

REPORT OF THE COMMITTEE ON ZONING

Voting Members:

Calvin K.Y. Say, Chair; Tyler Dos Santos-Tam, Vice-Chair;
Radiant Cordero, Esther Kia'āina, Matt Weyer

Committee Meeting Held
September 25, 2024

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, to which was referred Resolution 24-231 entitled:

"RESOLUTION GRANTING A SPECIAL MANAGEMENT AREA MAJOR PERMIT
TO ALLOW THE CONSTRUCTION OF A NEW SINGLE-FAMILY DWELLING
UNIT AND ATTACHED GARAGE IN WAILUPE PENINSULA, O'AHU,"

as transmitted by Departmental Communication 659 (2024) ("D-659 (2024)") from the
Department of Planning and Permitting ("DPP"), dated September 9, 2024, reports as
follows:

The purpose of Resolution 24-231 is to grant a Special Management Area ("SMA")
Major Permit to Timothy Gutierrez on behalf of Keith Horita ("Applicant") to allow for the
demolition of an existing single-family detached dwelling, and the construction of a new
single-family detached dwelling and two-car garage, on an approximately
18,316 square-foot shoreline lot zoned R-10 Residential District, located at 312 Wailupe
Circle, and identified as Tax Map Key 3-6-001:019 (the "Project").

In D-659 (2024), the DPP reports that the Project site is currently developed with
a single-family dwelling and several legally permitted nonconforming structures, including
a seawall, ocean-side dock, pool, and pool house. No work is being proposed on the
nonconforming structures. The certified shoreline survey indicates that the shoreline is
located along the outer (makai) face of an existing seawall. Despite being a shoreline lot,
there are no coastal dunes or sandy beaches on the Project site. A small part of the
western portion of the Project site is projected to be impacted by 3.2 feet of sea level rise

HONOLULU CITY COUNCIL

Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

ADOPTED ON **OCT 09 2024**

COMMITTEE REPORT NO. **296**

REPORT OF THE COMMITTEE ON ZONING

Voting Members:

Calvin K.Y. Say, Chair; Tyler Dos Santos-Tam, Vice-Chair;
Radiant Cordero, Esther Kia'āina, Matt Weyer

Committee Meeting Held
September 25, 2024
Page 2

by 2100 or sooner, and all development is located outside of the 3.2-foot sea level rise exposure area.

Your Committee notes that the DPP, after a public hearing held on July 26, 2024, recommends approval of the SMA Major Permit subject to the conditions set forth in the Resolution.

At your Committee's meeting on September 25, 2024, the Applicant's Agent provided a brief presentation of the proposed Project and responded to questions from Councilmembers.

A representative from the DPP testified in support of the Resolution.

One individual testified in support of the Resolution.

Your Committee received no written public testimony on the Resolution.

Your Committee has carefully reviewed the conditions recommended by the DPP for inclusion in this SMA Major Permit. Although your Committee generally finds the DPP's proposed conditions to be appropriate, your Committee recommends that certain conditions be amended and clarified as discussed below.

Your Committee has prepared a CD1 version of the resolution that makes the following amendments:

- A. Amends the first WHEREAS clause to clarify that the Applicant is Timothy Gutierrez, on behalf of Keith Horita, and to clarify the description of the Project.
- B. Amends the second WHEREAS clause to state that the landowner was present at the public hearing and that one member of the public submitted written comments.

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- C. Amends the third WHEREAS clause to clarify that the DPP transmitted its findings and recommendation of approval to the City Council within 45 calendar days (instead of working days) after the close of the public hearing.
- D. In Condition C, relating to minimizing impacts to threatened, endangered, or protected avian, marine, and terrestrial fauna that may frequent or traverse the vicinity of the Project site:
 - 1. In Condition C.2, deletes the last sentence that requires exterior lighting that is not necessary for security purposes to be turned off when human activity is not occurring in the illuminated area (this requirement is not imposed when the Project involves a detached dwelling on private property).
 - 2. Adds a new Condition C.4 that specifies that woody plants greater than 15 feet in height must not be disturbed, removed, or trimmed during the Hawaiian hoary bat birthing and pup rearing season (June 1 through September 15). Renumbers subsequent conditions in Condition C.
- E. In Condition D, relating to minimizing the potential for adverse impacts of coastal hazards:
 - 1. Moves the language in Condition D.1, which prohibits the landowner from claiming hardship to obtain approval for a Shoreline Setback Variance for a new shoreline protection structure, to a new Condition E. Renumbers subsequent conditions in Condition D, and realphabetizes subsequent conditions after Condition E.
 - 2. Adds a new Condition D.2 that states, "The landowner hereby acknowledges that Tax Map Key 3-6-001:019 is a shoreline zoning lot and may be adversely impacted by coastal hazards. The landowner agrees to

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Committee Meeting Held
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assume all risk and liability for any harm to or loss of life and property due to development on a shoreline zoning lot. The landowner further agrees to accept all responsibility for the cost and physical removal of materials and structures lost or damaged as a result of coastal hazards, including the cleanup and restoration of the Project site."

- F. Adds a new Condition F that requires the landowner to acknowledge 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 for any responsibility that may result from adverse impacts associated with sea level rise and coastal erosion." Also requires the statement to be clearly stated under "Landowner Acknowledgements" on all building permit plans. Realphabetizes subsequent conditions.
 - G. Adds a new Condition G that requires the landowner to acknowledge that "bed and breakfast homes and transient vacation units, as those terms are defined in ROH Chapter 21, the Land Use Ordinance, are not allowed on Tax Map Key 3-6-001:019," and requires this statement to be clearly stated under "Landowner Acknowledgements" on all building permit plans. Realphabetizes subsequent conditions.
 - H. Attaches to the resolution Exhibits A, B, C-1 through C-6, and D through H.
 - I. Makes miscellaneous technical and nonsubstantive amendments.
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HONOLULU CITY COUNCIL

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COMMITTEE REPORT NO. 296

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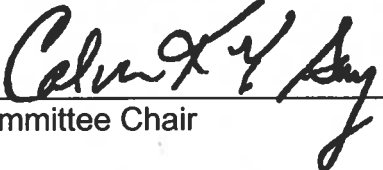
Committee Meeting Held
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Your Committee finds, pursuant to HRS § 205A-26 and ROH § 25-4.1, and in agreement with the conclusion of the DPP in D-659 (2024), that:

1. The development, as conditioned, will not have any significant adverse environmental or ecological effect, either alone or cumulatively with other projects.
2. The development, as conditioned, is consistent with the objectives and policies set forth in ROH § 25-3.1 and HRS § 205A-2, and the review guidelines contained in ROH § 25-4.1 and HRS § 205A-26.
3. The development, as conditioned, is consistent with the County General Plan, development plans, zoning, and other applicable ordinances.

Your Committee on Zoning is in accord with the intent and purpose of Resolution 24-231, as amended herein, and recommends its adoption in the form attached hereto as Resolution 24-231, CD1. (Ayes: Cordero, Dos Santos-Tam, Kia'āina, Say – 4; Noes: None; Absent: Weyer – 1.)

Respectfully submitted,

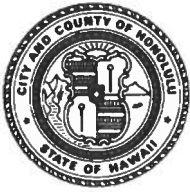


Committee Chair

HONOLULU CITY COUNCIL
Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

ADOPTED ON OCT 09 2024

COMMITTEE REPORT NO. 296



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

No. 24-231, CD1

RESOLUTION

GRANTING A SPECIAL MANAGEMENT AREA MAJOR PERMIT TO ALLOW FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY DWELLING WITH AN ATTACHED GARAGE IN WAILUPE PENINSULA, O'AHU.

WHEREAS, on May 28, 2024, the Department of Planning and Permitting ("DPP") accepted the application (DPP File No. 2024/SMA-54) of Timothy Gutierrez, on behalf of Keith Horita (the "Applicant") for a Special Management Area ("SMA") Major Permit to allow for the demolition of an existing single-family detached dwelling, and the construction of a new two-story single-family detached dwelling and two-car garage, on an approximately 18,316-square-foot shoreline lot zoned R-10 Residential District, located at 312 Wailupe Circle, and identified as Tax Map Key 3-6-001:019 (the "Project"); and

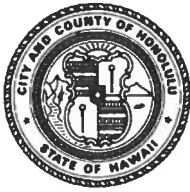
WHEREAS, on July 26, 2024, the DPP held a public hearing on the application at the Frank F. Fasi Municipal Building 6th Floor Conference Room, which was attended by the Applicant, the landowner, the Applicant's agent, and DPP staff; no members of the public were in attendance, but one member of the public submitted written comments; and

WHEREAS, on September 9, 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 September 10, 2024, by Departmental Communication 659 (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:

- A. 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-6, and D through H attached hereto and



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

No. 24-231, CD1

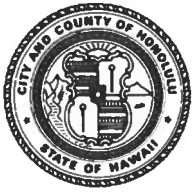
RESOLUTION

incorporated by reference herein. Any change in the size or nature of the Project that may have a significant effect on coastal resources, as 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 may be considered a minor modification and may be permitted under this resolution, upon review and approval by the DPP Director.

- B. To minimize impacts to archaeological, historical, or cultural resources that may be present on the Project site, 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 the State Historic Preservation Division ("SHPD") immediately. Work in the immediate area must be stopped until SHPD has assessed the impact and has made further recommendations for mitigative activity.

This requirement must be clearly stated under "Environmental Notes" on all Project construction permit plans and building permit plans.

- C. To minimize impacts to threatened, endangered, or protected 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 Project site, 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;



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No. 24-231, CD1

RESOLUTION

4. Woody plants greater than 15 feet in height must not be disturbed, removed, or trimmed during the Hawaiian hoary bat birthing and pup rearing season (June 1 through September 15);
5. Barbless fencing must be used for all fence construction to avoid the entanglement of Hawaiian hoary bats; and
6. All Project site work and construction activities are limited to daylight hours (sunrise to sunset).

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

- 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, the landowner hereby acknowledges (and any successor owner or interested party is hereby notified of) the following:

1. *"The landowner hereby acknowledges that Tax Map Key 3-6-001:019 is susceptible to coastal hazards, which may result in harm to or loss of life and property."*
2. *"The landowner hereby acknowledges that Tax Map Key 3-6-001:019 is a shoreline zoning lot and may be adversely impacted by coastal hazards. The landowner agrees to assume all risk and liability for any harm to or loss of life and property due to development on a shoreline zoning lot. The landowner further agrees to accept all responsibility for the cost and physical removal of materials and structures lost or damaged as a result of coastal hazards, including the cleanup and restoration of the Project site."*

The statements enumerated in this condition must be clearly stated under "Landowner Acknowledgments" on all Project construction permit plans and building permit plans.



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RESOLUTION

- E. 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 for a new shoreline protection structure. The landowner hereby acknowledges (and any successor owner or interested party is hereby notified of) the following:

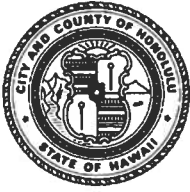
"In choosing to undertake the development at Tax Map Key 3-6-001:019, the landowner hereby acknowledges that no claim of hardship due to erosion, sea level rise, or any other coastal hazard may be asserted in order to obtain approval for a Shoreline Setback Variance for a new shoreline protection structure."

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

- F. To account for the potential shift of land from the State Land Use Urban District to the State Land Use Conservation District due 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 3-6-001:019, 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 for 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 building permit plans.



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

No. 24-231, CD1

RESOLUTION

- G. To ensure the Applicant is aware that bed and breakfast homes and transient vacation units 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 bed and breakfast homes and transient vacation units, as those terms are defined in ROH Chapter 21, the Land Use Ordinance, are not allowed on Tax Map Key 3-6-001:019."

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

- H. 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 that includes the DPP Director's findings and recommendations thereon. The Council may approve the proposed extension, approve 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.



HONOLULU CITY COUNCIL
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CITY AND COUNTY OF HONOLULU

No. 24-231, CD1

RESOLUTION

- I. 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 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

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to Keith Horita, 312 Wailupe Circle, Honolulu, Hawai'i 96821; 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.

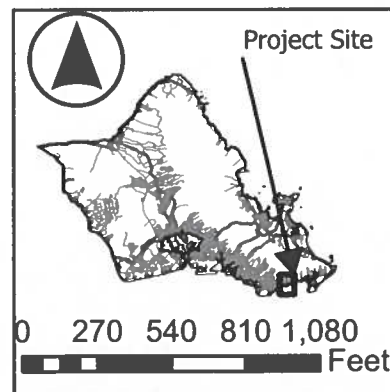
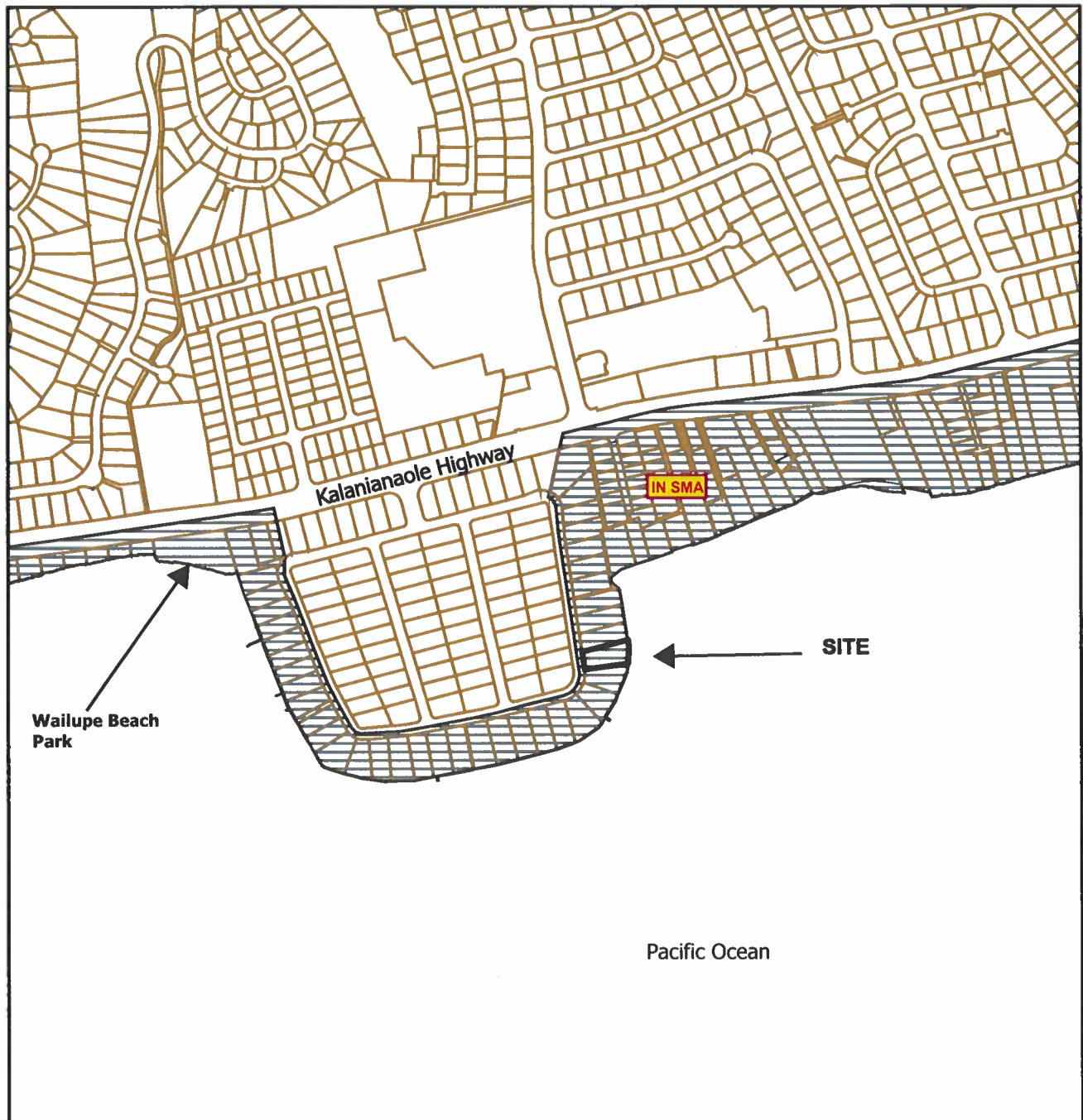
INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

September 16, 2024
Honolulu, Hawai'i

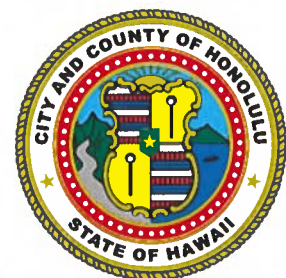
Councilmembers



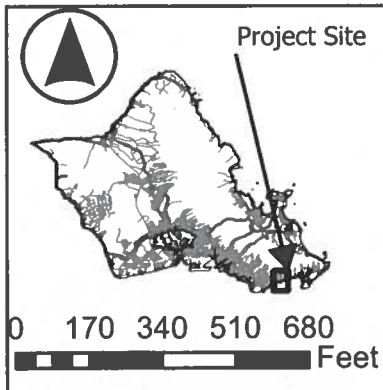
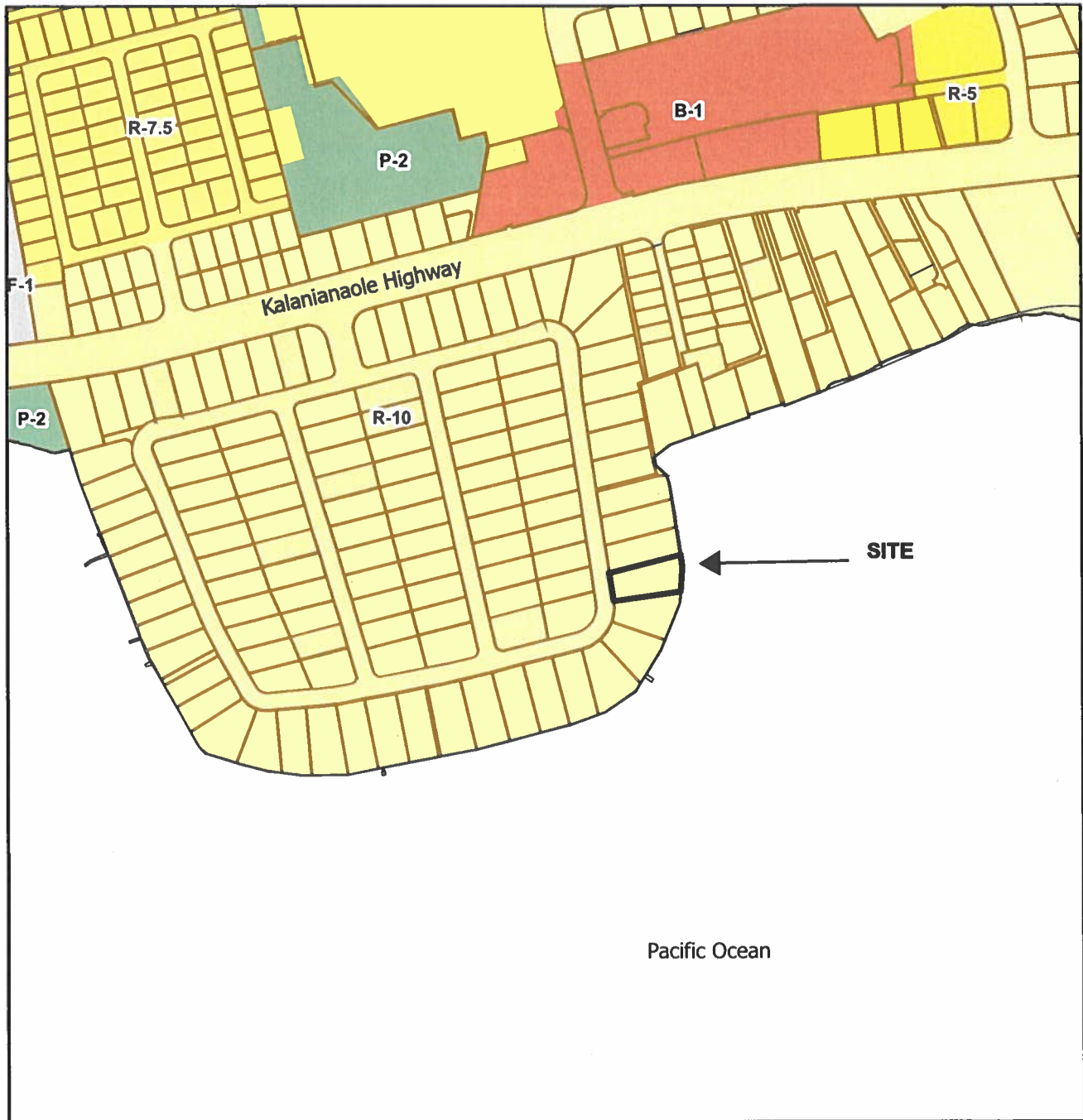
Location Map Exhibit A
File No.: 2024/SMA-54
Project: Horita Residence
Location: 312 Wailupe Circle
- Honolulu
TMK: 3-6-001:019

Legend

Within SMA Outside SMA



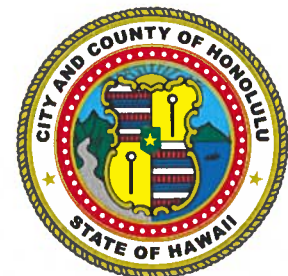
Department of Planning and Permitting
 Land Use Permits Division
 City and County of Honolulu



Zoning Map Exhibit B
File No.: 2024/SMA-54
Project: Horita Residence
Location: 312 Wailupe Circle
- Honolulu
TMK: 3-6-001:019

Legend

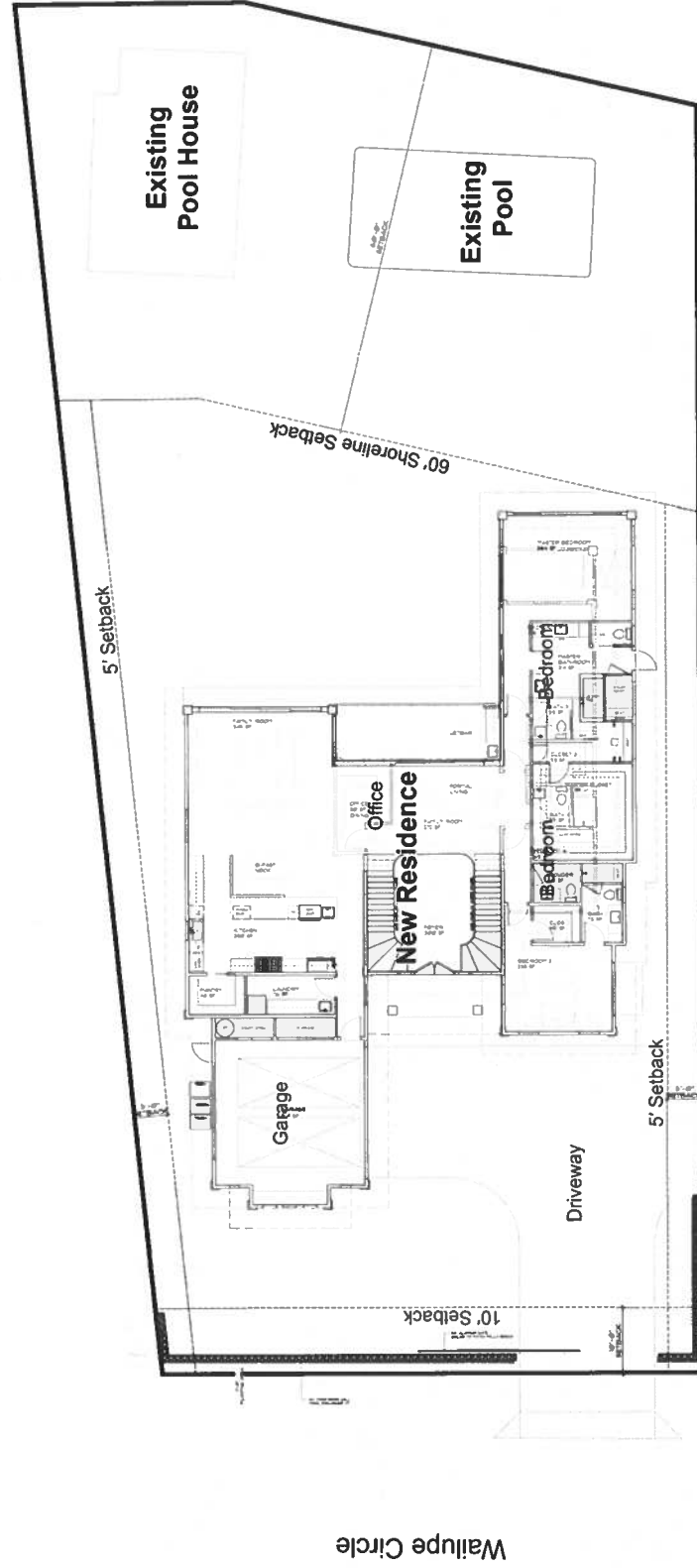
 B-1	 R-10
 F-1	 R-5
 P-2	 R-7.5



Department of Planning and Permitting
 Land Use Permits Division
 City and County of Honolulu

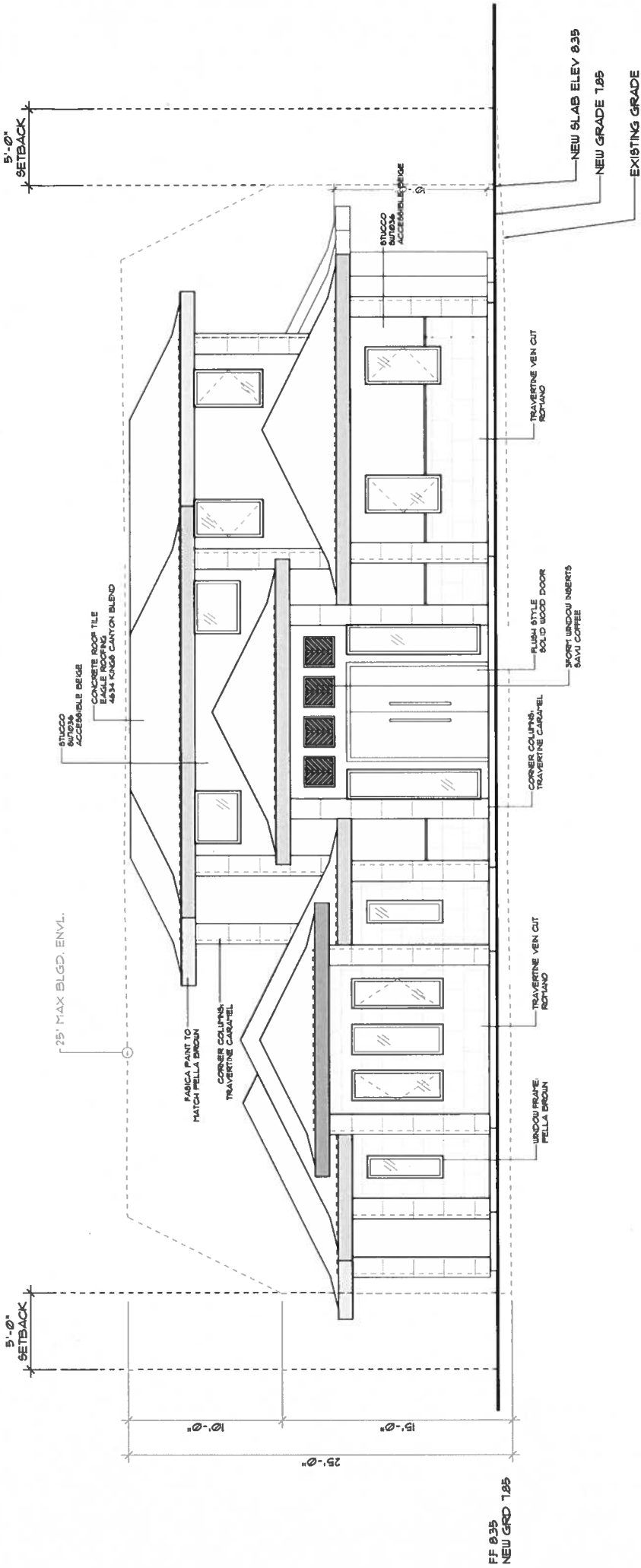
312 Wailupe Cir Honolulu, HI 96821

Exhibit C-1



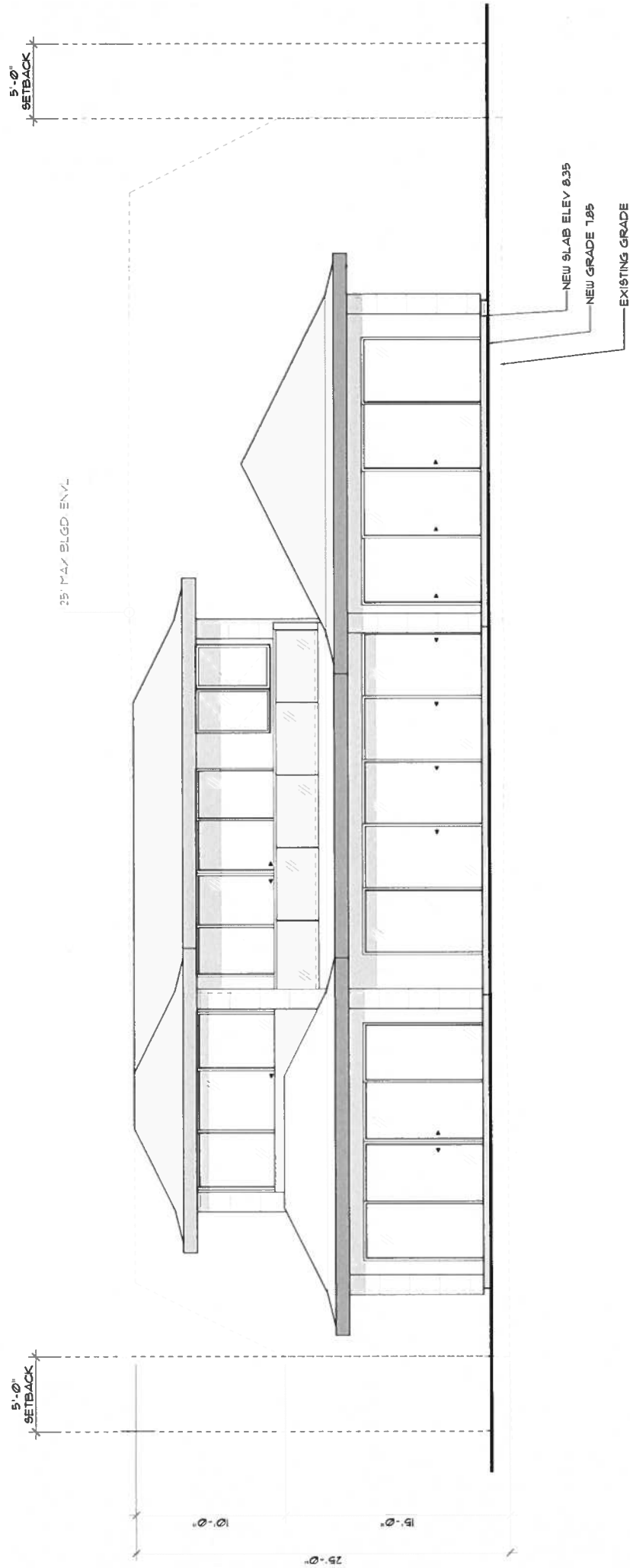
Site Plan

Exhibit C-2



FRONT ELEVATION

Exhibit C-3



REAR ELEVATION

Exhibit C-4

First Floor Plan



Exhibit C-5

Second Floor Plan

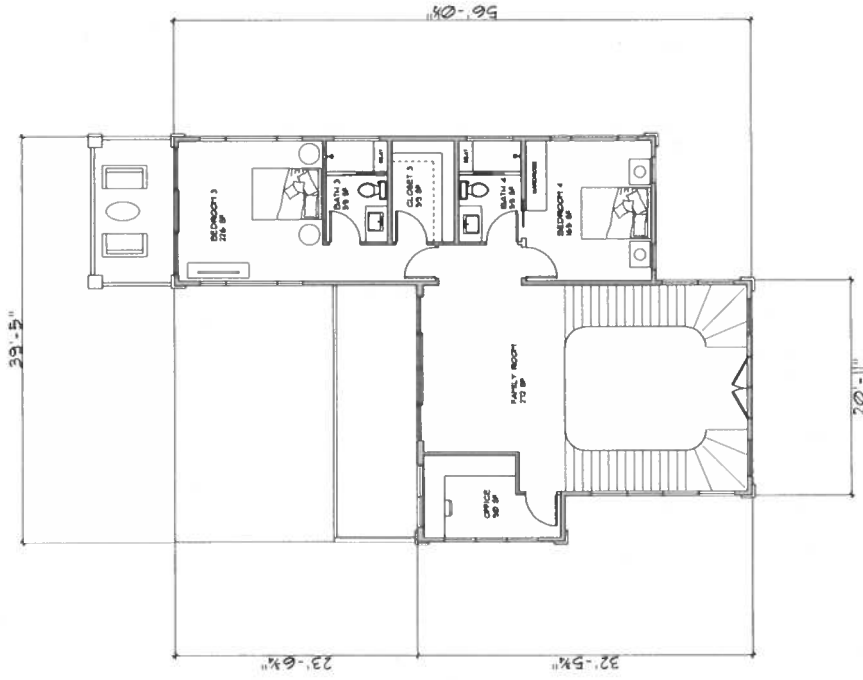
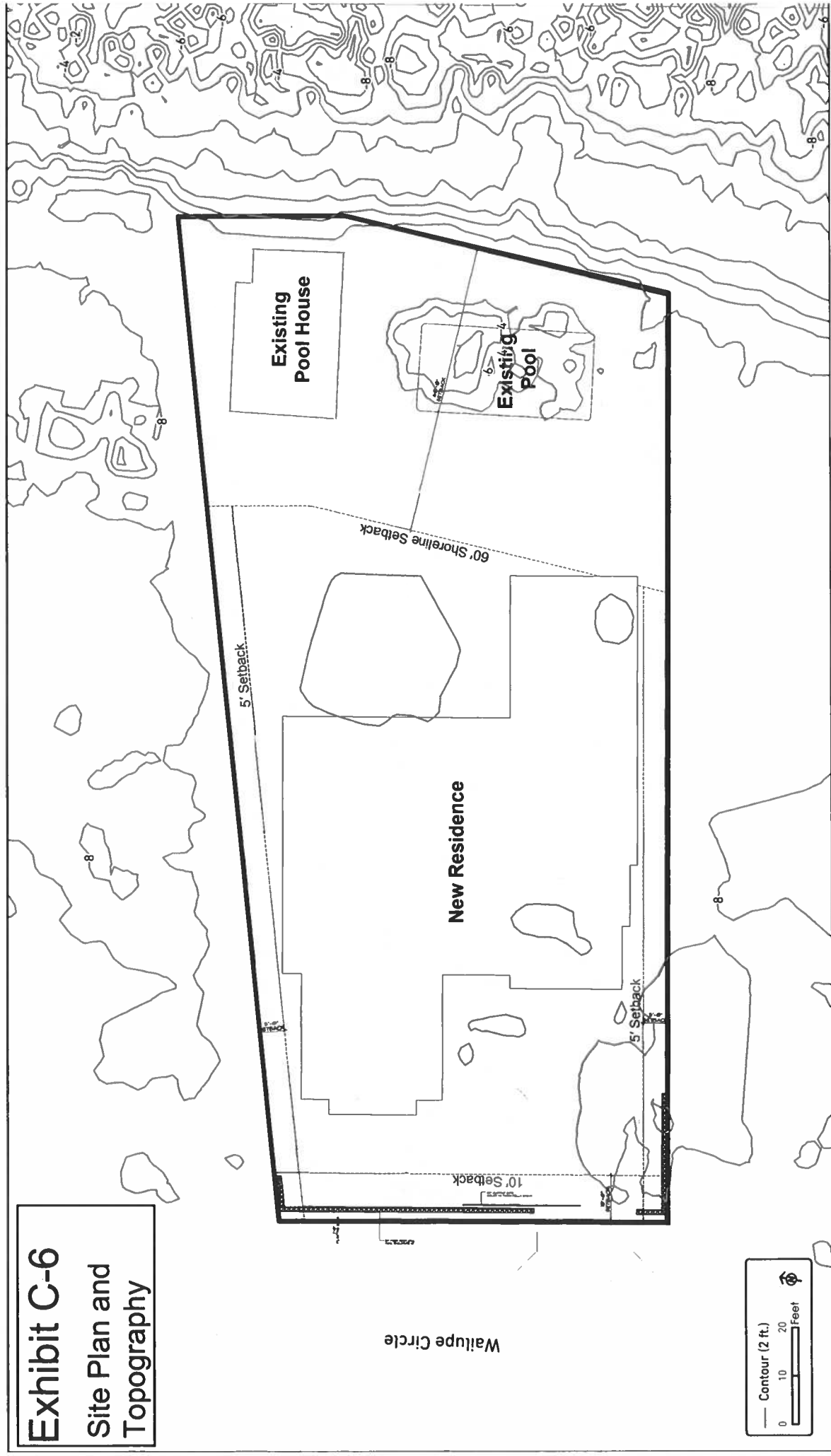
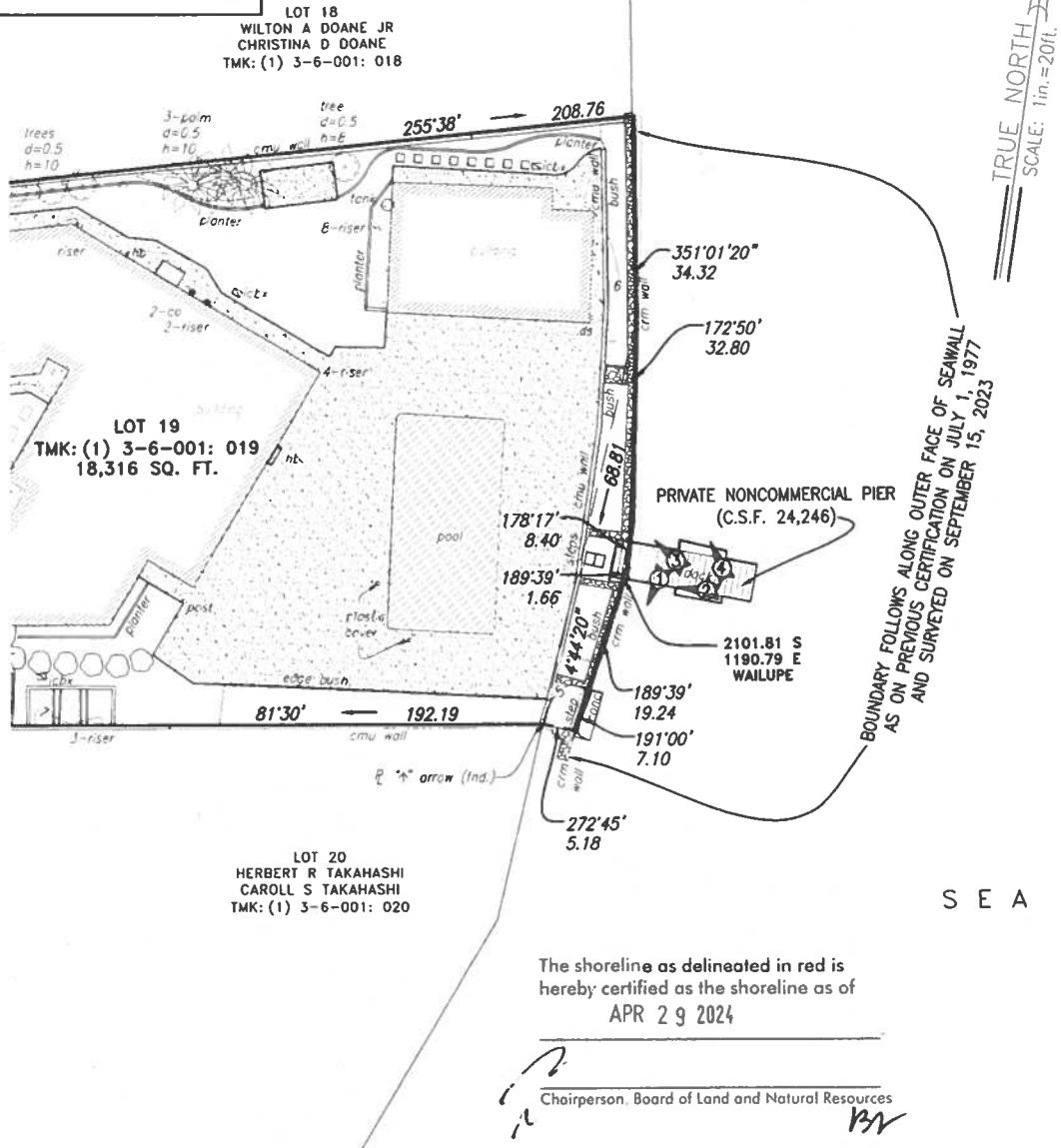


Exhibit C-6
Site Plan and
Topography



Wailupe Circle

Exhibit D



SHORELINE CERTIFICATION MAP OF LOT 19

OF LAND COURT APPLICATION 1596 (MAP 1)
SITUATED AT WAILUPE, WAIKIKI, HONOLULU, OAHU,
HAWAII TAX MAP KEY: (1) 3-6-001: 019

SITE ADDRESS: 312 WAILUPE CIRCLE
HONOLULU, HAWAII 96821
OWNER: KEITH K HORITA TRUST



NOTES

1. Azimuths shown on this map are referred to Government Survey Triangulation Station "WAILUPE" Δ.
2. Names of adjoining property owners were taken from Real Property Tax Records.
3. Shoreline certification is for building setback purposes.
⊙ Denotes photo number and direction.
4. Map is based on a field survey on September 15, 2023.

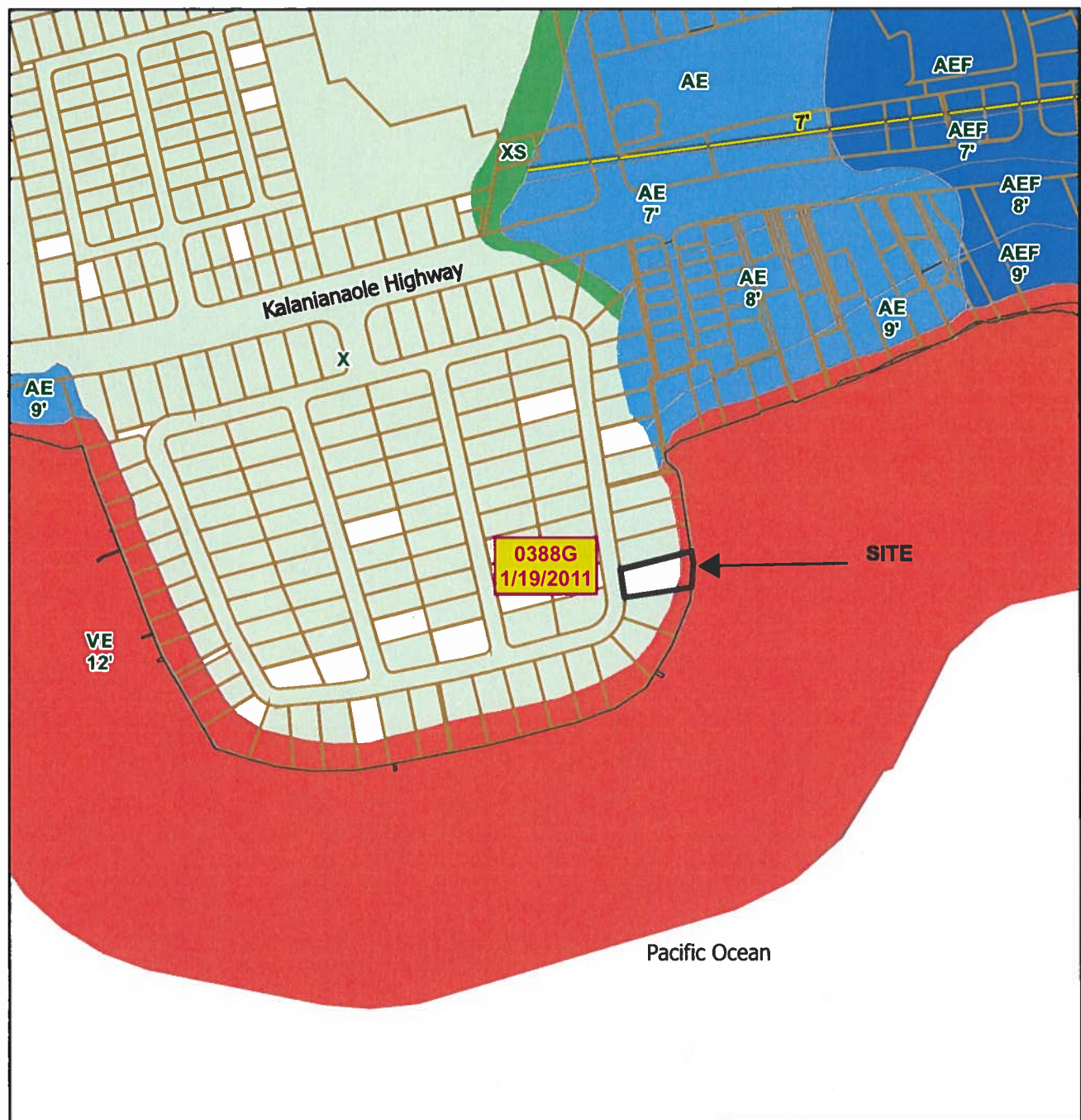
THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION.

Erik S. Kaneshiro
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE No. 9826
EXP. 04/24

TMK: (1) 3-6-001: 019

ATA AUSTIN, TSUTSUMI & ASSOCIATES, INC.
ENGINEERS, SURVEYORS • HONOLULU, WAILUKU, HAWAII

OCTOBER 26, 2023
11" x 17" = 1.30 SQ. FT.



Project Site



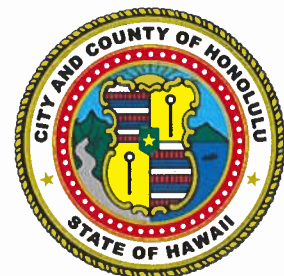
0 170 340 510 680
Feet

Flood Zone Map Exhibit E File No.: 2024/SMA-54

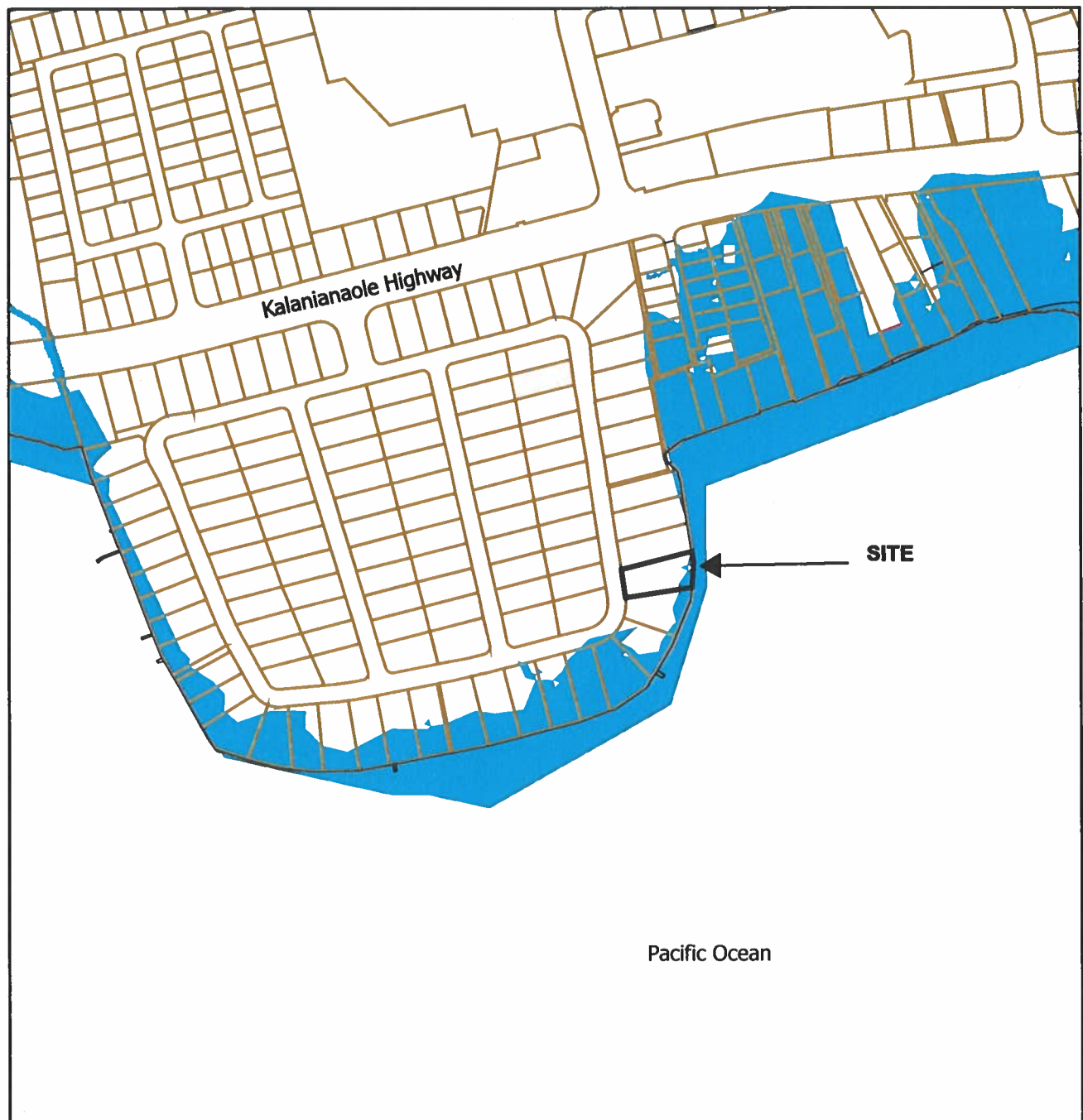
Project: Horita Residence
Location: 312 Wailupe Circle
- Honolulu
TMK: 3-6-001:019

Legend

■ AE	 X
■ AEF	 XS
■ VE	



Department of Planning and Permitting
Land Use Permits Division
City and County of Honolulu



0 170 340 510 680
 Feet

Sea Level Rise Exposure Area Map Exhibit F

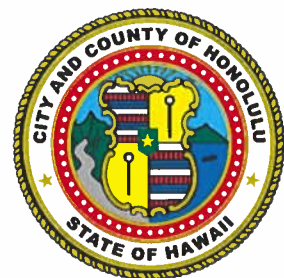
File No.: 2024/SMA-54

Project: Horita Residence
Location: 312 Wailupe Circle
- Honolulu

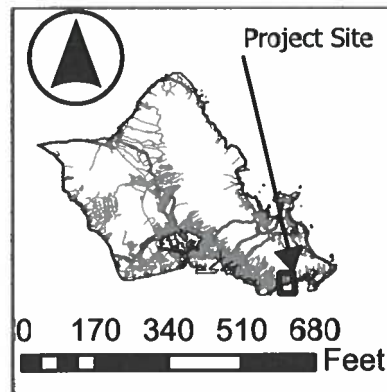
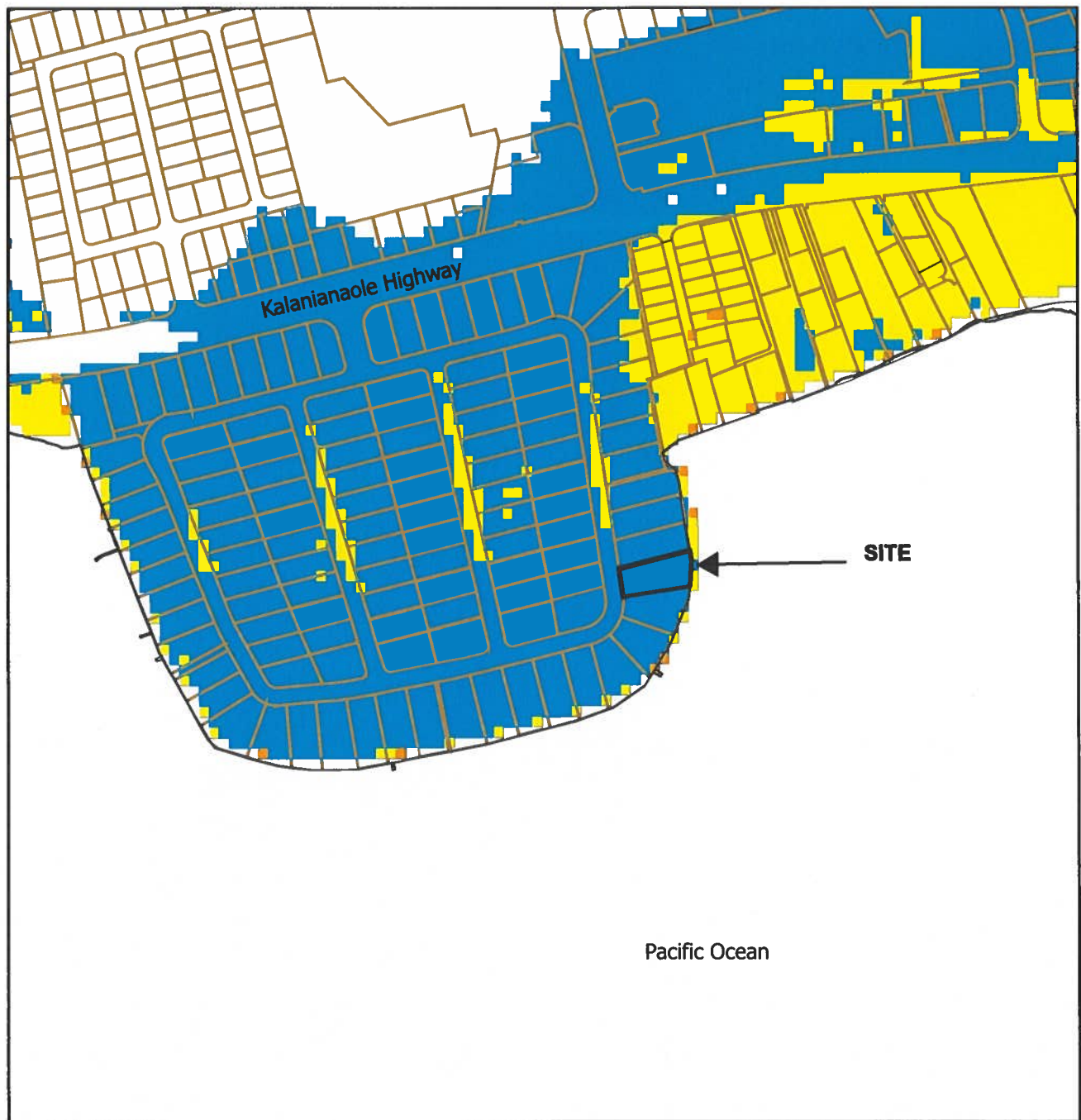
TMK: 3-6-001:019

Legend

SLR Exposure Area - 3.2
 Ft. Scenario



Department of Planning and Permitting
 Land Use Permits Division
 City and County of Honolulu

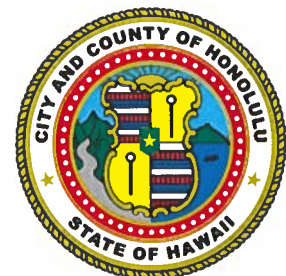


Storm Surge Map Exhibit G File No.: 2024/SMA-54

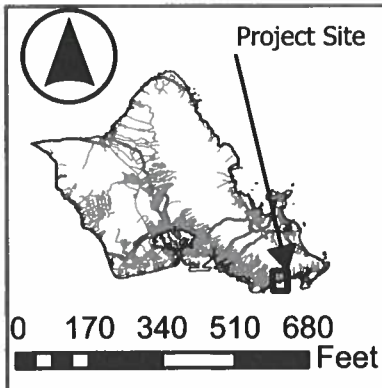
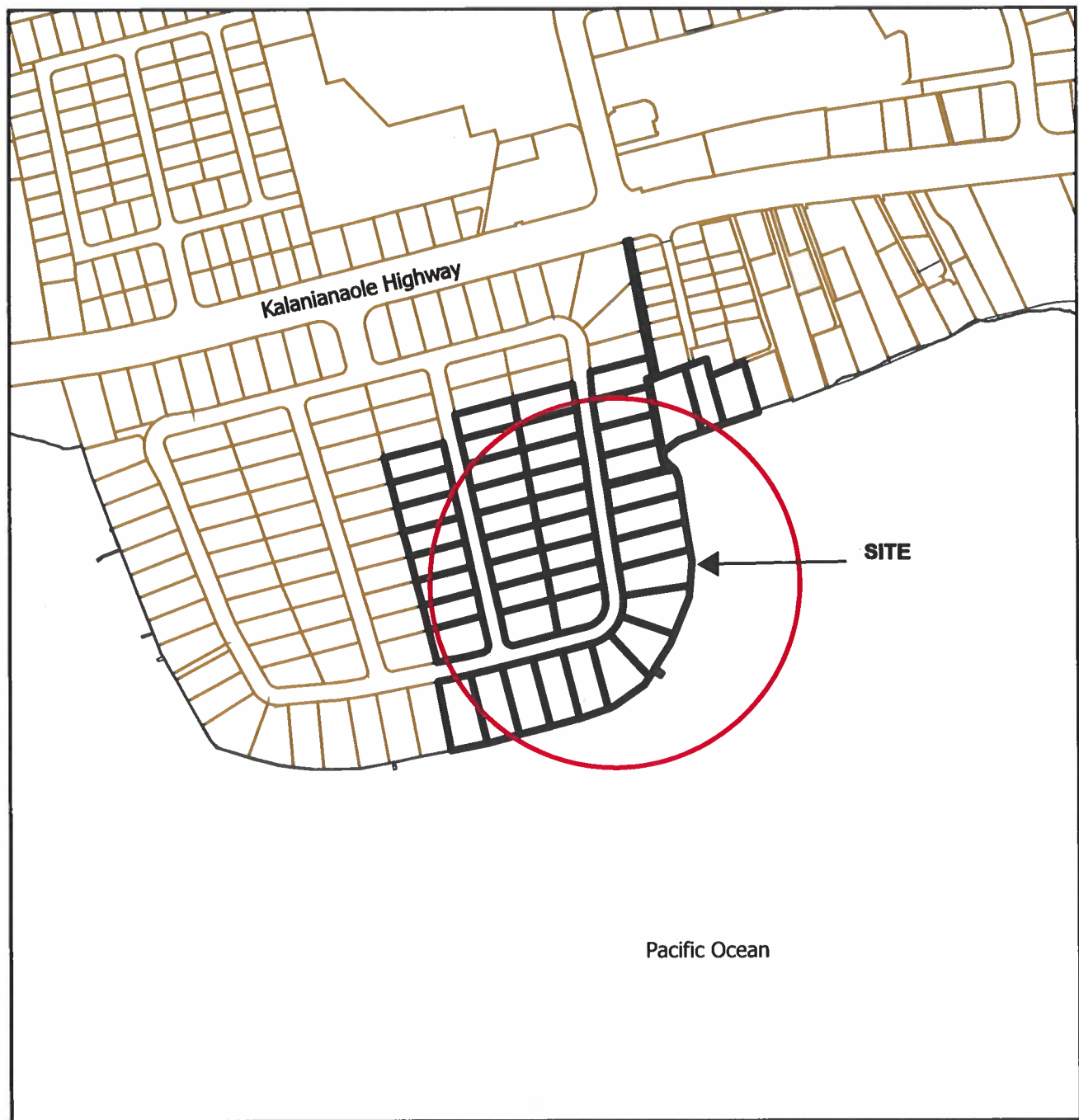
Project: Horita Residence
Location: 312 Wailupe Circle
 - Honolulu
TMK: 3-6-001:019

Legend

3 ft. Inundation	9 ft. Inundation
6 ft. Inundation	21 ft. Inundation



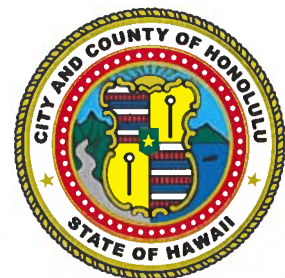
Department of Planning and Permitting
 Land Use Permits Division
 City and County of Honolulu



Cumulative Impact Map Exhibit H

File No.: 2024/SMA-54

Project: Horita Residence
Location: 312 Wailupe Circle
- Honolulu
TMK: 3-6-001:019



Department of Planning and Permitting
 Land Use Permits Division
 City and County of Honolulu

Report Title:

Special Management Area ("SMA") Major Permit; Land Use Permit; Department of Planning and Permitting ("DPP")

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.