

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

July 12, 2024

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

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

LANDOWNER: George M. Hudes, trustee of the George M Hudes Trust

LOCATION: 3763 Round Top Drive, Tantalus, Oahu

TMK: (1) 2-5-018:035

SUBZONE: Limited and Resource

EXHIBITS: **1:** Location and Subzone Map;
2: Site Plan and Construction Drawing
3: Photos

Background

The approximately 20,272-ft² parcel lies in the Limited and Resource Subzones of the State Land Use Conservation District (**Exhibit 1**). According to the City and County of Honolulu property tax record, the residence was constructed in 1952 and consists of a home, garage, and carport, and thus, the dwelling has been recognized as a nonconforming use.¹ The property was purchased in 1997 by the applicant.

A former landowner constructed and placed the residence's water-catchment tank at the rear or east side of the property on a steep slope that quickly descends into Manoa Valley. The existing water-catchment tank's location is identified as Site #1 in **Exhibit 2**. The water-catchment tank is the only source of water for the residence on the property; however, the tank is old, in poor condition and needs to be replaced prior to failing (**Exhibit 3**). The applicant is proposing to replace and relocate the water-catchment tank

¹ "Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district. HAR § 13-5-2.

to a different site on the property due to the current location's limited access and steep slope, which are not ideal for potential construction and future maintenance activities.

On December 18, 2023, the Department issued Site Plan Approval (SPA): OA 24-18 for the replacement and relocation of the water-catchment tank. SPA: OA 24-18 authorized relocating the tank on an area of the property identified as Site #3 in **Exhibit 2**. After consulting with multiple mason contractors and the supplier of the rain-water catchment tank, the applicant was informed that Site #3 was not practical for two reasons. First, placing the pipes in or under the driveway would require cutting a channel in the driveway which could potentially undermine the structural integrity of the driveway. Secondly, placing the necessary piping and connections to the water-catchment tank on top of the driveway could potentially expose the infrastructure to additional wear and tear and more frequent damage or failure.

On April 24, 2024, the applicant submitted a second SPA application for the water-catchment tank replacement and relocation project (Ref. SPA: OA 24-46). Due to the lot size, the parcel's irregular shape, topography, and existing uses on the property, the landowner is proposing to relocate, construct, and place the water-catchment tank within the setback area of the property at approximately 7-8-feet from the nearest property lines. The applicant's request to relocate the water-catchment tank near Round Top Drive and the parcels entrance is identified as site #5 in **Exhibit 2** and pictured on page 15 in **Exhibit 3**. The Hawaii Administrative Rules (HAR), Chapter 13-5 Single Family Residential Standards states for lots under 1 acre, such as the subject property, the minimum setback is 15-feet.

Staff determined the proposed relocation and placement of the water-catchment tank within the setback and deviation request would require review and potentially authorization from the Board.

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.

HAR Chapter 13-5 Exhibit 4 Single Family Residential Standards, Minimum Setback in relevant part states *Exceptions: Site characteristics and lot shape may be a factor in adjusting minimum setbacks when so determined by the board.*

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 East and West portions of the property consist of steep slopes. The parcel contains the residence which was constructed prior to the advent of Conservation District rules and the standards for residences. The placement of the water tank in the proposed location 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 or other functions of the residence (**Exhibit 2**). The alternative sites that were considered but eliminated from consideration include Site #1, Site #2, Site #3, and Site #4 in **Exhibit 2**. Issues with Site #1 are discussed above. Staff notes that Sites #2 and #3, as well as other potential relocation sites would require a similar deviation request as they would also potentially be within the parcel's setbacks. Site #4 contains the property's septic system, which would likely be compromised by the construction and placement of the water tank and associated connection equipment. Additionally, the landowner has concerns about potential impacts to neighbors with Site #1 and Site #2, and the possibility of the tank failing or falling. Staff is of the opinion that there appears to be a lack of practical alternatives, so the deviation request is reasonable.
- (2) Staff believes there should be minimal to no substantial adverse impacts to natural resources as the tank will be placed within an area that will require minimal vegetation removal. The applicant may re-landscape the area as necessary. The steel tank will have a height of 10-foot, 9-inches and a diameter of 12-foot, 4-inches. The tank will sit on a 15-foot diameter, 4-inch layer of gravel, which will still allow for water percolation and thus minimal runoff (**Exhibit 2**).
- (3) The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human activities. HAR §13-5-12 Limited (L) subzone. (a). The objective of the Resource subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas. HAR §13-5-13 Resource (R) subzone. (a). The location of the current water-catchment tank is in the Limited subzone, but the proposed location will site the tank on the portion of the property that lies in the Resource subzone. 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. Additionally, a single-family residence is an identified land use that may be applied for in the Resource Subzone pursuant to HAR §13-5-24 SINGLE FAMILY RESIDENCE (D-1). Staff believes the water-catchment tank is a compatible use that allows for the sustainable use of natural resources of the area; and therefore, does not conflict with the objective of the subzone.
- (4) The water-catchment tank 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. Alternative site locations that were considered, such as Site #1 and Site #2 posed possible safety hazards due to steep slopes or drop-offs and being located upslope or above

nearby residences. Staff believes the placement of the water tank at the proposed Site #5 is not inconsistent with public health, safety, or welfare.

Discussion

Due to the property's constraints mentioned above, it appears the most suitable location to relocate the water tank would be the proposed location identified as Site #5, adjacent to the driveway off Round Top Drive. The tank will be sited and at least will be partially shielded from view by existing landscaping.

Setbacks 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 landowner is proposing landscaping to minimize the visual impact. At this property, the placement of the water-catchment tank at Site #5, adjacent to the driveway, would not impair emergency response access.

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, as identified as Site #5 in **Exhibit 2**, approximately 8-feet from the side and front property boundaries located at 3763 Round Top Drive, Tantalus, Oahu tax map key: (1) 2-5-018:035 subject to the following conditions:

1. Applicable standard conditions for the HAR, §13-5-42 Standard conditions; and,
2. Landscaping shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plants species is prohibited.

Respectfully submitted,



mc

Kariann Stark, Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Dawn S. Chang, Chairperson
Board of Land and Natural Resources

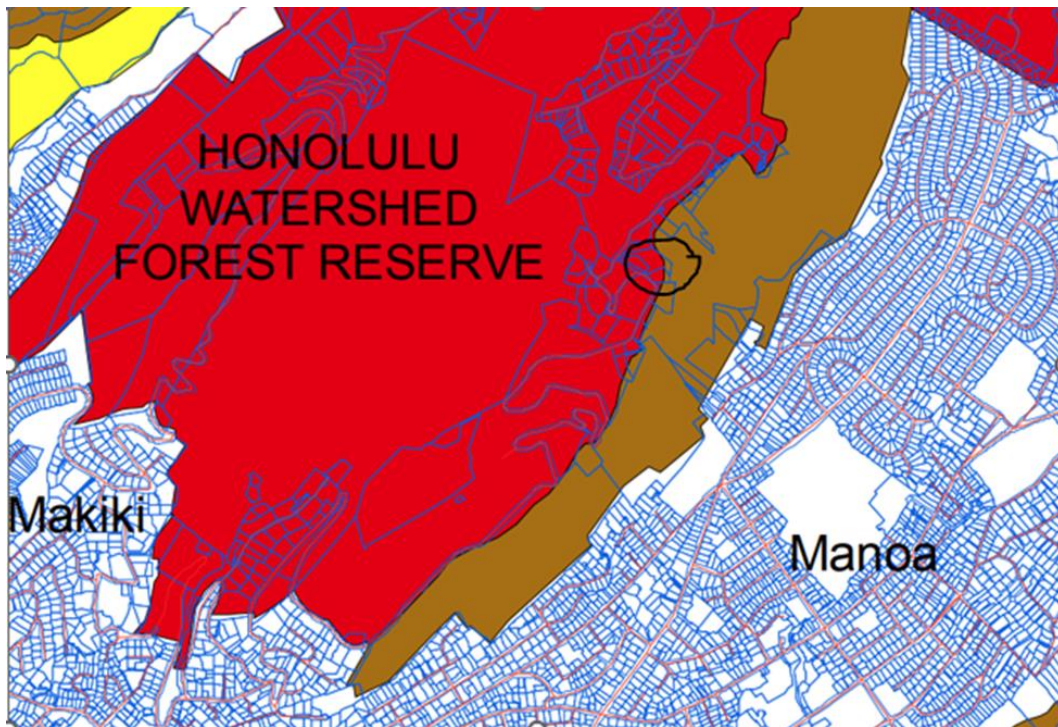
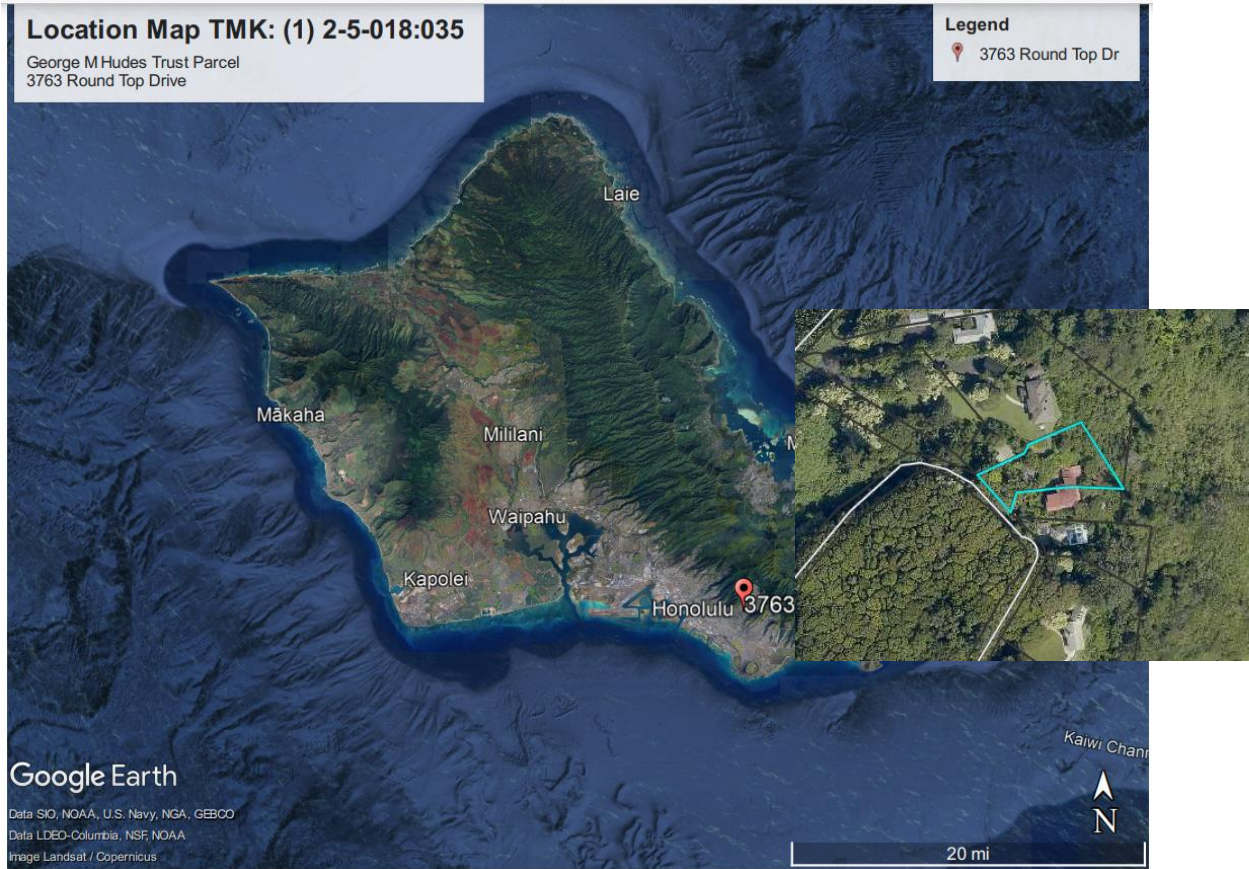


Exhibit 1

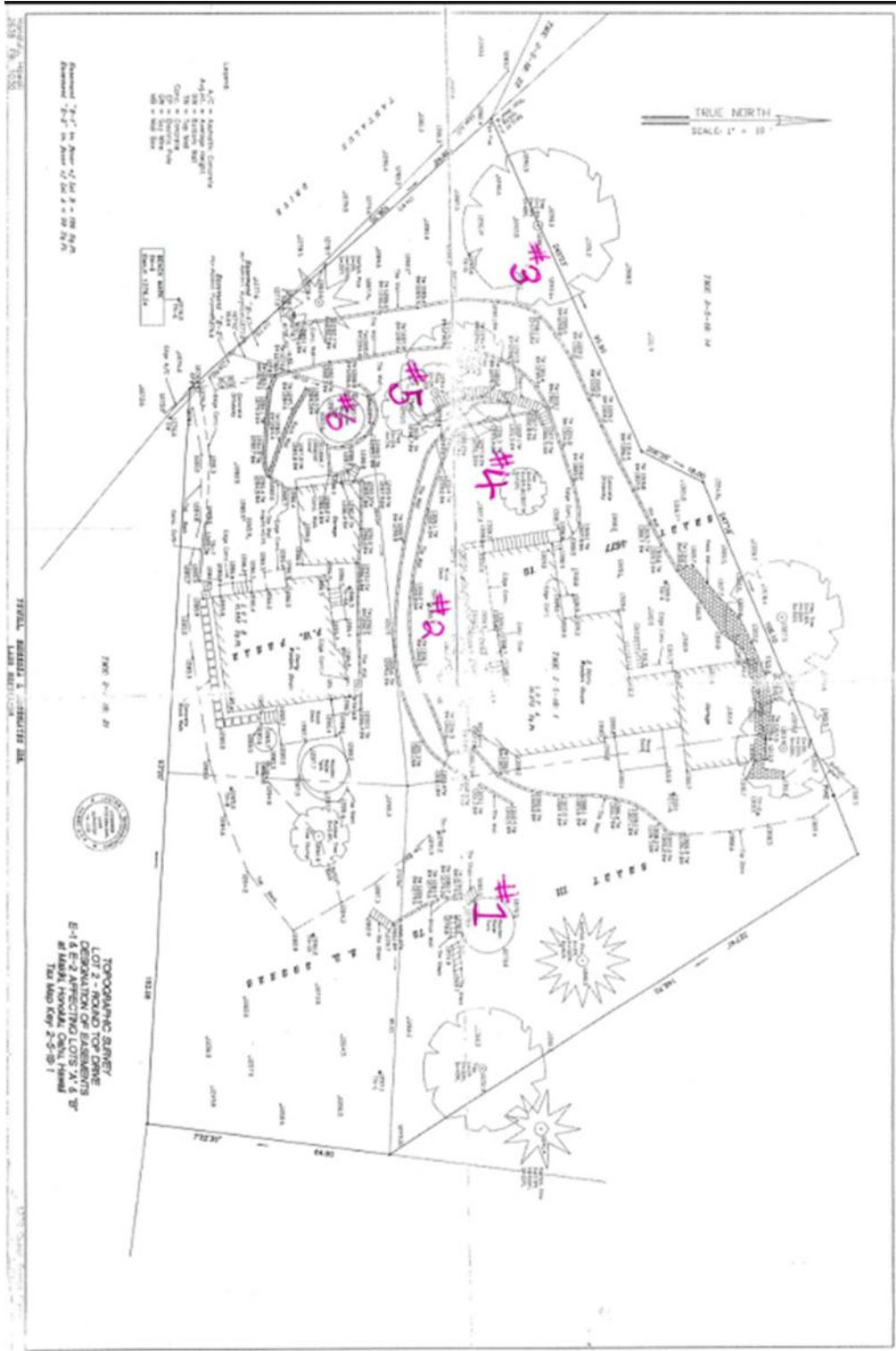


Exhibit 2

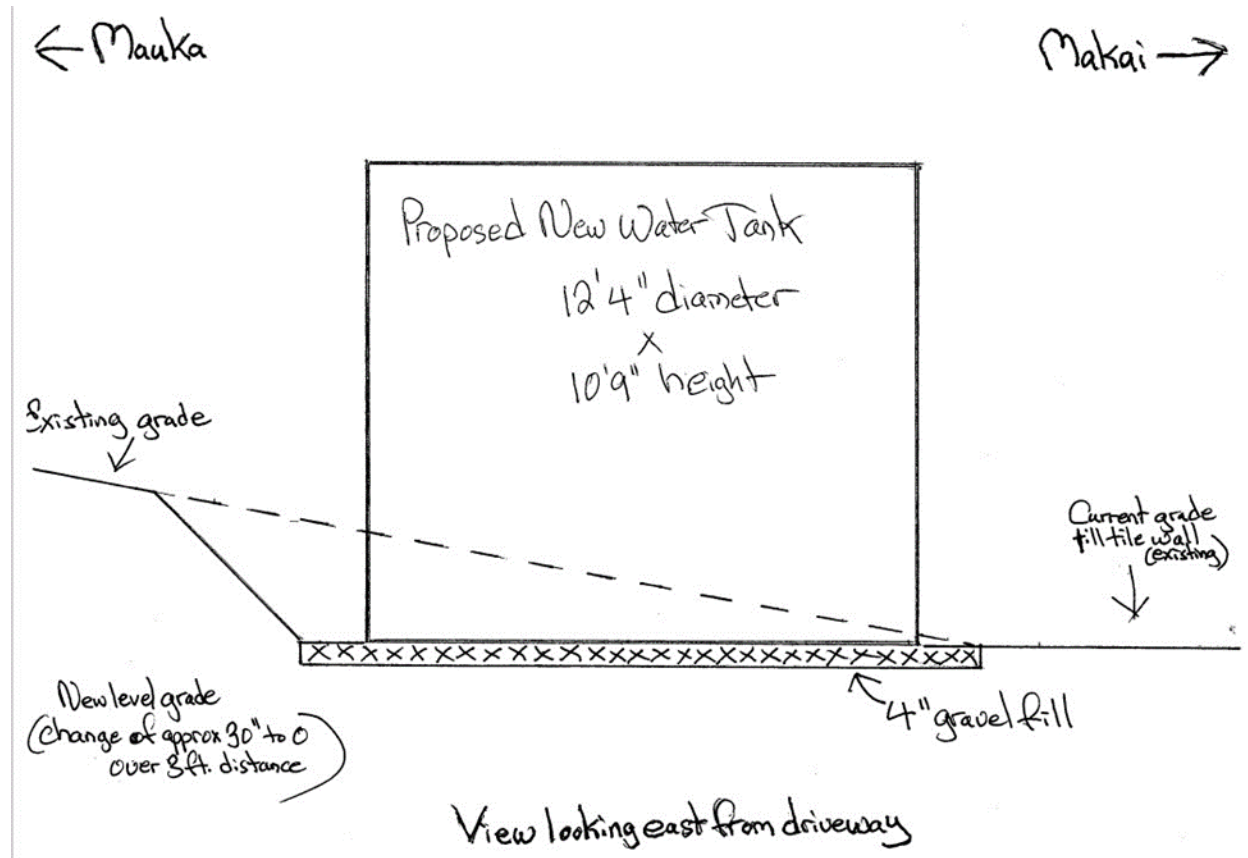


Exhibit 2



(Site #1, Existing Tank)

Exhibit 3



(Site #1, Existing Tank)

Exhibit 3



(Site #1, Existing Tank)

Exhibit 3



(Site #2)

Exhibit 3



(Site #3)

Exhibit 3



(Site #4, Septic Tank)

Exhibit 3



(Site #5, Proposed location)

Exhibit 3



(Property Entrance off Round Top Drive)

Exhibit 3