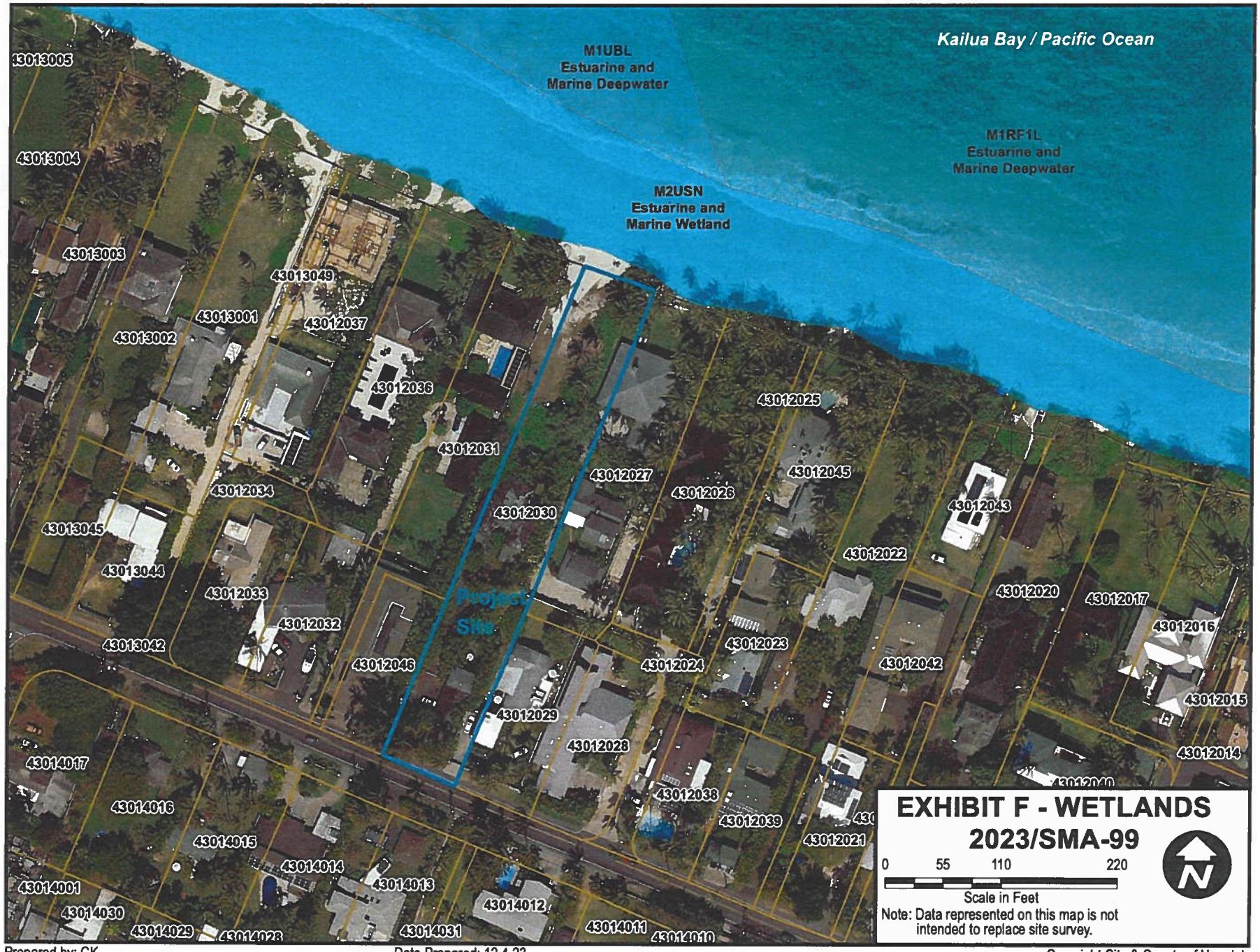
4-3-12:30

8/2/2021

1:00 P.M.

PARTY CHIEF: GRANT FUJISHIGE

EXHIBIT E-2 - 2022 SHORELINE SURVEY PHOTOS



Prepared by: CK

Date Prepared: 12.4.23

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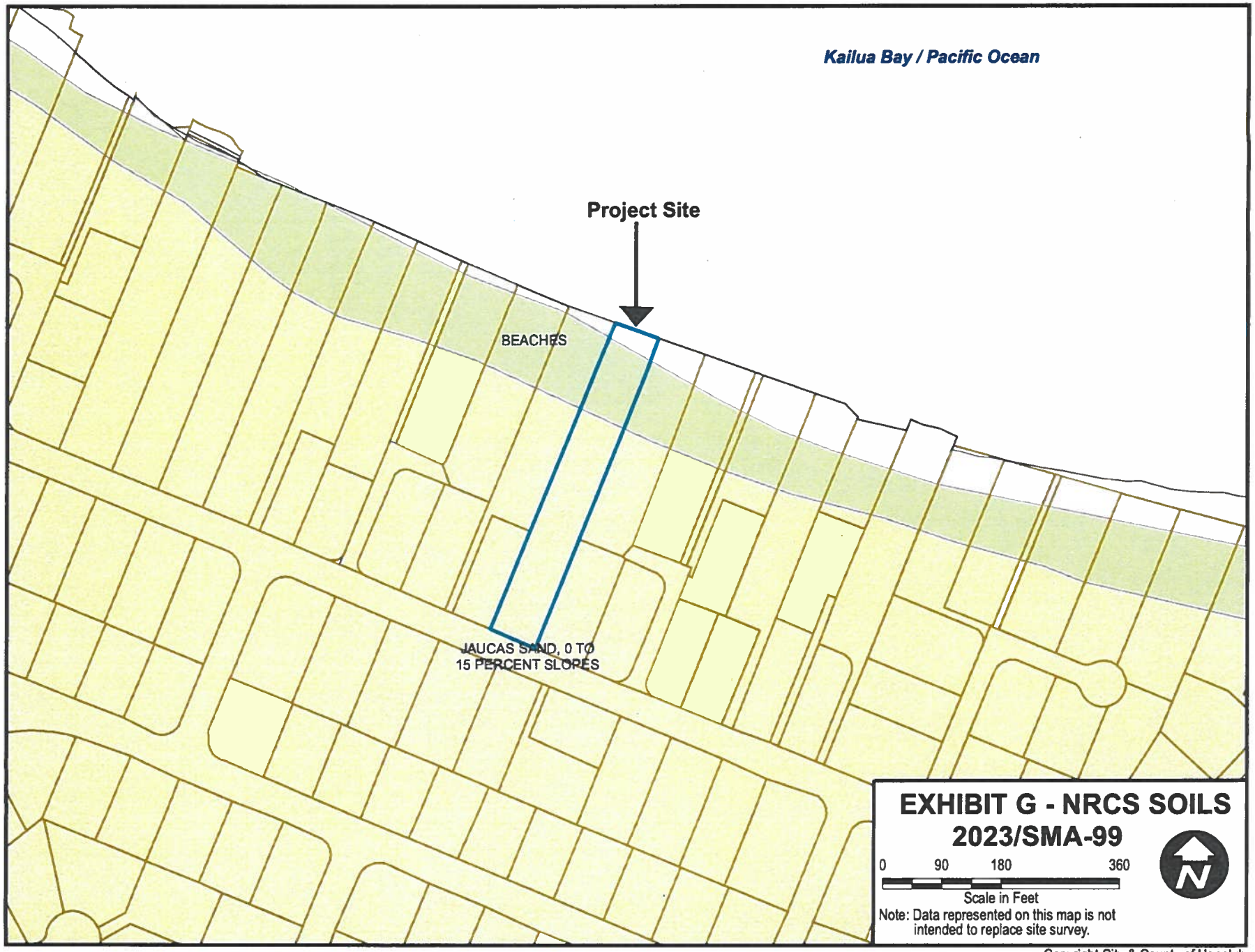

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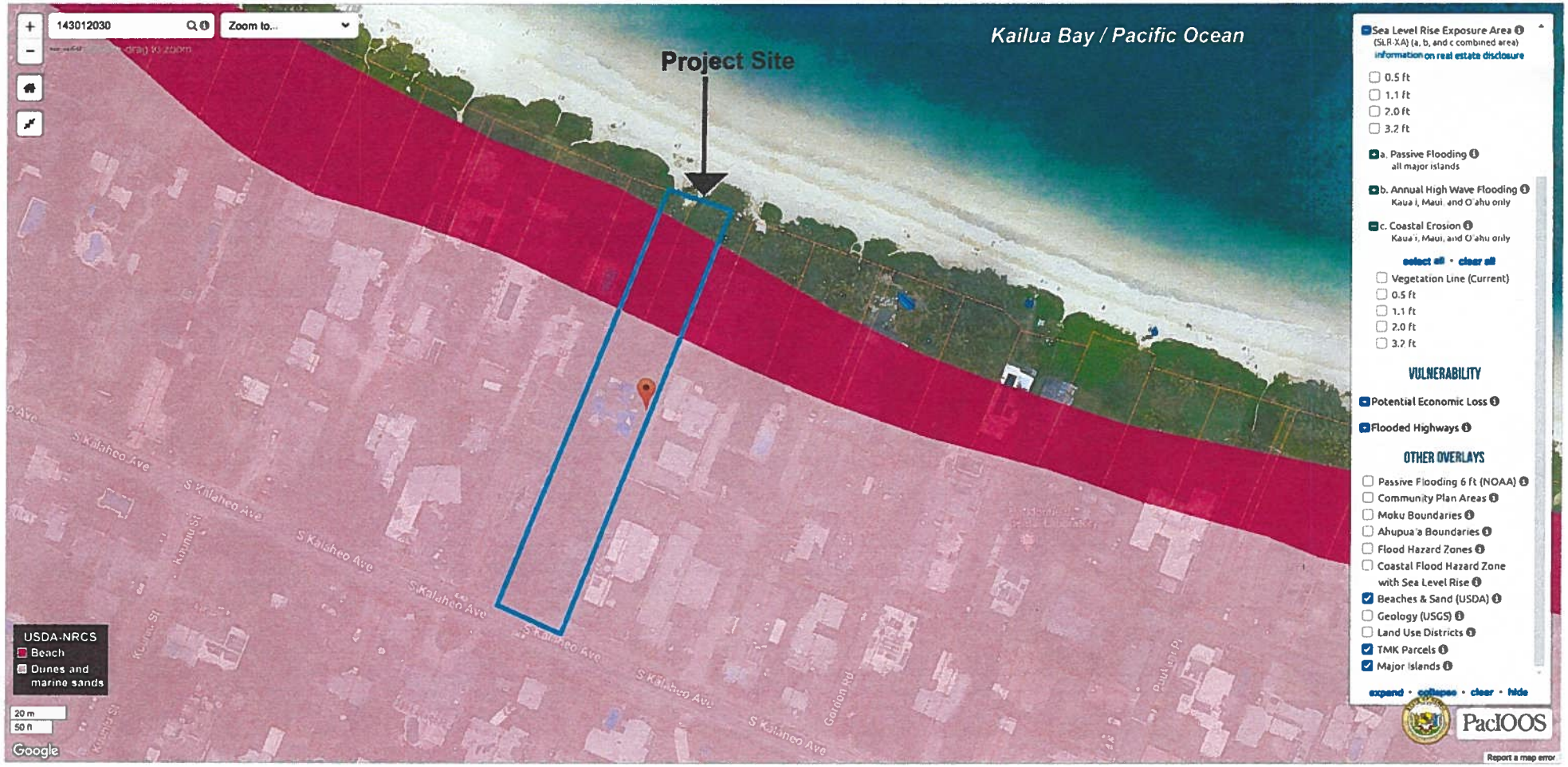
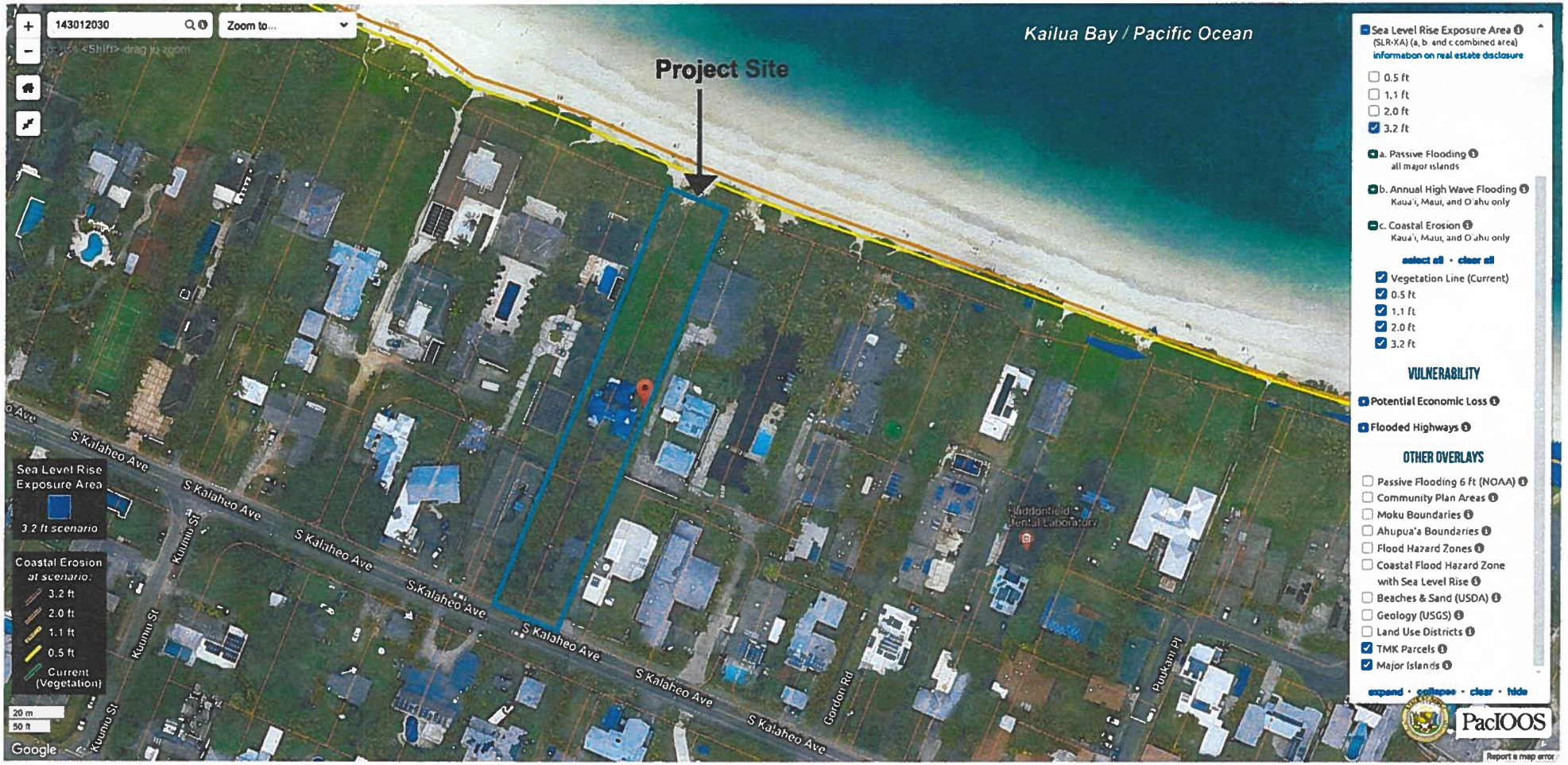


PacIOOS PACIFIC ISLANDS OCEAN OBSERVING SYSTEM *Hawai'i Sea Level Rise Viewer*

EXHIBIT H - BEACHES / DUNES AND MARINE SANDS

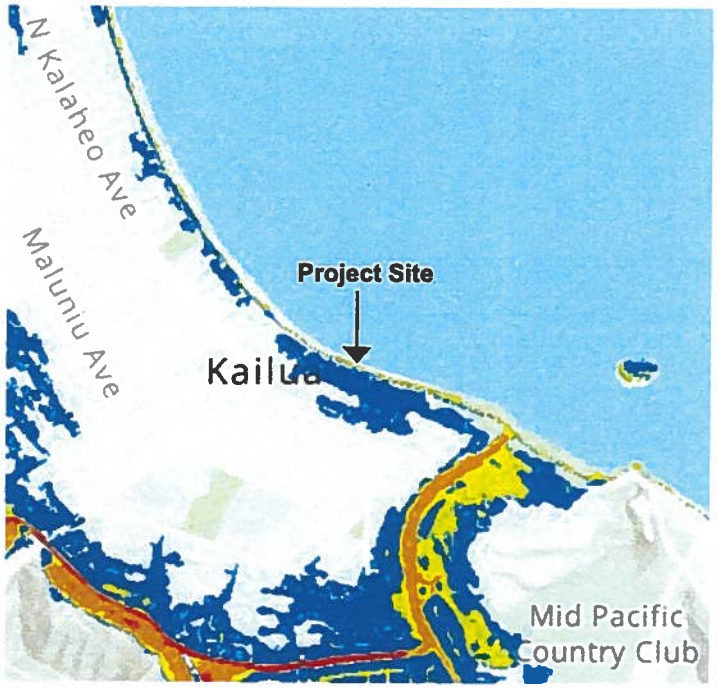


PacIOOS PACIFIC ISLANDS OCEAN OBSERVING SYSTEM *Hawai'i Sea Level Rise Viewer*

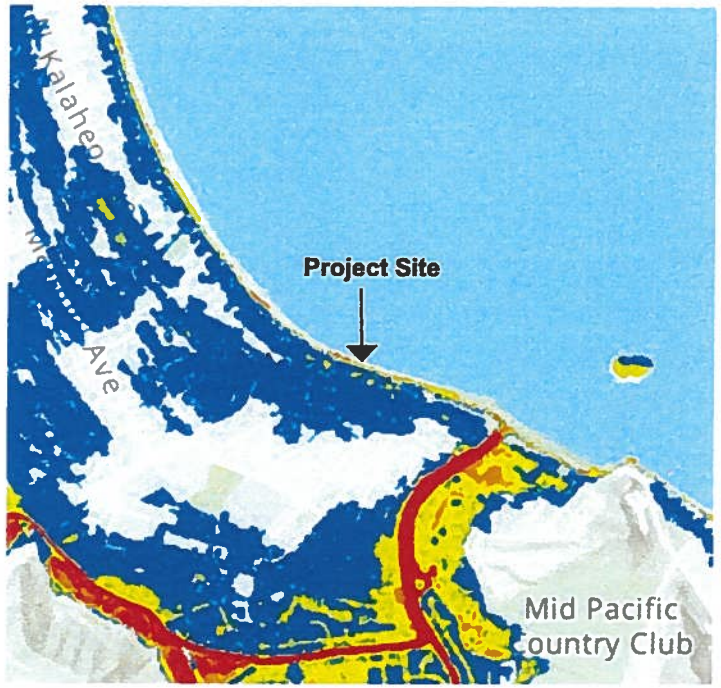
EXHIBIT I - 3.2-FOOT SEA LEVEL RISE EXPOSURE AREA

O'ahu Shoreline Change Mapper 1.8.24

EXHIBIT J - HISTORIC SHORELINE CHANGE RATES
Kailua Transect 159



Category 3 Hurricane



Category 4 Hurricane

- Less than 3 feet above ground
- Greater than 3 feet above ground
- Greater than 6 feet above ground
- Greater than 9 feet above ground

EXHIBIT K - NATIONAL HURRICANE CENTER STORM SURGE RISK MAPS

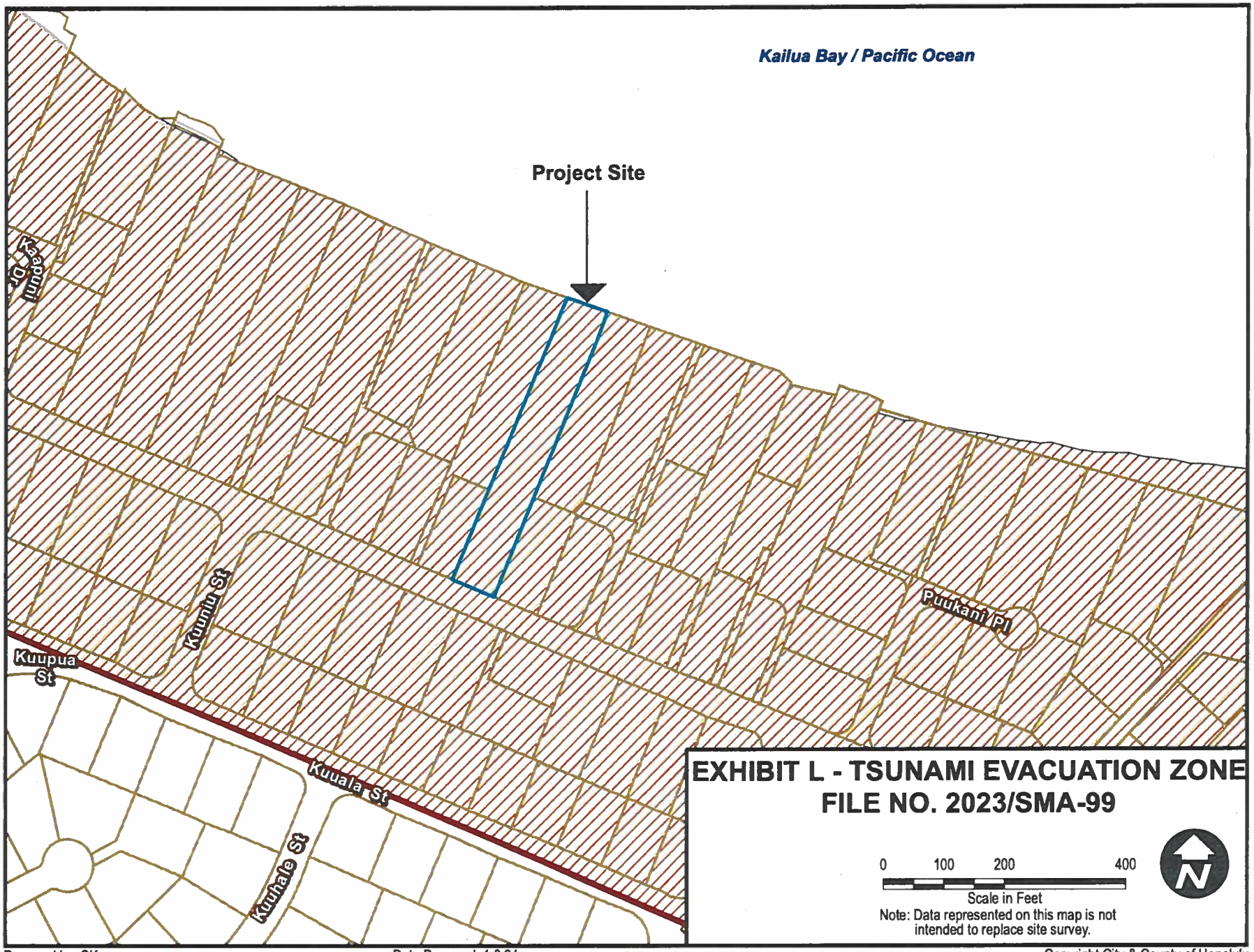


EXHIBIT L - TSUNAMI EVACUATION ZONE
FILE NO. 2023/SMA-99

Prepared by: CK

Date Prepared: 1.8.24

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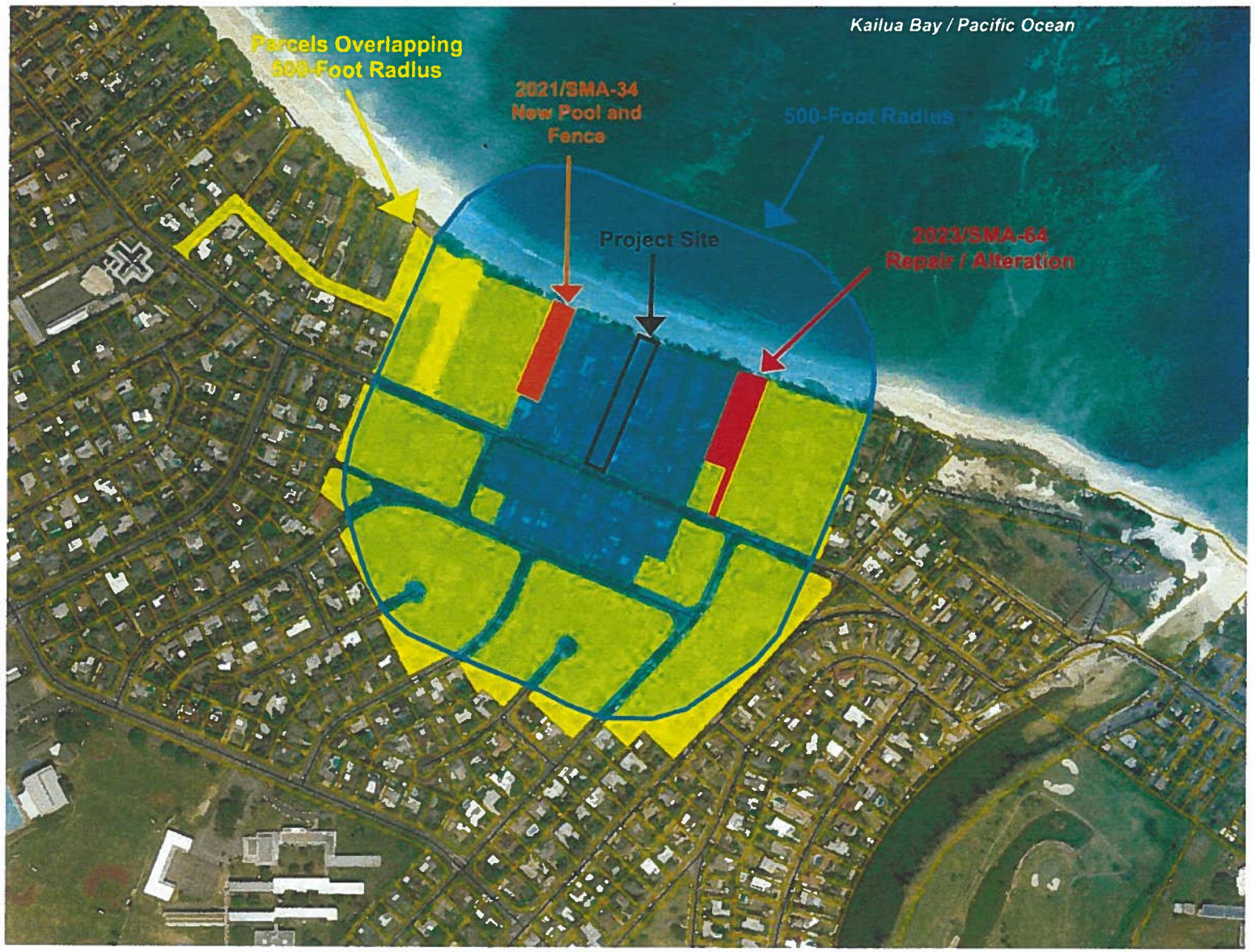

EXHIBIT M - 500-FOOT CUMULATIVE PROJECT RADIUS MAP

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 24-58, CD1

Introduced: 02/29/24 By: TOMMY WATERS - BY REQUEST Committee: ZONING (ZON)

Title: GRANTING A SPECIAL MANAGEMENT AREA MAJOR PERMIT TO ALLOW THE CONSTRUCTION OF TWO NEW SINGLE-FAMILY DWELLINGS WITH ACCESSORY PAVILIONS, A SWIMMING POOL, AND A GARAGE IN KAILUA, O'AHU.

Voting Legend: * = Aye w/Reservations

02/29/24	INTRO	Introduced.
04/03/24	ZON	Reported out for adoption as amended in CD1 form. CR-115 3 AYES: DOS SANTOS-TAM, KIA'ĀINA, SAY 2 ABSENT: CORDERO, WEYER
04/17/24	CCL	Committee report and Resolution as amended were adopted. 8 AYES: CORDERO, DOS SANTOS-TAM, KIA'ĀINA, OKIMOTO, SAY, TULBA, WATERS, WEYER 1 ABSENT: TUPOLA

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

GLEN I. TAKAHASHI, CITY CLERK

TOMMY WATERS, CHAIR AND PRESIDING OFFICER