

# Wai Halana

Hawaii Flood News

## Hurricane Season - Are you prepared?

Did you know that Hurricane Season, which runs through November 30th, started on June 1st? Have you prepared your Family Disaster Plan? If not, here's some tips:

### Prepare your Family Plan

- Keep emergency contact information near phones. Have extra copies to distribute to family members.
- Install safety devices in home (i.e. smoke alarms, fire extinguishers)
- Learn basic first aid skills
- Know how and when to turn off water, gas, and electrical connections.
- Teach children about 9-1-1. How and when to call.
- Keep three days to a week stock of emergency supplies in your home.
- Keep important family documents in a waterproof and fire resistant container.
- Keep an emergency kit and clothes in the trunk of your car.

### Prepare a Disaster Supply Kit

- At least a three day water supply (one gallon per person per day)
- Food that won't spoil
- One change of clothing and footwear per person.
- One blanket or sleeping bag per person
- First aid kit
- Prescription medicines
- Battery powered NOAA Weather Radio All Hazards
- Portable radio
- Flashlight
- Extra batteries enough for all battery operated devices
- Extra set of car keys
- Cash and credit cards
- Special items for infant, elderly, and disabled family members



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Wai Halana is published quarterly by the Department of Land and Natural Resources (DLNR), Engineering Division. It is supported by the Federal Emergency Management Agency under the Community Assistance Program. The contents of this publication is to increase awareness about the National Flood Insurance Program. The authors and publisher are solely responsible for the accuracy, and do not necessarily reflect the views of DLNR or FEMA.

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The current and selected past issues are also available at:

[www.hidlnr.org/eng/nfip](http://www.hidlnr.org/eng/nfip)

We welcome your comments and suggestions, as well as, newsworthy articles. Your submissions may be sent to the Department of Land and Natural Resources, Engineering Division, P.O. Box 373, Honolulu, Hawaii 96809. If you'd like to receive Wai Halana via email or wish to be removed from our mailing list, contact Elaine Keb at (808) 587-0227.

**Upcoming Events**

**FEMA Elevation Certificate Training**

Maui Workshop

Monday, August 13, 2007  
9:00 am - 3:00 pm  
Maui Community College  
Laulima Building Room 225

Kona Workshop

Tuesday, August 14, 2007  
9:00 am - 3:00 pm  
Sheraton Keauhou Bay Resort  
78-128 Ehukai Street  
Kailua-Kona

Visit: [www.hidlnr.org/eng/nfip](http://www.hidlnr.org/eng/nfip) for training and registration info.

3rd Annual Hawaii Floodplain Managers Conference  
August 15 - 16, 2007  
Sheraton Keauhou Bay Resort  
78-128 Ehukai Street  
Kailua-Kona

ASFPM approved -11 Core CEC  
Visit: [www.hidlnr.org/eng/nfip](http://www.hidlnr.org/eng/nfip) for info.

For current info on any of the listed events, visit: [www.hidlnr.org/eng/nfip](http://www.hidlnr.org/eng/nfip)

## Liability of Real Estate Brokers, Banks and Insurance Agents

An Excerpt from "Professional Liability for Construction in Flood Hazard Areas"

By: Jon Kusler, Esq.

To read the entire document visit: [www.floods.org](http://www.floods.org)



### Real Estate Brokers

Buyers of floodprone properties have successfully sued real estate brokers in some instances for failing to divulge known flood hazards. Real estate brokers have been held by courts to an increasingly high standard of care in their relationship with buyers. This relationship has been characterized as "fiduciary" relationship by some courts. For example, a Louisiana Court concluded:

*A real estate broker is a professional who holds himself out as trained and experience to render a specialized service in real estate transactions. The broker stands in a fiduciary relationship to his client and is bound to exercise reasonable care, skill, and diligence in performance of his duties ... Ultimately the precise duties of a real estate broker must be determined by an examination of the*

*nature of the task the real estate agent undertakes to perform and the agreements he makes with the involved parties ... The failure to disclose to a buyer a known material defect regarding the condition of real estate of which the broker or salesperson has knowledge is among a broker's duties ...*

Other courts have held brokers liable for failing to disclose flood or drainage problems without characterizing the relationship as fiduciary. For example, the Arkansas Court of Appeals upheld a judgment of damages against a seller, his insurance agency, and others for failing to inform purchasers that the house was in a flood zone and that flood insurance could be purchased. However, the court limited damages to those recoverable under an ordinary flood insurance policy.

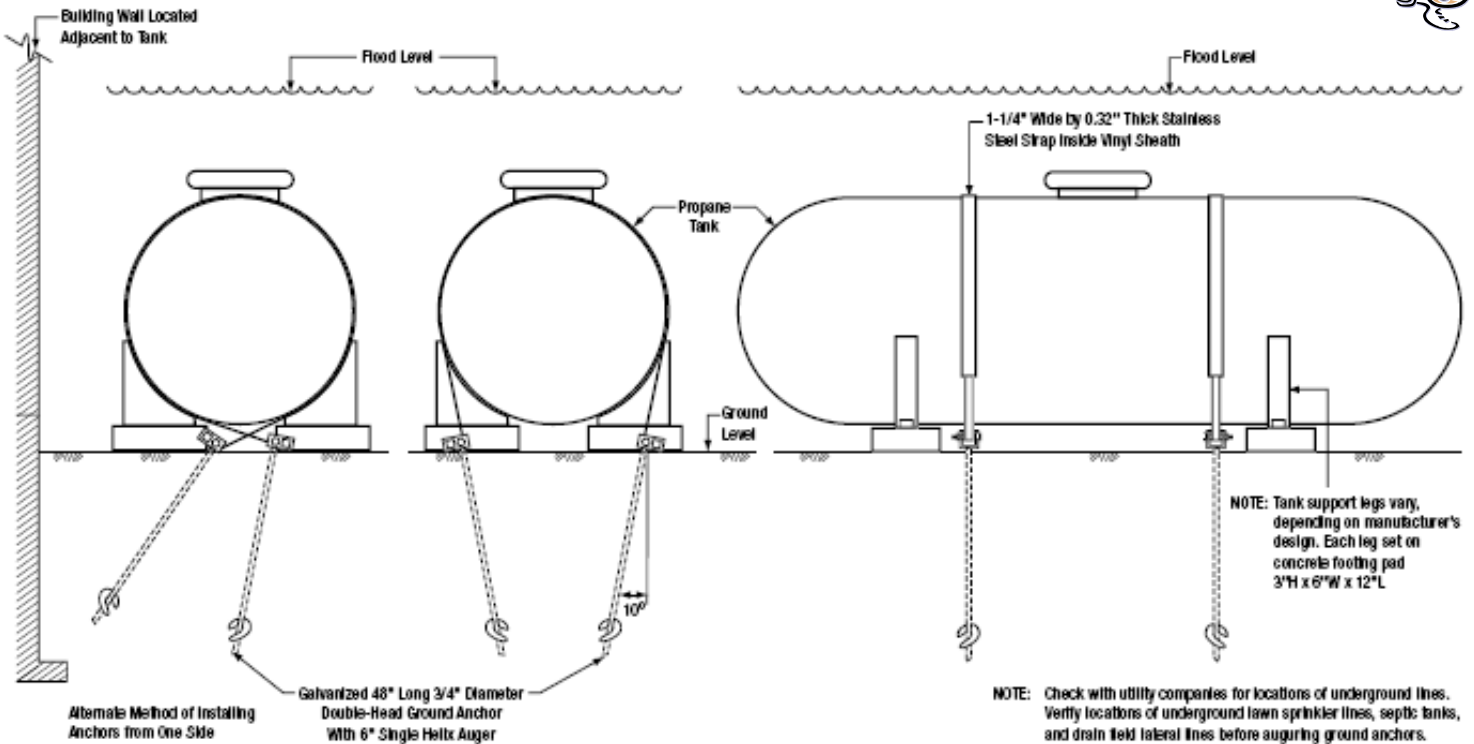


# Protecting Your Property From Flooding

## Anchoring Propane Tanks

Unanchored propane tanks can be easily moved by flood waters. These tanks pose serious threats not only to you, your family, and your house, but also to public safety and the environment. Propane is stored in pressurized vessels as liquefied petroleum gas (LPG), which can be extremely volatile and potentially explosive if the tank is ruptured and the escaping LPG is ignited by a spark. An unanchored tank outside your house can be driven into your walls by flood waters, or can be swept downstream, where it can damage other houses. As shown in the figure, an inexpensive way to secure a horizontal outside propane tank is to install four ground

anchors connected across the top of the tank with metal straps. Secure vertical tank (120-gallon, 420 lb. size) with two ground anchors. Set each anchor on opposite sides of vertical tank. Attach strap from each anchor to collar secured around top of tank. Attach another metal strap connected from one anchor to the other through tank base. The ground anchors and straps described below are the same products that are required by building codes to tie down mobile homes. These products are available from suppliers and installers that service the manufactured housing industry.

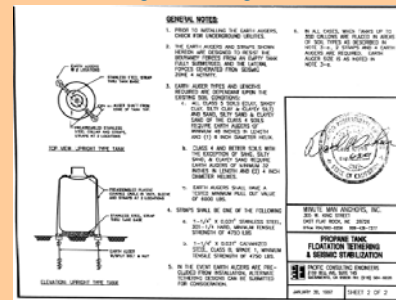


### Got an Upright Tank ?

There are several companies that supply anchoring systems for upright fuel tanks. Minute Man Anchors is one of several companies. Click on construction detail to view. Be sure to check with local permitting agency for approval of any anchoring technique and/or application.

This article is not an endorsement of Minute Man Products, Inc. and is provided for informational purposes.

[Click on Image to Enlarge](#)



# Purchasing and Building on Coastal property

## *Things to be Considered*

Purchasing a coastal property in a poor location and making unfavorable siting decisions can rarely be overcome by improved design and construction. Structure failures are often the result of poor siting. A well built but poorly sited building can still be undermined and destroyed by mother nature.

FEMA's Home Builder's Guide to Coastal Construction, Technical Fact Sheet No. 7, provides guidance on lot selection and siting considerations for coastal residential homes.

### **Key Issues**

- Purchase and siting decisions should be long-term decisions, not based on present-day shoreline and conditions.
- Parcel characteristics, infrastructure, regulations, environmental factors, and owner desires constrain siting options.
- Conformance with local/state shoreline setback lines does not mean buildings will be "safe."
- Information about site conditions and history is available from several sources.

### **The Importance of Property Purchase and Siting Decisions**

The single most common and costly siting mistake made by designers, builders, and owners is failing to consider future erosion and slope stability when an existing coastal home is purchased or when land is purchased and a new home is built. Purchase decisions — or siting, design, and construction decisions — based on present-day shoreline conditions often lead to future building failures.

Over a long period of time, owners of poorly sited coastal buildings may spend more money on erosion control and erosion-related building repairs than they spent on the building itself.

### **What Factors Constrain Siting Decisions?**

Many factors affect and limit a home builder's or owner's ability to site coastal residential buildings, but the most influential is probably parcel size, followed by topography, location of roads and other infrastructure, regulatory constraints, and environmental constraints.

Given the cost of coastal property, parcel sizes are often

small and owners often build the largest building that will fit within the permissible development footprint. Buyers frequently fail to recognize that siting decisions in these cases have effectively been made at the time the land was platted or subdivided, and that shoreline erosion can render these parcels unsuitable for long-term occupation.

In some instances, however, parcel size may be large enough to allow a hazard-resistant coastal building to be sited and constructed, but an owner's desire to push the building as close to the shoreline as possible increases the likelihood that the building will be damaged or destroyed in the future.

### **Coastal Setback Lines – What Protection Do They Provide?**

Many states require new buildings to be sited at or landward of coastal construction setback lines, which are usually based on long-term, average annual erosion rates. For example, a typical minimum 50-year setback line with an erosion rate of 2.5 feet/year would require a setback of 125 feet, typically measured from a reference feature such as the dune crest, vegetation line, or high-water line.

Building at the 125-foot setback (in this case) does not mean that a building will be "safe" from erosion for 50 years.

- Storms can cause short-term erosion that far exceeds setbacks based on long-term averages.
- Erosion rates vary over time, and erosion could surpass the setback distance in just a few years' time. The rate variability must also be known to determine the probability of undermining over a given time period.

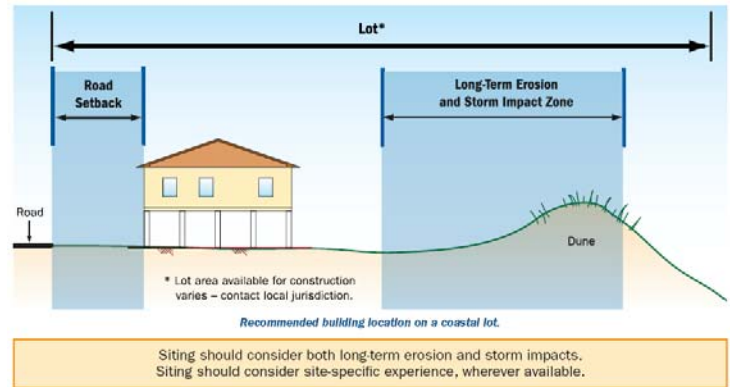
### **What Should Builders, Designers, and Owners Do?**

- Consult local and state agencies, universities, and consultants for detailed, site-specific erosion and hazard information.
- Look for historical information on erosion and storm effects. How have older buildings in the area fared over time? Use the experience of others to guide siting decisions.
- Determine the owner's risk tolerance, and reject parcels or building siting decisions that exceed the acceptable level of risk.



## Common Siting Problems

- Building on a small lot between a road and an eroding shoreline is a recipe for trouble.
- Odd-shaped lots that force buildings close to the shoreline increase the vulnerability of the buildings.
- Siting a building near the edge of a bluff increases the likelihood of building loss, because of both bluff erosion and changes in bluff stability resulting from development activities (e.g., clearing vegetation, building construction, landscaping, changes in surface drainage and groundwater flow patterns).
- Siting near a tidal inlet with a dynamic shoreline can result in the building being exposed to increasing flood and erosion hazards over time.
- Siting a building immediately behind an erosion control structure may lead to building damage from wave overtopping and may limit the owner's ability to repair or maintain the erosion control structure.
- Siting a new building within the footprint of a pre-existing building does not guarantee that the location is a good one.
- Siting should consider both long-term erosion and storm impacts. Siting should consider site-specific experience, wherever available.



Source: FEMA 499

On the other hand, courts have also held that buyers need to inspect property and that failure to inspect may defeat a claim of negligent misrepresentation. A North Carolina court also held that a real estate broker did not owe buyers a duty to check federal flood hazard maps to determine whether property was located in the floodplain and buyer where the broker made no representations, the buyers had an independent survey done for the property, and the fact that the property was in the floodplain was of public record.

## Banks

Banks have no common law duty to provide flood information to individuals seeking loans. However, buyers of floodprone properties seeking mortgages have sued banks for failing to correctly inform them that properties are subject to flooding as called for by the National Flood Insurance Act (42 U.S.C. 4012 (a)(b)) and to require flood insurance. Courts have broadly, but not universally, held that the federal flood hazard disclosure requirements of the National flood Insurance Act create no legal duty on behalf of banks to provide correct flood information to individuals seeking mortgages and the failure to provide correct information does not result in bank liability or the liability of businesses that provide flood hazard information to banks. Courts have, in general, reasoned that the beneficiaries of flood hazard notice requirements are the banks, not individuals seeking loans, and the federal statute creates no duty to mortgagees on behalf of the banks. However, the Supreme Court of Connecticut

held that a bank was liable pursuant to a state common law negligence action for failing to notify the purchaser of a house that the house was in a special flood hazard area. This court found the federal statute and regulations promulgated under it created a statutory standard of conduct the breach of which would give rise to an action for common law negligence.

The court concluded that the property owner was "a member of the class protected by the statute" and that the "injury" was "of the type the statute was intended to prevent."

## Insurance Agents

In some instances, buyers have sued insurance agents for failing to provide accurate flood insurance information. For example, an Indiana court remanded for trial a homeowner's claims against an insurance broker. The broker allegedly did not tell the homeowner that the \$72,000 of requested flood insurance had not been obtained. The court observed that an insurance broker retained to obtain insurance for another must use "reasonable skill, care, and diligence to obtain the desired insurance." In another case an Ohio court held that an insurance agent could potentially be held liable for quoting a \$220 premium for \$75,000 in federal flood insurance when this premium actually entitled the homeowner to only \$3,700 in coverage. The homeowner had requested a quote from the agent prior to purchasing the house and claimed that he would not have gone forward with the sale if he had known the true price of the insurance. The court held that the insurance agent could potentially be held liable for misrepresentation.



## Flood Insurance Rate Maps *Updates*

Are you currently doing work in the Counties listed here? If so, please take note that FEMA has approved the following Letter of Map Revision (LOMR) for changes to the flood hazard information shown on the current effective FIRM.

### **Hawaii County**

#### **FIRM Panel 0927D**

Effective date of revision: February 28, 2007

FEMA Case No. : 07-09-0533P

Flooding Source: Holualoa Drainageway Tributary

#### Description of Revision:

This LOMR updates the FIRM panel to revise the location of the Mamalahoa Highway North and South crossing. This LOMR does not change the effective Base Flood Elevations (BFEs) and floodplain boundary delineations.

On-line reader can view LOMC [here](#)

## RM vs. PID

### What's the relationship?

If some of you may have recalled, the November 20, 2000 Flood Insurance Rate Maps (FIRM) for the City and County of Honolulu had Elevation Reference Mark (RM) data printed directly onto the FIRM. The current effective FIRM (September 30, 2004 / June 2, 2005) no longer show this information. In fact, the "RM" naming convention is no longer used. Instead, the current City and County of Honolulu's FIRMs use the National Geodetic Survey's Permanent Identifier labels (PID, i.e. TU0252).

So what is the relationship? There is no known correlation. For this reason, Department of Land and Natural Resources started to work on developing a relationship table so that surveyors and engineers can easily make the connection from the elevation data shown on the old maps to the ones referenced on the new maps. This project is nearing completion and should be available on our website this Fall.



## Dam Safety - Legislative Update

The Hawaii Dam Safety program worked with the 2007 Legislature, owners, operators and others in the dam safety community to develop Senate Bill 1946, SD2, HD2, CD1, which updates Chapter 179D, HRS and is expected to become law on July 10, 2007. The Bill provides increased authority for the State, creates a permanent funding mechanism for the Hawaii Dam Safety Program and revises the chapter name to the "Hawaii Dam and Reservoir Safety Act of 2007".

Highlights of the bill include: adding a requirement for dams owners to apply for and obtain a certificate of approval to impound water, establishes a dam safety special fund to provide assistance to the dam safety program and for emergency purposes, adds a section expanding dam owner and operator responsibilities, updates the definitions for hazard classification, requires high and significant hazard dams to have an Emergency Action Plan.

The updated statute will expand government oversight and regulation and expand the requirements for owners and operators of dams and is a good step forward to ensuring that dams in Hawaii continue to be monitored for dam safety concerns. The program will have a year and a half to revise the Hawaii Administrative Rules, Title 13, Subtitle 7, Chapter 190 as applicable to ensure consistency with the statutes and we encourage those in the dam safety industry to participate in the rule revision process.



## Flood Hazard Mapping Tool

Coming this Fall — The Department of Land and Natural Resources has contracted with the Onyx Group to develop a GIS Flood Hazard Mapping Tool that will allow the public to view their properties' flood hazard risk. Onyx has begun the development of this tool utilizing the ArcGIS Server. The chore of overlaying FEMA's FIRM maps onto parcel maps will be a tedious exercise of the past.



## Fillable EC Form

Tired of filling out FEMA's Elevation Certificate (EC) form by hand or typewriter? Well fret no more, check out our easy to use fillable EC form on our website:

[www.hidlnr.org/eng/nfip](http://www.hidlnr.org/eng/nfip)

Just download the form from our website and start filling it in. It's that simple.

Click **FORMS** to get started



# FINANCE - Deputy IG: No Evidence Of A Katrina Claims Conspiracy

Published June 13, 2007, in CongressDailyAM

By: Bill Swindell

The deputy inspector general of the Homeland Security Department said Tuesday his office could find no evidence so far that insurance companies conspired to stick the federal government with flood claims in the aftermath of Hurricane Katrina instead of paying out their own policy wind-damage claims.

Matt Jadacki told members of two House subcommittees that "it is difficult to determine" whether claims that were paid out by the federal government's flood insurance program should have been assumed by property-and-casualty carriers under homeowner and commercial business policies that they had written.

Gulf Coast lawmakers, such as **Senate Minority Whip Lott** and Rep. **Gene Taylor**, D-Miss., have charged that some insurers improperly denied wind damage claims from Katrina -- which the companies would have to cover -- and instead cast them off as water-damage claims to be covered under the National Flood Insurance Program.

The flood program allows up to \$250,000 for residential building coverage, which is far less than many homeowner policies. The two lawmakers settled lawsuits they had filed against State Farm Insurance Cos. for denying their claims, but have continued their crusade against the insurance industry.

Lott attached a \$3 million rider on an appropriations bill last year that required the Homeland Security Department inspector general to investigate the handling of claims by carriers after Katrina struck.

The Financial Services Oversight and Investigations Subcommittee held a joint hearing with the House Homeland Security Oversight Subcommittee on the preliminary findings from the department investigation.

Jadacki said Homeland Security reviewed 98 flood claim files to determine whether there was any indication that wind damage could have been attributed to flooding. But, he said, with the exception of two files, there was no information on how much wind damage occurred; the cost of such damage, and whether wind claims were filed in the case.

The department also interviewed 20 claims adjusters who processed flood claims. Jadacki said in testimony that the adjusters said they were under no pressure to attribute wind damage to flooding, but his agency is trying to secure more records from private carriers.

Jadacki recommended the companies who process flood claims through the federal government's program state their rationale and methodology for calculating flood and wind damage where there is evidence that both might have contributed to damage; provide clearer guidance on the processing of such claims, and improve the review process for certifying that the claims were settled in a fair manner.

A preliminary GAO report also released Tuesday found that the federal government flood program "does not have all the information it needs to ensure that its claims payments were limited to damage caused by flooding."

Lawmakers said they did not want to rush to judgment given the preliminary inquiry given no evidence of wrongdoing. "There is a difference between the potential of wrongdoing and the finding of actual wrongdoing," said Financial Services Oversight and Investigations Subcommittee ranking member **Gary Miller**, R-Calif. "We need to proceed cautiously today."

But some said they were troubled that the Federal Emergency Management Agency, which administers the flood program, does not have sufficient safeguards in place to monitor whether a claim should be attributed to flood or wind.

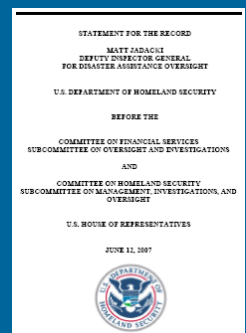
"It appears that neither [GAO nor Homeland Security] nor the state regulators have the information necessary to make this determination with any confidence," said Financial Services ranking member **Spencer Bachus**, R-Ala.

Financial Services Oversight and Investigations Subcommittee Chairman **Melvin Watt**, D-N.C., said his panel also is asking insurance carriers along the Gulf Coast for information on how they decided wind-versus-flood claims.



To read a copy of DHS, Deputy Inspector General, Matt Jadacki's report, click [here](http://www.dhs.gov/xoig/assets/testimony/OIGtm_MJ_061207.pdf)

This publication can be found online at: [http://www.dhs.gov/xoig/assets/testimony/OIGtm\\_MJ\\_061207.pdf](http://www.dhs.gov/xoig/assets/testimony/OIGtm_MJ_061207.pdf)





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*A while back, a friend of mine was interested in buying a property in windward Oahu. She had made an offer and began the, oftentimes, stressful process of buying a home. One day, she called to ask me to check on the "flood zone" for this property. She said the MLS listing showed the property as being in an X zone, however her appraisal came back saying AE (Floodway).*

*I quickly searched my resources for the information and discovered it to, in fact, be in the AE (Floodway). Long story short, she didn't end up buying this teardown property since rebuilding on this lot would prove to be challenging and costly.*

*This got me curious to see how many Hawaii real estate listings disclosed incorrect flood hazard information. To my dismay, I found many. In fact, I found some that made remarks that would render the building in violation of local building codes. However, what I found most prevalent was the absence of a flood zone designation. This information should always be disclosed. My advice to potential buyers, "Do your Homework". As for real estate agents, read our "Liability" article on page 2.*



 [View All 1 Pictures](#)

#### Property Features

Year Built:	2005
View:	Mountain
Design Structure:	1Story, Single Wall
Construction:	1Story, Single Wall
Exterior:	Wood
Roofing:	Asphalt Shingle
Parking Available:	Y
Parking Type:	1Car, Garage
Pool:	N
Water Access:	N
Disclosure:	Y
Utilities:	County Water, Underground Electric
Sub-Structure:	Post & Pier
Sewer:	Installed, Septic
Zoning:	R-4
Flood Zone:	???