STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i

June 12, 2015

Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i

REGARDING: Request to Deviate from the Hawaii Administrative Rules, Chapter 13-5, Single Family Residential Standards to Place a Water Tank Within the Setback Area of a Parcel

APPLICANT/ LANDOWNERs: Sandy L. Feng
Liang Zhao

LOCATION: 121 Forest Ridge Way, Tantalus, O'ahu

TMK: (1) 2-5-016:023

SUBZONE: Resource

Background

The approximately 9,047-ft² parcel can be defined as a nonconforming residential use. **(Exhibit A)** According to the City and County of Honolulu property tax record, the residence was constructed in 1950 and consists of a home and carport. The property has been recently acquired by the applicants and applicants hope to restore and rehabilitate the property as the home is dilapidated.

A former landowner placed the residence's water catchment tank upon the adjacent State owned parcel. The applicants removed the encroachment upon State land and now seek to place an 8-foot tall, 12-foot diameter water catchment tank that services the property within the bounds of their parcel. However due to the lot size and existing uses on the property, the landowners are proposing to place the water catchment tank within the setback area of the property. The Hawai'i Administrative Rules (HAR), Chapter 13-5 Single Family Residential Standards states for lots under one acre, the minimum setback is 15-feet.

Request for Deviation

Pursuant to HAR §13-5-42 (c) Deviation from any of the conditions, standards, or criteria provided in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

(1) The deviation is necessary because of the lack of practical alternatives;
(2) The deviation shall not result in any substantial adverse impacts to natural resources;
(3) The deviation does not conflict with the objective of the subzone; and
(4) The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before the deviation occurs constitutes cause for permit revocation.

ANALYSIS

The property owner has submitted written justification to address the request for deviation. Staff has reviewed, summarized and analyzed the information below:

(1) The placement of the water tank in the proposed location(s) within the setback is necessary as there does not appear to be sufficient room to place the tank in other portions of the property without blocking access to or other functions of the residence. The side setbacks of the home are about 5 to 6 feet on the eastern side and about 15 to 17-feet on the west side. The front of the property has a gate and the driveway to the east and to the west are very large pine trees with the underground sceptic system below the front yard. The backyard has a hollow tile retaining wall setback 15-feet and then ascents to Tantalus Drive. Placing the tank directly behind the home will completely block the windows and door that are on the back side of the house. Two viable locations have been identified; the back south portion of the parcel or the back east portion of the parcel **(Exhibit B & C)**. Staff is of the opinion, there appears to be a lack of practical alternatives.

(2) Staff believes there should be no substantial adverse impacts to natural resources as the tank will be within a previously developed area for residential use. This locality is noted as the Schmidt Estate Subdivision and residential uses were established in the early 1900's. According to the landowner, when the house was built in 1950, the required setback at that time was 5-feet.

(3) The objective of the Resource subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas. The subject area has been developed with residential land uses prior to the advent of the Conservation District. As the area is not serviced with County water, the water catchment tank is an integral part of the residence. There are over 150 single family residences above the 600-foot elevation on Tantalus with similar catchment tanks. Therefore staff believes the water catchment tank is a compatible use and allows for the sustainable use of the natural resources of the area and therefore does not conflict with the objective of the subzone.

(4) According to the landowner, the water tank is galvanized metal and is not flammable and will not produce any noise or smell. It will not restrict access for emergency service personnel to the property or adjacent properties. The contents of the 10,000-gallon tank could assist in the extinguishing wildfires on adjacent State land. Staff believes the placement of the water tank in either location is not inconsistent with public health safety or welfare.

DISCUSSION

It appears the most unobtrusive location to relocate the water tank would be either the south or east portion of the property in the back of the house. Either location would put the tank about 5-feet from either side's property boundary. The tank is currently being stored at the east location **(Exhibit D)**. Once the landowner gains authorization to place the tank, the tank will be sited and

the area will be landscaped to blend in with the environment and reduce the visual impact of the structure.

Staff notes some of the reasons for setbacks are: to provide for sufficient light and openness; to enhance privacy; to improve visual appeal and maintain uniformity; to eliminate the potential for encroachments, to restrict over-building, to allow for water run-off and filtration, to increase public health and safety, and for fire protection and access for emergency responders.

In this particular case, none of these factors would be compromised. The landowners are proposing landscaping to minimize the visual impact. At this location, there is a road in front of and behind the residence. Therefore emergency response access would not be reduced should the tank be placed within either side setback. Placing the tank in the east portion of the back of the property would place the tank 5-feet from the vacant State parcel. Siting the tank here would not impose upon any neighboring residence. In discussing this matter with the Division of Forestry and Wildlife that has management control over this State parcel, there were no objections to placing the tank at a minimum of 5-feet from the property boundary. However placing the tank on the south back portion of the property would place it near a neighboring residence. Should the landowner wish to place the tank on the south portion of the property, consultation with his neighbor should take place and written documentation should be provide to the Department from the adjacent landowner stating there are no objections to the placement of the tank 5-feet from the property line.

RECOMMENDATION

Staff recommends that the Board of Land and Natural Resources approve this deviation from the Hawaii Administrative Rules, Chapter 13-5, Single Family Residential Standards regarding the minimum setback for lots under one acre of 15-feet and allow a water tank to be located not less than 5-feet from the side property boundaries located at 121 Forest Ridge Way, Tantalus, O'ahu, tax map key:(1) 2-5-016:023 subject to the following conditions:

1. Applicable standard conditions of the HAR, §13-5-42 Standard conditions. (**Exhibit E**);

2. Landscaping shall give preference to plant materials that are endemic or indigenous to Hawai'i. The introduction of invasive plant species is prohibited; and

3. Siting of the water tank on the south portion of the property shall require written documentation from the adjacent landowner stating there are no objections to the placement of the tank 5-feet from the property line.

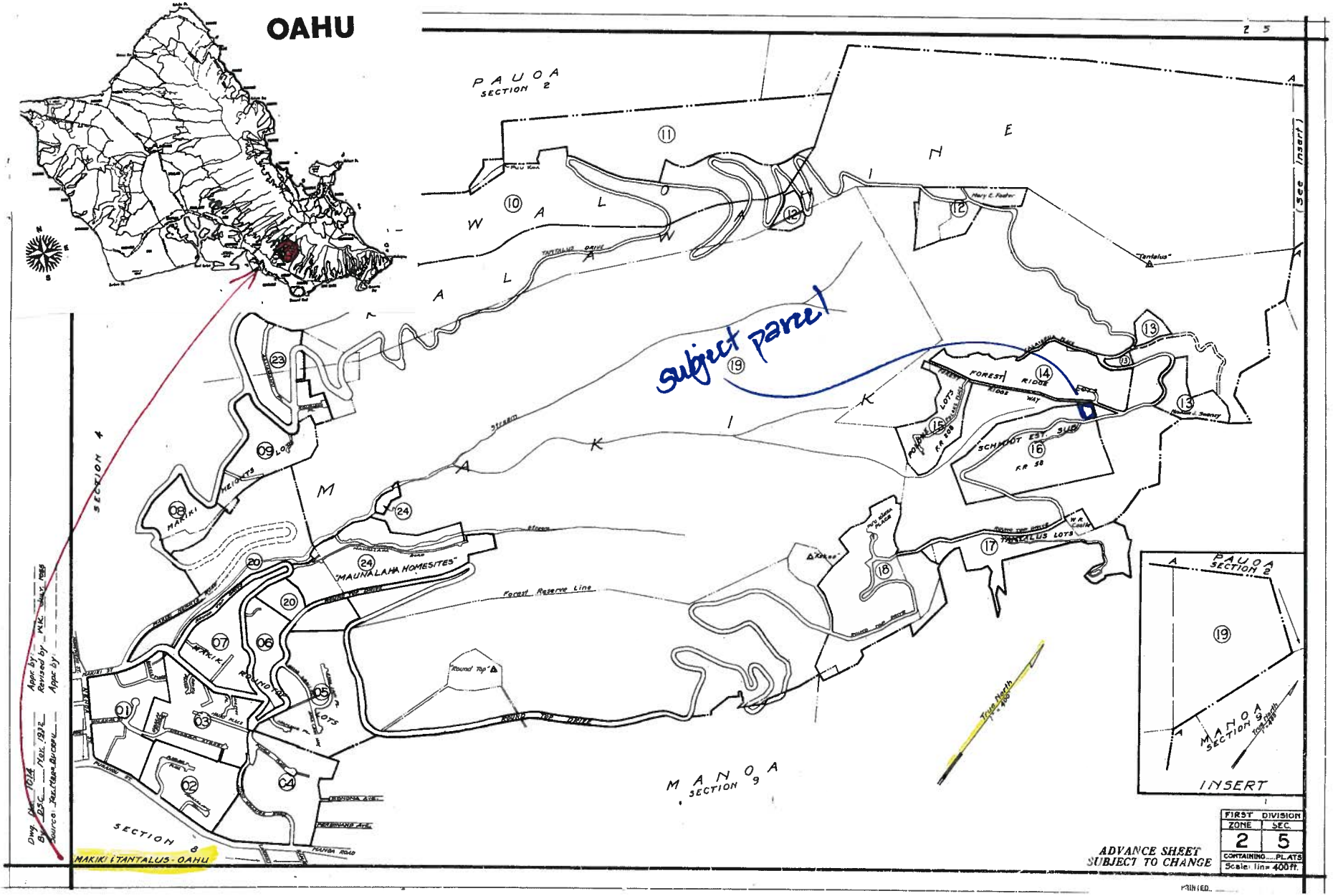
Respectfully submitted,

K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

EXHIBIT A


OAHU
PAUOA SECTION 2
WALAWEE
MAKIKI
MANOA SECTION 9
SECTION 4
SECTION 8
"MAUNALAHA HOMESITES"
FOREST RIDGE
SCHMIDT EST. SUB.
TANTALUS LOTS
Forest Reserve Line
Round Top Drive
Tantalus Drive
Stream
"Tantalus"
"Round Top"
True North
subject parcel
(See Insert)
INSERT
MAKIKI & TANTALUS - OAHU
FIRST DIVISION
ZONE 2
SEC. 5
CONTAINING ____ PL. ATS
Scale: 1in = 400ft.
ADVANCE SHEET
SUBJECT TO CHANGE
PRINTED

DJNS SURVEYING & MAPPING, INC.
P.O. BOX 25636
Honolulu, Hawaii 96825
Phone: (808) 395-5476, Fax: (808) 395-5477
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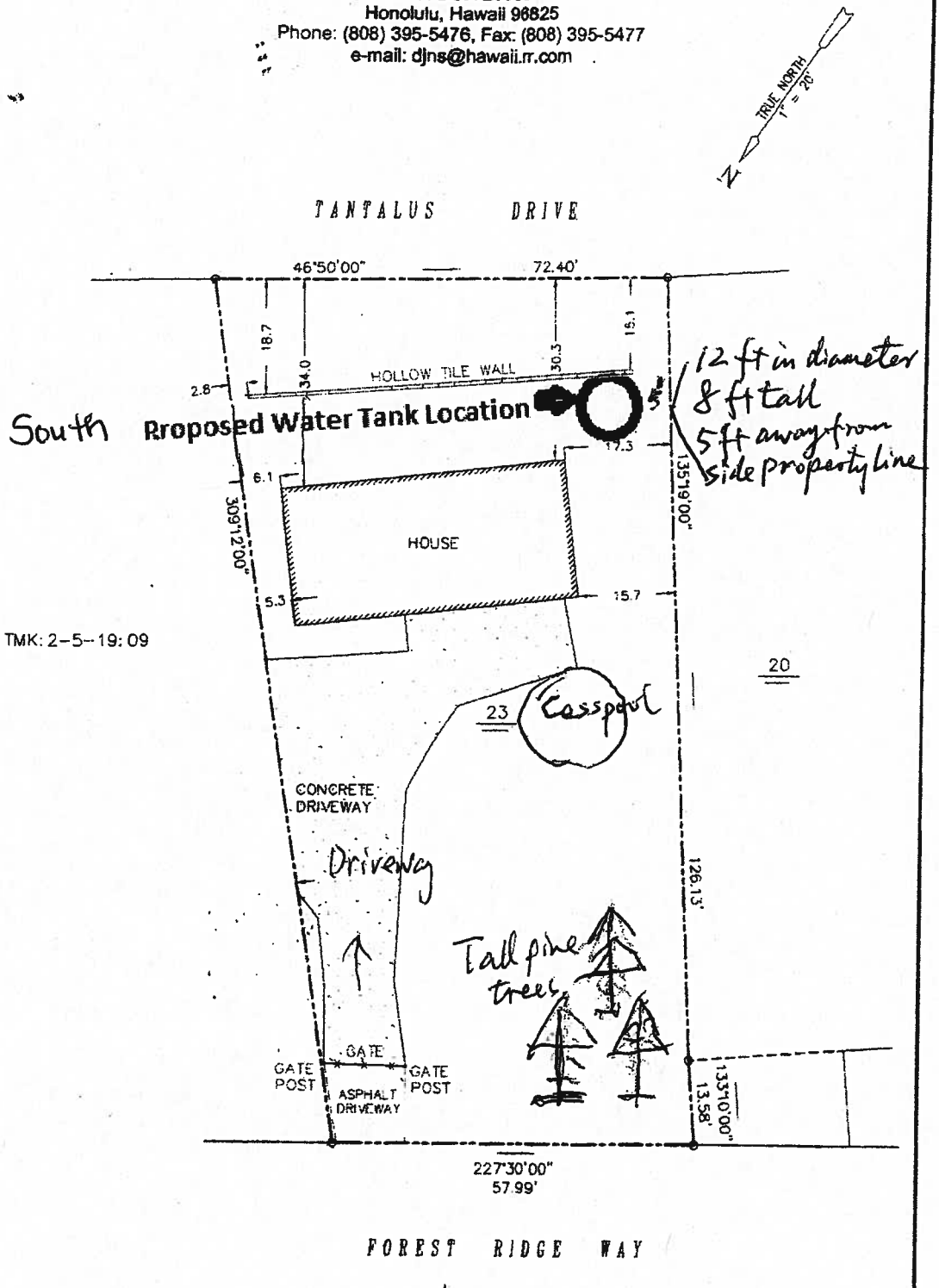

Site Plan

EXHIBIT B

DENNIS K. HASHIMOTO
LICENSED PROFESSIONAL LAND SURVEYOR
No. 5688
HAWAII, U.S.A.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION.

DENNIS K. HASHIMOTO

PLOT PLAN TAX MAP KEY: 2-5-16:23		
1" = 20'		NMH
OCT. 6, 2014		-
HONOLULU, OAHU, HAWAII FIELD BOOK – 593:37 & 676:26		11219

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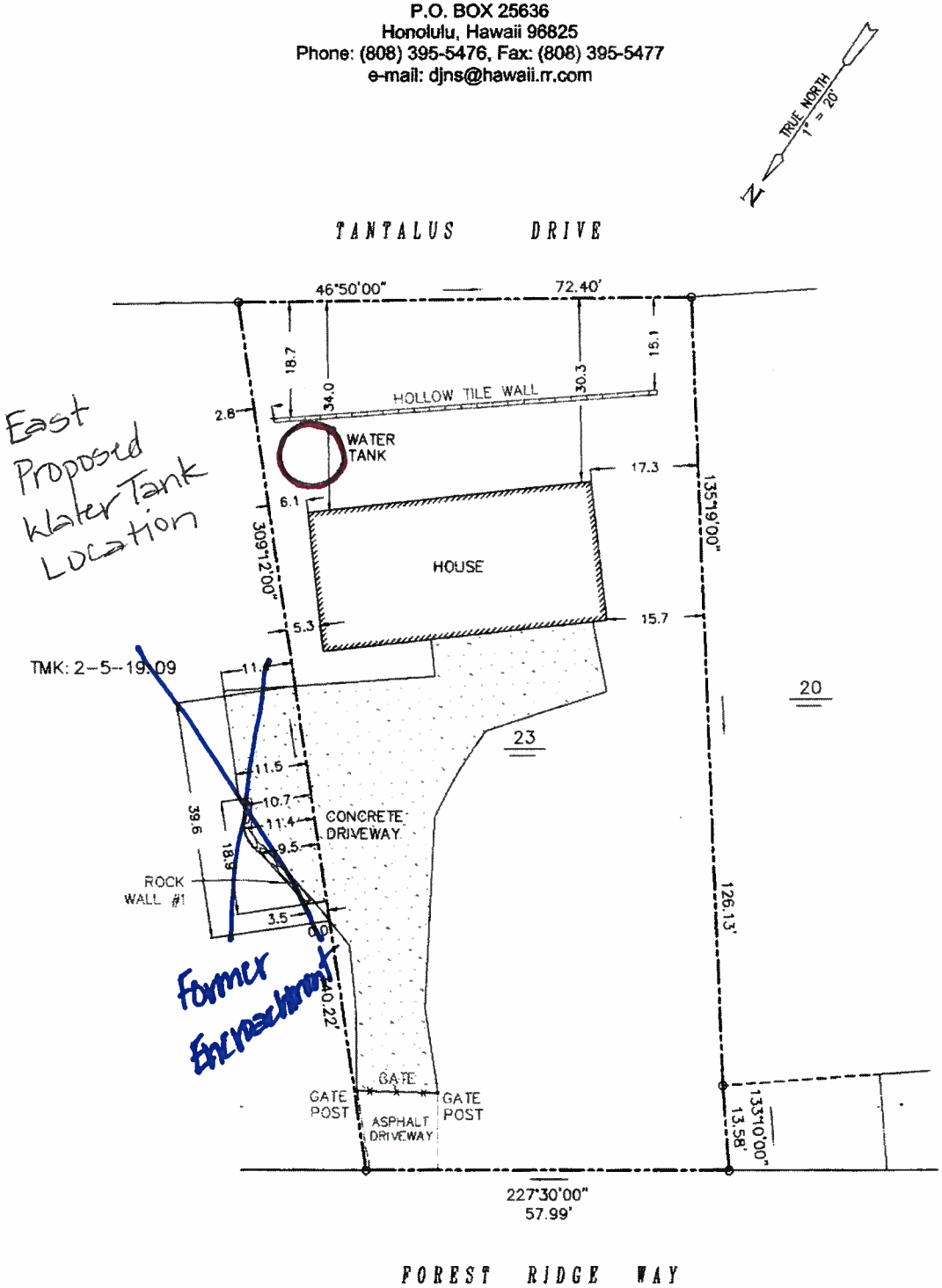

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DENNIS K. HASHIMOTO

PLOT PLAN TAX MAP KEY: 2-5-16:23		
SCALE: 1" = 20'	APPROVED BY:	DRAWN BY: NMH
DATE: OCT. 6, 2014		REVISED: –
HONOLULU, OAHU, HAWAII FIELD BOOK – 593:37 & 676:26		JOB NUMBER: 11219

EXHIBIT C

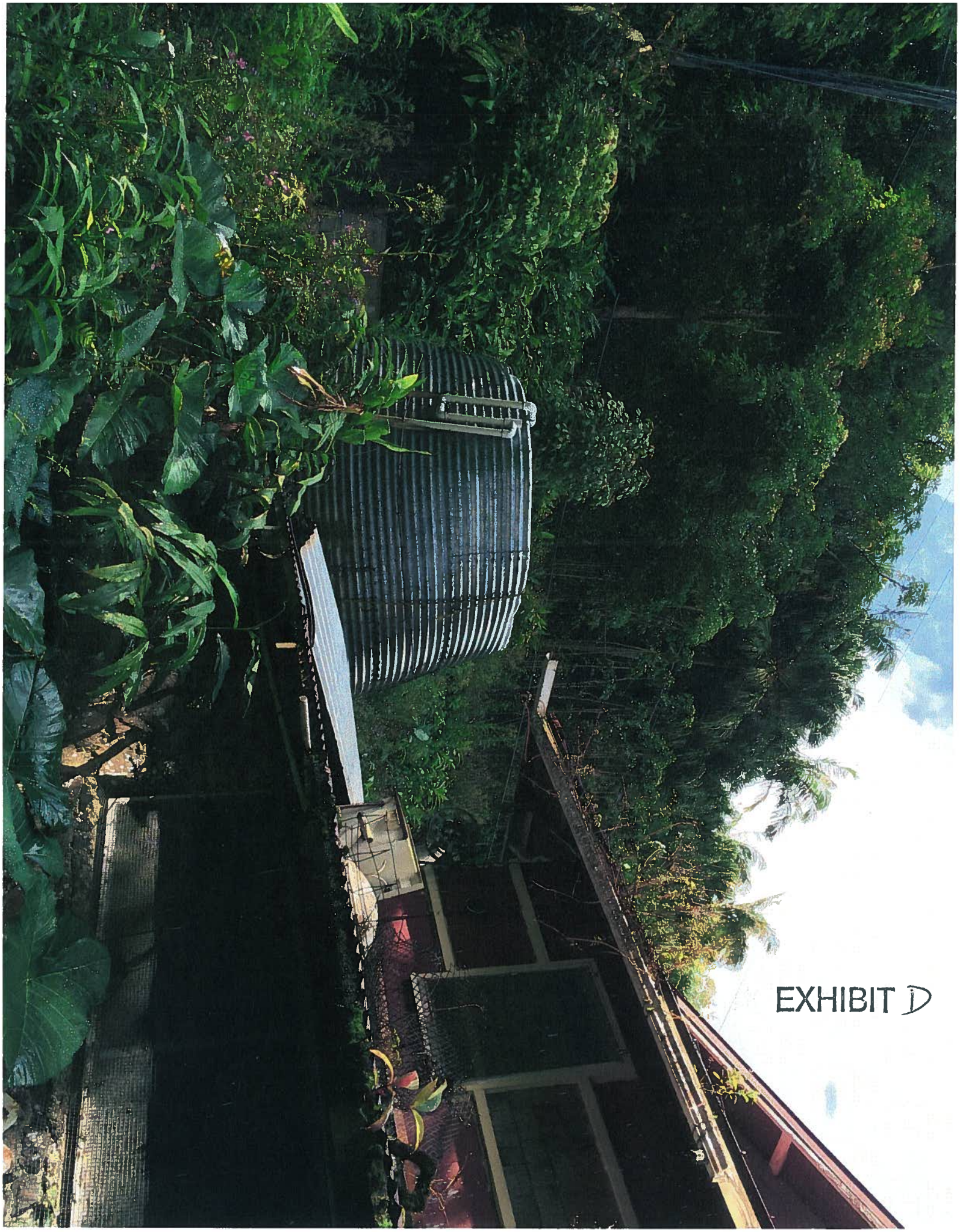

EXHIBIT D

am 11/14/05; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-41.1 Fire buffer zone. Where requested by the department, fire buffer zones shall be established and shall include the requirements listed in Exhibit 5, entitled "Fire Buffer Zone Standards: August 12, 2011", which is located at the end of this chapter and made a part of this section. [Eff and comp] Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use permitted within the conservation district is subject to the following standard conditions:

(1) The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

(2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

(3) The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;

(4) The permittee shall comply with all applicable department of health administrative rules;

(5) The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;

EXHIBIT E

(6) The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;

(7) Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

(8) Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;

(9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

(10) The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

(11) In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be

modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

(12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;

(13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;

(14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

(15) Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;

(16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;

(17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;

(18) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days unless otherwise provided for in a plan on file with and approved by the department;

(19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;

(20) Animal husbandry activities shall be limited to sustainable levels in accordance with good

soil conservation and vegetation management practices;

(21) The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;

(22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;

(23) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

(24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;

(25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and

(26) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

(c) Deviation from any of the conditions, standards, or criteria provided in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

(1) The deviation is necessary because of the lack of practical alternatives;

(2) The deviation shall not result in any substantial adverse impacts to natural resources;

(3) The deviation does not conflict with the objective of the subzone; and

(4) The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before the deviation occurs constitutes cause for permit revocation. [Eff 12/12/94; am and comp] Auth: HRS §183C-3) (Imp: HRS §§183C-4, 183C-6)

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) Unless otherwise authorized, all time extensions shall be submitted to the department prior to the expiration deadline.

(e) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.