 REGARDING: Conservation District Use Application (CDUA) OA-3739 for a Single Family Residence (SFR) & Related Improvements

APPLICANT/LANDOWNER: Adam Spurgat and Jacey Waterhouse

LOCATION: Tantalus, island of O‘ahu
TMKs: (1) 2-5-018:016

AREA OF PARCEL: Approximately (≈) 1.5-acres

USE: ≈ 3000-ft²

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE (EXHIBITS A, B, C & D)
The subject area exists in the Kona District of the island of O‘ahu within the mauka portion of Honolulu in Tantalus. The property is approximately (≈) 1.5-acres and lies within the Resource subzone of the Conservation District. Single-family residences have been an established use in the Tantalus area for over a hundred years.

The property is bounded to the northeast and southwest by the Honolulu Watershed Forest Reserve, to the west and northwest by a residence, and to the southern and southeast by Round Top Drive. The property slopes up and away from Round Top Drive with slopes from a 5% grade in the east/southeast corner to 20% grade along the west boundary. The proposed house site will be setback 97-feet from and approximately 26-feet above Round Top Drive.

Primary access to the subject area is from Round Top Drive, a two-lane asphalt road with no shoulders owned and maintained by the City & County of Honolulu. Electricity may be provided via overhead lines. Telephone and cable services are available. The subject property does not have municipal water or sewer services and is vacant with no structures.
According to the information presented, the parcel has forested and open areas and is vegetated with native and introduced species. The parcel was once part of a bigger estate that was established in the early 1900’s. Existing vegetation consists of a variety of native and non-native flora. Native flora includes Koa, Ekaha, Hapu‘u, Ohia lehua, Mamaki, Hala, Naio, and Hao.

Native birds that may be found in the vicinity include Apapane, Amakihi, and more rarely the Pueo. The Federally listed endangered Hawaiian Hoary Bat and the threatened Newell’s Shearwaters may fly over the area. Common introduced birds are present in the area as well as domestic mammals such as dogs, cats, rodents and feral pigs. No rare, threatened or endangered plant or animal species or significant habitats are known to exist on the subject property. There are no known archaeological or cultural resources on the property.

OCCL staff visited the property in February 2015 with the landowner and noted the site appeared as described in the application and preliminary building plans. Staff noted lehua, koa, hala, monstera, bromeliads, epiphytes and a broad lawn. Invasive trees had previously been removed and vegetation that includes lau ae and kalo were rejuvenating the area. Staff also noted remnants of trash were in the adjacent State property. When asked, the landowner stated there were individuals that trespassed on the property and the adjacent State property.

PROPOSED USE (EXHIBITS E, F & G)

According to the information provided, the proposed 2,922-ft² residence is a linear post on pier construction with a lower level garage area. The proposed SFR consists of 3 bedrooms, 2 baths, a kitchen/dining/living room, and lanai area. The residence will have 1783-ft² enclosed living area and 998-ft² garage area. Other improvements include three 6,000-gallon water tanks, a 250-gallon propane tank, an individual wastewater system and a 12-ft wide concrete and gravel driveway that includes a 40-ft² turn around.

According to the applicants, the design incorporates muted natural colors for the structure and driveway and the exterior materials have been chosen to ensure the home fits within the natural and conceptual surroundings and will be minimally visible. The siding of the dwelling will be a mixture of cement board siding products as well as painted sheet metal materials over the basic wooden frame. The roof will be covered in standing-seam sheet metal panels for rainwater catchment purposes.

The driveway will be constructed of gravel with a small concrete entry/exit section where it connects with Round Top Drive. An expanded turning area will serve as a vehicle maneuvering and guest parking area. The driveway will terminate at a lower level garage beneath the main living area of the residence.

No mature native trees will be removed for the construction of the residence and driveway. Grading for portions of the property will be done to minimize altering existing topography as design features have been incorporated to work within the slope and natural configuration of the property’s terrain. This would include:
• The linear design of the residence to decrease the need for extensive grading and cut and fill;
• Driveway location at the most broad, gently sloped portion of the property for visible safe ingress/egress;
• Driveway path to follow the natural contours of the terrain;
• Utilizing existing vegetation and mature trees to screen the driveway and residence;
• Siting the home in a less vegetated area consisting of mostly non-native flora; and
• Retaining the vegetation along the Tantalus roadway to retain the wooded and scenic drive.

The neighboring residences are across the street and downslope of the site with one residence upslope and 46-feet higher in elevation than the proposed project location. The Forest Reserve bounds the property to the northwest and southwest. Therefore it is believed the proposed residence would not affect the neighbor’s views. 90% of the property will be left in open space.

The structural design and siting of the residence as well as the design of the wastewater system has taken into consideration the soil conditions. Best Management Practices (BMP) will be observed during construction. Runoff will be directed into the rainwater catchment system or into vegetated and gravel areas designed to encourage absorption and minimize sheet runoff.

Construction shall be in compliance with Federal, State and Hawaii County laws. Standard Best Management Practices will be observed. Within the Environmental Assessment, the applicant has proposed and will observe several practices and mitigation for the short-term construction phase and long-term residential living to insure no adverse impacts to the environment, neighbors and household.

Proposed landscaping will be planting of native flora along the pathway leading to the house entry. The remainder of the property will be maintained with the existing native and non-native flora. The purpose of the proposed use is to provide a residence for the applicants and their children.

Alternatives
The applicant has not proposed any alternatives to the proposed action other than no action- the residence would not be built and the lot would remain undeveloped. No other uses are desired by the landowner for the property.

During the site visit in February 2015, staff inspected the property for alternative sites. However, staff concluded the proposed location appeared to be the best site for the residence as the area was void of native trees, appeared to be a slight plateau whereas other portions of the property were steeper and the residence would comply with setbacks.

SUMMARY OF COMMENTS
The application was referred to the following agencies for their review and comment: the State: Department of Health; Office of Hawaiian Affairs; Office of Environmental
Quality Control; Department of Land and Natural Resources Divisions of Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Na Ala Hele, O'ahu District Land Office, Historic Preservation; State Parks and the City & County of Honolulu: Department of Planning, the Fire Department, the Makiki/Punchbowl/Tantalus Neighborhood Board and the Tantalus Community Association. In addition, this application was also sent to the nearest public library, the Hawai'i State Public Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following agencies:

STATE OF HAWAII

DEPARTMENT OF HEALTH

Environmental Planning Office
No comment

Clean Water Branch
1. Any project and its potential impacts to State waters must comply with HAR, §11-54-1.1, Anti-degradation policy; §11-54-3, designated uses; §11-54-4 through 8, water quality criteria;
2. You may be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharge into state waters;
3. It is the State's position that all projects must reduce, reuse, and recycle to protect, restore, and sustain water quality and beneficial uses of State waters.

Applicant’s response
Design features of the proposed residence as well as project planning and development of the property will incorporate applicable regulations related to the Clean Water Branch program.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Engineering
Please take note that the project site according to the Flood Insurance Rate Map (FIRM) is located in Zone X. The National flood Insurance Program (NFIP) does not regulate developments within Zone X.

Forestry and Wildlife

- All structures should be at minimum, 30-feet from the Forest Reserve. This is the standard recommended distance for Firewise communities to increase survivability in the event of a wildfire. It also increases survivability of structures from falling trees from the Forest Reserve.
- All plants for landscaping shall have either an “L” or an “L (Hawai‘i)” designation on the Hawai‘i Pacific weed Risk Assessment website.
Board of Land and Natural Resources

- Grading from construction shall retain all topsoil and return topsoil to the highest horizon for areas not covered by concrete.
- All water drainage from property shall be dispersed to avoid channeling.
- Water catchment tank should have a 1.5" outlet for fire suppression.

**Applicant's response**

- The closest point of the structures to the Forest Reserve boundary is just over 134-feet.
- There is a small section of landscaping planned, ≈ 140-ft². The landscaped plan in our application outlined “that plant materials that are native or indigenous to Hawai‘i will be given preference.” All species used will have the requested “L” or “L (Hawai‘i) designation. Hui Ku Maoli Ola [Native Plant Landscaper] designed a preliminary layout and will supply the plants for the project.
- Topsoil that becomes disturbed during construction will be retained within the subject property and returned to the highest horizon for any area not covered by concrete.
- The project incorporates designs to retain as much existing topography and maintain the current water drainage pattern; dispersed sheet flow from the northwest. The entire footprint of the residence is covered under roof and divers all rainwater into three 6,000-G above ground storage tanks. The drive surface is composed of crushed gravel and is permeable.
- A 1.5" outlet will be installed with the water catchment system. Additionally, there will be a National Fire Protection Association compliant fire sprinkler system designed and will be installed in the residence for additional fire prevention services.

**Historic Preservation (LATE comment)**

Our records indicate that no archaeological inventory survey (AIS) has been conducted within the project area, and that no archaeological historic properties have been identified. Previous archaeological studies indicate potential exists for human burials to be present within the volcanic cinder and ash deposits within the greater Tantalus area; however, these sensitive deposits are not identified as being present within the current project area. Several studies indicate Tantalus Round Top Drive (a State Historic Site) is in close proximity to the proposed construction site. An ingress and egress route to the proposed residential site is via Round Top Drive. In addition, the extent of ground disturbances will require heavy machinery to traverse Tantalus Round Top Drive.

We request the following conditions be attached to the permit:

1. No impacts to Round Top Drive will occur including removal of curbs, damage to pavement, and clearing of shoulder area.
2. In the event that historic resources, including human skeletal remains, cultural layers, cultural deposits, features, artifacts, or sinkholes, lava tubes or lava blisters/bubbles are identified during construction activities, all work should cease in the immediate vicinity of the find, the find should be protected from additional
disturbance, and the State Historic Preservation Division should be contacted immediately at 808 692-8019.

With the aforementioned conditions in place, we believe no historic properties will be affected.

*Na Ala Hele*
No comments

*O'ahu District Land Office*
No comments

*Office of Conservation and Coastal Lands (OCCL)*
Please discuss if any mature native trees will be removed.

*Applicant's response*
No native mature trees will be removed in any phase of construction for the residence. Within the Environmental Assessment, it has been stated that only introduced or non-native trees will need to be removed. All trees, including natives, were identified in the site plan drawings to indicate strategic planning efforts were made on our behalf to ensure that no native mature trees would be impacted during the construction of the residence.

*Parks*
No comments

**CITY & COUNTY OF HONOLULU**

*Fire Department*

1. Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150-feet from fire department access roads as measured by an approved route around the exterior of the building or facility.

   A fire department access road shall extend to within 50-feet of at least one exterior door that can be opened from the outside and that provides access to the interior of the building.

2. A water supply approved by the county, capable of supplying the required fire flow for fire protection, shall be provided to all premises. Facilities or buildings in excess of 150-feet from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided.

3. Submit civil drawings to the HFD for review and approval.
Applicant’s response
We have met with the Honolulu Fire Department (HFD). HFD confirmed with the installation of an automatic sprinkler system in the residence, the design incorporates applicable fire regulations mentioned. Civil drawings will be submitted to HFD for review and approval.

Department of Planning and Permitting
No comments

Tantalus Community Association
The proposed project has been designed to minimize its impact on the environment and on neighboring properties. We also appreciate that it takes advantage of the local topography, views, and cooling trade winds.

We have no objection to the project, and have received no negative comments from TCA members. We request that the immediate neighbors be individually informed about the project.

ANALYSIS
After reviewing the application, by correspondence dated February 17, 2015, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to §13-5-24, Hawaii Administrative Rules (HAR), R-7, SINGLE FAMILY RESIDENCE, (D-1) A single family residence that conforms to design standards as outlined in Chapter 13-5, HAR. Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to §13-5-40 of the HAR, a Public Hearing will not be required;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project; and

4. The proposed project is not within the Special Management Area.

In addition, a FONSI to the environment was published in the May 8, 2015 Environmental Notice.

CONSERVATION CRITERIA
The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. The proposed land use is consistent with the purpose of the Conservation District.

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.
The proposed use is an identified land use in the Resource subzone of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. Single Family residences have been an established use on Tantalus for over a century.

No rare, threatened or endangered plant or animal species or significant habitats are known to exist on the subject property. No Archaeological and cultural resources have been identified on the property.

2. **The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.**

The objective of the Resource subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas. A Single Family Residence is an identified land use pursuant to the HAR, §13-5-24, R-7, SINGLE FAMILY RESIDENCE (D-1) A single family residence that conforms to design standard as outlined in Chapter 13-5. Because the project area is within an established neighborhood and shall conform to design stands set forth in 13-5, HAR, Staff believes the proposed land use is consistent with the objectives of the subzone.

3. **The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.**

The project site is not located within the Special Management Area. Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management: No significant public views will be impacted, the project has been designed to minimize grading; Best Management Practices (BMPs) will be implemented to minimize potential impacts during construction and an approved wastewater treatment system will be utilized to dispose of wastewater.

4. **The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.**

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region provided that mitigative measures are implemented and the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard that the project may cause.

There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality.

5. **The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.**
Staff is of the opinion that the proposed project will be compatible with the locality and surrounding areas and is appropriate to the physical conditions and capability of the specified parcel.

Staff believes that the proposed residence will not be detrimentally visible to the public along trails or along Round Top Drive or will the proposed house impact other residents’ views in the vicinity. The applicant wishes to retain all existing native mature tree growth. With the exception of the residence, the other 90% of the property will be kept open and not developed.

6. **The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.**

The site does not contain unique features either topographically or geologically. Although a structure will exist where no structure existed before, the applicant will take appropriate steps to mitigate potential impacts to enhance the subject parcel. The proposed project is intended to blend visually with the surroundings and it is believed there shall be no view impacts to the public or the neighbors.

The presence of the residence and people may curtail trespassing on this property and the adjacent state parcel.

7. **Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.**

No subdivision of land is proposed for this project.

8. **The proposed land use will not be materially detrimental to the public health, safety and welfare.**

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare as mitigated. With the incorporation of an appropriately designed and operated individual wastewater system, combined with other BMPs identified, the proposed residential land use will not result in materially detrimental impacts to public health, safety and welfare.

**CULTURAL IMPACT ANALYSIS**

The applicant’s family has been on this land for over 75 years. No gathering or traditional practices have been observed. During the processing of this application, no comments were received from native practitioners or the Office of Hawaiian Affairs. The proposed action does not appear to affect traditional Hawaiian rights. It is believed that the project will not impair, diminish, or preclude customary or traditional native Hawaiian rights and no action is necessary to protect these rights.
In the unlikely event that archaeological features are uncovered, all work will stop and immediate archaeological consultation will be sought with the State Historic Preservation Division in accordance with applicable regulations.

**DISCUSSION**

The proposed use is a modest 2,922-ft\(^2\) residence is a linear post on pier construction with a lower level garage area within an established residential area. The proposed SFR consists of 3 bedrooms, 2 baths, a kitchen/dining/living room, and lanai area. The residence will have 1783-ft\(^2\) enclosed living area and 998-ft\(^2\) garage area. Other improvements include three 6,000-gallon water tanks, a 250-gallon propane tank, an individual wastewater system and a 12-ft wide concrete and gravel driveway that includes a 40-ft\(^2\) turn around.

The applicants have incorporated a number of design features to minimize grading and altering existing topography and to work within the slope and natural configuration of the property’s terrain. Staff notes during construction, Standard Best Management Practices will be observed. Within the Environmental Assessment, the applicant has identified a number of mitigative measures, conditions and practices to ensure that the proposal will have minimal effects on the natural resources of the land. As such these proposed measures, conditions and practices are incorporated into the permit.

The proposal is consistent with Chapter 13-5, Hawaii Administrative Rules, Exhibit 4, Single Family Residential Standards. Compatibility provisions such as the use of earth toned or compatible colors with the surrounding area will be utilized on the exterior of the residence.

Staff believes that the project will have negligible adverse environmental or ecological effects provided that best management practices and mitigation measures as described in the application and environmental assessment, and as required by rule or laws, are fully implemented.

**RECOMMENDATION**

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE Conservation District Use Application OA-3739 for a Single Family Residence (SFR) & Related Improvements located at Tantalus, island of O‘ahu TMK: (1) 2-5-018:016 subject to the following 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 comply with all applicable department of health administrative rules;

4. 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;

5. 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;

6. 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;

7. 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;

8. All representations relative to mitigation set forth in the accepted application and environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

9. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;

10. The permittee shall notify the Office of Conservation and Coastal Lands (OCCL) in writing prior to the initiation and upon completion of the project;

11. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
12. The permittee shall utilize Best Management Practices for the proposed project;

13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;

14. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Chapter 13-5;

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

16. 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;

17. 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;

18. 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;

19. Obstruction of public roads, trails, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, or pathways acceptable to the department;

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

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. 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. All exterior lighting shall be shielded to protect the night sky;

23. 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;
24. Any landscaping will shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawai‘i. The introduction of invasive plant species is prohibited;

25. Failure to comply with any of these conditions shall render this Conservation District Use Permit void under Chapter 13-5, as determined by the chairperson or board.

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