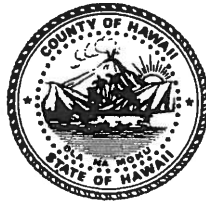


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563



## County of Hawai'i

### PLANNING DEPARTMENT

Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

August 31, 2021

Joe Kwan  
The Limtiaco Consulting Group  
1622 Kananui Street  
Honolulu, HI 96817

Dear Mr. Kwan:

**Application: Variance – VAR-21-000635**

**Applicant: The Limtiaco Consulting Group**

**Owners: HAWAII AMERICAN WATER COMPANY**

**Request: Variance from Chapter 25, Zoning, Article 5, Division 1,  
Section 25-5-76 Minimum yards requirements and Section 25-4-44,  
Permitted Projections into Yards and Open Space (Encroachments into East  
Front Yard Setback and Open Space Requirement)**

**Tax Map Key: (3) 6-8-001:049 Lot B**

The Planning Director certifies the **approval** of Variance No. 21-000635, subject to variance conditions. The variance will allow portions of the proposed structures, (2)-new polymer storage containers, that would be built into the side (north) yard setback, encroaching 18.5-feet into the 20.0-foot side yard with a minimum 1.5-foot side (north) yard setbacks, in lieu of the required 20-foot side yard setback and encroaching 12.5-feet into the minimum 14.0-foot (north) front yard open space requirement. These exceptions are in lieu of the required 20.0-foot side (north) yard setback and 14.0-foot front (north) open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44, Permitted projections into yards and open spaces.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot B, contains approximately 9.486 acres and is situated within Por. Waikoloa, South Kohala, Hawai'i. The subject property's street address is 68-260 Hoohana Street, Building 1, Waikoloa, HI 96738.
2. **County Zoning.** Agricultural (A-5a).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet for all sides.

**Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 2, 2021. The variance application's site plan dated November 12, 2020 was prepared by the Limtiaco Consulting Group, denotes that the proposed structures (2 new polymer storage containers), would be built into the side (north) yard setback, encroaching 18.5-feet into the 20.0-foot side yard with a minimum 1.5-foot side (north) yard setback, in lieu of the required 20-foot side yard setback and encroaching 12.5-feet into the minimum 14.0-foot (north) side yard open space requirement.

The proposed structures would also be located within the "Easement 1", which has been designated for the purpose of access and brackish water system purposes, as shown on Subdivision Map 05-00081-Revised, approved by the Planning Director on May 12, 2006. According to the variance application, the polymer storage containers are associated with the Kalahuipua'a Lagoon's Wastewater Treatment Plant serving the Mauna Lani Resort and are also designated in the Deed for this purpose.

**(See Exhibit A-Site Plan)**

The encroachment leaves a minimum 18.5-foot side (east) yard setback, in lieu of the required 20.0-foot side (north) yard setback, and a minimum 1.5-foot side (north) open space requirement in lieu of the 14.0-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that building permits issued for non-residential structures have been issued for the years 1981 to 2019. No specific details could be found on the website for these permits. This is the site for an existing wastewater treatment facility for the Mauna Lani resort. The most recent Final Plan Approval (PLA-19-001641) was issued on 4/3/2019) for the wastewater treatment facility disk filter upgrade.
8. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) – No comments received as of this date.
  - b. Department of Public Works - Building Division – No comments received as of this date.
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on July 24, 2021, and August 3, 2021, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 27, 2021.

10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

## **GROUNDNS FOR APPROVING VARIANCES**

### **Special and Unusual Circumstances**

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

### **The Variance application meets criterion (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment to allow portions of the proposed structures, (2) new polymer storage containers, to be built into the side (north) yard setback, encroaching 18.5-feet into the 20.0-foot side yard with a minimum 1.5-foot side (north) yard setback, and encroaching 12.5-feet into the minimum 14.0-foot (north) front yard open space requirement. These exceptions are in lieu of the required 20.0-foot side (north) yard setback and 14.0-foot front (north) open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44, Permitted projections into yards and open spaces.

The variance application's site plan dated November 12, 2020 was prepared by the Limtiaco Consulting Group, denotes that the proposed structures (2)-new polymer storage containers, that would be built into the side (north) yard setback, encroaching 18.5-feet into the 20.0-foot side yard with a minimum 1.5-foot side (north) yard setbacks, in lieu of the required 20-foot side yard setback and encroaching 12.5-feet into the minimum 14.0-foot (north) side yard open space requirement. **(See Exhibit A-Site Plan).**

The encroachment leaves a minimum 1.5-foot side (north) yard setback, in lieu of the required 20.0-foot front (east) yard setback, and a minimum 1.5-feet side (north) open space requirement in lieu of the 14.0-feet open space requirement.

Due to the location of the lagoon ponds, 1 and 2, located over most of this parcel as part of the wastewater system, only a limited area is left for the two polymer storage tanks to be located and still be accessible by service vehicles. In addition, "Easement 1" was granted for access and for brackish water systems" per Sub Subdivision Map 05-00081-Revised, approved by the Planning

Director on May 12, 2006. According to the variance application, the polymer storage containers are associated with the Kalahuipua'a Lagoon's Wastewater Treatment Plant serving the Mauna Lani Resort and are designated for this purpose in the Deed for this parcel.

### **Alternatives**

***(b) There are no other reasonable alternatives that would resolve the difficulty.***

#### **The Variance application meets criterion (b) for the following reasons:**

Two alternatives available to the current owners to address the building encroachments for construction into the affected side yard of the subject property include the following actions:

Relocated the proposed the building encroachments and/or redesign the easterly portions of the structure (2-polymer storage containers) to fit within the correct building envelope as prescribed by the Zoning Code. The applicant considered two other locations on the parcel for the two polymer storage containers, and both were not feasible, as the first one was closer to lagoon number 1 and would not provide service access as there was not room for maneuverability and the second option was in another part of the access easement, that would result in blocking access within the easement. Both alternatives would be deemed unreasonable, especially when the Deed for the parcel and the Easement 1, expressly state the easement is for access and for brackish water purposes, and the applicant states this is for the wastewater system and should be allowed to be located within the easement.

There are no reasonable alternatives to resolve the encroachment issue.

### **Intent and Purpose**

***(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.***

#### **The Variance application meets criterion (c) for the following reasons:**

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The variance request will not be materially detrimental to the public's welfare and will not cause

substantial adverse impact to the area's character and to adjoining properties. The structure (two polymer storage tanks) would be constructed adjacent to the wastewater lagoons, and are only 8 feet in height, and should not be visible from the nearby properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 127") will not meet the minimum front (east) yard and front yard (east) open requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the structures (two new polymer storage tanks) built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. Future or new building improvements and permitted uses shall be subject to State law and County Ordinances and Regulations pertaining to building construction and building occupancy.

Joe Kwan  
The Limtiaco Consulting Group  
August 31, 2021  
Page 6

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-21-000635.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'Z' followed by a long horizontal line.

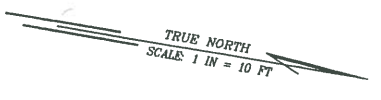
ZENDO KERN  
Planning Director

RJN:rjn

P:\public\Admin Permits Division\Variance\2021\VAR-21-000635 - Hawaii American Water -  
Setback\Hawaii American Water- approval.doc

Joe Kwan  
The Limtiaco Consulting Group  
August 31, 2021  
Page 7

xc: DPW Engineering Division (Kona)  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS

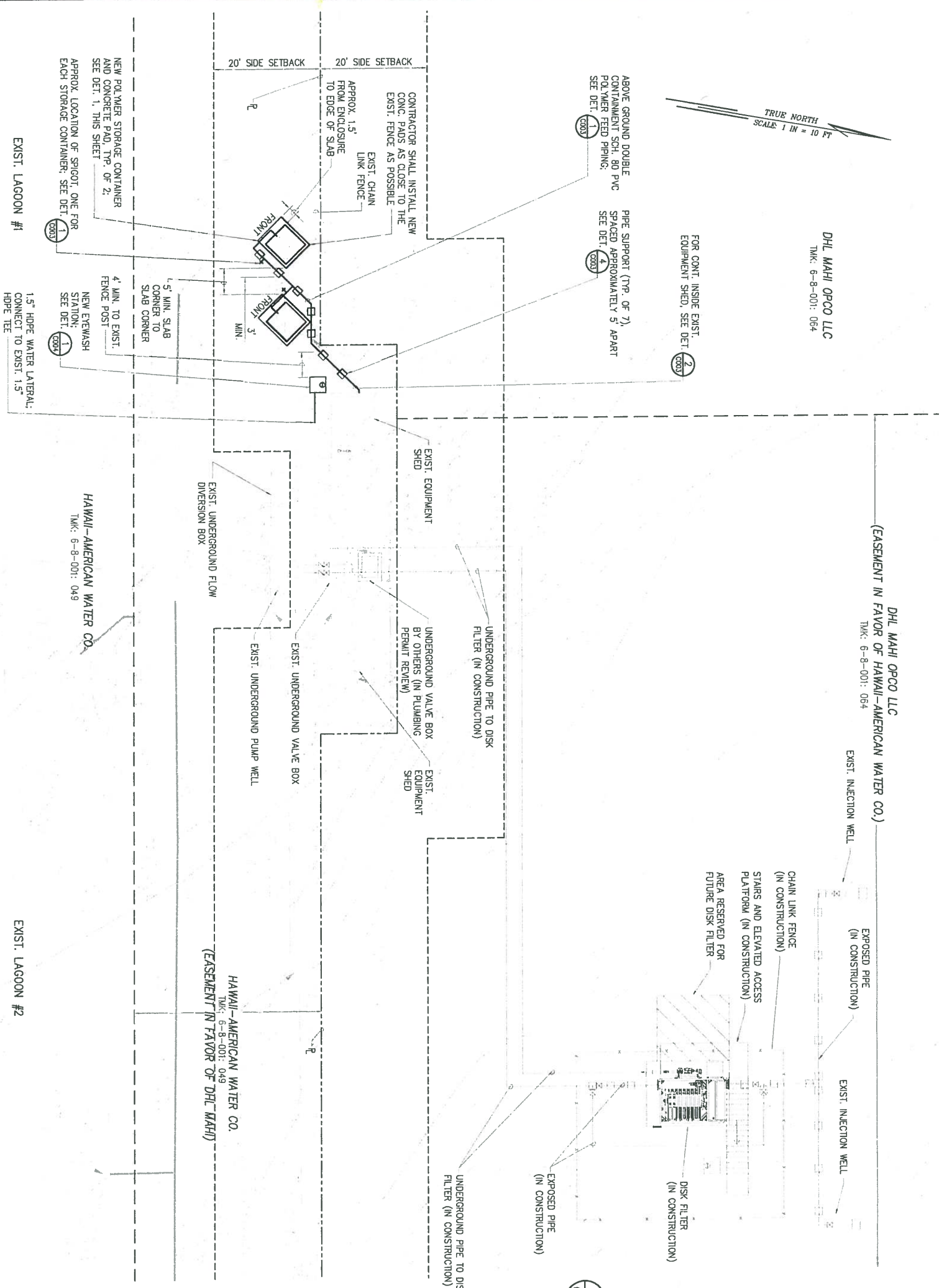


DHL MAHI OPCCO LLC  
TMK: 6-8-001: 064

FOR CONT. INSIDE EXIST. EQUIPMENT SHED, SEE DET. C002

PIPE SUPPORT (TYP. OF 7), SPACED APPROXIMATELY 5' APART SEE DET. C002

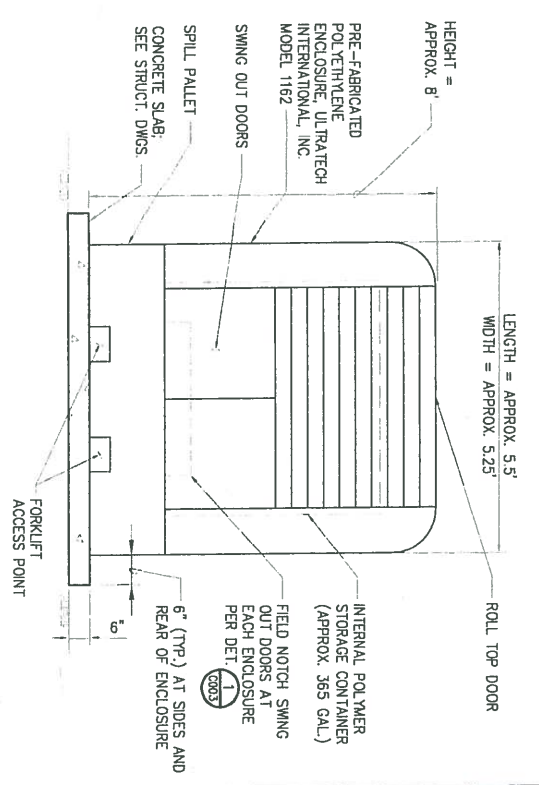
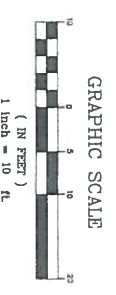
ABOVE GROUND DOUBLE CONTAINMENT SCH. 80 PVC POLYMER FEED PIPING. SEE DET. C002



**SITE PLAN**  
SCALE: 1" = 10'

PRE-FINAL DRAWINGS  
11-12-2020

“EXHIBIT A”



**1 TYPICAL POLYMER STORAGE CONTAINER DETAIL**  
C002 NOT TO SCALE

- LEGEND:**
- PROPERTY LINE
  - EASEMENTS
  - SETBACKS

REV.	DATE	DESCRIPTION	APPR.

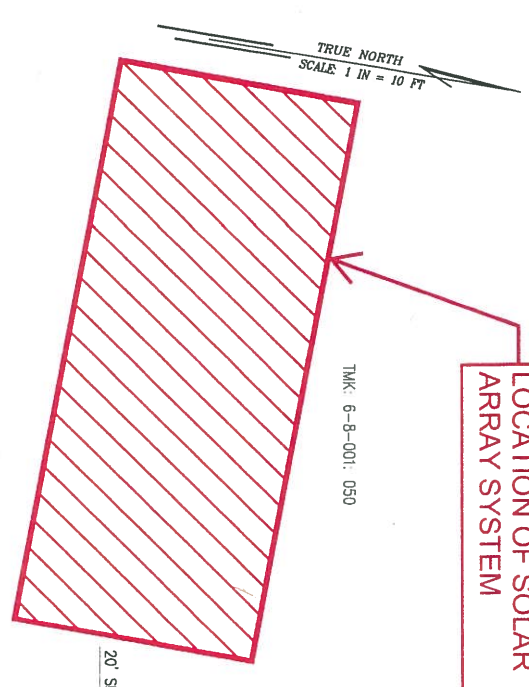
**THE LAMICHO CONSULTING GROUP**  
2825 WANDA DRIVE, SUITE 100, HONOLULU, HAWAII 96819  
**KALAHUPI'UA LAGOONS WASTE SERVING THE MAUNA KAI RESORTS**  
SOUTH KOHALA, HAWAII, HAWAII

**SITE PLAN**

APPROVED: **ATTACHMENT B:**  
DRAWN BY: AK  
FIELD BOOK NO: **PAGE 3 OF 3**

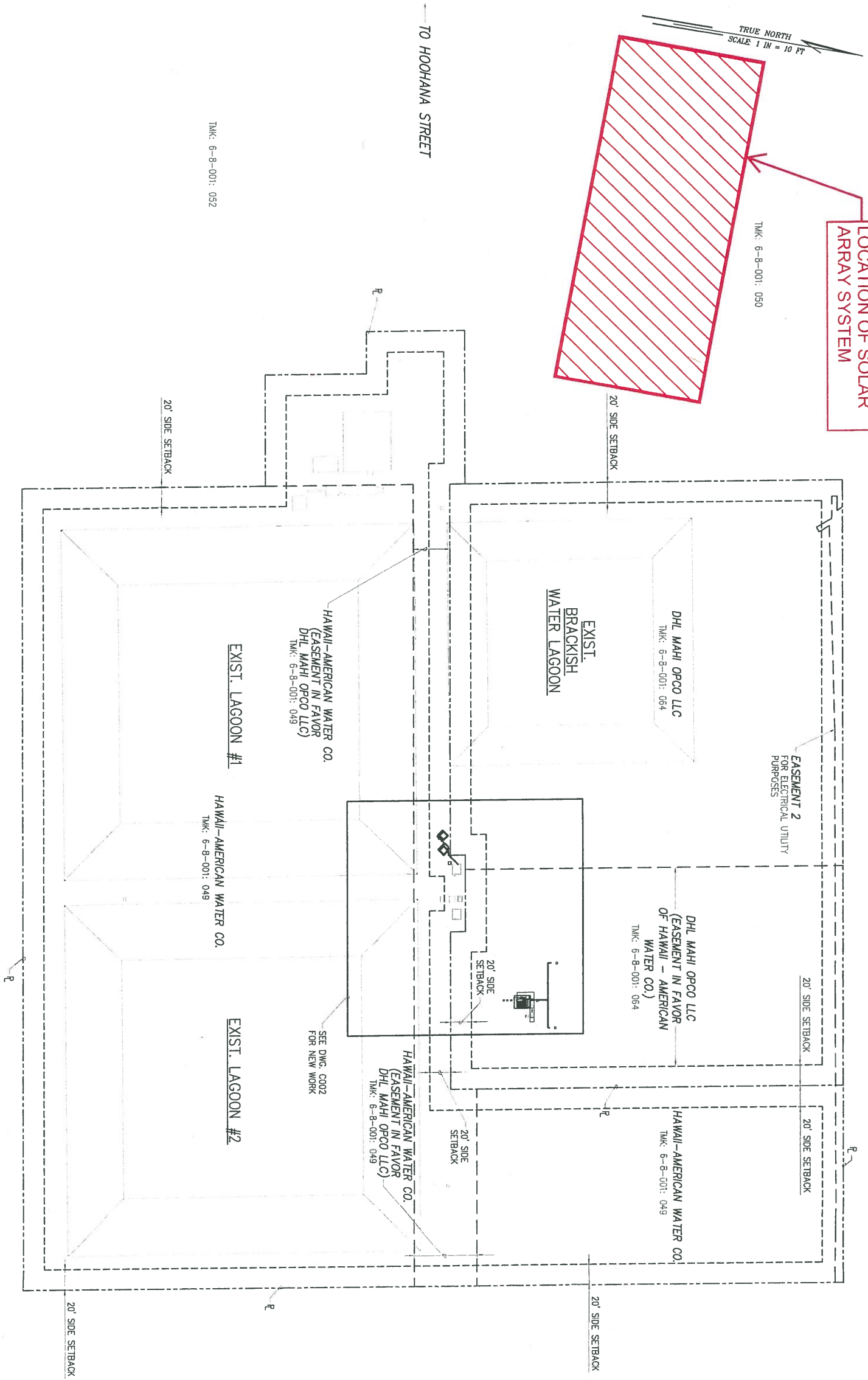


**APPROXIMATE  
LOCATION OF SOLAR  
ARRAY SYSTEM**



TO HOOHANA STREET

TMK: 6-8-001: 052



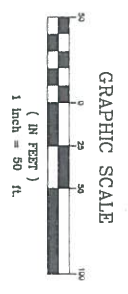
**LEGEND:**

- PROPERTY LINE
- EASEMENTS
- SETBACKS

**PRE-FINAL DRAWINGS**  
11-12-2020

**PROPERTY LAYOUT**  
SCALE: 1" = 50'

“EXHIBIT A”



PROJECT SITE INFORMATION	
PROPERTY OWNER	HAWAII-AMERICAN WATER CO. & DHL MAHI OP CO LLC
TAX MAP KEY	6-8-001-049 & 6-8-001-064
LOT AREA	9,486 AC. & 5 AC.
ZONING	A-5A
FRONT AND REAR SETBACK	30 FT.
SIDE SET BACK	20 FT.
HEIGHT LIMITATION (NON RESIDENTIAL)	45 FT.
SPECIAL MANAGEMENT AREA (SMA)	YES

REV.	DATE	DESCRIPTION	APPR.

**THE LUMINOUS CONSULTING GROUP**  
DATE: 11/12/2020  
SOUTH KONA, HAWAII, HAWAII

**KALAHUIPU'A LAGOONS WWTF**  
SERVING THE MAUIA LANI RESORTS  
EXTERIOR POLYMER STORAGE

**PROPERTY LAYOUT**

**ATTACHMENT B:**  
PAGE 2 OF 3