

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

September 11, 2020

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

Ref No.: GL S-6083

OAHU

Approval of Proposed Repair and Modification of Existing Seawall and Steps Covered by Non-Exclusive Easement GL S-6083 to Waimanalo Paradise, LLC, a Delaware limited liability company, Waimanalo, Koolauapoko, Oahu, Tax Map Key: (1) 4-1-002:seaward of 007.

BACKGROUND:

At its meeting on November 14, 2014, under agenda item D-21, the Board approved the grant of a term, non-exclusive easement for seawall and steps purposes for the subject property. The easement received legislative approval during the 2015 legislative session and consideration for the easement at fair market value as determined by independent appraisal was paid to the Department. The easement was executed as GL S-6083 on October 29, 2015. GL S-6083 covers the seawall, steps and an area of fast land between the seawall and the seaward boundary of the property.

The benefitted property has since been subdivided into two parcels, Tax Map Keys (1) 4-1-002:021 and 022 owned by Nesbitt Holdings HI LLC and original easement grantee Waimanalo Paradise LLC, respectively (collectively referred to as "Grantee"). The Grantee has undertaken a project to repair the seawall. In the planning phase of the project, Grantee discovered potential conflicting language within the grant of easement document that may affect the Grantee's ability to proceed with the project. Grantee sought approval from the Board to amend GL S-6083 in order to resolve the potential conflicts. At its meeting on March 8, 2019, under agenda item D-8, the Board approved amendment of GL S-6083. A copy of the approved submittal is attached as **Exhibit A**. Additionally, the shoreline for the property was located at the base of the seawall and certified on June 5, 2018 and July 13, 2020. A copy of the most recent shoreline certification map identifying both the shoreline location and the easement area is attached as **Exhibit B**.

Section 19 of the easement document reads as follows:

"The Grantee acknowledges and agrees that the existing seawall and steps described in Exhibit "A" and delineated on Exhibit "B" herein are nonconforming and, further, that the Grantee is prohibited from rebuilding or altering said existing seawall and steps without first obtaining the appropriate permission (e.g.,

conservation district use permit) from Grantor. In no event may Grantee extend the existing seawall and steps seaward of their present location. Furthermore, the Grantee shall keep the existing seawall and steps in good condition and repair; provided, however, if the existing seawall and steps are substantially (greater than fifty percent) or completely destroyed as determined by the Grantor, this easement and all rights granted herein shall cease and terminate automatically without any further action on the part of the Grantor.”

At the time of its consideration of the easement amendment, the Board reviewed the conceptual repair plans. Staff noted that Grantee would return to the Board for approval of the proposed final project design. Grantee now comes before the Board requesting the aforementioned approval.

REMARKS:

The seawall is approximately 100 years old and is in a deteriorated condition. Deficiencies in the seawall include cracks, delamination, spalling, abrasion, undermining and sinkholes. Despite this, the seawall is currently in a serviceable condition and does not need to be removed. Grantee seeks to conduct a repair and modification project of the existing seawall, which will be located in the easement area but mauka of the certified shoreline. The objectives of the proposed project are to repair and modify the seawall to achieve adequate resistance to design soil loads, reduce wave overtopping under design wave conditions, and increase the resilience of the property to sea level rise.

The project proposes to repair delaminations and spalls from isolated small steel connections and random embedded steel at the front surface of the wall; patch vertical and diagonal cracks to mitigate potential loss of fines through cracks; fill and repair abraded and missing front surface mortar; increase scour resistance at the wall base by filling and replacing undermined areas at the toe of the wall with tremie concrete; and replace missing, settled and spalled concrete masonry unit (CMU) wall extensions with new reinforced concrete wall extensions. Proposed modifications include removal and replacement of delaminated areas of the top cap of the splash guard; removal of delaminated and spalled portions of the splash guard itself and replacement with a new reinforced concrete splash guard; installation of a 2-foot concrete width extension behind the existing seawall to provide adequate resistance to design overturning forces<sup>1</sup>; increase wall crest elevation; excavation to base of wall and installation geotextile fabric to fill sinkholes; and reconstruction of a 15-foot section of wall that was previously removed (now functioning as a boat ramp). Modifications to seawall height would result in the seawall having a minimum height of 9 feet along the entire structure. In the areas where the existing seawall height is currently 9 feet or higher, there will be no height increase. The 9-foot seawall height is in alignment with the adjacent parcel west of the subject property. Additionally, fronting the seawall for most of its length is a fishpond or turtle pond that has likely been in existence since kingdom times.

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<sup>1</sup> A portion of the width extension is located outside the easement area on private land.



In addition to the proposed repairs and modifications, new structural elements include a new buttress wall constructed at the southeast end of the project site and a new ocean access constructed near the stairs at the makai property boundary<sup>2</sup>. The structural walls are intended to provide additional stability for the existing seawall. The buttress wall and ocean access and all associated construction work would occur landward of the existing seawall and shoreline. In accordance with the easement, there will be no improvements located seaward of the present location. A set of design plans are attached as **Exhibit C**. Pursuant to Chapter 343, Hawaii Revised Statutes (HRS), a Final Environmental Assessment with a Finding of No Significant Impact was accepted by the City and County of Honolulu, Department of Planning and Permitting, and published in the Office of Environmental Quality Control The Environmental Notice on July 8, 2020 and is linked below.

<http://oeqc2.doh.hawaii.gov/Doc Library/2020-07-08-OA-FEA-Waimanalo-Paradise-Seawall-Repair.pdf>

As all work will take place mauka of the shoreline, no Conservation District Use Permit (CDUP) is required for this project. Pursuant to Section 28 of the easement, Grantee has conducted an Archaeological Inventory Survey (AIS). The State Historic Preservation Division (SHPD) has reviewed the AIS and determined that the requirements of Section 28 have been fulfilled, and the permitting issuance for the seawall modification work may proceed. A copy of SHPD's approval letter is attached as **Exhibit D**. Grantee has also consulted with the US Army Corps of Engineers (USACE), which determined that no permit is required. Even though a permit is not required, construction will be done in accordance with industry standard Best Management Practices to minimize potential environmental impacts. A copy of the USACE determination letter is attached as **Exhibit E**. Outstanding regulatory approvals include obtaining a shoreline setback variance and building permits from the City and County of Honolulu.

Staff recommends approval of this project as it is compliant with the executed easement previously reviewed and approved by the Board, Legislature and Governor, pursuant to Section 171-53, HRS. As this is a pre-existing, non-conforming seawall, the project will not impact coastal processes or public shoreline access beyond currently existing conditions. Finally, the project is conceptually consistent with what was presented to the Board when it previously approved the amendment of the easement that allowed the project planning to commence.

**RECOMMENDATION:** That the Board:

- 1) Approve the seawall repair and modification project as proposed by the Grantee.

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<sup>2</sup> The buttress wall is located outside the easement area on private land.

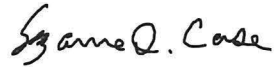
Respectfully submitted,



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Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

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# EXHIBIT A



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

March 8, 2019

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

Ref No.: GL S-6083

OAHU

Amendment of Grant of Non-Exclusive Easement S-6083 to Waimanalo Paradise, LLC, a Delaware limited liability company, for Seawall and Steps Purposes; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-002: seaward of 007. The purpose of the amendment is to modify an easement provision that is in conflict with the rights and privileges granted by the easement.

BACKGROUND:

At its meeting on November 14, 2014, under agenda item D-21, the Board approved the grant of a term, non-exclusive easement for seawall and steps purposes for the subject property. The easement received legislative approval during the 2015 legislative session and consideration for the easement at fair market value as determined by independent appraisal was paid to the Department. The easement was executed as GL S-6083 on October 29, 2015. GL S-6083 covers the seawall, steps and an area of fast land between the seawall and the seaward boundary of the property. A copy of the easement document is attached as exhibit A.

The current landowner of landward parcel, TMK (1) 4-1-002:007, and grantee of the easement, Waimanalo Paradise LLC, a Delaware limited liability company (Grantee) is now planning to undertake a project to repair the seawall. In planning the project, Grantee discovered potential conflicting language within the grant of easement document that may affect the Grantee's ability to proceed with the project. Grantee seeks approval from the Board to amend GL S-6083 in order to resolve the potential conflicts.

REMARKS:

The seawall is approximately 100 years old and is in a deteriorated condition. Deficiencies in the seawall include cracks, delamination, spalling, abrasion, undermining and sinkholes. After conducting preliminary engineering assessments, Grantee desires to install a supplemental structure landward of the existing seawall that would serve to reinforce and stabilize the existing seawall, with minimal modification to the existing structure. The shoreline for the property was located at the base of the seawall and certified on June 5, 2018. The supplemental structure would be located mauka of the

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

March 8, 2019      Go.

EXHIBIT A

D-8

certified shoreline but within the easement area.

Installation of the supplemental structure is preferred over the significant alteration or replacement of the existing seawall that would otherwise be required. This would allow the existing seawall to preserve its non-conforming status. Additionally, the easement prohibits the grantee from extending the seawall and steps seaward of their present location. The proposed project would ensure compliance with that requirement of the easement, as well as minimize impacts to the marine environment by avoiding any placement of structures in the shoreline area and conservation district.

Section 18 of easement states:

“No building, structure or improvements other than the existing seawall and steps shall be placed or constructed within the easement area.”

Narrowly construed, section 18 could be interpreted to prohibit any improvement to support the existing seawall and other steps beyond minor repair. However, the easement granting clauses bestow to the grantee the right, privilege and authority to use, maintain, repair, replace and remove existing seawall and steps. Additionally, the easement permits the existing seawall to be rebuilt and improved provided that approval is granted by the Board. Therefore, it appears that section 18 conflicts with the other provisions of the easement by prohibiting any structure other than the existing seawall and steps in the easement area.

The Board is requested to approve the amendment of section 18 in order to conform to the other provisions in the easement. If approval is granted by the Board, staff will work with the Grantee on appropriate language for the amendment, provided that the amendment is subject to acceptance by the Chairperson and the Attorney General. Finally, upon amendment of the easement, Grantee will work to finalize the project scope and proceed with regulatory approvals. As required by the easement, Grantee will also return to the Board to request approval for the project.

RECOMMENDATION: That the Board:

- 1) Approve the amendment of section 18 of GL S-6083 as described above, with the amendment subject to acceptance by the Chairperson and the Attorney General.

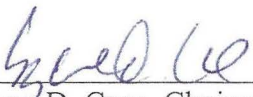
Respectfully submitted,



Ian Hirokawa  
Special Projects Coordinator




APPROVED FOR SUBMITTAL:

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Suzanne D. Case, Chairperson



Total Number of Pages:

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Tax Map Key No. (1) 4-1-002:007 seaward

THIS INDENTURE made and entered into this 29<sup>th</sup> day of OCTOBER, 2015, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and WAIMANALO PARADISE LLC, a Delaware limited liability company, whose address is 525 Monroe Street, Suite 1900, Chicago, Illinois 60661-3693, Attn Seth R. Madorsky, hereinafter referred to as the "Grantee."

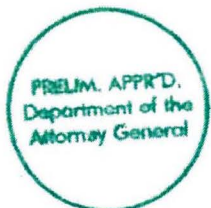
The Grantor, pursuant to Sections 171-13 and 171-53(c), Hawaii Revised Statutes and Section 183C-5, Hawaii Revised Statutes, to the extent applicable, for and in consideration of the rent to be paid and of the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following non-exclusive and term easement rights:

PRELIM. APPR'D.  
Department of the  
Attorney General

in, over, under and across that certain parcel of land ("area"), also referred to as "premises," situate at Pahonu, Waimanalo, Koolaupoko, Oahu, Hawaii, being identified as "Non-Exclusive Seawall and Steps Easement," containing an area of 4539 square feet, more or less, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 25,416 and dated February 17, 2015, TOGETHER WITH the rights of ingress and egress to and from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The term of this easement shall be fifty-five (55) years, commencing on the 29<sup>th</sup> day of OCTOBER, 2015, up to and including the 28<sup>th</sup> day of OCTOBER, 2070, unless sooner terminated as hereinafter provided, the Grantor reserving and the Grantee yielding and paying to the Grantor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, a one time payment, payable in advance, without notice or demand of SIXTY ONE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$61,400.00).





THE GRANTOR AND THE GRANTEE COVENANT AND AGREE AS  
FOLLOWS:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees to indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to maintain the easement area and sidewalks, roadways, and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, 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 the Grantor and similar grantee(s) in any manner which interferes unreasonably with the Grantee in the use of the easement area for the purposes for which this easement is granted.

3. The placement of all improvements in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and subject to the terms of paragraphs 10 and 14 may be removed or otherwise disposed of by the 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 condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement area, the 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 the Grantor.



5. Throughout the term of this easement (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (1) 4-1-002:007, provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

8. The Grantee, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal laws, rules and regulations, now in force or which may hereinafter be in force.

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

10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to their original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee. If the





Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Grantor may remove any and all of Grantee's personal property from the premises, 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 the 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 the easement.

11. The Grantee shall procure and maintain, at its own cost and expense, in full force and effect throughout the term of this easement, comprehensive general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire easement area, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantee.

The Grantee, prior to entry and use of the easement area or within fifteen (15) days after the effective date of this easement, whichever is sooner, shall furnish the Grantor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire easement term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Grantor. The Grantor may at any time require the Grantee to provide Grantor with copies of the insurance policy(s) that are or were in effect during the easement period.

The Grantor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this easement. If, in the opinion of the Grantor, the insurance provisions in this easement do not provide adequate



protection for the Grantor, the Grantor may require Grantee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Grantor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Grantor shall notify Grantee in writing of changes in the insurance requirements and Grantee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Grantor incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Grantee's liability under this easement nor to release or relieve the Grantee of the indemnification provisions and requirements of this easement. Notwithstanding the policy(s) of insurance, Grantee shall be obligated for the full and total amount of any damage, injury, or loss caused by Grantee's negligence or neglect connected with this easement.

It is agreed that any insurance maintained by the Grantor will apply in excess of, and not contribute with, insurance provided by Grantee's policy.

12. Grantor reserves the right to withdraw the easement for public use or purposes, at any time during the term of this easement upon the giving of reasonable notice to Grantee. Upon withdrawal of the easement, Grantor shall return to Grantee a portion of the one-time payment described in paragraph 1. For purposes of determining the amount to be returned to the Grantee, the term "net payment" shall mean the one-time payment described in paragraph 1 reduced by any non-refundable portion of the one-time payment, if any, that Grantor was required by statute to pay to any other entity or body. The amount returned to Grantee shall be the net payment prorated for the unused term of the easement.

13. The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage, hypothecation, or pledge without the approval shall be null and void.

14. Time is of the essence in this agreement and if the Grantee shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantee's property for the benefit



of creditors, or if Grantee shall fail to observe and perform any of the covenants, terms, and conditions contained in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantee.

15. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to dispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or





default. The proceeds of any redisposition shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redisposition which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

16. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement area.

17. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of Grantee's business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. 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 the 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 the easement area placed or released by Grantee.

The Grantee agrees to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive





the expiration or earlier termination of this 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.

18. No building, structure or improvements other than the existing seawall and steps shall be placed or constructed within the easement area.

19. The Grantee acknowledges and agrees that the existing seawall and steps described in Exhibit "A" and delineated on Exhibit "B" herein are nonconforming and, further, that the Grantee is prohibited from rebuilding or altering said existing seawall and steps without first obtaining the appropriate permission (e.g., conservation district use permit) from Grantor. In no event may Grantee extend the existing seawall and steps seaward of their present location. Furthermore, the Grantee shall keep the existing seawall and steps in good condition and repair; provided, however, if the existing seawall and steps are substantially (greater than fifty percent) or completely destroyed as determined by the Grantor, this easement and all rights granted herein shall cease and terminate automatically without any further action on the part of the Grantor.

20. The public shall have access across the easement area at all times.

21. The Grantee shall hold harmless, defend, and indemnify the State of Hawaii, its boards, departments, agencies, and public and appointed officials from any and all claims for harm, taking, damages, loss of land, or specific performance that may arise out of or result from the existence and effect of the existing seawall and steps on the flow of ocean water that, in turn, may affect or cause lateral erosion of shoreline land in either direction along the shore from the existing seawall and steps.

22. The Grantee shall comply with all applicable federal and state environmental impact regulations.



23. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.

24. The Grantee shall maintain, repair and upkeep the existing seawall and steps in a condition satisfactory to the Grantor, and in a manner that will enhance the public shoreline and access thereto. Any improvements to the existing seawall and steps shall be subject to the prior written approval of the Board of Land and Natural Resources and any other appropriate permission. Upon abandonment, expiration or termination of this easement, if desired by the Grantor, the Grantee, its successors and assigns, at its sole cost and expense, shall remove the existing seawall and steps and restore the area to a condition satisfactory to the Grantor.

25. Should future development 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.

26. Section 171-53(c), Hawaii Revised Statutes, requires the prior approval of the Governor of the State of Hawaii to be obtained for this term easement. The Governor of the State of Hawaii's approval was obtained on May 29, 2015.

27. Section 171-53(c), Hawaii Revised Statutes, requires the prior authorization of the legislature by concurrent resolution to be obtained for this term easement. House Concurrent Resolution No. 34, H.D. 1 was adopted in final form on April 28, 2015.

28. The Grantee shall conduct an archaeological inventory survey, including assessment of the seawall, prior to the issuance of any future permit involving ground-disturbing activities.

29. This easement is subject to any shoreline

hardening policy that may be adopted by the Board of Land and Natural Resources prior to execution of the grant of easement.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on November 14, 2014.

By *Suzanne D. Case*  
SUZANNE D. CASE  
Chairperson  
Board of Land and  
Natural Resources

GRANTOR

WAIMANALO PARADISE LLC, a Delaware limited liability company

By: *Judy Grimanis*  
Judy Grimanis  
Its *Manager*

By \_\_\_\_\_  
Its \_\_\_\_\_

APPROVED AS TO FORM:

*AMANDA J. WESTON*  
AMANDA J. WESTON  
Deputy Attorney General

Dated: *June 22, 2015*

By \_\_\_\_\_  
Its \_\_\_\_\_

GRANTEE





STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared \_\_\_\_\_,  
to me personally known, who, being by me duly sworn or affirmed,  
did say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.

\_\_\_\_\_  
Notary Public, State of

\_\_\_\_\_  
My commission expires: \_\_\_\_\_



STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

On this 9th day of September, 2015,  
before me personally appeared Judy Grimanis,  
to me personally known, who, being by me duly sworn or affirmed,  
did say that such person executed the foregoing instrument as the  
free act and deed of such person, and if applicable in the  
capacity shown, having been duly authorized to execute such  
instrument in such capacity.



Dorinda A. Karom  
Notary Public, State of

Illinois

My commission expires: 9-11-18





STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,416

February 17, 2015

NON-EXCLUSIVE SEAWALL AND STEPS EASEMENT  
Fronting Land Court Application 997

Pahonu, Waimanalo, Koolaupoko, Oahu, Hawaii

Comprising the following:

- A. Portion of the Government (Crown) Land of Waimanalo.
- B. Portion of Grant 7618 to Nohokula.

Beginning at the southeast corner of this easement and at the northeast corner of Land Court Application 997, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKAPUU" being 6023.18 feet North and 8944.61 feet West, thence running by azimuths measured clockwise from True South:-

- |    |          |  |
|----|----------|--|
| 1. | 132° 15' | 61.93 feet along Land Court Application 997; |
| 2. | 203° 16' | 3.10 feet along Land Court Application 997;  |
| 3. | 119° 17' | 50.70 feet along Land Court Application 997; |
| 4. | 37° 03'  | 3.84 feet along Land Court Application 997;  |
| 5. | 123° 22' | 8.40 feet along Land Court Application 997;  |
| 6. | 116° 27' | 28.68 feet along Land Court Application 997; |
| 7. | 106° 40' | 99.74 feet along Land Court Application 997; |

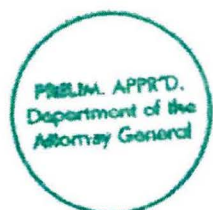
PRELIM. APPRD.  
Department of the  
Attorney General



8.	14° 59'	19.45 feet along Land Court Application 997;
9.	48° 39'	11.43 feet along Land Court Application 997;
10.	107° 35'	1.05 feet along Land Court Application 997;
11.	54° 20'	23.90 feet along Land Court Application 997;
12.	133° 40'	42.50 feet along Land Court Application 997;
13.	106° 56'	93.50 feet along Land Court Application 997;
14.	108° 30'	103.50 feet along Land Court Application 997;
15.	179° 35'	16.90 feet along Land Court Application 997;

Thence along the seaward face of concrete and rock seawall for the next sixteen (16) courses, the direct azimuths and distances between points along said seaward face of concrete and rock seawall being:

16.	197° 04'	0.73 of a foot;
17.	287° 41'	110.97 feet;
18.	351° 21'	12.50 feet;
19.	285° 56'	81.75 feet;
20.	286° 46'	24.70 feet;
21.	357° 42'	8.00 feet;
22.	285° 37'	15.00 feet;
23.	216° 57'	6.00 feet;
24.	278° 46'	15.80 feet;
25.	195° 32'	23.50 feet;
26.	286° 37'	102.00 feet;
27.	297° 44'	34.00 feet;

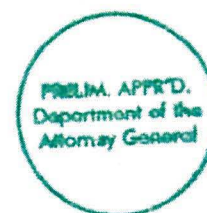


- |     |          |  |
|-----|----------|--|
| 28. | 207° 02' | 5.00 feet;   |
| 29. | 299° 40' | 61.30 feet;  |
| 30. | 38° 37'  | 4.50 feet;   |
| 31. | 312° 22' | 58.05 feet;  |
| 32. | 31° 42'  | 3.68 feet along Grant 11,795 to Louis C. Brown to the point of beginning and containing an AREA OF 4539 SQUARE FEET, MORE OR LESS. |

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Gerald Z. Yonashiro  
Gerald Z. Yonashiro  
Land Surveyor rm

Compiled from map and desc. furn. by  
Hawaii Land Consultants. Said map and  
desc. have been examined and checked  
as to form and mathematical correctness  
but not on the ground by the Survey Division.





RDM February 17, 2015



# EXHIBIT B



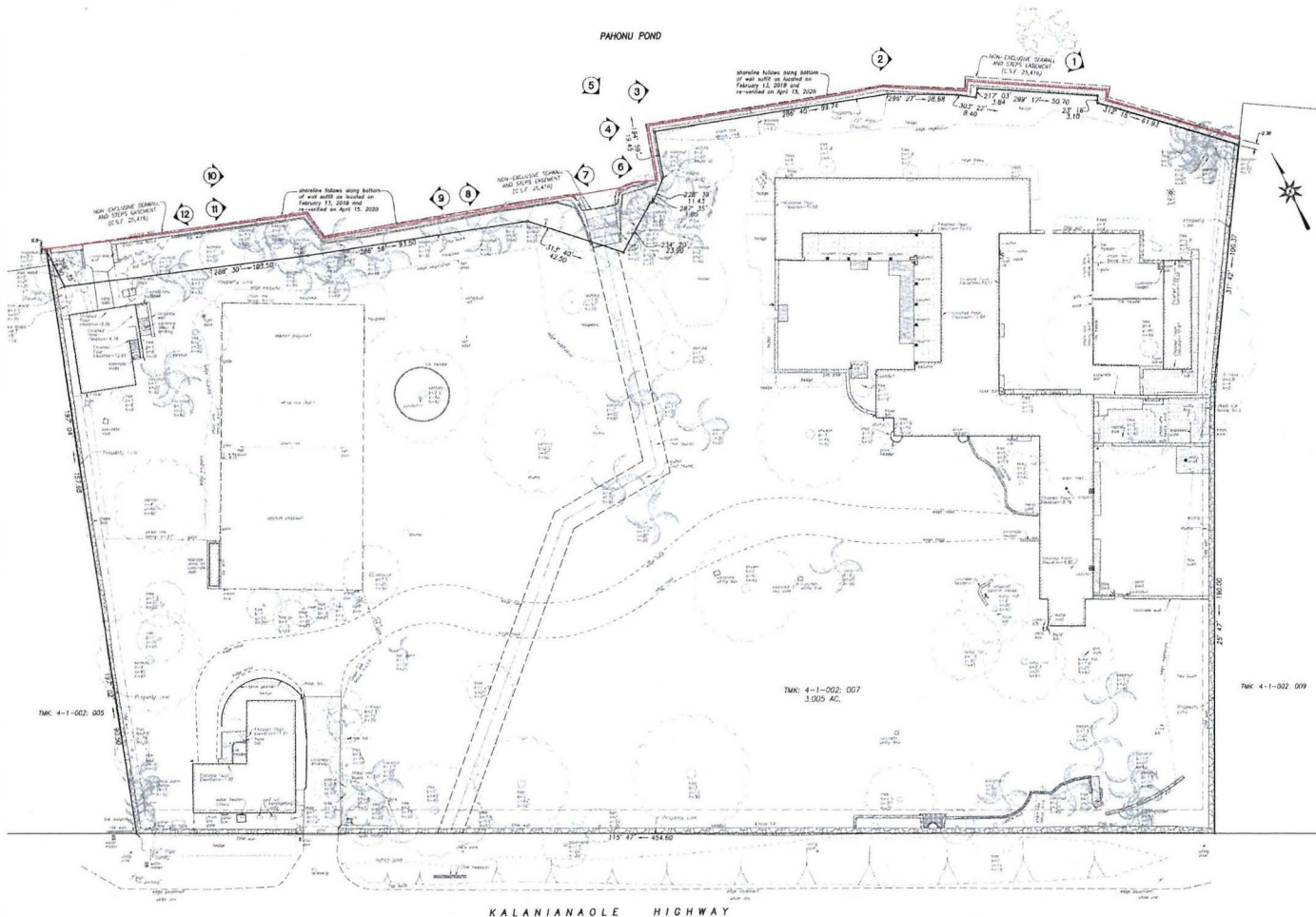


① ② ③ ④ ⑤ ⑥



⑦ ⑧ ⑨ ⑩ ⑪ ⑫

(1) - included on tabulated as of  
JUL 13 2020  
P. 2

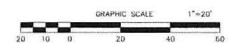


# EXHIBIT B

ABBREVIATIONS:  
CRM Concrete Rubble Masonry

NOTES:  
Azimuths are referred to Government  
Triangulation Station 'Mahepe' Δ.

① Denotes approximate position and direction of shoreline photograph.



**PN**  
KNS  
KNS Surveying, LLC  
500 ALAKA STREET, #100A  
HONOLULU, HAWAII 96817  
PH: 524-7700

SHORELINE SURVEY  
AT 41-505 KALANIANA'OLE HIGHWAY  
OWNER: WAIMANALO PARADISE LLC  
PAHANU, WAIMANALO, KODIAUPONO, OAHU, HAWAII  
AS SHOWN ON LAND COURT APPLICATION 997 MAP 1  
TAX MAP KEY: 4-1-002.007  
SCALE: 1 IN. = 20 FT.



APRIL 15, 2020 FIELD BOOK NO. 155-01



# EXHIBIT C

\\PROJECTS\2018 FOLDER\18067\_HQ Waimanolo Paradise - East Lot Seawall.dwg WAS PLOTTED ON 8/25/2020 8:11 AM BY GFD3

- # EXHIBIT C

SHEET LIST	
S-0	TITLE SHEET AND GENERAL NOTES
S-1	OVERALL SEA WALL PLAN
S-2	EAST LOT SEA WALL PLAN - SCOPE OF WORK
S-3	EXISTING SEA WALL SECTIONS
S-4	SEA WALL RETROFIT SECTIONS
S-5	NEW SEA WALL ENTRY AND BRACING DETAILS
S-6	WATER QUALITY PROTECTION PLAN
S-7	WATER QUALITY PROTECTION PLAN

1. REPAIR QUANTITIES ARE APPROXIMATE AND ARE TO BE VERIFIED BY VISUAL OBSERVATION, SOUNDING, AND ACTUAL PERFORMANCE OF THE REPAIRS.
2. UNDERMINING AND ASSOCIATED VOID LOCATION AND SIZES AS WELL AS THE SUITABILITY OF THE SUBSTRATE SHALL BE CONFIRMED DURING DEBRIS REMOVAL.

WAIMANALO PARADISE  
EAST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

ISSUE:	DATE:
PERMIT SET	08-24-20

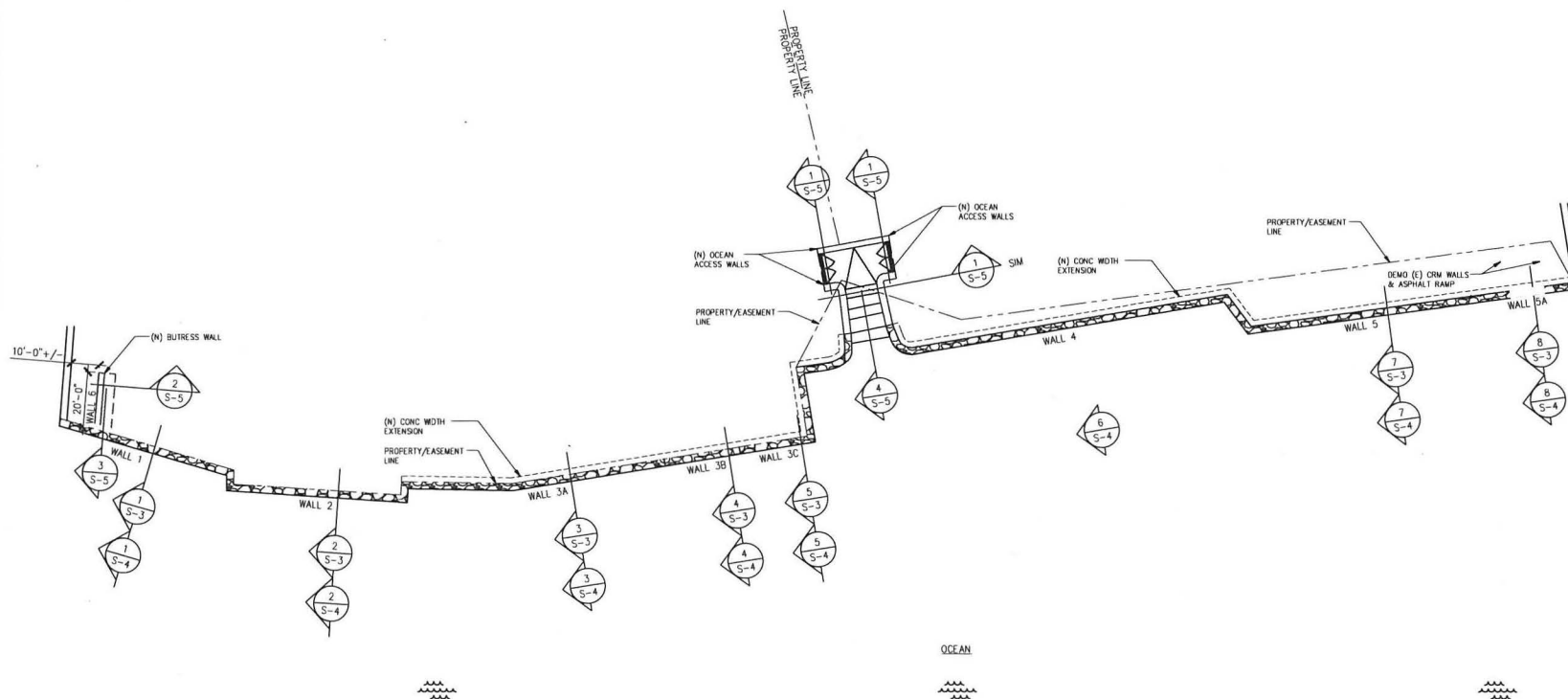
JOB# 18057.H2

CONTENTS:  
GENERAL NOTES

S-0



UPROJECT\2018\10\06\18067\20 Waimanalo Paradise - East Lot Seawall\DWG\CASTLES.dwg WAS PLOTTED ON 8/25/2026 8:11 AM BY GPDB



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ENGINEERS



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AND CONSTRUCTION OF THIS  
PROJECT WILL BE UNDER MY  
OBSERVATION.

Chris Wilson EXP 4/30/22  
Chris Wilson

WAIMANALO PARADISE  
EAST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

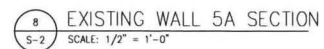
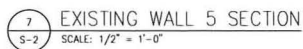
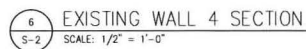
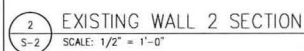
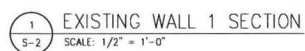
ISSUE: DATE:  
PERMIT SET 08-24-20

JOB# 18067.H2

CONTENTS:  
OVERALL  
SEAWALL  
PLAN

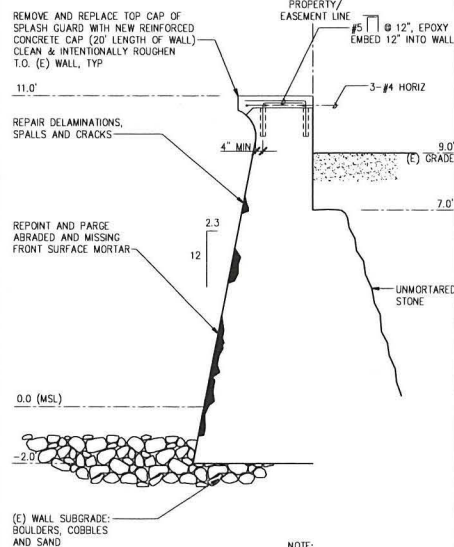
S-1



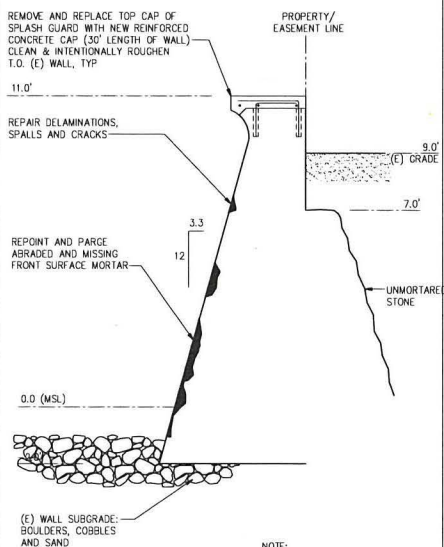


S-3

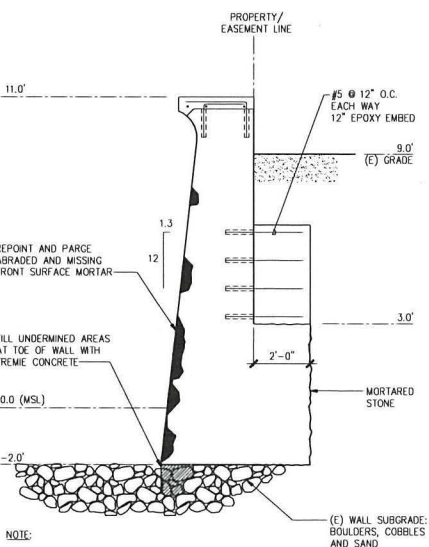




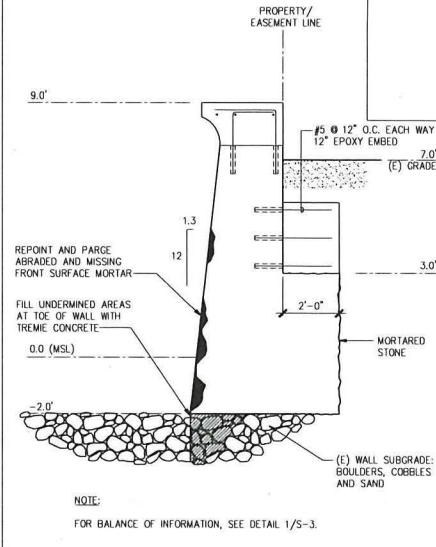
1 WALL 1 SECTION  
S-4 SCALE: 1/2" = 1'-0"



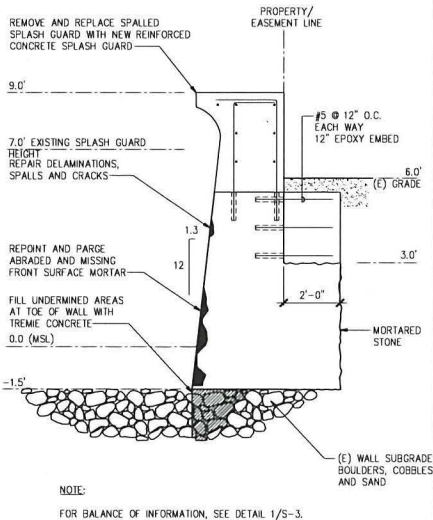
2 WALL 2 SECTION  
S-4 SCALE: 1/2" = 1'-0"



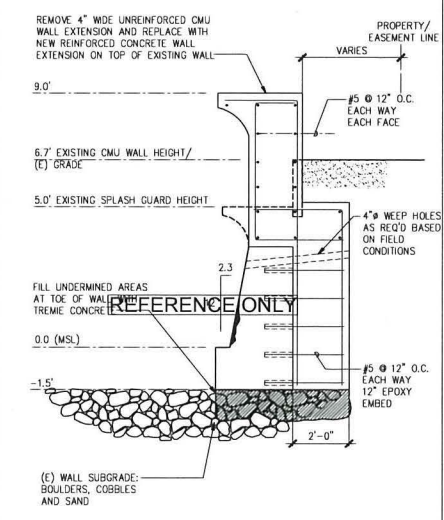
3 WALL 3A SECTION  
S-4 SCALE: 1/2" = 1'-0"



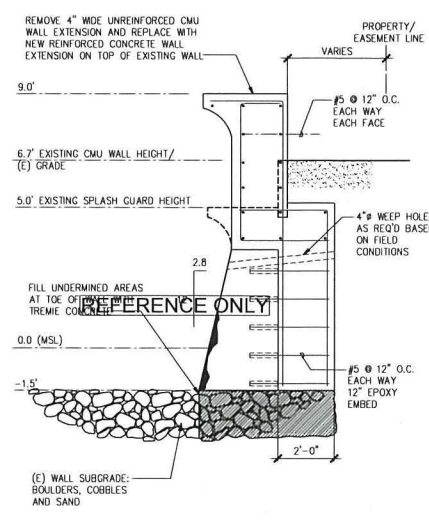
4 WALL 3B SECTION  
S-4 SCALE: 1/2" = 1'-0"



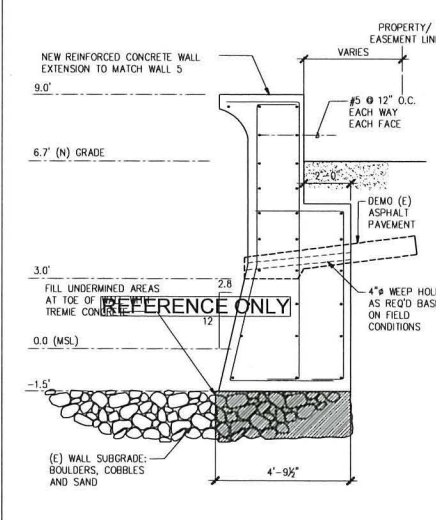
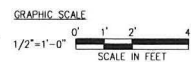
5 WALL 3C SECTION  
S-4 SCALE: 1/2" = 1'-0"



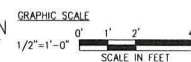
6 WALL 4 SECTION  
S-4 SCALE: 1/2" = 1'-0"



7 WALL 5 SECTION  
S-4 SCALE: 1/2" = 1'-0"



8 WALL 5A SECTION  
S-4 SCALE: 1/2" = 1'-0"



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Kaimukui, Hawaii 96814  
808.967.6260



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Chris Wilson EXP 4/30/22  
Chris Wilson

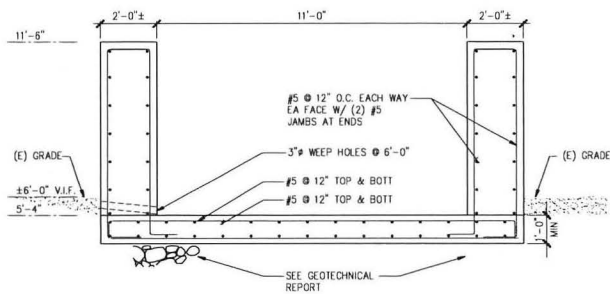
WAIMANALO PARADISE  
EAST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

ISSUE: DATE:  
PERMIT SET 08-24-20

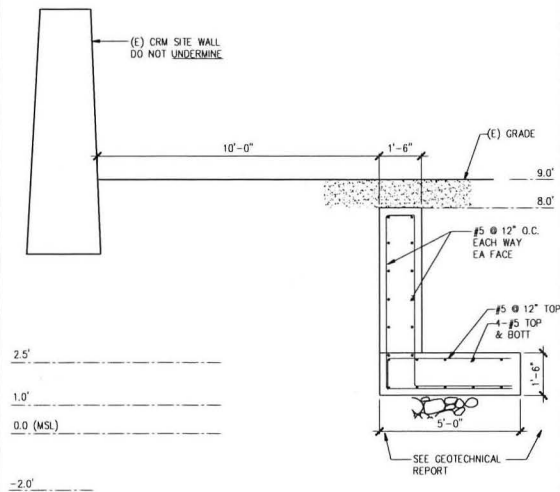
JOB# 18067.H2

CONTENTS:  
SEAWALL  
RETROFIT

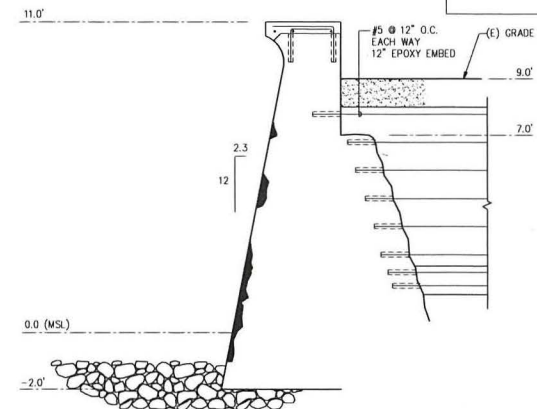
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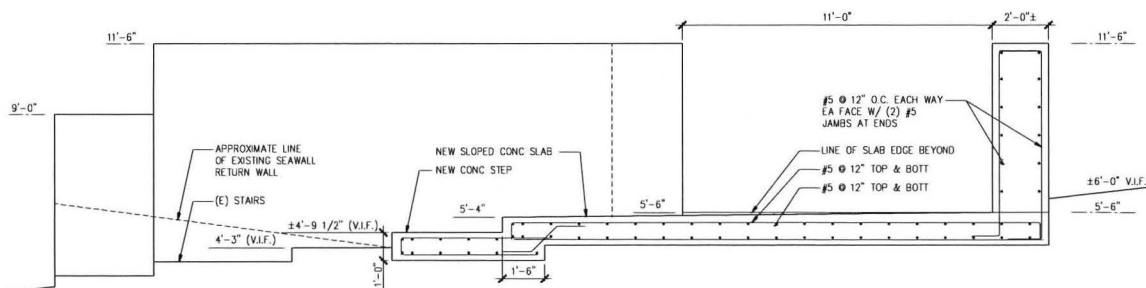
1 WALL 7 SECTION-BEACH ACCESS WALLS  
SCALE: 1/2" = 1'-0"



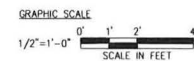
2 WALL 6 SECTION-BUTTRESS WALL  
SCALE: 1/2" = 1'-0"



3 WALL 6 CONN TO WALL 1  
SCALE: 1/2" = 1'-0"



4 WALL 7 SECTION-BEACH ACCESS WALLS  
SCALE: 1/2" = 1'-0"



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Honolulu, Hawaii 96824  
RKH 887 6251



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Chris Wilson EXP 4/30/72  
Chris Wilson

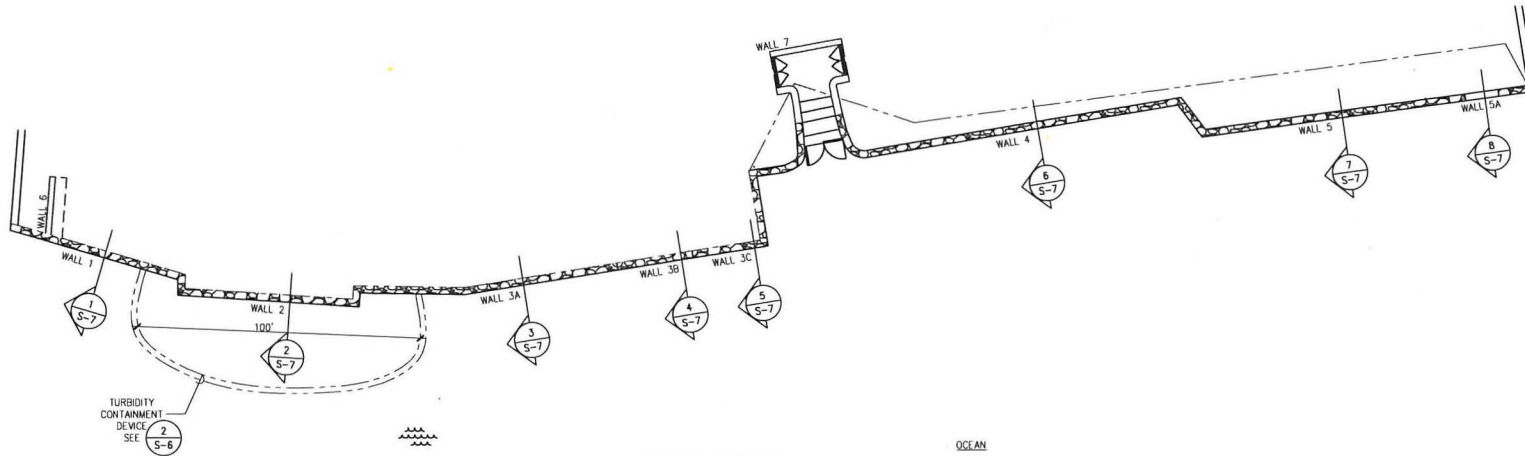
WAIMANALO PARADISE  
EAST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

ISSUE: DATE:  
PERMIT SET 08-24-20

JOB# 18067.H2

CONTENTS:  
SEAWALL  
RETROFIT

S-5



NOTE:  
100' LONG TURBIDITY CONTAINMENT DEVICE SHALL BE DEPLOYED PARALLEL TO WALL CONSTRUCTION AFTER WORK IS COMPLETE ON EACH WALL. EQUIPMENT AND BMPs WOULD BE MOVED TO THE NEXT WALL.

WATER QUALITY  
PROTECTION  
LAYOUT  
SCALE: 1" = 20'



#### TURBIDITY CONTAINMENT DEVICE NOTES:

1. TURBIDITY CONTAINMENT DEVICES SHALL BE OF SUFFICIENT DESIGN, STRENGTH, AND SUITABILITY FOR THEIR INTENDED APPLICATION IN THE OCEAN ENVIRONMENT.
2. FLOATING TURBIDITY CONTAINMENT DEVICES SHALL GENERALLY BE COMPOSED OF A WATER SURFACE FLOATATION BOOM WITH A MINIMUM FREEBOARD OF 4 INCHES, A SKIRT HANGING VERTICALLY TO THE REQUIRED DEPTH, BALLAST WEIGHT AT THE SKIRT BOTTOM, AND SUFFICIENT ANCHORS TO MAINTAIN THE CURTAIN IN PLACE.
3. THE FLOATING TURBIDITY CONTAINMENT DEVICE SKIRT MATERIAL SHALL BE MONOFILAMENT WOVEN POLYPROPYLENE WITH THE FOLLOWING MINIMUM PHYSICAL REQUIREMENTS:

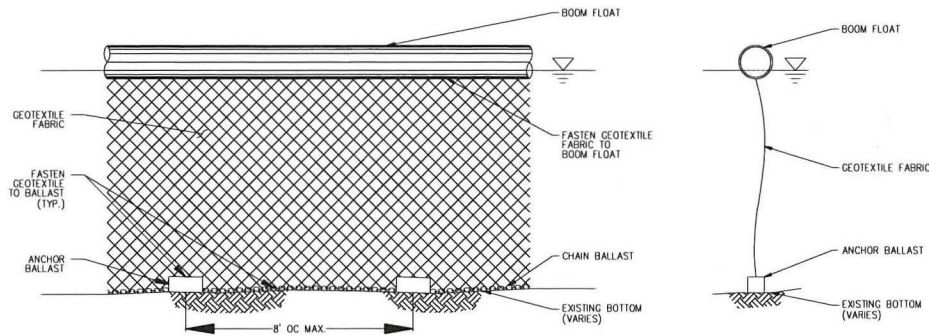
PROPERTY	VALUE	TEST METHOD
GRAB STRENGTH	200 LBS	ASTM D 4632
PUNCTURE	90 LBS	ASTM D 4833
TRAPEZOID TEAR	90 LBS	ASTM D 4533

PERVIOUS GEOTEXTILE SKIRT MATERIAL SHALL HAVE A MAXIMUM APPARENT OPENING SIZE (AOS) AND PERCENT OPEN AREA (POA) CAPABLE OF RETAINING FINE SUSPENDED SEDIMENTS 0.004 MM OR LARGER IN DIAMETER.

4. TURBIDITY CONTAINMENT DEVICES SHALL BE INSPECTED DAILY, AND IMMEDIATELY REPAIRED OR REPLACED AS NECESSARY TO ENSURE THEIR EFFECTIVENESS.
5. A TURBIDITY CONTAINMENT DEVICE SHALL BE DEPLOYED TO COMPLETELY SURROUND THE AREA OF ACTIVE IN-WATER CONSTRUCTION.

#### WOODEN FORMWORK NOTES:

1. WOODEN FORMWORK WILL BE INSTALLED AT LOW TIDE.
2. WOODEN FORMWORK WILL CONSIST OF UNTREATED WOOD.
3. HYDRAULIC CEMENT OR PUG DUCT SEAL WILL BE USED TO FILL ANY GAPS BETWEEN THE BOTTOM OF THE FORMWORK AND THE SEAFLOOR.
4. A FLEXIBLE PVC WATERSTOP BARRIER WILL BE INSTALLED BETWEEN THE WOODEN FORMWORK AND THE FACE OF THE SEAWALL TO ENSURE THAT ALL WATER AND CONCRETE IS CONTAINED WITHIN THE FORMWORK, AND NO OCEAN WATER CAN ENTER THE FORMWORK.
5. ALL MATERIALS, INCLUDING THE WOODEN FORMWORK, PVC WATERSTOP BARRIER, AND HYDRAULIC CEMENT OR PUG DUCT SEAL, WILL REMAIN IN PLACE FOR THE DURATION OF CONSTRUCTION AND WILL BE REMOVED WHEN CONSTRUCTION IS COMPLETED.



2 TURBIDITY CONTAINMENT DEVICE DETAIL  
SCALE: NTS

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design for fine  
architecture  
ENGINEERS



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Chris Wilson EXP 4/30/22  
Chris Wilson

WAIMANALO PARADISE  
EAST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

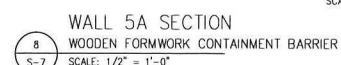
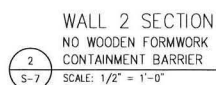
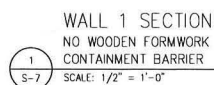
ISSUE: DATE:  
PERMIT SET 08-24-20

JOB# 18067.H2

CONTENTS:  
WATER  
PROTECTION  
PLAN AND  
DETAILS

S-6





**GRAPHIC SCALE**

0' 1' 2' 4'

$1/2" = 1' - 0"$

SCALE IN FEET

**GF  
DE**  
**ENGINEERS**

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65-1251 Kawaiahao Road, Ste 102  
Kamuela, Hawaii 96743  
808 887 6250



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PROJECT WILL BE UNDER MY  
OBSERVATION.

Chris Wilson EXP 4/30/22

WAIMANALO PARADISE  
EAST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

ISSUE: \_\_\_\_\_ DATE: \_\_\_\_\_  
PERMIT SET 08-24-20

JOB# 18067.H2

CONTENTS:  
DETAILS

S-7

J:\PROJECTS\2018 FOLDER\18067\_H2 Wamamelo Paradise - East Lot Serwalling\WEST\SO.dwg WAS PLOTTED ON 8/25/2020 @ 1:15 AM BY GFDS

- REPAIR, RETROFIT AND NEW WALL CONCRETE:

- GENERAL UNDERMINING REPAIR PROCEDURES:

- DETERIORATED MORTAR REPOINTING AND PARING:

- ## SCOPE OF WORK

SCOPE OF WORK INCLUDES THE RETROFIT OF AN EXISTING CRM SEAWALL.

## BUILDING CODE

DESIGN IS BASED ON THE INTERNATIONAL BUILDING CODE, 2006 EDITION.  
CONSTRUCTION SHALL CONFORM WITH APPLICABLE SECTIONS OF THIS CODE.

REFERENCE STANDARDS SHALL BE THE EDITION NOTED IN THE CODE, UNLESS OTHERWISE INDICATED.

### CONCRETE SPALL REPAIRS:

1. ANTI-CORROSION COATING APPLIED ON EXISTING CORRODED REINFORCING OR STRUCTURAL STEEL TO BE COVERED WITH CONCRETE OR REPAIR MORTAR SHALL BE MAPEFER 1K BY MAPEI CORPORATION, SIKA ARMATEC 110 EPODEM BY SIKA CORPORATION, OR APPROVED EQUAL.
2. REPAIR MORTAR FOR TOP SURFACE REPAIRS SHALL BE MAPEI PLANTOP 18 BY MAPEI CORPORATION, SIKATOP 123 PLUS BY SIKA CORPORATION, OR APPROVED EQUAL. MAX 3/8" HARD ROCK AGGREGATE THAT IS CLEANED, WASHED, AND PREWASHED SHALL BE ADDED AT MANUFACTURER'S RECOMMENDED RATE TO PRODUCE REPAIR MATERIAL WITH COARSE AGGREGATE.
3. REPAIR MORTAR FOR VERTICAL OR UNDERSIDE SURFACES TO BE REPAIRED IN LIFTS SHALL BE MAPEI PLANTOP X BY MAPEI CORPORATION, SIKATOP 123 PLUS BY SIKA CORPORATION, OR APPROVED EQUAL.
4. ANTI-CORROSION COATING AND REPAIR MORTAR SHALL BE SUPPLIED BY THE SAME MANUFACTURER.
5. MANUFACTURER'S PROCEDURES SHALL BE FOLLOWED FOR INSTALLATION OF ALL PRODUCTS.

NOTES:

1. REPAIR QUANTITIES ARE APPROXIMATE AND ARE TO BE VERIFIED BY VISUAL OBSERVATION, SOUNDING, AND ACTUAL PERFORMANCE OF THE REPAIRS.
2. UNDERMINING AND ASSOCIATED VOID LOCATION AND SIZES AS WELL AS THE SUITABILITY OF THE SUBSTRATE SHALL BE CONFIRMED DURING DEBRIS REMOVAL.
3. QUANTITIES ARE THE TOTALITY OF WORK FROM EAST AND WEST PROPERTIES

SHEET LIST	
S-0	TITLE SHEET AND GENERAL NOTES
S-1	OVERALL SEA WALL PLAN
S-2	WEST LOT SEA WALL PLAN - SCOPE OF WORK
S-3	EXISTING SEA WALL SECTIONS
S-4	SEA WALL RETROFIT SECTIONS
S-5	NEW SEA WALL ENTRY AND BRACING DETAILS
S-6	WATER QUALITY PROTECTION PLAN
S-7	WATER QUALITY PROTECTION PLAN

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D S**  
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85-1291 Kneeham Road, Ste 10  
Kamuela, Hawaii 96742  
808 887 4250



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AND CONSTRUCTION OF THIS  
PROJECT WILL BE UNDER MY  
OBSERVATION

Chris Wilson EXP 4/30/22  
Chris Wilson

WAIMANALO PARADISE  
WEST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

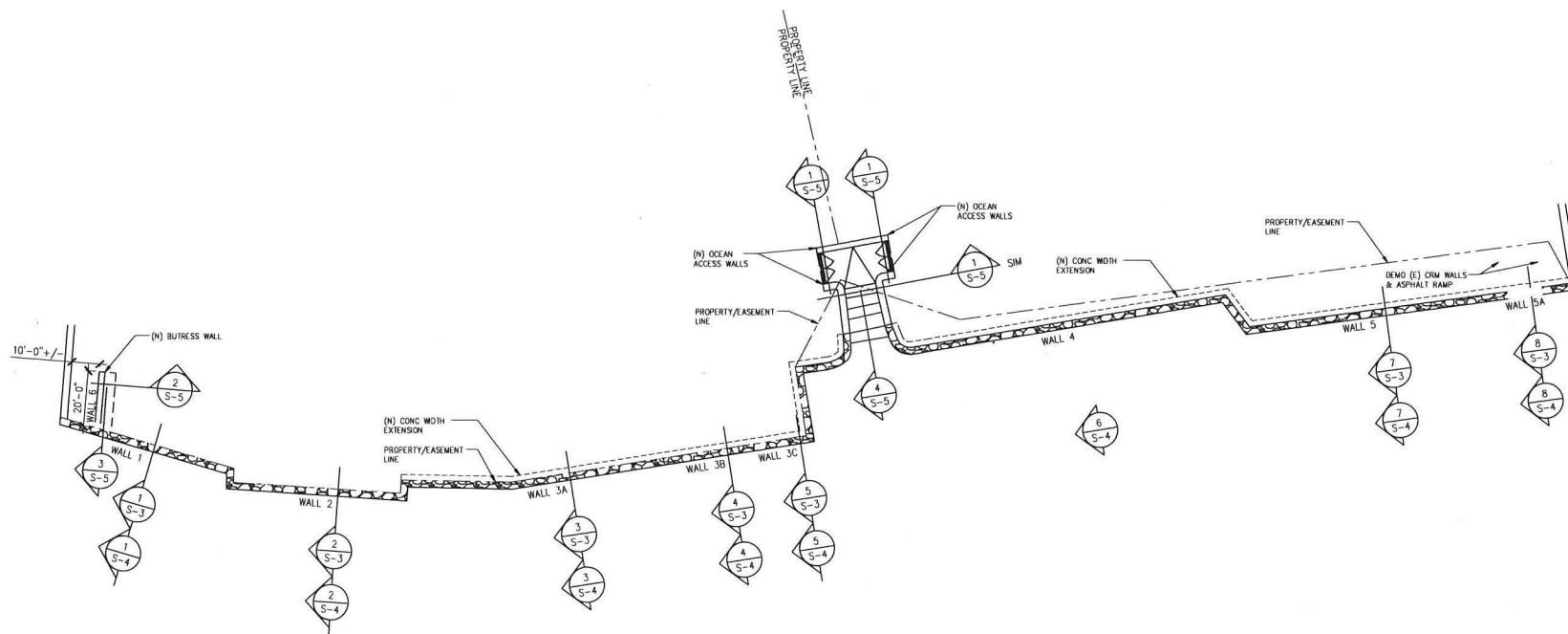
ISSUE: \_\_\_\_\_ DATE: \_\_\_\_\_  
PERMIT SET 08-24-20

JOB# 18067.H3

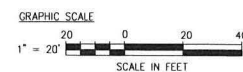
CONTENTS:  
GENERAL NOTES

S-0

U:\PROJECTS\2018\FOLDER1807142\Waimanalo Paradise - Ext1.dwg WAS PLOTTED ON 8/25/2020 11:15 AM BY GJDB



OVERALL SEAWALL PLAN  
SCALE: 1" = 20'



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Chris Wilson EXP 4/30/22  
Chris Wilson

WAIMANALO PARADISE  
WEST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

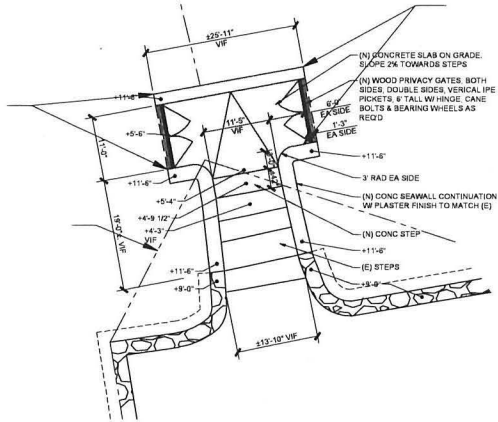
ISSUE: DATE:  
PERMIT SET 08-24-20

JOB# 18067.H3

CONTENTS:  
OVERALL  
SEAWALL  
PLAN

S-1

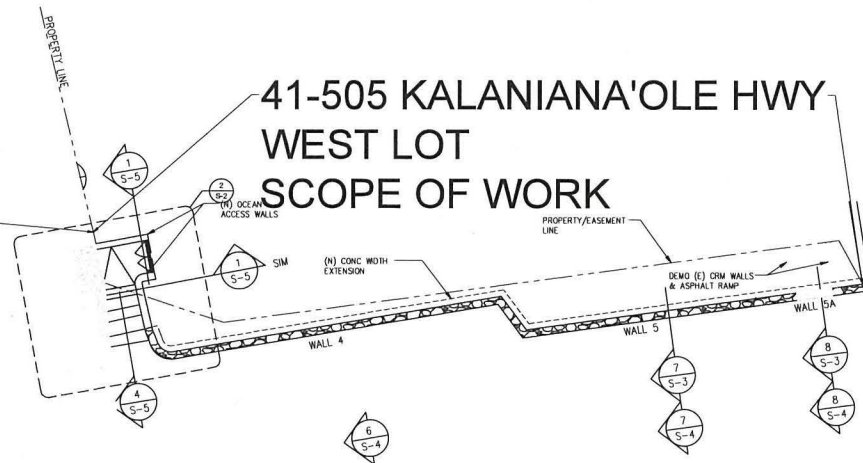




2 ENLARGED SEAWALL ACCESS PLAN  
SCALE: 1" = 10'



41-505 KALANIANA'OLE HWY  
EAST LOT  
SHOWN FOR REFERENCE  
ONLY



OCEAN

WEST LOT SEAWALL PLAN - SCOPE OF WORK  
SCALE: 1" = 20'



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Chris Wilson

WAIMANALO PARADISE  
WEST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

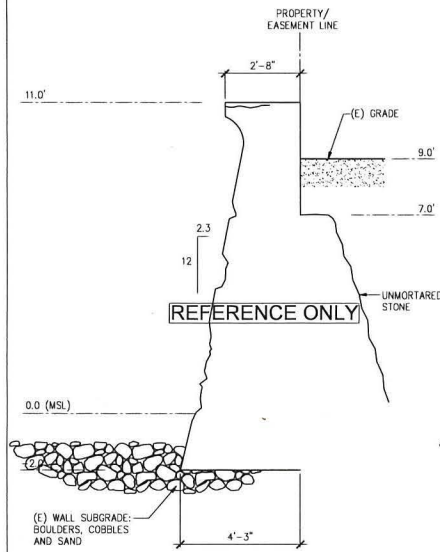
ISSUE: DATE:  
PERMIT SET 08-24-20

JOB# 18067.H3

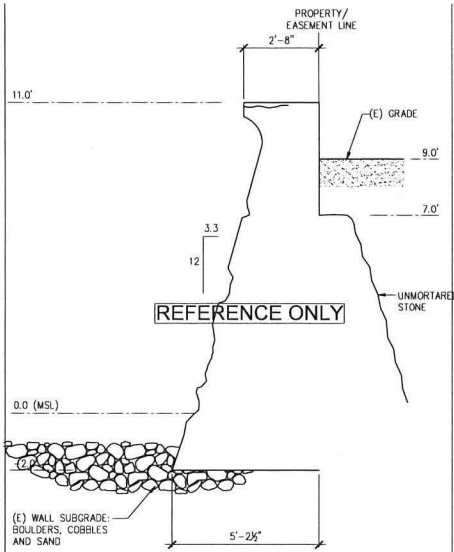
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WEST LOT  
SEAWALL PLAN -  
SCOPE OF WORK

S-2

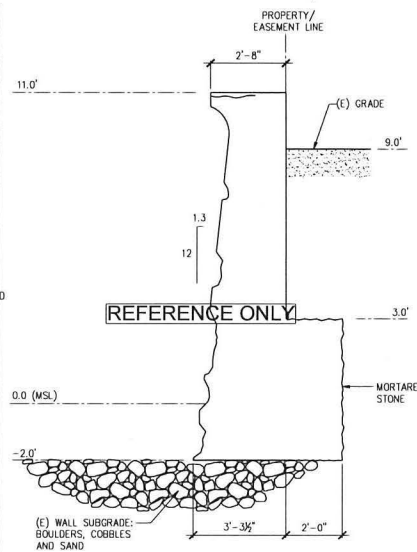
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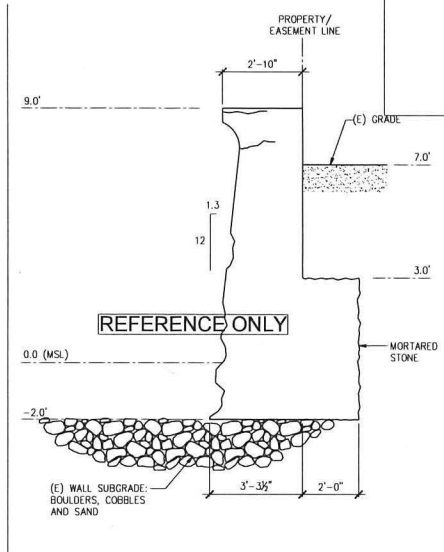
1 EXISTING WALL 1 SECTION  
S-2 SCALE: 1/2" = 1'-0"



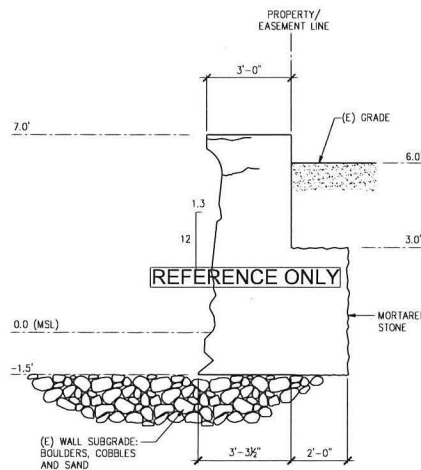
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S-2 SCALE: 1/2" = 1'-0"



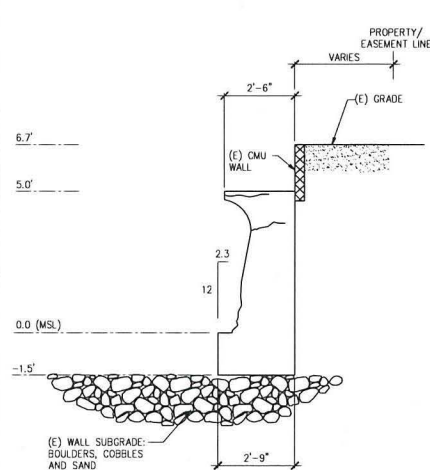
3 EXISTING WALL 3A SECTION  
S-2 SCALE: 1/2" = 1'-0"



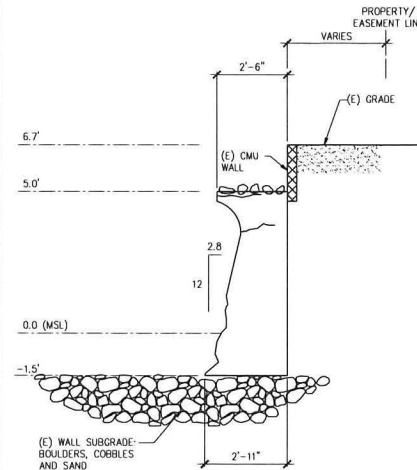
4 EXISTING WALL 3B SECTION  
S-2 SCALE: 1/2" = 1'-0"



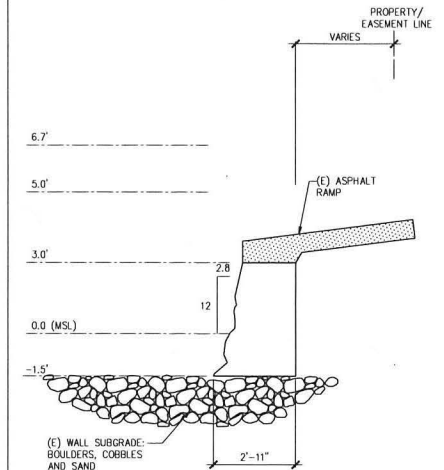
5 EXISTING WALL 3C SECTION  
S-2 SCALE: 1/2" = 1'-0"



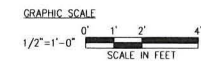
6 EXISTING WALL 4 SECTION  
S-2 SCALE: 1/2" = 1'-0"



7 EXISTING WALL 5 SECTION  
S-2 SCALE: 1/2" = 1'-0"



8 EXISTING WALL 5A SECTION  
S-2 SCALE: 1/2" = 1'-0"



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Chris Wilson

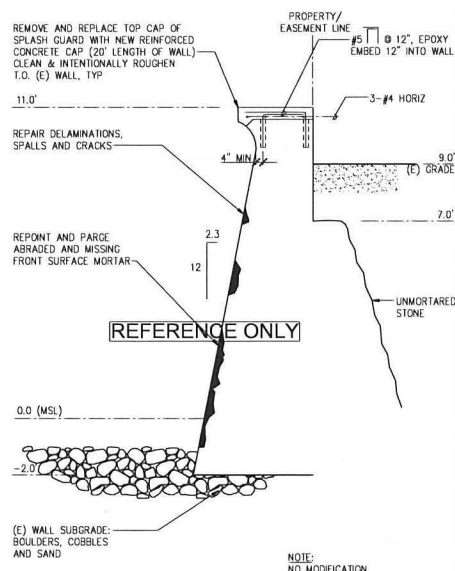
WAIMANALO PARADISE  
WEST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

ISSUE: DATE:  
PERMIT SET 08-24-20

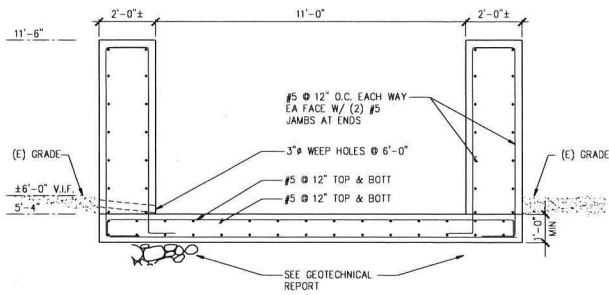
JOB# 18067.H3

CONTENTS:  
EXISTING  
SEAWALL  
SECTIONS

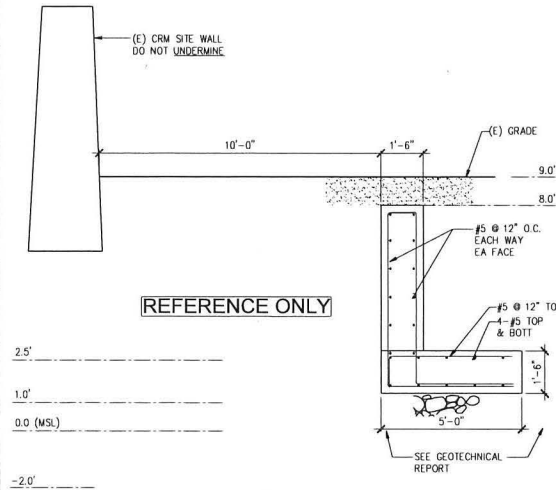
S-3



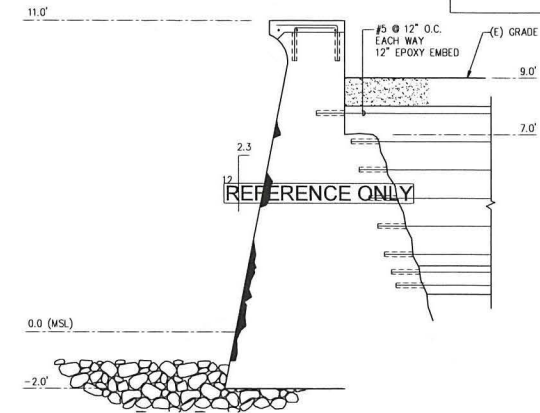




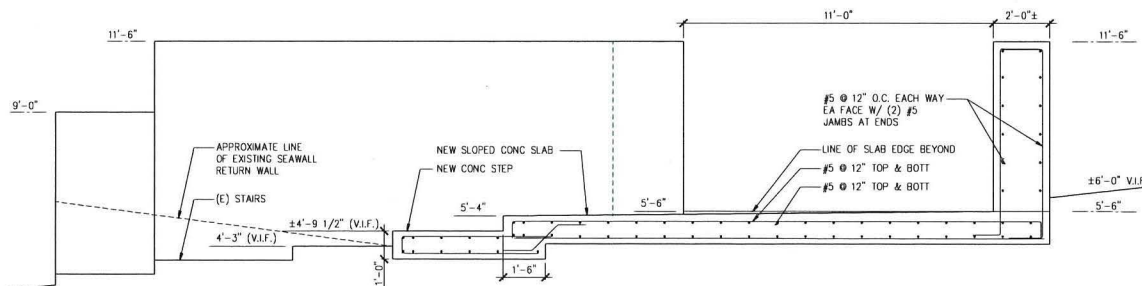
1 WALL 7 SECTION-BEACH ACCESS WALLS  
S-5 SCALE: 1/2" = 1'-0"



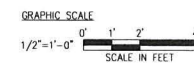
2 WALL 6 SECTION-BUTTRESS WALL  
S-5 SCALE: 1/2" = 1'-0"



3 WALL 6 CONN TO WALL 1  
S-5 SCALE: 1/2" = 1'-0"



4 WALL 7 SECTION-BEACH ACCESS WALLS  
S-5 SCALE: 1/2" = 1'-0"



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Chris Wilson

WAIMANALO PARADISE  
WEST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

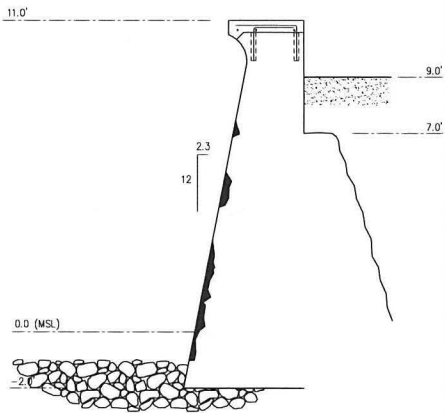
ISSUE: DATE:  
PERMIT SET 08-24-20

JOB# 18067.H3

CONTENTS:  
SEAWALL  
RETROFIT

S-5



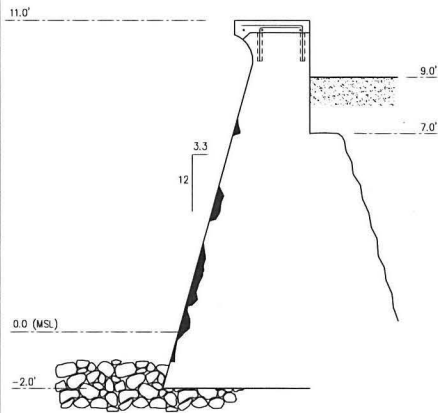


### WALL 1 SECTION

NO WOODEN FORMWORK  
CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

1  
S-7

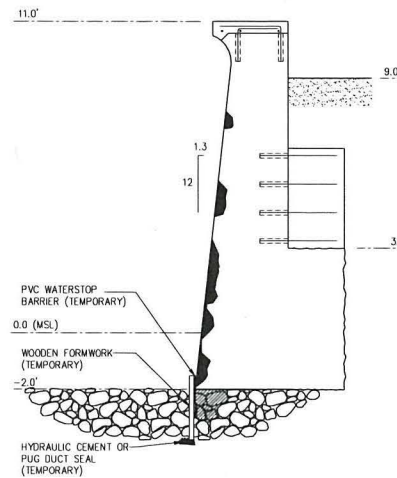


### WALL 2 SECTION

NO WOODEN FORMWORK  
CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

2  
S-7

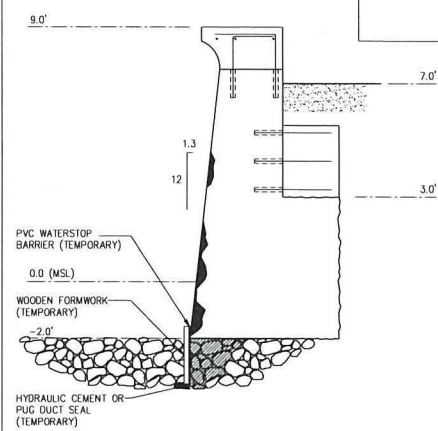


### WALL 3A SECTION

WOODEN FORMWORK CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

3  
S-7

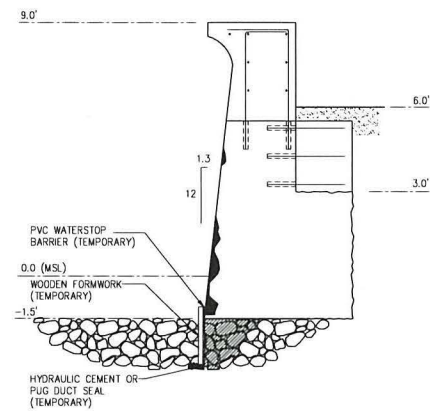


### WALL 3B SECTION

WOODEN FORMWORK CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

4  
S-7

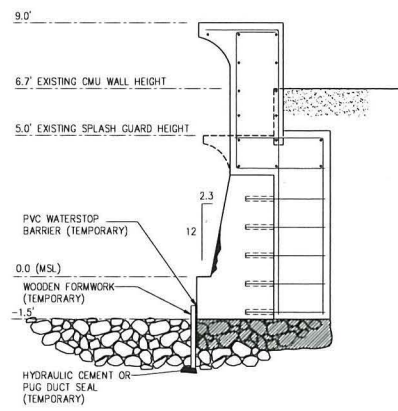


### WALL 3C SECTION

WOODEN FORMWORK CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

5  
S-7

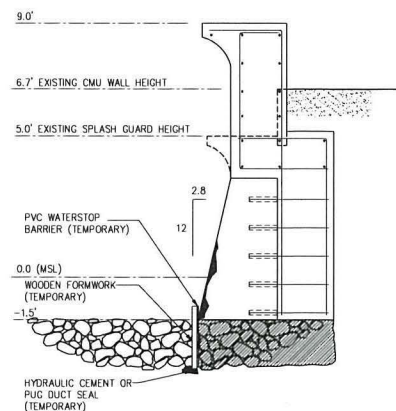


### WALL 4 SECTION

WOODEN FORMWORK CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

6  
S-7

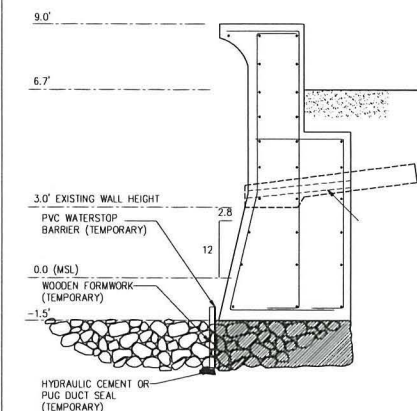


### WALL 5 SECTION

WOODEN FORMWORK CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

7  
S-7

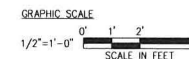


### WALL 5A SECTION

WOODEN FORMWORK CONTAINMENT BARRIER

SCALE: 1/2" = 1'-0"

8  
S-7



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Chris Wilson EXP 4/30/72  
Chris Wilson

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WEST LOT  
41-505 KALANIANA'OLE HWY  
WAIMANALO, HI 96795  
TMK: 4-1-002:007

ISSUE: DATE:  
PERMIT SET 08-24-20

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DETAILS

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# EXHIBIT D





DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
KAKUHIWEA BUILDING  
601 KAMOKILA BLVD., STE 555  
KAPOLEI, HI 96707

KIZANNE D. CASK  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
  
ROBERT K. MARUDA  
FIRST DEPUTY  
  
M. KALLO MANUEL  
DEPUTY DIRECTOR - WATER  
  
AQUATIC RESOURCE  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCE  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCE ENHANCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KARLOLAWEI LAND RESERVE COMMISSION  
LAND  
STATE PARKS

December 20, 2019

Kathy K. Sokugawa  
City and County of Honolulu  
Department of Planning and Permitting  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, HI 96813  
c/o [REDACTED]

Ms. Sharon Nishiura, Planner  
Subdivision Branch  
City and County of Honolulu  
650 South King Street, 8<sup>th</sup> Floor  
Honolulu, HI 96813  
c/o [REDACTED]

Dear Ms. Sokugawa and Ms. Nishiura:

SUBJECT: Chapter 6E-42 Historic Preservation Review –  
Subdivision Application No. 2018/SUB-112  
Non-Exclusive Easement S-6083  
Archaeological Inventory Survey Report for the Waimānalo Paradise Seawall Project  
Waimānalo Ahupua'a, Ko'olaupoko District, Island of O'ahu  
TMK: (1) 4-1-002:007 and State of Hawai'i coastal lands

This letter updates the State Historic Preservation Division's (SHPD's) comments concerning the subject application and non-exclusive easement and provides the SHPD's review of the draft archaeological report titled, *Draft Archaeological Inventory Survey Report for the Proposed Waimānalo Paradise Seawall Project, Waimānalo Ahupua'a, Ko'olaupoko District, O'ahu TMK: (1) 4-1-002:007 and State of Hawai'i Coastal Lands* (Enanoria et al., December 2019). SHPD received the draft archaeological inventory survey (AIS) report on April 22, 2019. SHPD requested revisions via email (Samantha Hemenway [SHPD] to David Shideler [Cultural Surveys Hawai'i, Inc.] on December 19, 2019 and received the revised draft AIS on December 20, 2019.

Cultural Surveys Hawai'i, Inc. (CSH) conducted the AIS at the request of the private landowner, Waimanalo Paradise LLC (landowner). The 0.17-acre (0.06-hectare) project area is located in the northern portion of 41-505 Kalaniana'ole Highway, Waimānalo. The project area is between the coast and Kalaniana'ole Highway and is approximately 160 m southwest of Kaiona Beach Park and 1,100 m northeast of Kaupō Beach Park and the Makai Research Pier. The proposed scope of work consists of Sea Engineering, Inc. (SEI) conducting subsurface investigations to confirm the wall dimensions and geotechnical soil parameters to accurately determine the feasibility and cost estimates for conceptual wall repair and replacement options.

In a letter dated March 29, 2019 (Log No. 2018.01746, Doc. No. 1903SL06), SHPD requested an AIS be conducted for the Waimānalo Paradise Seawall Project as specified by Stipulation 28 in the Grant of Non-Exclusive Easement S-6083 between the State of Hawaii, Board of Land and Natural Resources (Grantor) and Waimanalo Paradise LLC (Grantee), dated October 25, 2015. "The Grantee shall conduct an archaeological inventory survey, including assessment of the seawall, prior to the issuance of any future permits involving ground-disturbing activities." SHPD also approved the AIS research design in the March 29, 2019 letter.

IN REPLY REFER TO:  
Log No.: 2019.00876  
Doc. No.: 1912SCH07  
Archaeology

Ms. Sokugawa and Ms. Nishiura  
December 20, 2019  
Page 2

The AIS field work was conducted on April 2 and April 3, 2019. A 100% pedestrian inspection was completed for the entire project area, along with GPS data collection, photographic documentation, and the recording of stratigraphic profiles and soil descriptions. A total of four backhoe test trenches (T-1 through T-4) were excavated at designated locations on the makai side of the seawall. The AIS identifies two previously identified historic properties, State Inventory of Historic Places (SHIP) Site 50-80-15-8748 and 50-80-15-8747.

SHIP Site 50-80-15-8747 Feature 5 was previously identified in the Crowell et al. (2019) AIS as a remnant portion of the former Anderson Estate-Pahonu seawall. Construction of the Estate was completed in 1933. Site 8747 Feature 5 was identified in all 4 test excavations. Crowell (et al. 2019) indicates that Site 8747 lacks sufficient integrity to be considered a significant historic property. The current AIS supports this previous assessment for both Site 8747 and specifically Feature 5.

SHIP # 50-80-15-8748 is a culturally expressed A horizon previously identified in the Crowell et al. (2019) AIS. Site -8748 is located in the makai section of the parcel. The current AIS documented Site 8748 in two test excavations (T-3 and T-4). In these trenches, Site 8748 likely represents a portion of the cultural deposit which was impacted by the construction of the seawall. The current AIS supports the Crowell et al. (2019) AIS assessment of Site 8748 as significant pursuant to HAR §13-284-6 under Criterion d for information it has yielded and still has potential to yield about former traditional Hawaiian and historic land use activities.

The integrity and significance assessments of each site are explained well. The effect determination for the proposed project is "Effect, with agreed on mitigation commitments." The recommended mitigation commitment is archaeological monitoring during all ground disturbances. On-site archaeological monitoring will be conducted in accordance with the SHPD-accepted archaeological monitoring plan (Belluomini et al. 2019 (March 29, 2019; Log No. 2019.00246, Doc. No. 1903SL08).

The revised AIS report reviews well the available environmental, historical, and cultural background information, and previous archaeological investigations. It provides a detailed discussion of the AIS field and laboratory methods and findings, and adequately assesses the integrity and significance of the historic properties identified. The revisions adequately address our earlier correspondence. This AIS report satisfies the requirements of HAR §13-276-5. It is accepted. Please send one hard copy of the document, clearly marked FINAL, along with a copy of this letter and a text-searchable PDF version of the report, to the Kapolei SHPD office, attention SHPD Library

Pursuant to HAR §13-284-3, Steps (1) through (4) of the historic preservation review process are complete. The SHPD concurs that the survey identification efforts were adequate, agrees with the significance assessments, agrees with the project effect determination, and accepts the agreed upon mitigation in the form of archaeological monitoring for the subject project, including all ground disturbing activities and all work associated with the modification of the seawall (Site 50-80-15-8747 Feature 5).

SHPD hereby notifies the County that Stipulation 28 in the Grant of Non-Exclusive Easement S-6083 has been fulfilled and that the permitting issuance for the seawall modification work may proceed.

SHPD requests written notification at the start of archaeological monitoring. Within 60 days of completion of archaeological monitoring fieldwork, SHPD looks forward to receiving for review and acceptance an archaeological monitoring report meeting the requirements of HAR §13-279-5.

Please contact Samantha C. Hemenway at (808) 692-8011 or by email at [Samantha.Cragen@hawaii.gov](mailto:Samantha.Cragen@hawaii.gov) if you have any questions or if we can be of assistance in any way

Aloha,  
Susan A. Lebo

Signed For  
Alan S. Downer, PhD  
Administrator, State Historic Preservation Division  
Deputy State Historic Preservation Officer

EXHIBIT D

Ms. Sokugawa and Ms. Nishiura  
December 20, 2019  
Page 3

cc: Judy Grimanis, Waimanalo Paradise, [REDACTED]  
David Shideler, CSH, [REDACTED]  
Deputy Robert Masuda, DLNR, [REDACTED]



# EXHIBIT E



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT  
FORT SHAFTER, HAWAII 96858-5440

January 24, 2020

SUBJECT: Determination of No Permit Required, Waimanalo Paradise Seawall Repairs, Oahu, HI, Department of the Army File No. POH-2019-00189

Nesbitt HI Holdings LLC  
c/o Mr. Martin H. Nesbitt  
Vistria Group  
300 East Randolph Street, Suite 3850  
Chicago, IL 60601

And

Waimanalo Paradise LLC  
c/o Mr. John Kevin Poorman  
PSP Partners  
444 West Lake Street Suite 3500  
Chicago, IL 60606

Dear Mr. Nesbitt and Mr. Poorman:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch has received your request for a determination whether a Department of the Army (DA) permit is required for the repair of spalling and voids along the seaward face of and beneath 585 linear feet of seawall along the shoreline of the Pacific Ocean, including a landward expansion of the seawall, height extension in the existing seawall footprint, and use of a turbidity curtain, all located at 21. 325322, -157. 680110, approximately 430 feet east of Kaiana Beach Park and 1400 feet west of Kaupo Beach Park, on TMKs (1) 4-1-002:021 and 022 in Waimanalo, Island of Oahu, Hawaii in accordance with the project plans (Enclosure 1). Your request has been assigned Department of the Army (DA) file number POH-2019-00189. Please reference this number in all future correspondence with our office relating to this action.

We have reviewed your submittal pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344; "Section 404") and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; "Section 10"). Section 404 requires DA authorization for the discharge (placement) of dredged and/or fill material into waters of the U.S., including wetlands. Section 10 requires DA authorization for the placement of structures in, under or over navigable waters of the U.S. and/or other work affecting the course, location, condition or navigable capacity of such waters. To determine if a DA permit is required for a proposed action, the Corps must first determine whether the proposed project is located

**EXHIBIT E**



within the Corps' geographic jurisdiction (i.e., whether the activity is located within a water of the U.S.). If the activity is within a water of the U.S., the Corps must then determine whether the proposed activity is a regulated activity under Section 10 and/or Section 404, or if the activity is exempt under Section 404(f) and is not recaptured. The determination provided in this letter pertains to whether your proposed project is an activity we regulate as well as whether the project falls within the Corps geographic jurisdiction.

Based on the information you provided, we have determined that the proposed in-kind maintenance repairs to the seaward face and area beneath the existing seawall are activities that are exempted under Section 404(f) of the Clean Water Act and therefore, do not require DA authorization under Section 404. Additionally, the proposed in-kind maintenance repairs to the seaward face and area beneath the existing seawall as well as the associated temporary installation of wooden formwork, PVC water-stop barrier, and hydraulic concrete water-stop barrier are not considered the installation of a "structure" as defined by 33 CFR 322.2 nor work subject to the regulatory jurisdiction of the Corps. Furthermore, we determined the proposed expansion of the seawall would not be regulated under Section 404 and Section 10 because the proposed height and landward width expansions of the seawall would occur shoreward of the High Tide Line and mean high water mark, respectively, and therefore, outside the geographic limits of the Corps jurisdiction. Lastly, the temporary deployment of a turbidity curtain in a navigable water of the U.S. is not considered a "structure" as defined by 33 CFR 322.2 nor work subject to the regulatory jurisdiction of the Corps.

While a DA permit is not required for your proposed project, you are responsible for obtaining all other applicable Federal, state, or local authorizations required by law. Be advised, a DA permit may be required if you alter the method, scope, or location of your proposed work. You should contact our office if you are considering modifying your project.

Thank you for your cooperation with the Honolulu District Regulatory Program. If you have any questions related to this determination, please contact me at 808-835-4310 or via e-mail at Vera.B.Koskelo@usace.army.mil. You are encouraged to provide comments on your experience with the Honolulu District Regulatory Office by accessing our web-based customer survey form at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey).



For additional information about our Regulatory Program, please visit our web site at <http://www.poh.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

KOSKELO.VERA  
.B.1370139110

Digitally signed by  
KOSKELO.VERA.B.137013911  
0  
Date: 2020.01.24 13:27:31  
-10'00'

Vera B. Koskelo  
Project Manager, Regulatory Office

Enclosure