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September 20, 2023

John Pipan
c/o Land Planning Hawaii LLC
194 Wiwoole Street
Hilo, HI 96720
VIA EMAIL

Dear Mr. Pipan:

**SUBJECT: Special Management Area (SMA) Use Permit Assessment Application
(PL-SAA-2023-000176)**
Applicant(s): Land Planning Hawaii LLC
Landowner(s): George and Susan Foster Trust
Project: Consolidation and Construction of a Swimming Pool
Tax Map Key: (3) 6-9-003:010 & 011
**Location: 69-1664 Puakō Beach Drive, Lālānilo, Keanu'i'manō, South
Kohala District, Island of Hawai'i**

We have reviewed the subject Special Management Area (SMA) Use Permit Assessment Application (PL-SAA-2023-000176), submitted to this office on August 17, 2023. The 14,000 square feet subject parcels are zoned Single-Family Residential-10,000 square feet (RS-10) by the County and designated Urban by the State Land Use Commission (LUC). The subject parcels are designated as "Low Density Urban" (Idu) by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) map. The subject parcels are located within the Special Management Area (SMA) as well as situated on a shoreline parcel pursuant to section 205A-22, Hawai'i Revised Statutes (HRS).

Proposed Project:

The applicant is proposing to consolidate the two subject parcels in order to construct a swimming pool and related improvements that include a bridge, pavilion, lava rock features and landscaping.

Existing Land Uses:

A review of our files indicates that there is an existing single family dwelling which was constructed in 1991 on the subject parcel 010. In addition, Shoreline Setback Variance No. 645 was approved in 1993 to allow for a 6-foot roof eave extension into the 20-foot shoreline setback area.

Shoreline Setback Determination:

The entire project area is located within the Special Management Area (SMA) as well as situated on a shoreline parcel pursuant to section 205A-22, HRS. Two shoreline certifications were approved by the Board of Land and Natural Resources (BLNR). The first shoreline certification was approved on December 6, 1990 for the subject parcel 010 and a second shoreline certification was approved on July 12, 1991 for the subject parcel 011. Both shoreline certifications demarcates the shoreline at the *makai* face of an existing seawall on both parcels.

Pursuant to Hawai'i Administrative Rules (HAR) Ch. 13-222-11 if the location of the certified shoreline is fixed by an artificial structure that was appropriately permitted, no new certification is required. The project parcels both have an existing permitted seawall that marks the shoreline location. Therefore, as the proposed project will be cited approximately 40 feet from the existing seawall, the Deputy Director has waived the requirement for an updated shoreline certification at this time.

Special Management Area Determination:

1. Pursuant to Hawai'i Revised Statutes (HRS) §205A-22, as amended, and Planning Commission Rule 9-4(e)(1), 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 Planning Commission Rule 9-4(e)(3), *"any proposed use, activity, or operation listed in Section 9-4(e)(2) shall be deemed to be "Development" until the Deputy Director has determined it to be exempted from the definition of "development."* According to 9-4(e)(2), "Development" does not include the following uses, activities, or operations, and therefore is determined to be exempt from the definition of "Development."
 - *Structural and non-structural improvements to existing single-family residences, where otherwise permissible.*
3. Pursuant to Planning Commission Rule 9-4(e)(4), *"whenever the Deputy 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 Deputy Director finds that the proposed project is exempt from the definition of “development” and will not have a cumulative impact, or significant adverse environmental or ecological effect on the Special Management Area.

However, please note that any substantive changes to the improvements listed in the current application may require further review by this office and possibly the submittal of another SMA Use Permit Assessment Application.

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 Deputy 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.*”

Chapter 6E-42 Historic Preservation Review:

The Planning Department consulted with the State Historic Preservation Division (SHPD) on the proposed consolidation and construction of a swimming pool with related improvements. SHPD responded by letter dated September 12, 2023, in which SHPD determined that “*No historic properties are affected*” and pursuant to HAR §13-284-8(e), the permit issuance process may proceed.

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 Deputy 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 Deputy Director has added the following conditions for the proposed project:

Deputy 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 final subdivision approval for the proposed project within two (2) years from the date of this determination. If final subdivision approvals 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.

3. The proposed work shall comply with the requirements of Hawai'i County Code (HCC) Chapter 10, Erosion and Sedimentation Control.
4. All construction and maintenance activities on the subject parcel shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
5. 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.
6. 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.
7. 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 issuance of 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.
8. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Deputy Director may initiate procedures to revoke this determination or require additional review against the Special Management Area rules and regulations.

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

Sincerely,
Jeffrey W. Darrow

September 20, 2023 08:09 AM

JEFF DARROW
Planning Deputy Director

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John Pipan
c/o Land Planning Hawaii LLC
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Enclosure: Exhibit 1 - Site Plan

cc via email w/enclosure: Planning – West Hawai'i Division
GIS Section

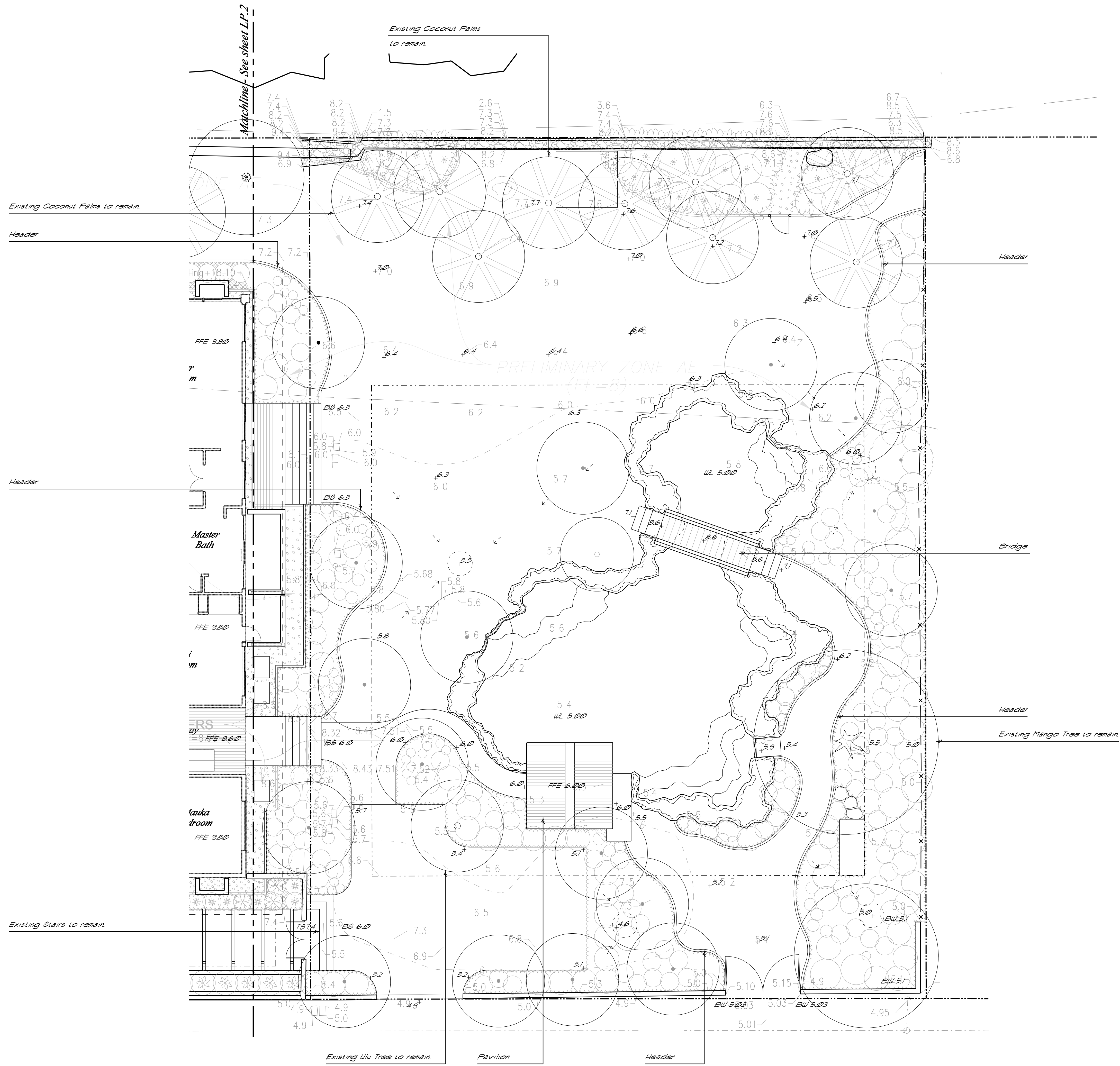
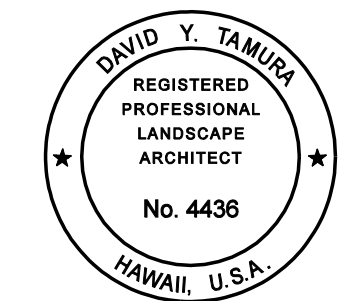
DAVID Y. TAMURA
REGISTERED
PROFESSIONAL
LANDSCAPE
ARCHITECT
No. 4436
HAWAII, U.S.A.



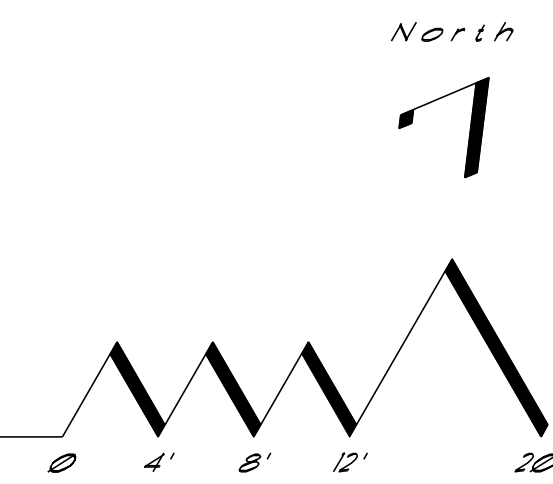
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Figure 2

This work was prepared by me or under my supervision. Construction of the project will be under my observation.
EXP. DATE 04/30/2024



Grading Plan
Scale 1/8" = 1'-0"

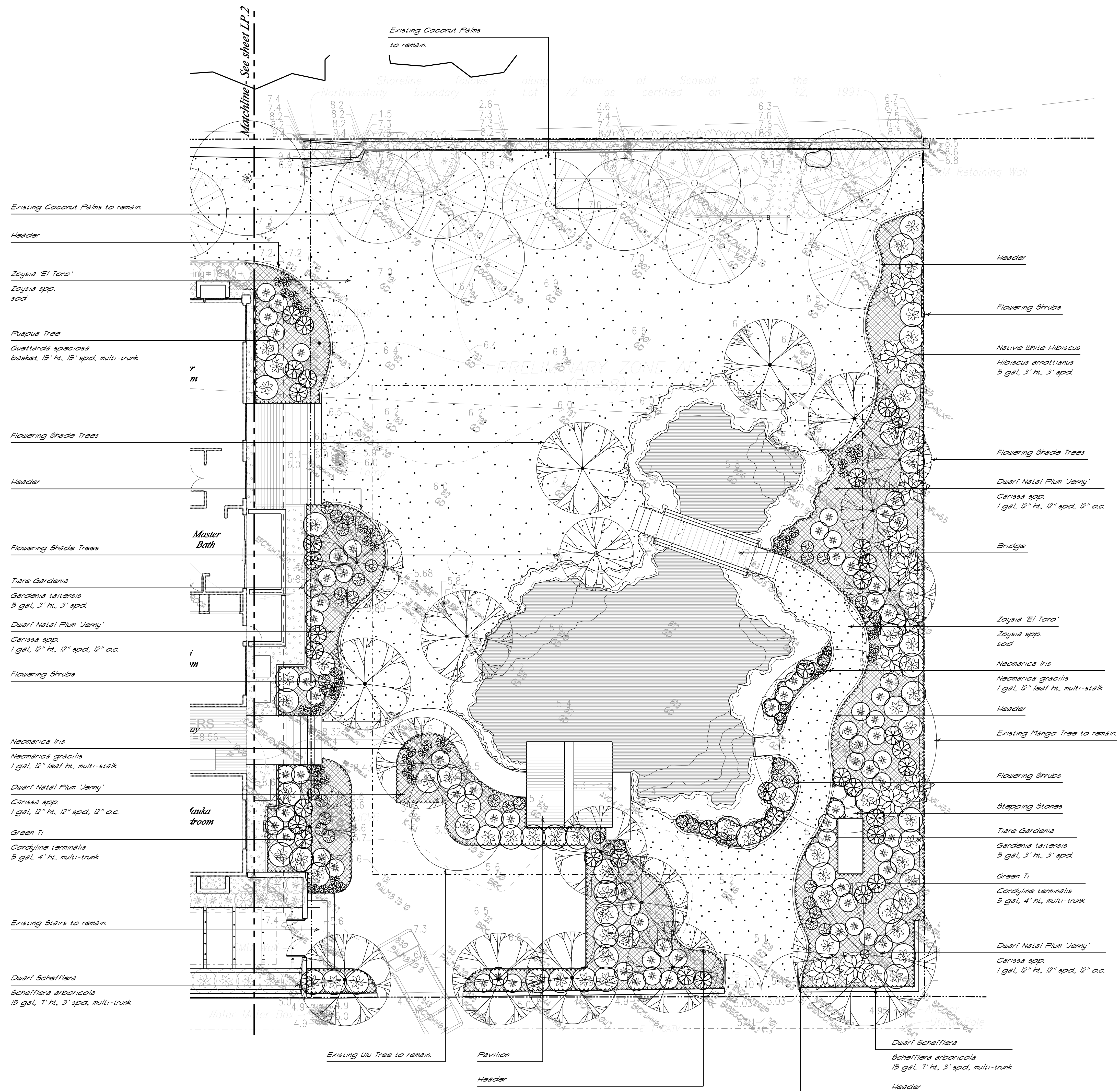
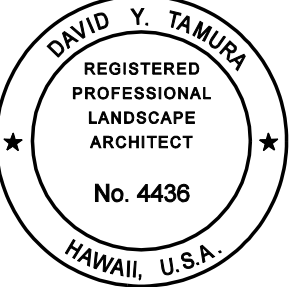


The Foster Residence
69-1666 Puako Beach Drive, Hawaii

David Y. Tamura Associates, Inc., ASLA
Landscape Architecture, Hilo, Hawaii
May 26, 2022

LP.8

Figure 3



Landscape Plan
Scale 1/8" = 1'-0"

The Foster Residence
69-1666 Puako Beach Drive, Hawaii

David Y. Tamura Associates, Inc., ASLA
Landscape Architecture, Hilo, Hawaii
May 26, 2022

Figure 4

LP.3

The Foster Residence

