

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

FILE NO.: CDUA KA-3857
REF: OCCL: MC
Acceptance Date: December 2, 2019
180 Exp. Date: May 26, 2020

May 8, 2020

REGARDING: Hā'ena 0.2 MG storage tank

APPLICANT: County of Kaua'i Department of Water
3498 Pua Loke Street, Līhu'e, HI 96766

AGENT: Laurel Loo
4357 Rice Street, Līhu'e, Kaua'i 96766

LANDOWNER: Keith and Bruce Robinson

LOCATION: Wainiha, Kaua'i

TAX MAP KEY: (4) 5-8-002:003 and 007

SUBZONE: Limited

PROJECT PROPOSAL

The County of Kaua'i Department of Water (KDOW) proposes to install a new 0.2 MG storage tank on the above subject parcel. KDOW intends to integrate the new steel tank into the existing Wainiha-Hā'ena potable water distribution system. Other infrastructure in the area includes a 0.1 MG water storage tank adjacent to the project site, a 6500-gallon storage tank approximately 200 feet uphill of the project site, and a booster pump station 300 hundred feet downhill from the project site. The facilities are surrounded by chain link fences and a locked gate. They are not accessible to the public.

The new tank will be approximately 37 feet in diameter and 29 feet in height. The floor will be comprised of a reinforced six-inch concrete pad. Potable water will be piped into the new tank from underground pipelines connected to KDOW's Wainiha booster pump station.

A new underground utility pipeline will be installed to connect the booster station with the tank. Trenching will be one-foot wide by three-feet deep for three hundred linear feet.

Access to the site is via a graded, twelve-foot wide unimproved earthen road that connects with the Wainiha Powerhouse Road.

Approximately twenty Java plum (*Syzygium cumini*) and thirty strawberry guava (*Psidium cattleianum*) will be removed.

A portion of the existing drain line, drainage outlet, and accompanying rip-rap serving the existing 0.1 MG tank will be removed. A new expanded rip-rap outlet with energy dissipaters will be constructed in place of the demolished rip-rap.

The project site has a 42% grade which will need to be graded flat. To accomplish this, the land upslope of the project area will be cut up to 27-feet in height and held back by a retaining system. The applicant proposes using a soil-nail wall system to hold back the upslope hillside. The excavation will occur in stages, while grouted rebar will be simultaneously installed. Once the nails have been installed a concrete finish will be placed on the face of the cut. The finished soil-nail wall will be 135-feet long and 2.5 to 27.5 feet tall.

A concrete swale will collect and drain water around the diameter of the tank and perimeter road. The swale will direct water to one of two grouted rip-rap at the base of the wall; the rip-rap will dissipate the stormwater into sheet flow. The applicant does not anticipate any overall change in flow direction.

The estimated timeline for the project is:

- Clearing and grubbing: 1-2 weeks
- Mass grading: 4 weeks
- Construction of retaining wall: 8-12 weeks
- Installation of underground utilities: 2 weeks
- Fine grading: 2 weeks
- Tank construction: 12 weeks
- Finish work: 4 weeks

LIST OF EXHIBITS

- Exhibit 1 – Project location
- Exhibit 2 – Hā'ena-Wainiha water system
- Exhibit 3 – Site photos (provided by applicant)
- Exhibit 4 – Project site plan

SUMMARY OF COMMENTS

The OCCL consulted the following persons and agencies:

Department of Land and Natural Resources (DLNR), Commission on Water Resource Management (CWRM, Kaua'i Land Division, Office of Historic Preservation, and Division of Forestry and Wildlife; Office of Hawaiian Affairs; and Kaua'i County Department of Planning.

The CDUA was also available for public review at the Līhu'e Regional Library and on OCCL's website at dlnr.hawaii.com/occl, and a notice was published in the December 8, 2019 edition of the Office of Environmental Quality Control's *Environmental Notice*.

OCCL did not receive any comments on the proposal.

ANALYSIS

Following review and acceptance for processing, the applicant was notified, by letter dated December 4, 2019, that:

1. The proposed use was an identified use within the Conservation District pursuant to Hawai'i Administrative Rules (HAR) §13-5-22, Identified Land Uses in the Conservation District, P-6 PUBLIC PURPOSE USES, (D-1) *Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.* This use requires a permit from the Board of Land and Natural Resources (BLNR). The final decision as to whether to grant or deny the permit lies with the Board.
2. A public hearing pursuant to HAR §13-5-40 was not required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out. An Environmental Assessment was prepared for the project by Shiramizu Loo & Nakamura LLP. The County of Kaua'i Department of Water was the approving agency; they issued a Finding of No Significant Impact (FONSI) on March 22, 2018.

SECTION 13-5-30 CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawai'i Administrative Rules (HAR).

1. *The proposed 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.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area.

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

Pursuant to HAR §13-5-14, the objective of the Limited Subzone *is to limit uses where natural conditions suggest constraint on human activities.*

The project is designed to accommodate a growing population makai of the subject parcel, in the urban and agriculture districts. It will not facilitate greater development or urbanization of the Conservation District. As a public purpose use, it is an identified land use in the Limited Subzone.

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

The project location is over 0.25 miles inland and will not have a direct impact on coastal processes. Stormwater runoff and drainage will be managed to minimize the potential for erosion. It is not proposed for a location with known recreational activities. There are no known historical resources on the project site. The project site is on a vegetated hillside and will not be visible from any significant view plains.

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

Staff is of the opinion that the project will have little to no impact on the existing natural resources of the area.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Water tanks that are similar in design and size are common and necessary features of communities in Hawai'i. There is an existing water tank nearby, and staff is of the opinion that it is aesthetically better to place a new one in the same area rather than in a relatively untouched area. The proposed use is thus a visually and functionally appropriate use for the subject parcel.

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

The hillside location is heavily vegetated, and the surrounding area forested. The project will be partially visible from Wainiha Powerhouse Road, but otherwise not be visible from outside the parcel, and will not affect natural beauty or open space.

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

The proposed project does not involve subdivision of Conservation District land.

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

The proposed action will not be materially detrimental to the public health, safety and welfare.

CULTURAL IMPACT ANALYSIS

In *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, 94 Haw. 31 (2000), the Hawai'i Supreme Court laid out a framework for assessing cultural impacts. An assessment must include:

- (1) The identity and scope of "valued cultural, historic, or natural resources" in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
- (2) The extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and

- (3) The feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist.

Archeological surveys of the site were conducted by Cultural Surveys Hawai'i (CSH). No middens, artifacts, or other definable evidence of culture were identified. This is consistent with other surveys of the area, which found that human activity was centered closer to the river basin rather than along the steep slopes of the property. CSH concluded that further archaeological research was not recommended.

The documents were submitted to DLNR's Historic Preservation Division for review and comment as part of the Pre-Assessment consultation process. SHPD subsequently issued a determination letter indicating that "an acceptable archeological assessment or inventory survey found no historic properties". Thus, the Historic Preservation Division concluded that "no historic properties will be affected" by this undertaking.

There are no known traditional or customary practices that occur within the project area.

Given this, OCCL does not recommend that the applicant or landowner take any additional actions to protect Native Hawaiian rights.

DISCUSSION

The proposed use is an identified use within the Conservation District according to the Hawai'i Administrative Rules (HAR), §13-5-23, P-6 PUBLIC PURPOSE USES.

The project involves construction of a public facility; its current estimated construction cost is \$3,819,000, which constitutes an economic benefit to the State's economy. The project's location is also suitable inasmuch as the new tank will be co-located adjacent to other KDOW water storage tanks and a nearby KDOW potable water booster pump station.

The project involves minimal landscaping. The intent is to minimize ground disturbances. It is anticipated that existing trees and vegetation will block views of the new tank from Wainiha Powerhouse Road.

The applicant has developed a list of Best Management Practices that will be followed during construction to minimize the risk of unintended environmental impacts.

The existing tank is similar in size and appearance to other tanks in rural Hawaiian communities. Its use and appearance are thus consistent with the culture and the landscape. The tank will be a passive use, and there should be no impact on the neighboring community besides the original construction and occasional periods of repair and maintenance.

No known archeological, cultural, or historic resources are known to exist within the project area; as such, no adverse cultural impacts are anticipated as a result of the new tank's construction. Should iwi kūpuna or Native Hawaiian cultural deposits be identified during any ground altering activities, all work will immediately cease and appropriate agencies (SHPD and the Kaua'i Police Department in the case of human remains), including the Office of Hawaiian Affairs, will be contacted.

Staff is of the opinion that the proposed project will not adversely affect the land, resources, or community of Wainiha. The proposal should actually benefit the community by improving the water supply.

Staff therefore recommends:

RECOMMENDATION

Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for the Hā'ena 0.2 MG water tank and associated site improvements at TMK (4) 5-8-002:003 and 007 in Wainiha, Kaua'i, 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 Hawai'i 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. 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;
5. 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;
6. 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;
7. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
8. 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;
9. 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;
10. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;

11. 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;
12. 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;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
14. 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;
15. 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 Hawai'i, and by Hawai'i statutory and case law;
16. 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 HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
17. Other terms and conditions as prescribed by the chairperson.
18. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Respectfully submitted,

S Michael Cain

Michael Cain, Planner
Office of Conservation and Coastal Lands

Approved for submittal

Suzanne D. Case

By: _____

SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

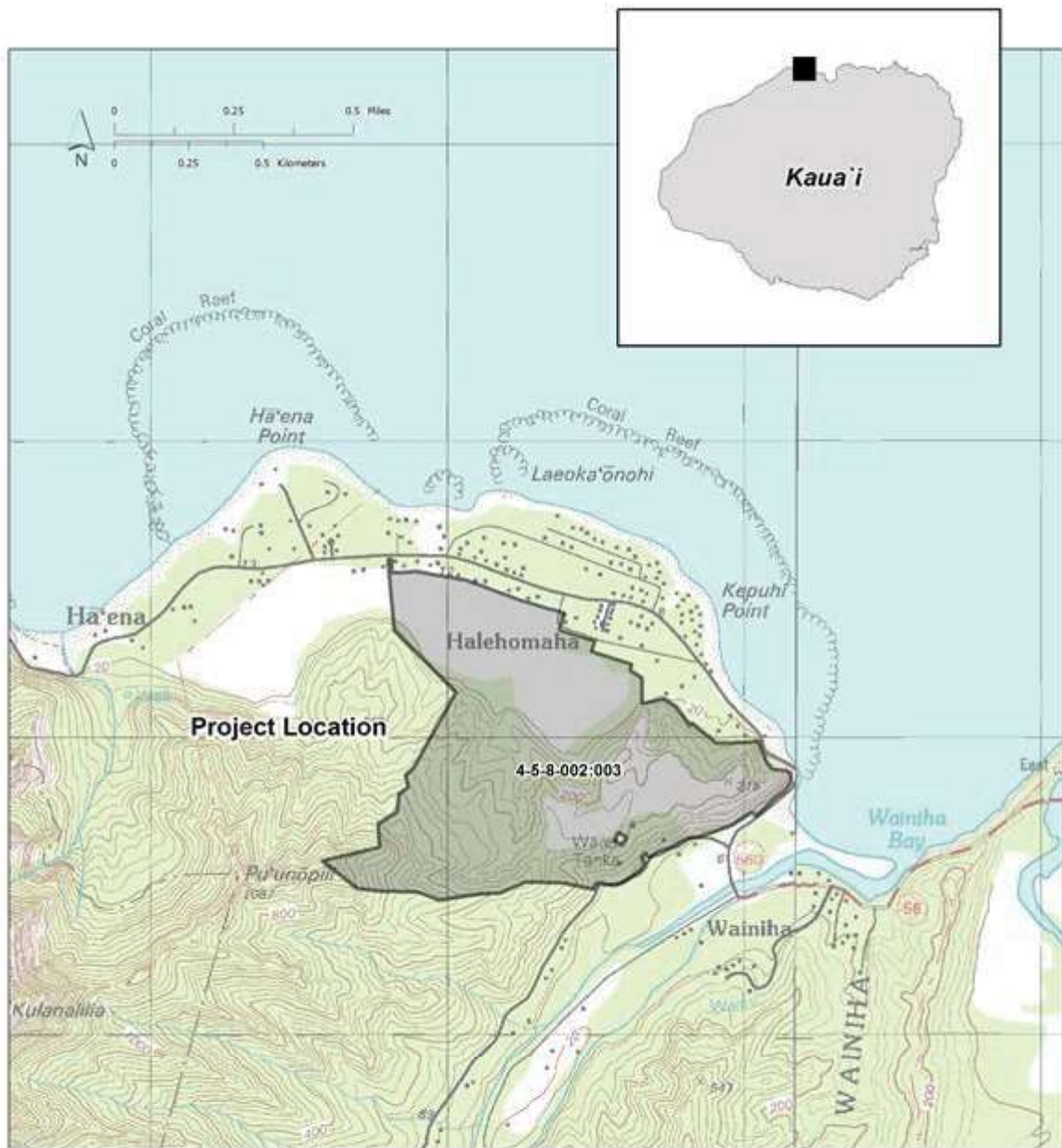


Exhibit 1 - Project location

EXHIBIT "A"

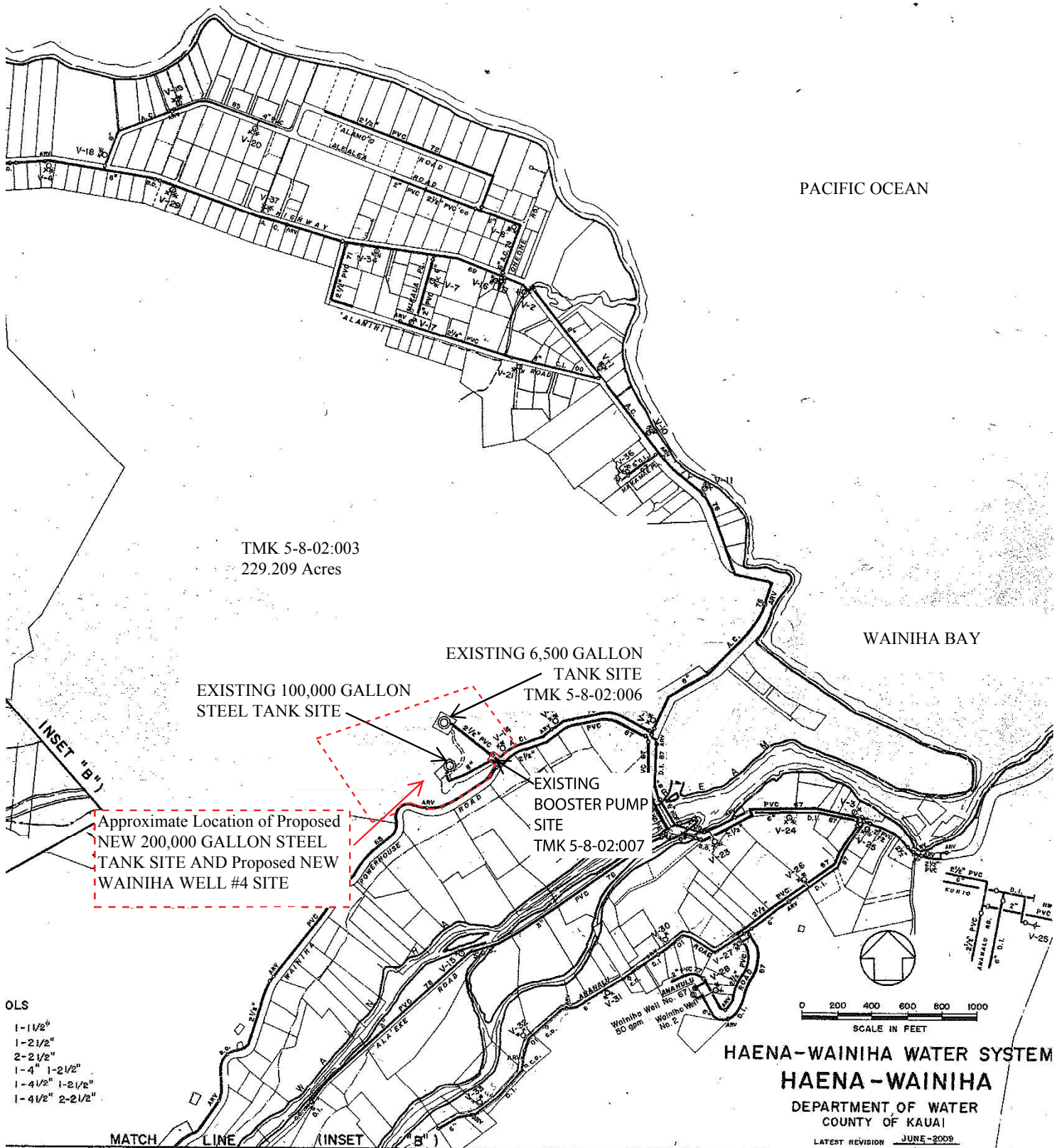


Exhibit 2 - Haena Wainiha water system

The following are typical views of the project area and KDOW's existing 0.1 MG tank. (Except for being larger in size, the proposed 0.2 MG tank and its immediate environs will be similar in appearance to the existing 0.1 MG Tank shown in the following views.)

Typical views of proposed project area:





View of KDOW's existing 0.1 MG tank:



View toward Wainiha Valley from locked access gate of 0.1 MG tank:



Transmission pipelines, control valves, and related facilities for 0.1 MG tank:



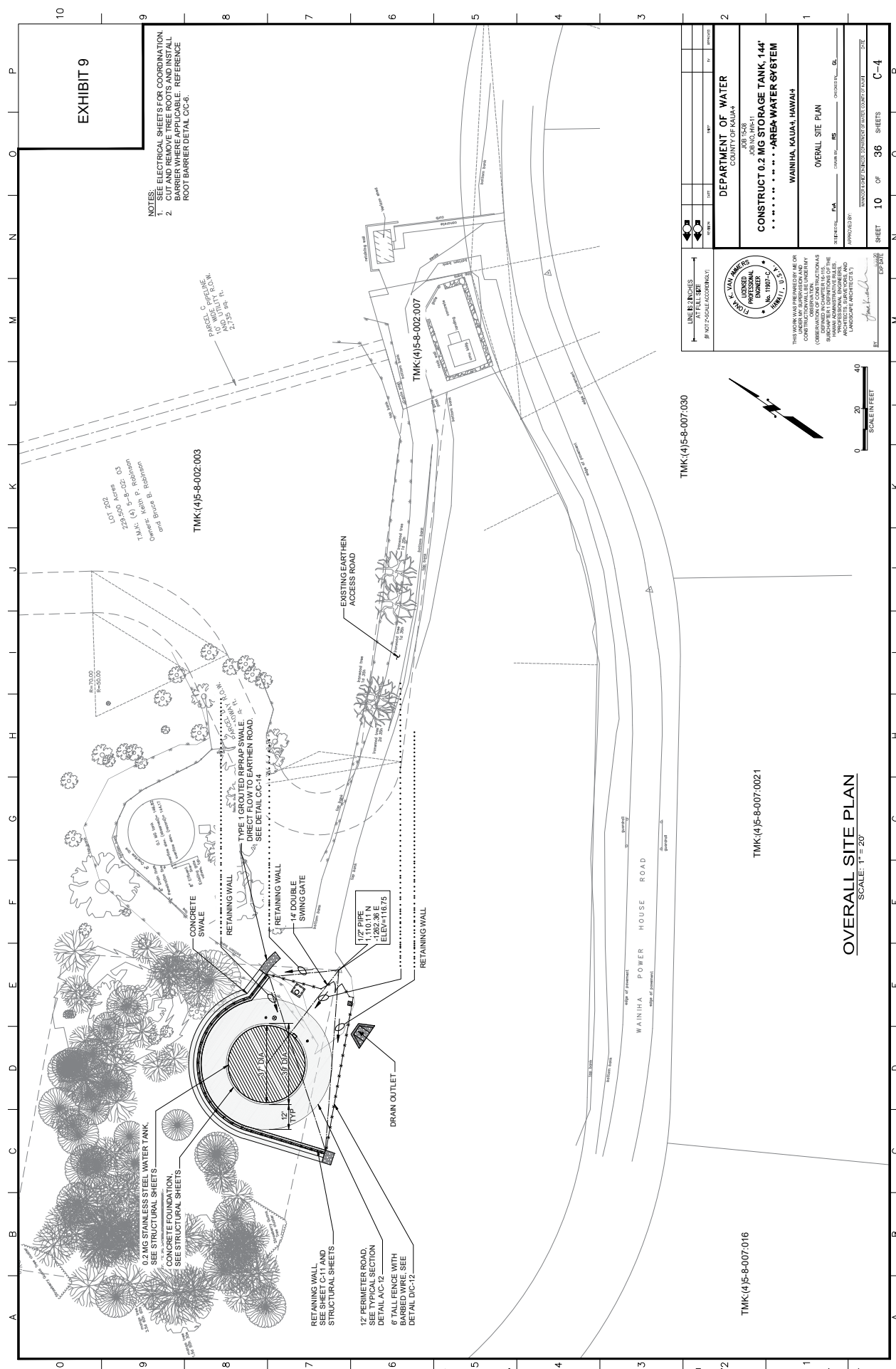


EXHIBIT 9

- NOTES:
1. SEE ELECTRICAL SHEETS FOR COORDINATION.
2. SEE MECHANICAL SHEETS FOR COORDINATION.
3. SEE CIVIL SHEETS FOR COORDINATION.
4. SEE STRUCTURAL SHEETS FOR COORDINATION.
5. SEE DETAIL CC-6.
6. SEE DETAIL CC-12.
7. SEE DETAIL CC-14.
8. SEE DETAIL CC-15.
9. SEE DETAIL CC-16.
10. SEE DETAIL CC-17.

DEPARTMENT OF WATER COUNTY OF KAUAI	
JOB NO. 15-038	
CONSTRUCT 0.2 MG STORAGE TANK, 144' DIAMETER, 14' DEEP, WITH 14' WATER SYSTEM	
WAINIHA, KAUAI, HAWAII	
DESIGNED BY: <u>PA</u>	CHECKED BY: <u>BS</u>
OVERALL SITE PLAN	
APPROVED BY: <u>[Signature]</u>	
DATE: <u>05/11/2017</u>	
SHEET 10 OF 38 SHEETS C-4	

Exhibit 4 - Project site plan