

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

December 6, 2017

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Interim Executive Director to Issue a Grant of Easement to the Hawaiian Electric Company at the Ala Moana Pump Station Site?

SUMMARY:

Hawaiian Electric Company requires a grant of easement prior to connecting the Pump Station site to the power grid.

AUTHORITIES:

The Authority must review all agreements lasting longer than one year.

BACKGROUND:

The Hawaii Community Development Authority (HCDA) executed a lease with Pacific Gateway Center (PGC) for the Ala Moana Pump Station site on January 15, 2016. The lease terminates on January 15, 2049.

PGC renovated the historic Pump Station building and began operating the Na Kupuna Makamae Center for intergenerational activities in September 2016. Since then, PGC has been operating off generator power, as they have been unable to secure an electrical connection with HECO.

HECO requires a perpetual wire line easement in order to connect the Pump Station to the electrical grid. The easement would be five feet wide and would span a portion of the 240 Keawe Street parcel that the HCDA leases to the State Public Safety Division. The easement is more particularly described in HECO's request letter, which is attached hereto as Exhibit A.

ANALYSIS:

HECO will not install electric service to the Pump Station without the perpetual easement, and PGC requires an electrical connection to conduct business. It is not feasible for PGC to continue operating on generator power, as it is costly and poses a security hazard with power cords being run out of open windows. PGC desires to secure an electrical connection as soon as possible.

RECOMMENDATION

HCDA staff recommends that the Board:

Authorize the Interim Executive Director to Issue a Grant of Easement to the Hawaiian Electric Company at the Ala Moana Pump Station Site.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Garrett Kamemoto, Interim Executive Director
Hawaii Community Development Authority

Attachments

Exhibit A – HECO Request and Map

Exhibit B - Draft Easement Document

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By: Mail Pickup

Hawaiian Electric Company, Inc.
Survey Division
P. O. Box 2750HECO
Honolulu, HI 96840-0001

This document contains ___ pages.

WO# CE227788/JP49581A

TITLE OF DOCUMENT(S):

R/W 2017-033

GRANT OF EASEMENT

PARTIES TO DOCUMENT:

GRANTOR: HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate and public instrumentality of the State of Hawaii

GRANTEE: HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation

HAWAIIAN TELCOM, INC., a Hawaii corporation

Description: Easement affects Lot C, being a portion of the filled land of Kaakaukui, situate off Ala Moana Boulevard, Kaakaukui, Kakaako, Honolulu, Oahu, Hawaii, as shown on map dated December 24, 2003, by Dennis K.O. Chong, Licensed Professional Land Surveyor No. 7904, approved by the City and County of Honolulu, Department of Planning and Permitting as DPP File No. 2004/SUB-18 on July 2, 2004; easement being five (5) feet wide and having an area of 618 square feet as shown on HECO R/W Map 2017-033 dated July 31, 2017, attached hereto and made a part hereof.

Tax Map Keys: (1) 2-1-015:063
Address: 240 Keawe St

GRANT OF NON-EXCLUSIVE EASEMENT

THIS INDENTURE is entered into as of _____, 20____, between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, a body corporate and public instrumentality of the State of Hawaii, which body is hereinafter referred to as "Grantor" and whose address is 547 Queen Street, Honolulu, Hawaii 96813, and **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, whose principal place of business is 900 Richards Street, Honolulu, Hawaii and whose post office address is P. O. Box 2750, Honolulu, Hawaii 96840, and **HAWAIIAN TELCOM, INC.**, a Hawaii corporation, whose principal place of business is 1177 Bishop Street, Honolulu, Hawaii, and whose post office address is P. O. Box 2200, Honolulu, Hawaii, 96841 (collectively, the "Grantee"),

A. Grantor, for and in consideration of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, and of the terms, conditions and covenants herein contained and on the part of Grantee to be observed and performed, does hereby grant unto Grantee, its successors and permitted assigns, the following nonexclusive and perpetual easement rights.

The right, privilege and authority to construct, reconstruct, use, maintain, remove, demolish, and repair poles, overhead and underground wire lines and such other electric transmission or distribution appliances and equipment (the foregoing, collectively, the "Facilities") for public purposes only, including the right (but not the obligation) to trim and keep trimmed any trees in the way of Grantee's appliances and equipment, over, upon, under and across. Easement affects Lot C, being a portion of the filled land of Kaakaukui, situate off Ala Moana Boulevard, Kaakaukui, Kakaako, Honolulu, Oahu, Hawaii, as shown on map dated December 24, 2003, by Dennis K.O. Chong, Licensed Professional Land Surveyor No. 7904, approved by the City and County of Honolulu, Department of Planning and Permitting as DPP File No. 2004/SUB-18 on July 2, 2004; easement being five (5) feet wide and having an area of 618 square feet as shown on HECO RW Map 2017-033 dated July 31, 2017, attached hereto and made a part hereof.

TOGETHER WITH, the right from time to time and at all reasonable times to enter upon the Easement Area for the above-mentioned purposes, and also the right of ingress, egress, regress across immediately adjacent lands of Grantor, subject to written notification of any affected lessee, permittee, or licensee of Grantor, except in the event of an emergency, in which case notice will be given as soon as reasonably possible (such easement rights are herein collectively referred to as the "Easement").

TO HAVE AND TO HOLD the Easement unto Grantee, its successors and permitted assigns, in perpetuity.

B. SUBJECT, HOWEVER, to the following terms, conditions, and covenants:

1. Grantee (a) shall keep the 618 square feet of land (hereinafter "Easement Area") and Facilities in a clean, sanitary, orderly, and safe condition and repair; (b) at all times use the Easement Area and Facilities with due care for public safety; and (c) shall not make or permit any waste, strip, spoil, nuisance, or unlawful, improper, or offensive use of the Easement Area.

2. Grantor reserves unto itself and its successors the full use and enjoyment of the Easement Area and the right to grant to others rights and privileges for any and all purposes affecting the Easement Area, provided, however, that the rights herein reserved shall not be exercised by Grantor or any agent, representative or assign of Grantor, in such manner so as to

interfere unreasonably with Grantee's exercise of the Easement Area for the purposes for which this Easement is granted. Grantee shall provide written notice to Grantor's tenants and lessees prior to commencing work that would impact the leased premises.

3. The Facilities (a) shall be installed or constructed in or upon the Easement Area by Grantee at its expense; (b) shall remain Grantee's property; and (c) may be removed or otherwise disposed of by Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the Easement Area, which shall be restored to its original state, or as close thereto as possible to the satisfaction of Grantor, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the Easement Area, Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the Easement Area in a clean and sanitary condition satisfactory to Grantor.

5. The Easement or any other rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged or otherwise transferred or disposed of, whether voluntarily or by operation of law, except with Grantor's prior written consent. Any transfer in contravention of this provision shall be void.

6. The use and enjoyment of the Easement Area pursuant to this Easement shall not be exercised in support of any policy that discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, disability, age, or infection with the human immunodeficiency virus (HIV).

7. Grantee acknowledges that it has inspected the Easement Area and knows its condition and fully assumes all risks incident to its use and enjoyment of the Easement Area pursuant to this Easement.

8. Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law and with the consent of Grantor. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law nor allow to be brought onto the Easement Area any such materials except to use in the ordinary course of Grantee's business. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on and/or within the Easement Area placed or released by Grantee. These covenants shall survive the expiration or earlier termination of this Grant of Easement.

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. Should future development or change in use of property necessitate a relocation of the Easement granted herein, or any portion thereof, the relocation shall be accomplished at the Grantee's own cost and expense; provided, however, that Grantor shall provide Grantee with six (6) months advance written notice, and if other lands of the Grantor are

available, the Grantor will grant to the Grantee, without payment of any monetary consideration, a substitute easement of similar width within the reasonable vicinity of the original alignment, which substitute easement shall be subject to the same terms and conditions as that herein granted and as required by law. Nothing in this provision shall obligate Grantor to acquire by purchase or otherwise any such land to enable such relocation.

10. Grantee, in the exercise of the rights granted herein, shall comply with all municipal, state and federal laws, ordinances, regulations, orders, judgments, directives, guidelines, or policies pertaining to the Easement Area now or hereafter in force.

11. Grantee agrees to defend, hold harmless and indemnify Grantor and the State of Hawaii, and their officers, members, directors, agents, or employees from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damages, personal injury and wrongful death, based upon or arising out of or in connection with: (a) Grantee's breach of this Grant of Easement; (b) Grantee's negligent or tortious conduct or violation of law while on or within the Easement Area; (c) Grantee's failure to properly construct, maintain, or operate any of the Facilities; (d) injuries to or death of persons or damage to property caused by Grantee's failure to observe and/or perform any of the covenants contained herein; (e) Grantee's non-observance of the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments applicable to Grantee's use and enjoyment of the Easement Area; or (f) any other act or omission in any way relating to or arising out of this Grant of Easement (collectively, "Covered Claims"). Grantee shall reimburse Grantor for all its costs and expenses, including reasonable attorneys' fees, incurred in connection with Grantor's defense of any Covered Claims. This provision shall survive the termination of this Grant of Easement.

12. The Easement shall cease and terminate, and the Easement Area shall automatically be forfeited to Grantor, without any action on the part of Grantor, in the event of non-use or abandonment by Grantee of the Easement Area, or any portion thereof, for a consecutive period of one (1) year.

13. Upon termination or revocation of this Easement, Grantee shall peaceably deliver unto Grantor possession of the Easement Area, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the Easement Area to its original state, or as close thereto as possible, within a reasonable time and at the expense of Grantee, at the option of Grantor. If Grantee does not remove the improvements or restore the Easement Area to the satisfaction of Grantor, Grantor may effect such action and Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the termination or revocation of this Easement, should Grantee fail to remove any and all of Grantee's personal property from the Easement Area, after notice thereof, Grantor may remove any and all of Grantee's personal property from the Easement Area, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of this Grant of Easement.

14. This Grant of Easement constitutes the entire agreement and understanding between the parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the parties regarding the Easement. This Grant of Easement cannot be modified except by a written instrument signed by both parties.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties have executed this Indenture as of the date first above mentioned.

GRANTOR:

Approved as to Form:

**HAWAII COMMUNITY DEVELOPMENT
AUTHORITY**, a body corporate and public
instrumentality of the State of Hawaii

By: _____

Deputy Attorney General

By: _____

Executive Director

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 20____, before me personally appeared _____, to me known, who, being by me duly sworn or affirmed, did say that he is the executive director of the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, a body corporate and public instrumentality of the State of Hawaii; that he signed the foregoing Indenture on behalf of said corporation by authority of its members; and that the Indenture is the free act and deed of said corporation.

Doc Date: _____, 20____ **# Pages:** ____
Name: _____ **First Circuit**
Doc. Description: Grant of Easement,
 TMK 1-2-015:063

Signature _____ **Date** _____

NOTARY CERTIFICATION

[Affix Seal]

Type or print name:
Notary Public, State of Hawaii

My commission expires: _____

[Affix Seal]

APPROVED

Land & Rights of Way

By _____

GRANTEE:

HAWAIIAN ELECTRIC COMPANY, INC.,
a Hawaii corporation

By _____
Name:
Title: Sr. Vice President

STATE OF HAWAII)
: ss.
CITY AND COUNTY OF HONOLULU)

On this day of _____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that such person is the Sr. Vice President of **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, and the foregoing _____-page instrument entitled GRANT OF EASEMENT, dated UNDATED, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free and act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

Notary Signature

Type or print name: _____
Notary Public, First Circuit, State of Hawaii

My commission expires: _____

[Affix Seal]

HAWAIIAN TELCOM, INC.
 Network Plng. & Engrng.
 Checked _____
 Approved _____

HAWAIIAN TELCOM, INC.,
 a Hawaii corporation

By _____
 Name:
 Title:

Grantee

STATE OF HAWAII)
 : ss.
 CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 20____, before me personally
 appeared _____, to me personally known, who, being by me duly
 sworn, did say that he/she is the _____ of **HAWAIIAN TELCOM, INC.**,
 a Hawaii corporation; that said instrument was signed on behalf of said corporation by authority
 of its Board of Directors and said _____ acknowledged said
 instrument to be the free act and deed of said corporation.

Doc Date: _____ # Pages: _____
 Name: _____ First Circuit
 Doc. Description: GRANT OF EASEMENT

 Signature _____ Date _____
 NOTARY CERTIFICATION
 [Hawaii notary only]
 [Affix Seal]

 Type or Print Name:
 Notary Public, State of Hawaii
 My commission expires: _____

[Affix Seal]



August 4, 2017

Ms. Lindsey Doi Leaverton
Asset Manager
Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

Request for Perpetual Easement to Service
Pacific Gateway Center Pump House

Dear Ms. Doi Leaverton:

Per our conversation, Hawaiian Electric Company, Inc. (HECO) respectfully requests a perpetual easement from the Hawaii Community Development Authority to serve the Pacific Gateway Center Pump House. The property affected is identified as Tax Map Key No. 2-1-015: 063. The easement is a five (5) foot wide easement and is shown on the attached Location Sketch. HECO respectfully request your assistance in acquiring the aforementioned easement. We are currently, drafting the formal Grant of Easement document and forward it to you once it has been finalized.

Please let me know, if you have any questions, or require any additional information, please feel free to contact Robyn Tanaka at 543-4731, or at robyn.tanaka@hawaiianelectric.com. We appreciate your attention to this matter.

Sincerely yours,

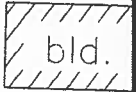
Wendy E. Oda
Director, Land & Rights of Way

Enclosure

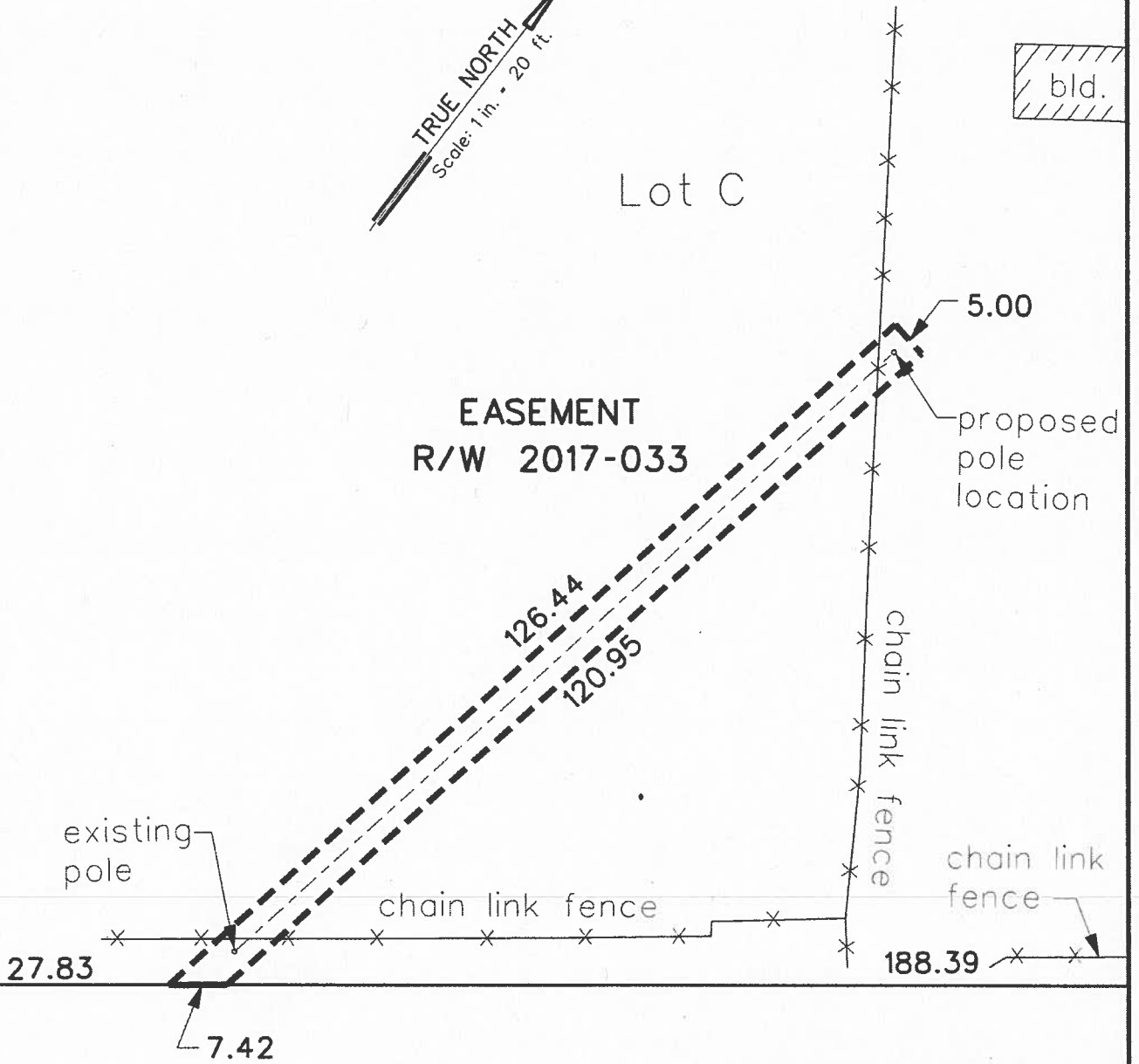


Lot B

Lot C



EASEMENT
R/W 2017-033



KEAWE STREET

HAWAIIAN ELECTRIC COMPANY, INC.
HONOLULU, HAWAII

Location sketch of
Wire line Easement R/W 2017-033
affecting TMK: (1) 2-1-015: 063

LOCATION SKETCH

EXHIBIT A1

ALA MOANA BOULEVARD

KEAWE STREET (CITY)

OLD KAKA'AKO PUMP STATION

SEWER PUMP STATION

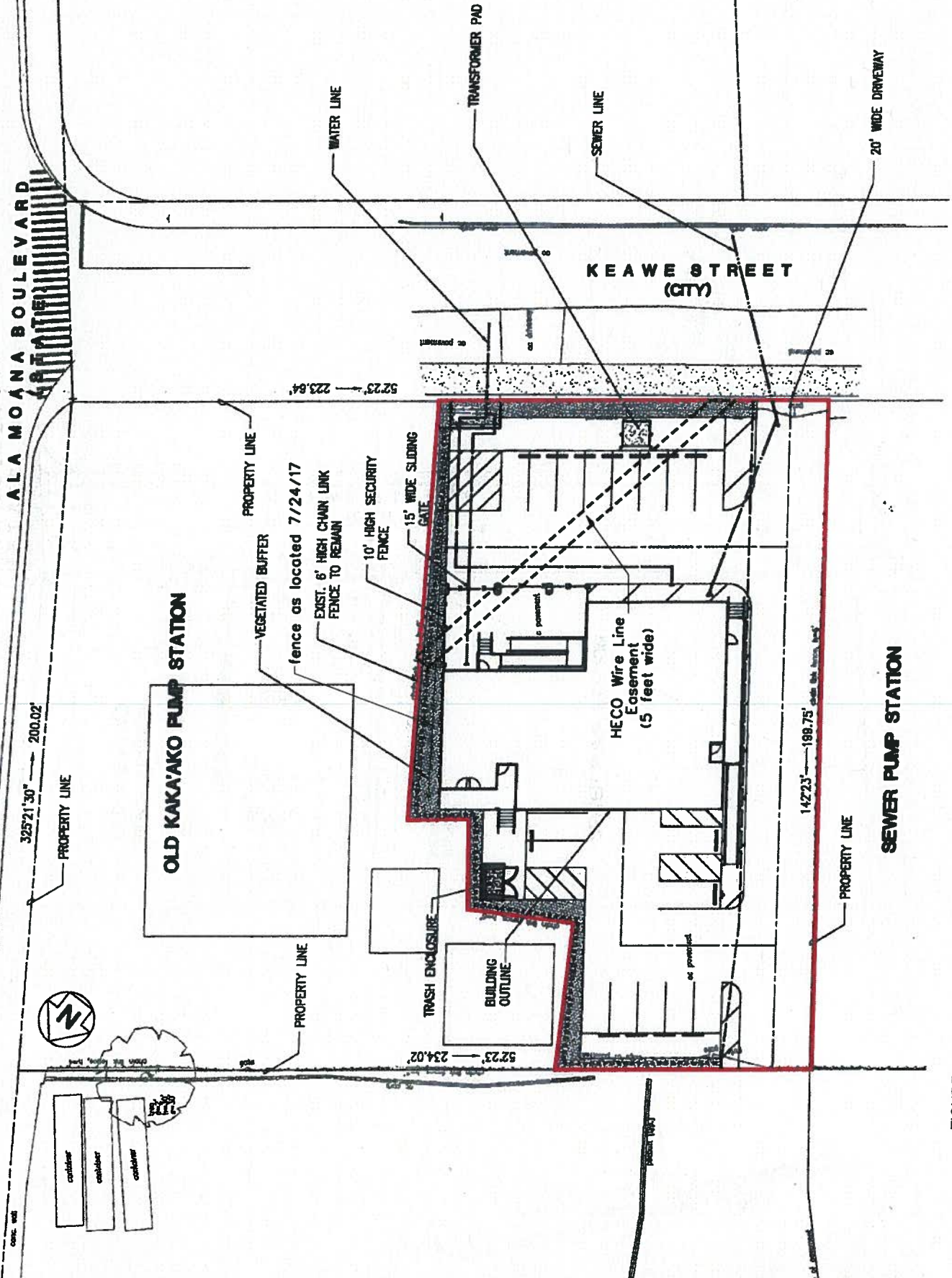


FIGURE 2
PLOT PLAN

PUBLIC SAFETY INTERIM FACILITY

SCALE: 1" = 20'