

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 13, 2018

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

PSF No.:18OD-018

OAHU

Grant of Term, Non-Exclusive Easement to Ashley Wu-Fang Chen for Seawall
Purposes; Kaalawai, Honolulu, Oahu, Tax Map Key: (1) 3-1-041:Seaward of 025

APPLICANTS:

Ashley Wu-Fang Chen, unmarried

LEGAL REFERENCE:

Sections 171-6, 13, 17, and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kaalawai, Honolulu, Oahu, identified by Tax
Map Key: (1) 3-1-041:seaward of 025, as shown on the attached map labeled **Exhibit A**.

AREA:

214 square feet, more or less, subject to review and approval by the Department of
Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-5 [for the abutting private property]

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land". See exemption declaration attached as **Exhibit B**.

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;
2. Pay for an appraisal to determine one-time payment; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

The applicant requested a certified shoreline to obtain County building permits. However, during the due diligence shoreline process portions of a seawall and concrete fortified rocks fronting the seawall were located Makai of the shoreline (see **Exhibits C-1 to C-5**).

Subsequently, the applicant worked with the Office of Conservation and Coastal Lands (OCCL) to resolve the encroachment by submitting the Shoreline Encroachment Information questionnaire. Upon review of the information provided in the questionnaire, OCCL supported a disposition of the encroachments. A copy of OCCL's letter dated October 17, 2017 is attached as **Exhibit D**.

Based on OCCL's support, staff recommends the disposition of the shoreline encroachment abutting the Applicant's property through an easement. Staff requests that the Board authorize the granting of a term, non-exclusive easement for the seawall.

The Department of Accounting and General Services – Survey Division, the Department of Planning and Permitting, the Department of Facility Maintenance, and the Board of Water Supply has no objections and no comments to the request and the proposed environmental assessment exemption declaration.

The State of Hawaii Historic Preservation Division and the Office of Hawaiian Affairs did not respond to the request for comments.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Since the encroachment area is 214 square feet (more or less), staff recommends that a fine of \$500 be imposed by the Board.

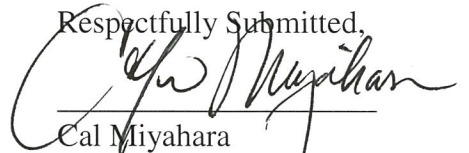
Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Assess a fine of \$500, under Section 171-6, HRS.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-1-041:025 when such change in ownership occurs prior to the execution of the requested easement, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Ashley Wu-Fang Chen covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;

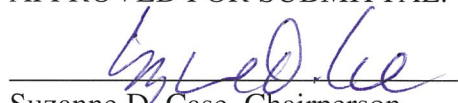
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-1-041:025, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
- D. Review and approval by the Department of the Attorney General;
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



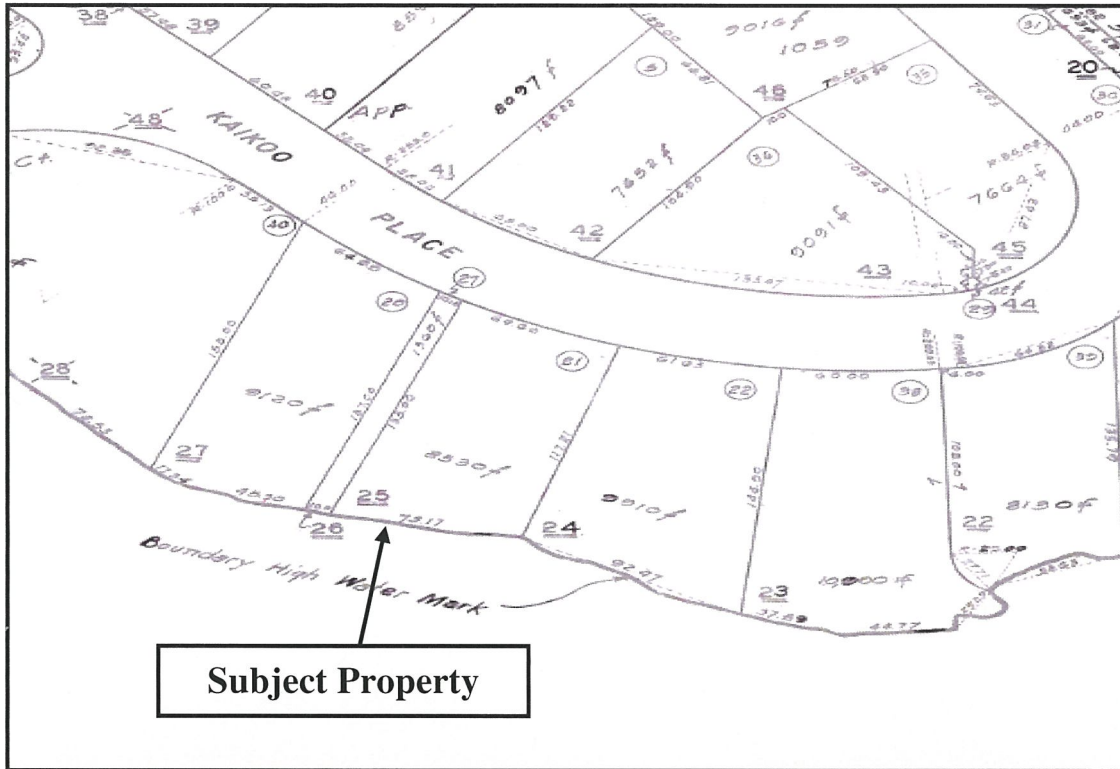
Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





TMK: (1) 3-1-041:seaward of 025

EXHIBIT A

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Easement for seawall purposes

Project / Reference No.: PSF 18OD-018

Project Location: Kaalawai, Honolulu, Oahu, Tax Map Key: (1) 3-1-041:seaward of 025.

Project Description: Issuance of term, non-exclusive easement for seawall purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land".
The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Agencies as noted in the submittal.

Recommendation: That the Board finds this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B

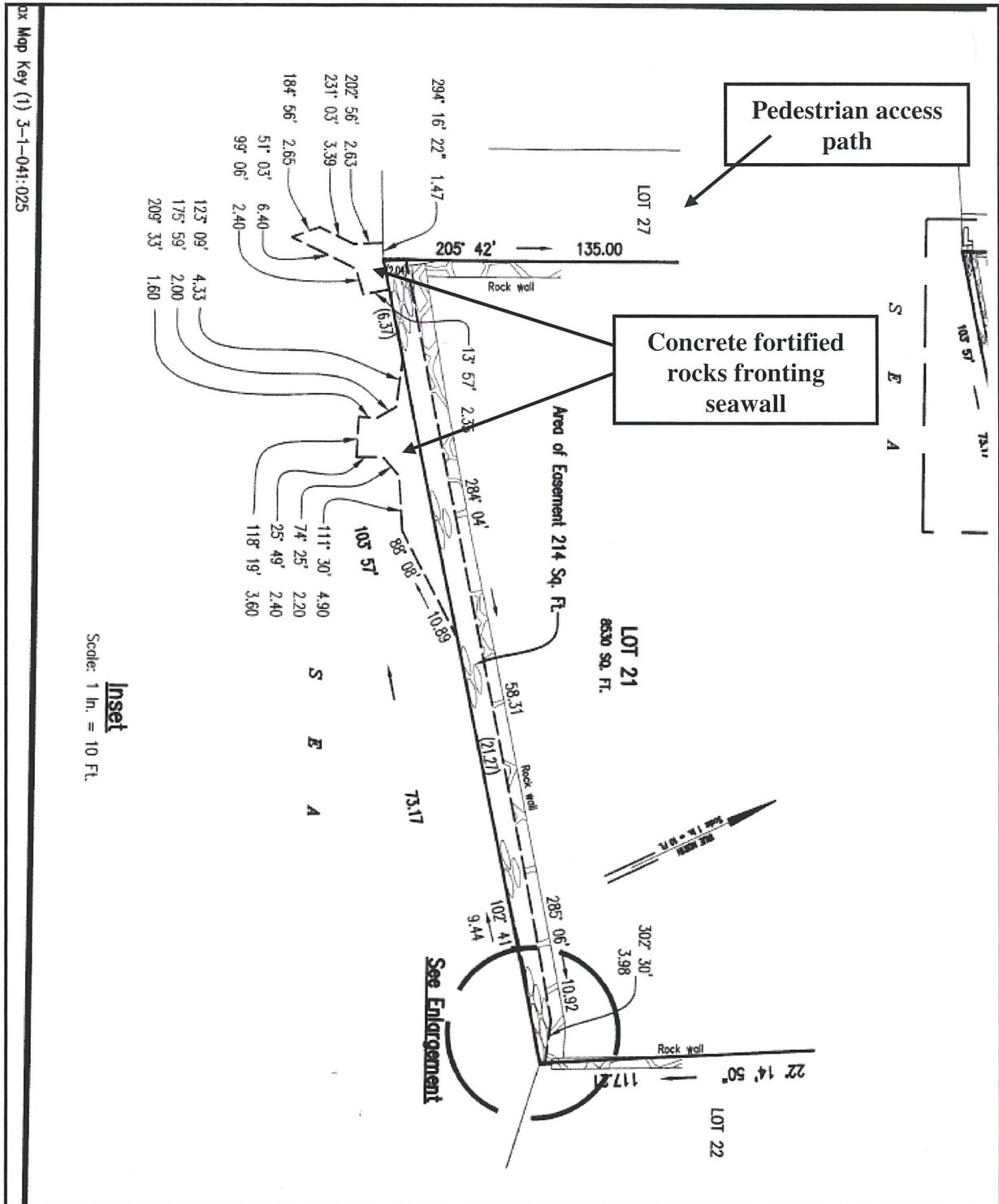
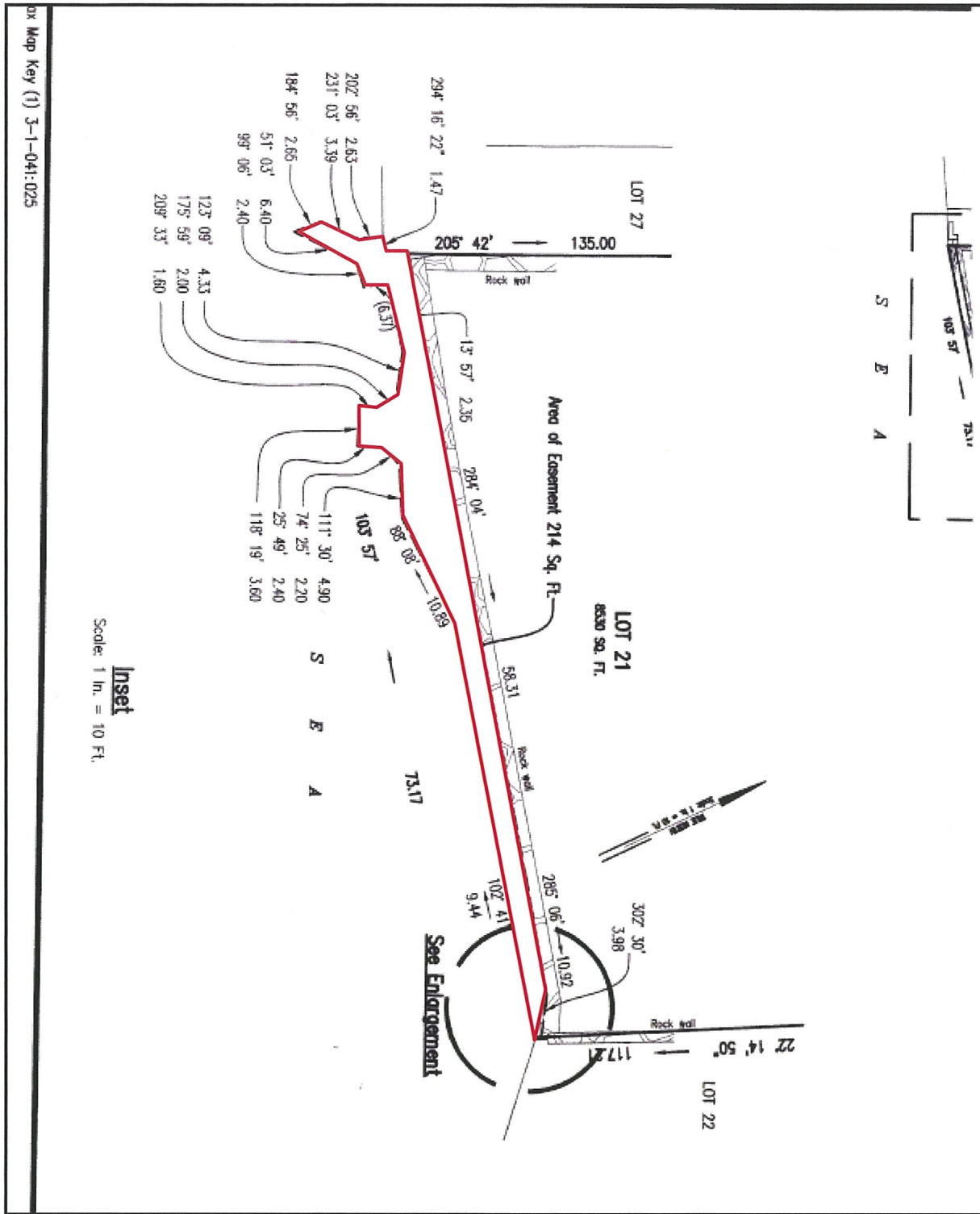


EXHIBIT C-1



Note: Red line (—) indicates encroachment area.

EXHIBIT C-2

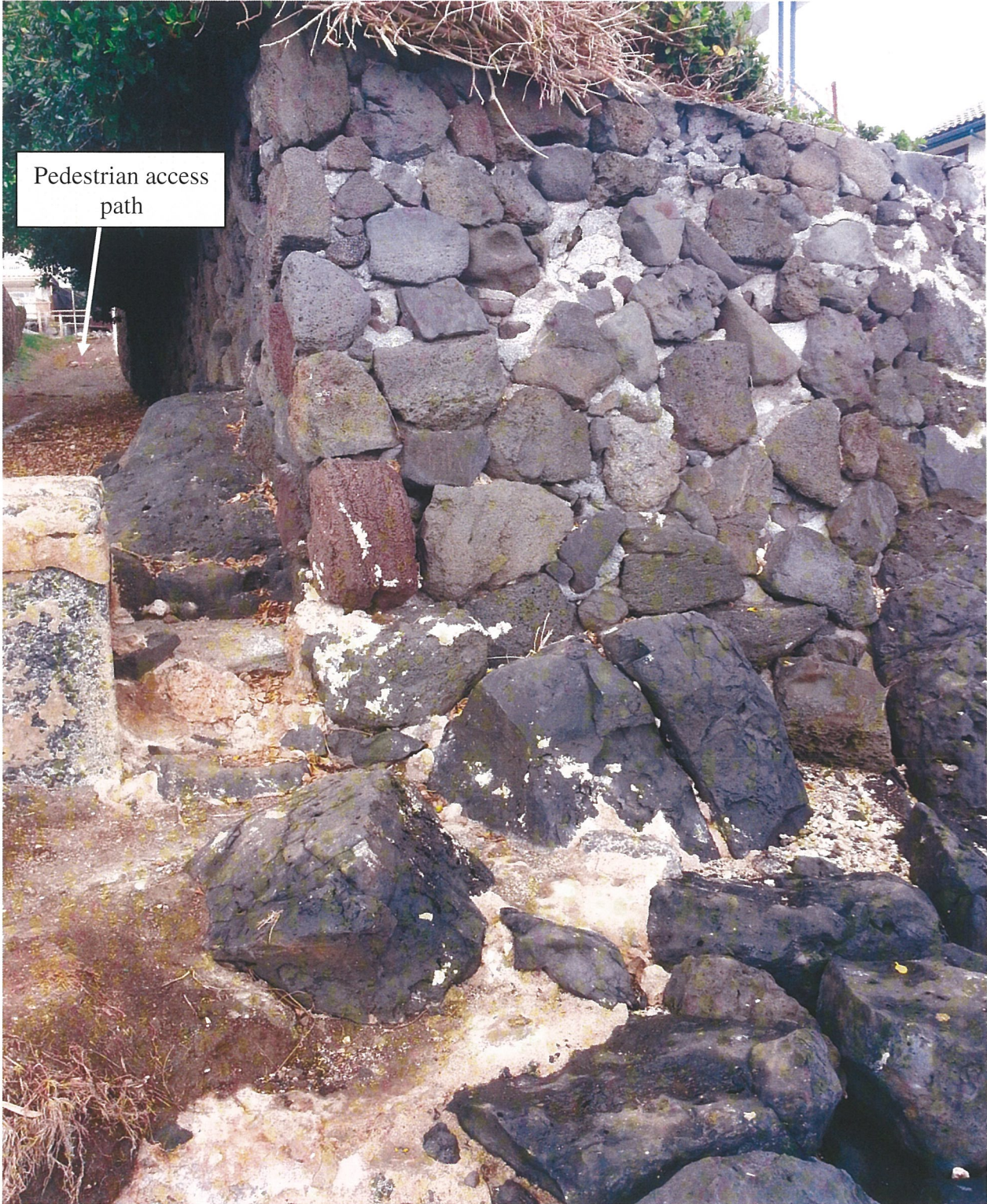


Photo looking north with pedestrian shoreline access path on the left. Photo shows the encroachment area extending beyond the seawall with concrete being used to fortify rocks.

EXHIBIT C-3



Photo looking west along the face of the seawall. Photo shows encroaching area in front of the seawall with concrete being used to fortify rocks.

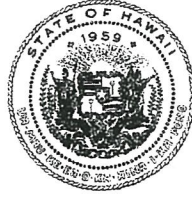
EXHIBIT C-4



Photo looking east along the face of the seawall. Photo showing concrete fortified rocks in front of the seawall.

EXHIBIT C-5

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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JEFFREY T. PEARSON, P.E.
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:NF

Encroachment OA-18-03

OCT 17 2017

Wesley T. Tengan
P.O. Box 240953
Honolulu, HI 96824

SUBJECT: Request to Resolve State Land Encroachment Located Seaward of 4312 Kaikoo Place, Kahala, Oahu; Tax Map Key: (1) 3-1-041:025

Dear Mr. Tengan,

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter dated September 19, 2017 including the building permit for the encroachments seaward of 4312 Kaikoo Place. Previous correspondence from our office dated September 6, 2017 requested confirmation of when the encroachment was built.

You are working on behalf of the landowner, Ashley Chen, to resolve the encroachment on State land. The encroachment consists of approximately 135 square feet of the seaward face of a CRM seawall fronting the subject property. Construction of the CRM seawall was authorized by the City and County of Honolulu Building Permit 018346 on October 12, 1973. You provided our office with copies of the signed building permit and site plans for the CRM seawall.

The Board of Land and Natural Resources established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's recommendations on the disposition of shoreline encroachments.

Surrounding Land Uses:

EXHIBIT "D"

Wesley Tengan

Encroachment: OA-18-03

A single-family dwelling exists on the subject property. The surrounding land uses are primarily residential. The adjacent neighbors are fronted by similar seawalls. Kaikoo Place borders the property to the north.

Beach Resources:

The subject property is located on Black Point and is fronted by a rocky shoreline with basalt boulders.

Public Access:

Public shoreline access is available along the western property boundary of the subject property. Alongshore access is limited due to the rocky nature of the shoreline fronting the subject property.

Effect of Removing the Encroachment on:

Beach Resources: There are no sandy carbonate beach resources fronting the subject property. Removal of the encroaching areas of the seawall would not result in a significant improvement to the beach resources fronting the subject property.

Public Access: The alongshore access is limited due to the rocky nature of the shoreline. Removal of the encroaching areas of the seawall would not result in an improvement to lateral beach access fronting the subject property.

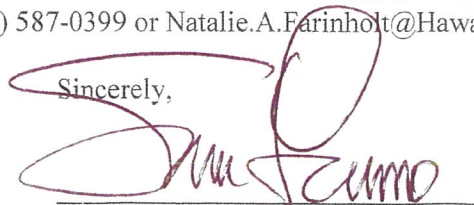
Effect on Adjacent Properties: The adjacent properties have similar seawall structures fronting their properties. Removal of the encroaching areas of the seawall could potentially destabilize the seawalls on the adjacent properties.

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered. There are little or no carbonate beach resources fronting the subject seawall. It is unlikely that removal of the encroachments would improve lateral shoreline access. Furthermore, the structure was authorized in October 1973 by the City and County of Honolulu.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

If you have any questions, please feel free to contact Natalie Farinholt in the Office of Conservation and Coastal Lands at (808) 587-0399 or Natalie.A.Farinholt@Hawaii.gov.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: LAND
City and County of Honolulu