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County of Hawai'i PLANNING DEPARTMENT

Zendo Kern
Director

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Deputy Director

East Hawai'i Office
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Fax (808) 961-8742

January 25, 2023

Katherine Luga
c/o Carlsmith Ball, LLP
121 Waiānuenue Avenue, Unit 121
Hilo, HI 96720
VIA EMAIL

Dear Ms. Luga:

SUBJECT: Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2022-000130) and Issuance of SMA Exemption Determination
Applicant(s): Joshua Kleban
Landowner(s): Klekala, LLC
Project: Single-Family Residence
TMK: (3) 6-9-004:002, Puakō Beach Lots, South Kohala, Hawai'i

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2022-000130), received by this office on November 3, 2022. The 0.35-acre subject parcel is zoned single-family residential 10,000 square feet (sf) (RS-10) by the County and designated Urban by the State Land Use Commission (LUC). The subject parcel is designated as Low Density Urban (ldu) and Open (ope) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The subject parcel is within the County Special Management Area (SMA), as well as within the "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).

Existing Land Uses:

A review of our files indicates that there is an existing four (4) bedroom, four (4) bathroom single-family dwelling that is located on the subject parcel. The existing single-family dwelling was permitted and constructed in 2011.

Proposed Project:

The applicant is proposing to conduct the following exterior improvements to an existing single-family dwelling:

- Construction of an above-ground pool and spa with fencing;
- Construction of a concrete floor covered lānai next to garage;
- Construction of an above-ground wooden deck on the second floor next to family room;
- Construction of an enclosed pool/spa equipment and heater room (ground floor) and gas lines next to garage;
- Lānai expansion with BBQ equipment and half bath;
- Construction of stairs to the ground floor;
- Garden equipment enclosure; and
- Gas tiki torches and connecting gas lines.

Shoreline Area Determination:

The parcel is within the Special Management Area (SMA), as well as within the “shoreline area” as defined by Section 205A-41, Hawai‘i Revised Statutes (HRS). According to information provided by the applicant, a Shoreline Certification was approved by the Board of Land and Natural Resources (BLNR) on November 4, 2022 which demarcates the shoreline along the western (makai) property boundaries. Pursuant to Hawai‘i Revised Statutes (HRS) § 205A-43(a) Establishment of Shoreline Setbacks, “*Setbacks along shorelines are established of not less than forty feet inland from the shoreline.*” All work will be sited outside of the minimum 40-foot shoreline setback area. Staff notes that there is no deeded public access through the subject parcel; however, the applicant will not restrict lateral public access along the shoreline.

Special Management Area Determination:

1. Pursuant to Hawai‘i Revised Statutes (HRS) §205A-22, as amended, relating to the Special Management Area, “*Development means any of the [listed] uses, activities, or operations on land or in or under water within the special management area.*” According to the application, the following definitions of “Development” can be applied to the proposed use:
 - *Placement or erection of any solid material or any gaseous liquid, solid, or thermal waste;*
 - *Grading, removing, dredging, mining, or extraction of any materials; and*
 - *Construction, reconstruction, demolition, or alteration of the size of any structure.*

2. Pursuant to Hawai‘i Revised Statutes (HRS) §205A-22, as amended, “Development” does not include the following uses, activities, or operations, and therefore is determined to be exempt from the definition of “Development”:
 - *Structural and nonstructural improvements to existing single-family residences, where otherwise permissible.*
3. Pursuant to Planning Commission Rule 9-4(e)(4), “*whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as “Development” for the purposes of this rule.*”
 - Based on the information provided, the Director finds that the proposed improvements to an existing single-family residence will not have a cumulative impact, or significant adverse environmental or ecological effect on the Special Management Area.

Please note that any substantive changes to the proposed improvements, as well as any subsequent phases or activities may require further review by this office and possibly the submittal of another SMA Use Permit Assessment Application.

Future Special Management Area Determinations:

While further review of the proposed activities against the Special Management Area rules and regulations will not be required at this time, all other applicable Zoning and Building Code requirements must be satisfied.

Additionally, pursuant to Planning Commission Rule 9-10(g), “*the Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a substantial adverse effect on the Special Management Area.*” The Director has added the following conditions for the proposed project:

Director’s Conditions:

1. The applicant(s), its successor(s), or assign(s) (“Applicant”) shall be responsible for complying with all stated conditions of approval.
2. The Applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.

3. Other than the proposed project as described in this determination, no further work is permitted under this approval.
4. The Applicant shall secure building permits for the proposed project within two (2) years from the date of this determination. If building permits have not been secured within that two (2) year period, this determination is automatically null and void, and a new Special Management Area Assessment Application must be submitted for review and approval.
5. Prior to any land alteration on the property and until the time that the approved activity and/or structure is completed and has received final inspection by the Building Division, the Applicant shall have a licensed land surveyor place and maintain stakes and flags at the location of the 40-foot shoreline setback line, as shown on the approved plans. Stakes and flags shall be placed at intersections with the side yard boundaries and at appropriate intervals along the setback line; the stakes shall be clearly visible at all times. No vegetation removal, land alteration or construction shall occur between the shoreline and shoreline setback line unless approved by this permit.
6. A construction barrier shall be erected along the entire length of the 40-foot shoreline setback line prior to the commencement of land altering and construction activities and shall remain in place until final inspection has been granted by the Building Division for the proposed single-family residence. The construction barrier shall be shown and properly noted on the plans submitted for any permits requiring land altering or construction activities. The construction notes on the plans must include the following statement, *“The construction (and/or erosion control) barrier must be erected prior to any land altering or construction activities and must remain in place until final inspection by Department of Public Works.”*
7. In the event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
8. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai‘i County Code.
9. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai‘i County Code.

Katherine Luga
c/o Carlsmith Ball, LLP
January 25, 2023
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10. Any further development, including but not limited to, the construction of structures or improvements not included in this determination shall require further review and approval as provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure.
11. That in issuing this determination, the Department has relied on the information and data that the Applicant has provided in connection with this determination. If, subsequent to this determination, such information and data prove to be false, incomplete, or inaccurate, this determination may be modified, suspended, or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings.
12. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this determination or require additional review against the Special Management Area rules and regulations.

If you have any questions, please contact Tracie-Lee Camero of this office at (808) 961-8166 or via email at Tracie-Lee.Camero@hawaiicounty.gov.

Sincerely,

Zendo Kern

Zendo Kern (Jan 25, 2023 08:30 HST)

ZENDO KERN
Planning Director

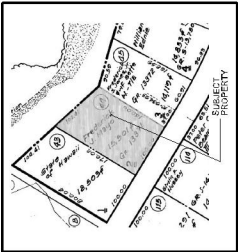
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Enclosure: Exhibit 1 (Site Plan)

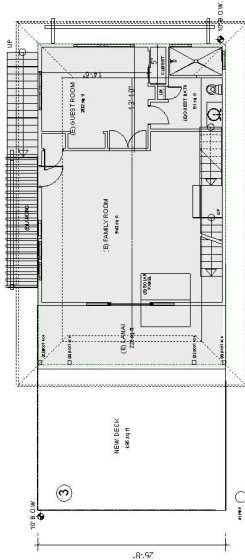
Cc (via email): GIS Section

VICINITY MAP

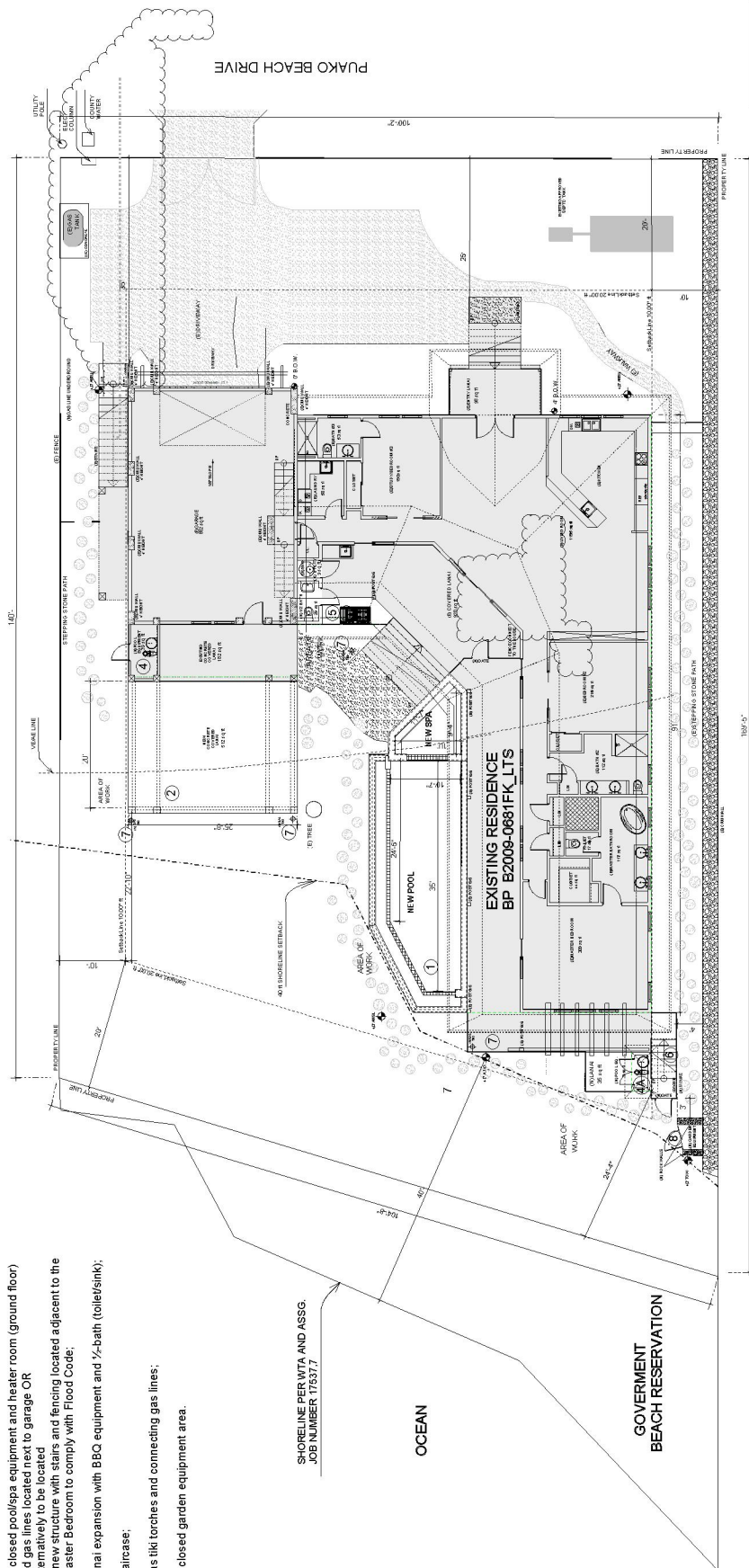


SCOPE OF WORK

1. Above-ground pool and spa with fencing.
2. Ground floor concrete covered lanai next to garage;
3. Above-ground wooden deck next to family room;
4. Enclosed pool/spa equipment and heater room (ground floor) and gas lines located next to garage OR alternatively to be located in new structure with stairs and fencing located adjacent to the Master Bedroom to comply with Flood Code;
- 4A
5. Lanai expansion with BBQ equipment and 1/2-bath (toilet/sink);
6. Staircase;
7. Gas tiki torches and connecting gas lines;
8. Enclosed garden equipment area.



GARAGE SECOND LEVEL
1/8"=1'



SITE PLAN
1/8"=1'

Planning Dept.
Exhibit 1

HALE HAWAII DESIGN
75-5639 Ahi Drive,
Kalaheena, HI, 96740

THIS WORK WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THE ACCURACY OF THE INFORMATION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION.

**PROPOSED ADDITIONS
FOR KLEBAN RESIDENCE**
69-1778 PUAKO BEACH DRIVE

Owner: KLEKALA LLC
Last Rev: 11 03 2022
Contact: Bill McCowatt
808 345 8000
TMK: 690040020000
C01



HALE HAWAII DESIGN
 75-5639 Aiti Drive
 Kailash-Kona, HI, 96740



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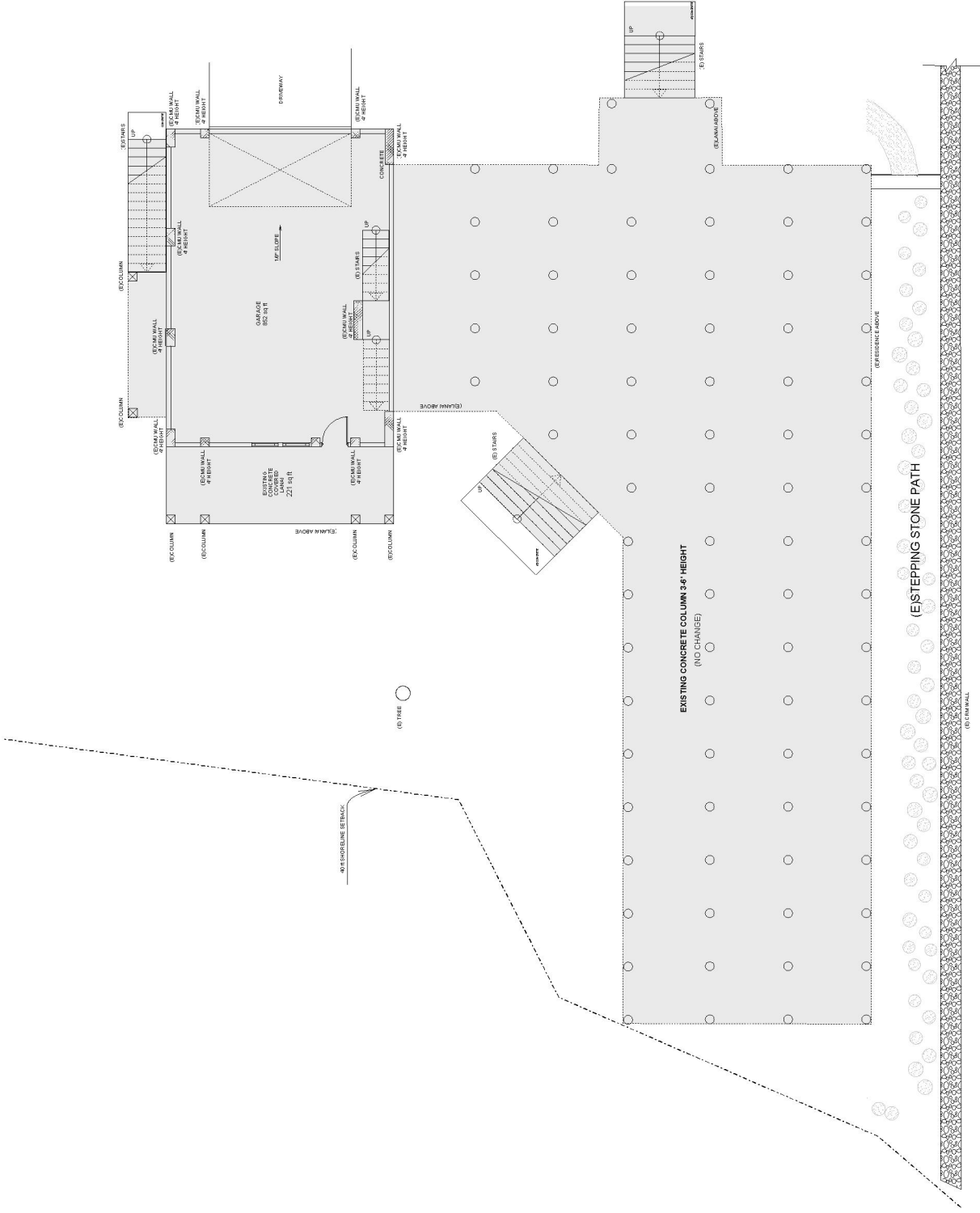
**PROPOSED ADDITIONS
 FOR KLEBAN RESIDENCE
 69-1778 PUAKO BEACH DRIVE**

Owner: KLEKALA LLC

Last Rev: 11/03/2022
 Contact: Bill McCowatt
 808 345 8000

TMK: 690040020000

A01



EXISTING GROUND LEVEL
 1/4"=1'



HALE HAWAII DESIGN
75-5099 Ahi Drive,
Kalihi-ona, HI, 96740



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**PROPOSED ADDITIONS
FOR KLEBAN RESIDENCE
69-1778 PUAKO BEACH DRIVE**

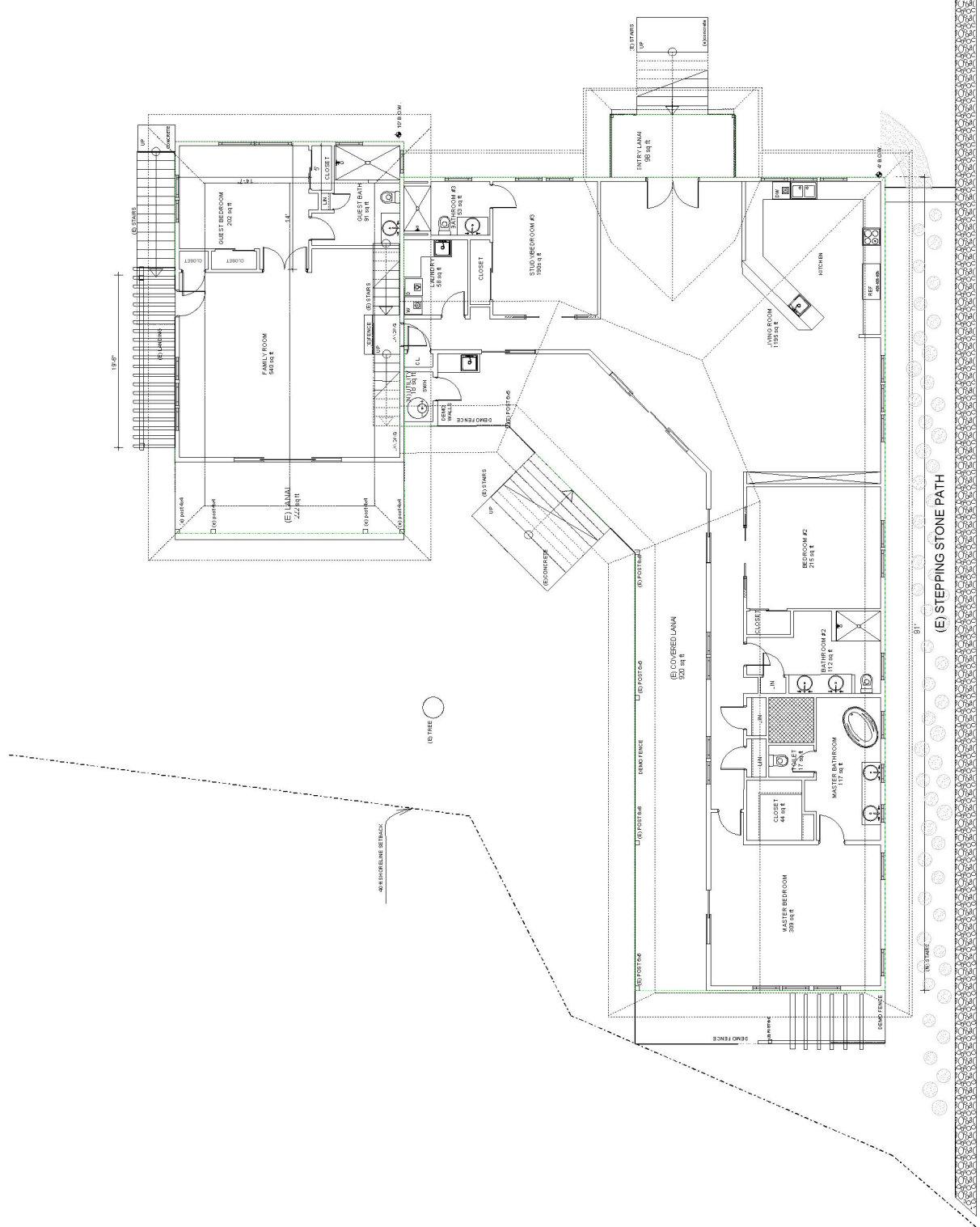
Owner: KLEKALA LLC

Last Rev: 11 03 2022

Contact: Bill McCowatt
808 345 8000

TMK: 690040020000

A03



EXISTING FIRST LEVEL
1/4"=1'



HALE HAWAII DESIGN

75-6909 Ahi Drive,
Kaliua-Kona, HI, 96740



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PROPOSED ADDITIONS FOR KLEBAN RESIDENCE 69-1778 PUAKO BEACH DRIVE

Owner: KLEKALA LLC

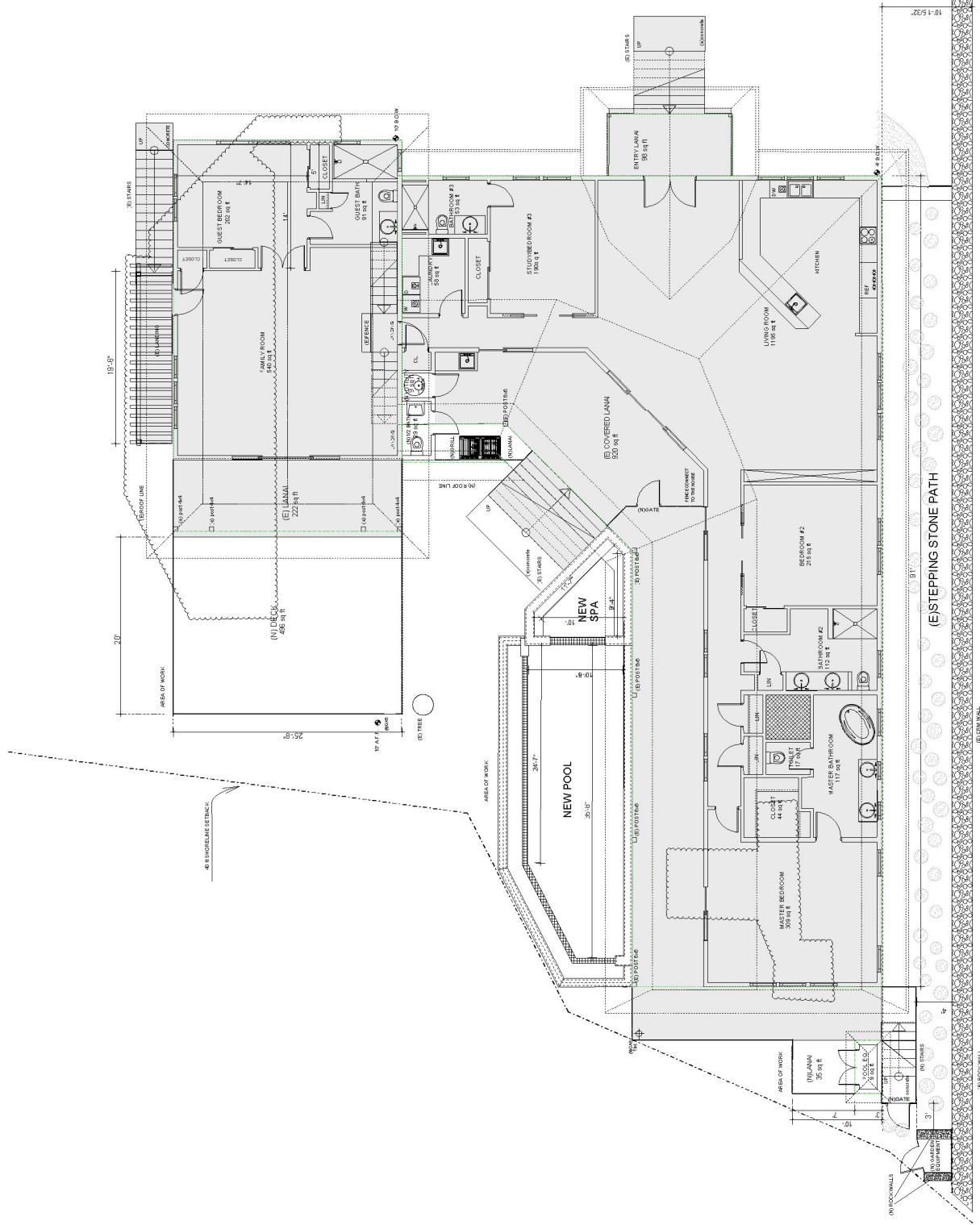
Last Rev: 11 03 2022

Contact: Bill McCowatt

808 345 8000

TMK: 690040020000

A04



PROPOSED FIRST LEVEL
1/4"=1'



HALE HAWAII DESIGN

75-5689 AHI Drive,
Kailua-Kona, HI, 96740



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69-1778 PUAKO BEACH DRIVE
PROPOSED ADDITIONS
FOR KLEBAN RESIDENCE

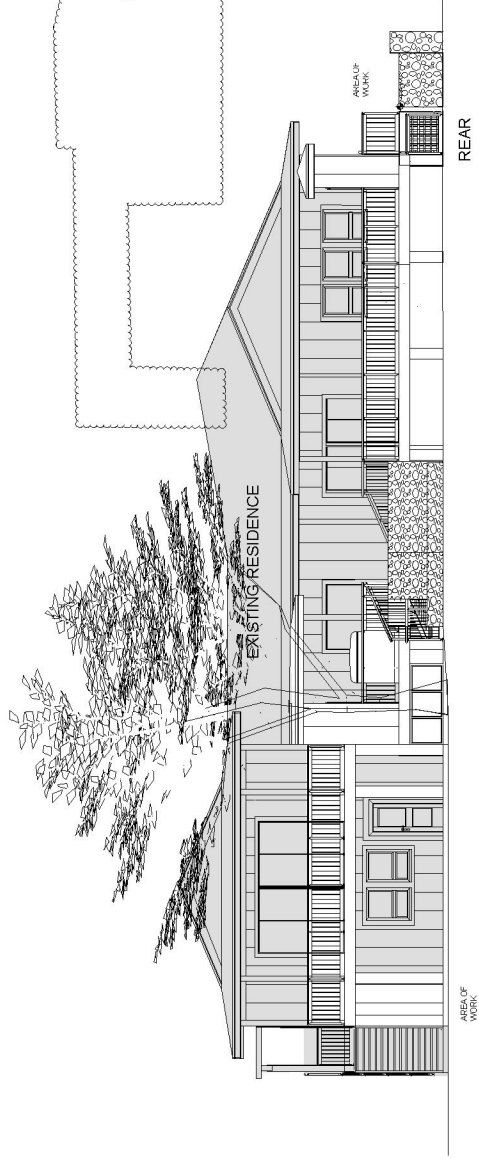
Owner: KLEKALA LLC

Last Rev: 11.03.2022

Contact: Bill McCowatt
808 345 8000

TMK: 690040020000

A05



ELEVATIONS

1/4"=1'



HALE HAWAII DESIGN

75-6900 Ahi Drive
Kaliua-Kona, HI, 98740



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PROPOSED ADDITIONS
FOR KLEBAN RESIDENCE
69-1778 PUAKO BEACH DRIVE

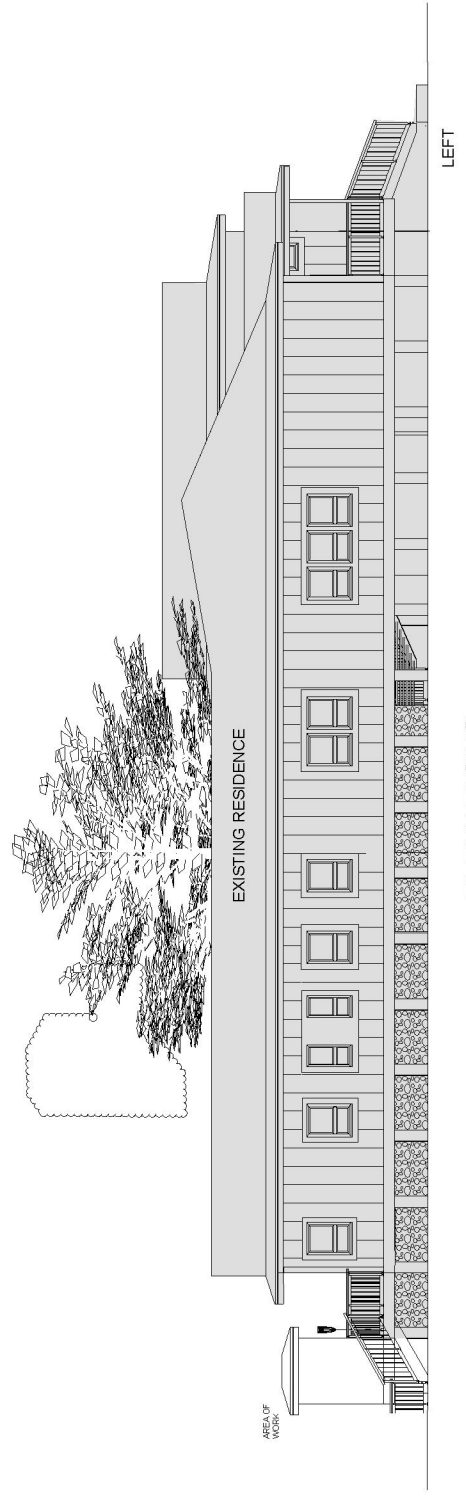
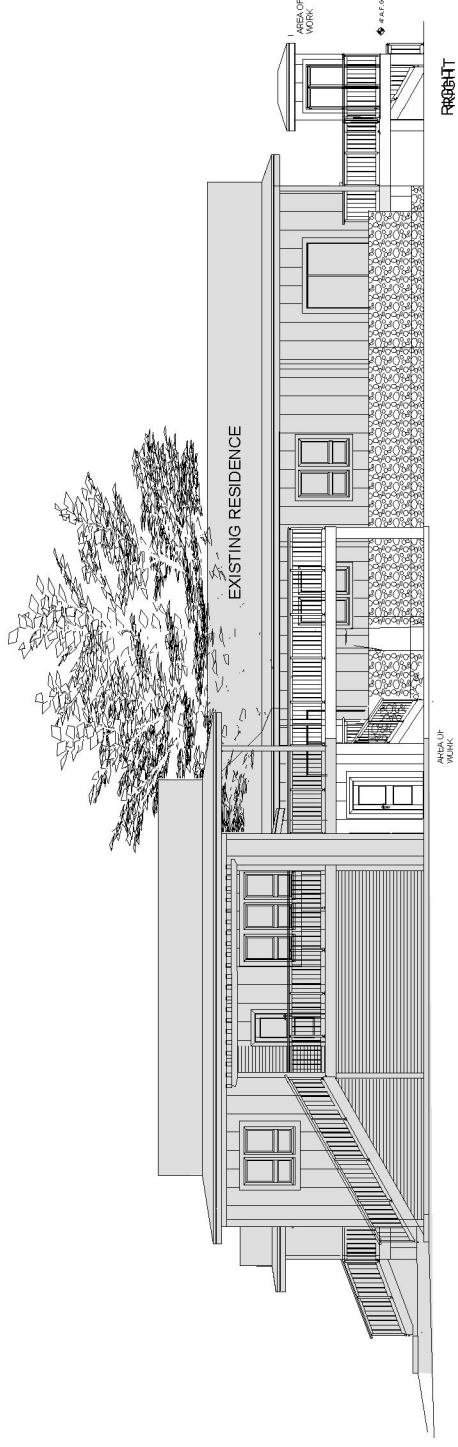
Owner: KLEKALA LLC

Last Rev: 11 03 2022

Contact: Bill McCowatt
808 345 8000

TMK: 690040020000

A06



ELEVATIONS

1/4"=1'