

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

July 14, 2023

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

PSF No.: 23OD-020

OAHU

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to Pema Hegan and Rosalynn Hegan, as Trustees under that certain Pema and Rosalynn Hegan Revocable Living Trust dated April 12, 2019, for Seawall, Steps, and Landscaping on Filled Land; Pupukea, Koolauloa, Oahu; TMK: (1) 5-9-001: portion of 038.

APPLICANTS:

Pema Hegan and Rosalynn Hegan, as Trustees under that certain Pema and Rosalynn Hegan Revocable Living Trust dated April 12, 2019. (“Applicants”)

LEGAL REFERENCE:

Sections 171-53(b), Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government land located in Pupukea-Paumalu, Tax Map Key: (1) 5-9-001: portion of 038, as shown on **Exhibits A-1** and **A-2**.

AREA:

1,098 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: Urban  
City & County of Honolulu LUO: P-2 General Preservation District  
R-5 Residential [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:

Encumbered by Executive Order No. 2598 setting aside to the City and County of Honolulu for Paumalu - Pupukea (Sunset) Beach Park with encroachments.

TERM, NON-EXCLUSIVE EASEMENT:CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing seawall, steps, and landscaping 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 value of the reclaimed land, subject to review and approval by the Chairperson.

TERM:

Twenty-five (25) years.

The Land Division has reduced the term for which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission and pursuant to the recommendation of the Office of Conservation and Coastal Lands. Landward migration of the shoreline is currently occurring as a direct result of sea level rise. This will progressively expose immobile shoreline structures to an evolving combination of destructive effects from erosion, chronic flooding, and wave inundation. The intention of the term reduction is two-fold: (1) to reduce the potential for accidents and liabilities resulting from dysfunctional shoreline structures by more frequently reviewing and managing shoreline structures and (2) to facilitate a general process of managed retreat from the shoreline.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

Monthly rental amount \$1,022.00 for right-of-entry and revocable permit has been calculated by staff and has been reviewed and approved by the Chairperson. **(Exhibit B)**

REMOVAL BOND:

A removal bond is required, in an amount of \$52,800 as determined in consultation with Engineering Division and subject to the approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part 1, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structure or land.” The subject request is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment. **(Exhibit C)**

DCCA VERIFICATION:

Not applicable. Applicants are Trustees under that certain Pema and Rosalynn Hegan Revocable Living Trust dated April 12, 2019, and are not required to register with DCCA for this purpose.

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 monthly rent as determined by the Department and approved by the Board in consideration of the right-of-entry and revocable permit;
3. Post a removal bond in an amount to be determined by Land Division in consultation with Engineering Division and subject to approval by the Chair;
4. Pay for an appraisal to determine one-time payment in consideration of the easement;
5. Pay for publication of public notice at least once statewide and in the City and County of Honolulu by publication pursuant to section 171-16(d), HRS; and
6. Remove all encroaching structures or items in the event that the easement is not consummated.

REMARKS:

Applicants are the owners of the residential property located at TMK: (1) 5-9-001:089. The residential property abuts a portion of state land which is encumbered by Executive Order No. 2598, setting aside a portion of state shoreline land identified as TMK: (1) 5-9-001:038 to the City & County of Honolulu for Pamalu-Pupukea (Sunset) Beach Park. The public land at issue in this submittal is a 1,098 square foot area of filled land bordered on the mauka and makai sides with rock walls. The filled land and makai-side rock wall fall outside of the parcel boundary of the residential property but appear to have been treated as part of the residential property by successive property owners. The

residential property and filled land are elevated several feet higher than the abutting sandy beach.

The mauka-side rock wall located on TMK: (1) 5-9-001:089 abutting the filled land contains a built-in barbecue area and steps connecting the filled land located on TMK: (1) 5-9-001:038 to the abutting residential property located at TMK: (1) 5-9-001:089. The makai-side rock wall located on TMK: (1) 5-9-001:038 stretches across the width of the residential property and appears to run continuously across the width of the neighboring residential property immediately to the west of the subject property then curves mauka to run perpendicular to the shoreline on the west side of the neighboring property along a public beach access route. The makai-side rock wall contains steps and a gate facing the shoreline to allow access between the filled land and the beach, also located on TMK: (1) 5-9-001:038. There is a similar gate and set of steps on the rock wall at the neighboring property. There is an additional 1,225 square foot area of public land abutting the makai-side rock wall that is covered by landscaped vegetation and which may be subject to a later disposition pursuant to a shoreline determination. There is currently no certified shoreline for the subject property.

According to correspondence dated April 21, 2006, from the Office of Conservation and Coastal Lands (OCCL) to the County Department of Planning and Permitting (DPP), OCCL conducted a review and investigation of the subject property in 2005, under prior ownership. At that time, OCCL found that the filled land, landscaping, seawall, and steps were “inconsistent with the intent of the EO for the Pamalu-Pupukea beach park.” OCCL further stated, “Based on the public-benefit intent of the EO, the DLNR recommends removal of the subject encroachments and restoration of the area to a public beach condition since the subject encroachments do not serve the interest of the public.” OCCL also stated that the encroachment may have been built before 1964 and, if so, may be exempt from shoreline restrictions as a non-conforming structure. (see **Exhibit D**)

The Applicants took no action to remove the encroachment or obtain a land disposition until 2022 when the Applicants, through their attorney, submitted a Shoreline Encroachment Information Sheet to OCCL for purposes of obtaining permits for construction on the private property. Around this time, Applicants’ contactor also contacted OCCL regarding the demolition of the single-story house on the residential property and construction of a two-story house in its place. In correspondence with the contractor dated February 8, 2023, OCCL pointed to its 2006 recommendation for removal of the encroachments and its statement that the encroachments may be non-conforming. (**Exhibit D**) Based on the surveyor’s map included with the construction site plan, the single-story house currently on the residential property is located entirely on the residential parcel identified as TMK: (1) 5-9-001:089. It appears from site plan information provided that the new two-story house will also be located entirely on the residential parcel identified as TMK: (1) 5-1-001:089 and will not encroach onto the filled land parcel identified as TMK: (1) 5-1-9-001:038. (**Exhibit E**).

In a letter to Applicants’ counsel dated February 8, 2023, OCCL found that the encroachments are non-conforming structures built before Conservation District rules

were promulgated in October 1964 and, therefore, are not subject to rules prohibiting structures on the public shoreline. **(Exhibit F)** There is no information in the present record to establish the exact date the encroachment was constructed, although the Shoreline Encroachment Information Sheet submitted by the Applicant’s counsel includes aerial photographs of the filled land dated April 22, 1967. It is unclear from the photographs whether the rock wall bordering the mauka side of the filled land was present at the time the photographs were taken. **(Exhibit G)** The Applicants now request a disposition by easement for the filled land area to resolve the encroachment.

The Applicants state in their Shoreline Encroachment Information Sheet that removal of the encroachment would cause “physical disruption to the adjoining propert(ies) if the retaining wall was removed.” The Applicant further states, “Removal will likely cause subsidence and compromise the structural integrity of what remains of the retaining wall, which could render access to and use of the portion of the “Beach” Reserve unsafe.” **(Exhibit H)** Staff notes that the encroachment at issue in the present submittal includes not only the makai rock wall, but also the entirety of the filled land, which is located on public land makai of the boundary line of the residential property.

Staff notes that there is presently no certified shoreline for the subject property because the Department is unable to accept a shoreline certification application while the subject encroachment remains unresolved. Based on survey maps, photographs, and a site visit by staff, it appears that the subject encroachment is situated mauka of the highest wash of the waves. The Applicants will be required to obtain a certified shoreline as a prerequisite to obtaining building permits from the County. The Applicants have indicated that they do plan to pursue such a certification.

In response to a staff request, the Department of Planning and Permitting (DPP) of the City and County submitted comments expressing no objection to the grant of the easement proposed in the present submittal. In communication with staff, DPP acknowledged that the proposed easement area is located on State land subject to Executive Order 2598, setting aside the land to the City & County of Honolulu for Pamalu-Pupukea Beach Park and reiterated that it has no objection to the proposed easement.

In response to a staff request, the Office of Conservation and Coastal Lands had no comment on the proposed easement.

The Office of Hawaiian Affairs, Honolulu Department of Parks & Recreation, and Honolulu Board of Water Supply did not respond to requests for comments on this submittal.

Staff notes that the present submittal is subject to section 171-53(b), Hawaii Revised Statutes, which governs the disposition of reclaimed public land located outside of the shoreline conservation district. This statute requires publication of notice of the disposition statewide and the county in which the land is located but does not require the prior approval of the Legislature and the Governor, as would be the case if the land in question were submerged land within the shoreline conservation district. Staff further notes that the

publication requirement in this case may be satisfied by a single publication in the Honolulu Star-Advertiser, which is the largest statewide publication of daily circulation and is published within the City & County of Honolulu. Notice will also be posted on the Department's website.

In anticipation of the time to complete the entire easement process, including survey, appraisal, and approvals, Staff recommends the Board authorize the issuance of an immediate right-of-entry which will be followed by a revocable permit for a term to end upon consummation of the requested easement. Should the requested easement remain unconsummated for any reason, the Applicants will be required to remove the subject encroachment pursuant to the revocable permit. The revocable permit will be terminated upon removal of the encroachment to the satisfaction of the Department. In addition, the Department can call on the removal bond for the removal of the subject encroachment if the Applicants fail to carry out this obligation. Upon approval of the present request, staff will work with the Department of the Attorney General on drafting conditions to protect the interest of the State should the Applicants be required to remove the seawall, steps, and landscaping. Before the consummation of the interim revocable permit, staff recommends a management right-of-entry for the same purpose due to the length of time needed to process the revocable permit.

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 subject encroachment area is approximately 1,098 square feet, staff recommends that the Board impose a fine of \$500.

Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Sections 11-200.1-15 and -16, HAR, this disposition is expected to 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 for unauthorized encroachment pursuant to the criteria adopted by the Board at its meeting of June 28, 2002, under agenda item D-17.
3. Authorize the continued applicability of the subject requests in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 5-9-001:089 if such change in ownership occurs prior to the execution of the requested easement, provided that the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

4. Authorize the issuance of a right-of-entry permit to the Applicants 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 right-of-entry permit form, as may be amended from time to time;
  - B. Posting of a removal bond during the effective period of the right-of-entry permit;
  - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
  - D. Commencement of the right-of-entry upon provision of liability insurance as required under the standard right of entry terms, posting of the required removal bond, and payment of the fine required pursuant to recommendation 2, for a term of one year or until the issuance of the revocable permit described in recommendation 5 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown; and
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of a revocable permit to the Applicants 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 revocable permit form, as may be amended from time to time;
  - B. Posting of a removal bond during the effective period of the revocable permit;
  - C. Removal of the subject encroachment, if required, within the period stipulated by the Chairperson;
  - D. Review and approval by the Department of the Attorney General; and
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to the Applicants 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) 5-9-001:089, 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 State, as 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. Review and approval by the Department of the Attorney General;
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



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Rebecca L. Anderson  
Shoreline Specialist

APPROVED FOR SUBMITTAL:

*KEM*



*RT*

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Dawn N. S. Chang, Chairperson





**TMK (1) 5-9-001:038**

**EXHIBIT A-1**





**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621  
HONOLULU, HAWAII 96809

**DAWN N.S. CHANG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**LAURA H.E. KAKUA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

To: Dawn N. S. Chang, Chairperson

Through: Russell Y. Tsuji, Administrator

From: Land Division, Appraisal Section

Date: May 3, 2023

Subject: Pema and Rosalynn Hegan Shoreline Revocable Permit

A shoreline revocable permit valuation was prepared for the property below and is summarized as follows:

Reference: PSF No. 23OD-020  
 Applicant: Pema and Rosalynn Hegan  
 TMK: (1) 5-9-001:portion of 038  
 Area: 1,098 square feet, more or less  
 Effective Date: Upon Board Approval  
 Recommended Value: **\$1,022/month**

The undersigned finds that the valuation was completed in accordance with the assignment.

*RT*  
Dawn N. S. Chang, Chairperson

May 5, 2023

Date

TMK	(1) 5-9-001:portion of 038
Assessed Land Value (\$)	3,025,100
Land Area (sf)	5,419
Unit Rate Land Value (\$/sf)	558.2395
50% Off For Submerged Lands	279.1198
Encroachment Area (sf)	1098
Encroachment Land Value (\$)	306473.5
Annual Rent @ 4 to 8%	0.04
Recommended Annual Value	12258.94
Monthly Value	1021.578

**EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to Pema and Rosalynn Hegan.

Reference No.: PSF 23OD-020

Project Location: Pupukeya, Koolauloa, Oahu, Tax Map Key: (1) 5-9-001:038

Project Description: Issuance of term, non-exclusive easement for seawall, steps, and landscaping.

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

Exemption Class No.: In accordance with HAR §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features , involving negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part 1, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structure or land.”

The Applicant is not planning on conducting any major change to the existing topographical condition of the subject location. 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.

Cumulative Impact of Planned Successive Actions in Same Place Significant?

No. This request is for a 25-year term easement for an existing, permanent shoreline structure and landscaped area. Staff is not aware of any successive actions planned by the property owners in the proposed easement area. As such, staff believes that there would be no significant cumulative impact.

**EXHIBIT C**

Action May Have Significant Impact on Particularly Sensitive Environment?

No, the requested area is a portion of public shoreline land that contains improvements makai of the abutting private property which OCCL has determined to have been in existence for many years. Maintenance of the proposed easement area in its present state is not likely to have a significant environmental impact. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

Agencies as noted in the submittal.

Analysis:

The Board has authorized 25-year term, non-exclusive easements for existing shoreline structures in the past. The proposed request is of a similar type and scope as other shoreline easement requests across the State. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

That the Board find 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.

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'AINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



2023 FEB 10 PM 1:29



DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII  
KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
OFFICE OF CONSERVATION AND COASTAL LANDS  
P.O. BOX 621  
HONOLULU, HAWAII 96809

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
LAURA H.E. KAAKUA  
FIRST DEPUTY  
M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
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MANAGEMENT  
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CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:CM

Correspondence: OA 23-120

Feb 8, 2023

Makena White  
Planning Solutions, Inc.  
711 Kapiolani Boulevard, Suite 950  
Honolulu, HI 96813

SUBJECT: Scoping Request for Environmental Assessment of Proposed Hegan Residence Project Located at [REDACTED] Pupukea-Paumalu Beach Lots, Oahu; Tax Map Key (TMK): (1) 5-9-001:089

Dear Mr. White,

The Office of Conservation and Coastal Lands (OCCL) has reviewed your correspondence regarding the proposed construction of a two-story single-family home at the subject location. Accordingly, the project will include the demolition of an existing one-story house and the construction of a new two-story house. Your correspondence states that the project site is in the State of Hawaii Urban Land Use District, and the City and County of Honolulu's R-10 Residential District and Special Management Area (SMA). As part of the SMA application process, an Environmental Assessment (EA) is being prepared.

The OCCL regulates land uses in the State Land Use Conservation District. Staff's research revealed that this property is currently not located in the Conservation District, however, the parcel abuts the shoreline area and may likely be impacted by future climate changes and sea level rise. A cursory review of the Hawai'i State Sea Level Rise Viewer (<https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>) indicates that the subject parcel lies within the sea level rise exposure area (SLR-XA). The OCCL has attached **Exhibit 1** regarding the SLR-XA for your information. We suggest that you include a thorough discussion of coastal hazards, climate change, sea level rise, and associated impacts in the EA. As the landowner's agent, you may want to consider reviewing the Hawaii Sea Level Rise Vulnerability and Adaptation Report (2017). A copy of the report can be obtained at <https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report-Dec2017.pdf>.

Potential structures should be sited away from the shoreline as private shoreline hardening structures are prohibited at sites having sand beaches under Act 16 (2020) that amended HRS 205A. The OCCL also suggests the EA disclose any potential impacts to lateral shoreline access that the project may pose as well as how the landowner intends to support access along this stretch of coast.

**EXHIBIT D**

Planning Solutions, Inc.  
Hegan's residence project

Correspondence OA 23-120

Additional staff research revealed an OCCL correspondence dated April 21, 2006, stating a review and investigation of the subject property identified a seawall and filled land encroachments (see **Exhibit 2**). The correspondence further states the Department of Land and Natural Resources recommends removal of the encroachments and restoration of the area to a public beach condition as the encroachments do not serve the interest of the public. Also, the correspondence states that information provided in 2006 to OCCL showed the seawall appeared to have been built before the Conservation District rules were promulgated in October 1964. Structures built on State lands prior to October 1964 are defined as being non-conforming.

The encroachments are located on State lands makai of the subject property which are covered by an Executive Order No. 2895 (EO) authorized by the Governor to the City and County of Honolulu, Department of Parks and Recreation.

Should you have any questions regarding this correspondence, contact Cal Miyahara of the Office of Conservation and Coastal Lands at (808) 798-6147 or [calen.miyahara@hawaii.gov](mailto:calen.miyahara@hawaii.gov).

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

C: ODLO  
City-Department of Planning and Permitting

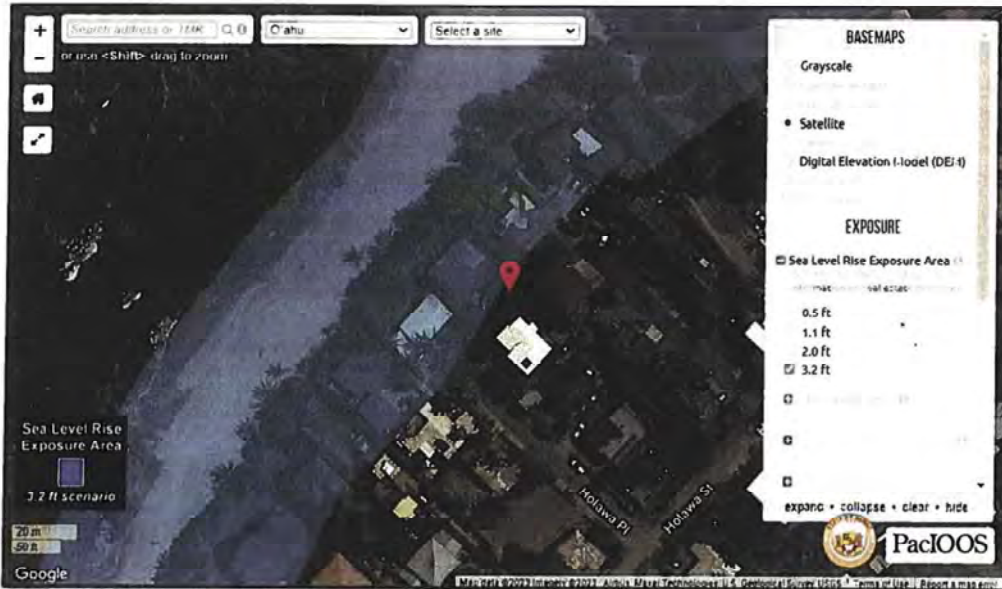


Planning Solutions, Inc.  
Hegan's residence project

Correspondence OA 23-120



Note: 1.1-ft. sea level rise forecast shown in blue (approx. 2050). TMK: (1) 5-9-001:089.



Note: 3.2-ft. sea level rise forecast shown in blue (approx. 2100). TMK: (1) 5-9-001:089.

### Exhibit 1

Planning Solutions, Inc.  
Hegan’s residence project

Correspondence OA 23-120

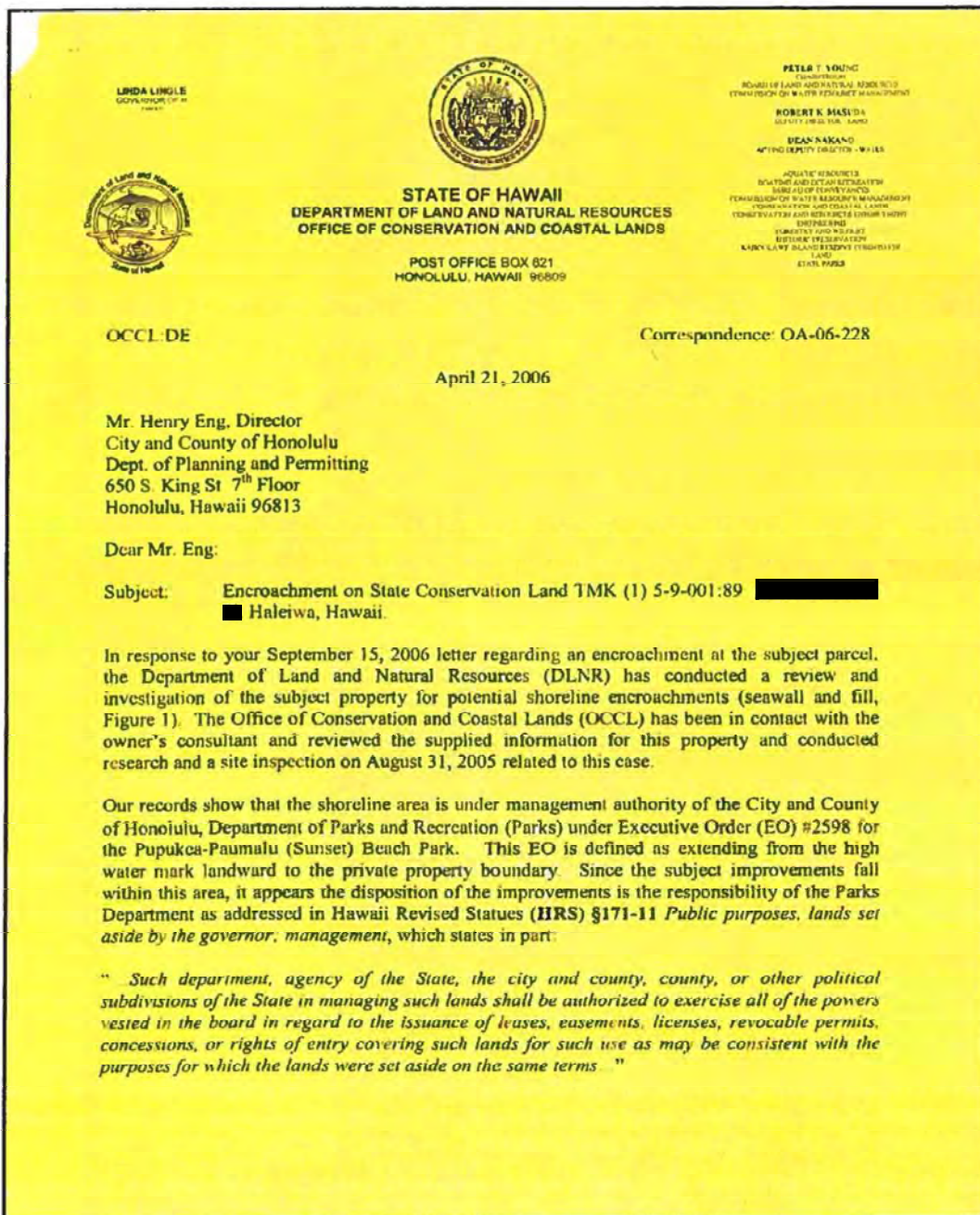


Exhibit 2

Planning Solutions, Inc.  
Hegan's residence project

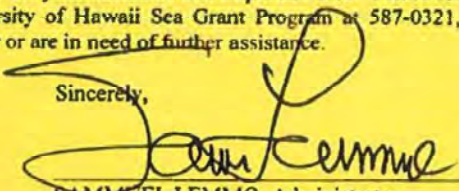
Correspondence OA 23-120

The subject improvements (1037 ft<sup>2</sup> area) within the EO area consist of a seawall, stairs, fill, and landscaping. The DLNR does not believe these land uses are consistent with the intent of the EO for the Pamalu-Pupukea beach park. This EO states in part "...is hereby set aside for the following public purposes: FOR PARK AND RELATED PUPOSES..." Based on the public-benefit intent of the EO, the DLNR recommends removal of the subject encroachments and restoration of the area to a public beach condition since the subject encroachments do not serve the interest of the public.

Based on the information available it appears the seawall was built before the establishment of the Conservation District in 1964 and may be exempt from the rules governing land use activities in this area. This does not include any unauthorized improvements to the structure that increase the footprint or size of the structure.

I hope this helps clarify the jurisdiction of this important area. Please feel free to contact Dolan Eversole of the University of Hawaii Sea Grant Program at 587-0321, should you have any questions on this matter or are in need of further assistance.

Sincerely,

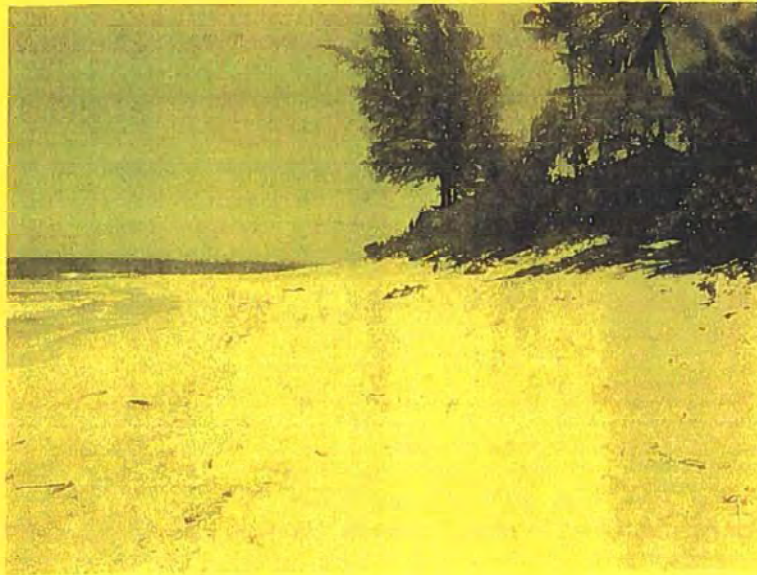
  
SAMMUEL LEMMO, Administrator  
Office of Conservation and Coastal Lands

cc: Chairperson  
Oahu Board Member  
Land Division  
Mr. Lester Chang, Director City and County of Honolulu Dept. of Parks and Recreation  
1000 Uluohia St. Suite 309 Kapolei, Hawaii 96707  
Mr. Richard Furst, South Pacific Design Group  
66-250 Kamehameha Hwy. Suite D-101 Haleiwa, Hawaii 96712  
Mr. James Vitale [REDACTED] San Carlos, Cal 94070  
North Shore Neighborhood Board Kathleen M. Pahinui (Chair)  
[REDACTED] 96791  
Sunset Beach Community Association (Via Email)

Planning Solutions, Inc.  
Hegan's residence project

Correspondence OA 23-120

Figure 1. Site area and subject encroachment



Correspondence MA-06-228

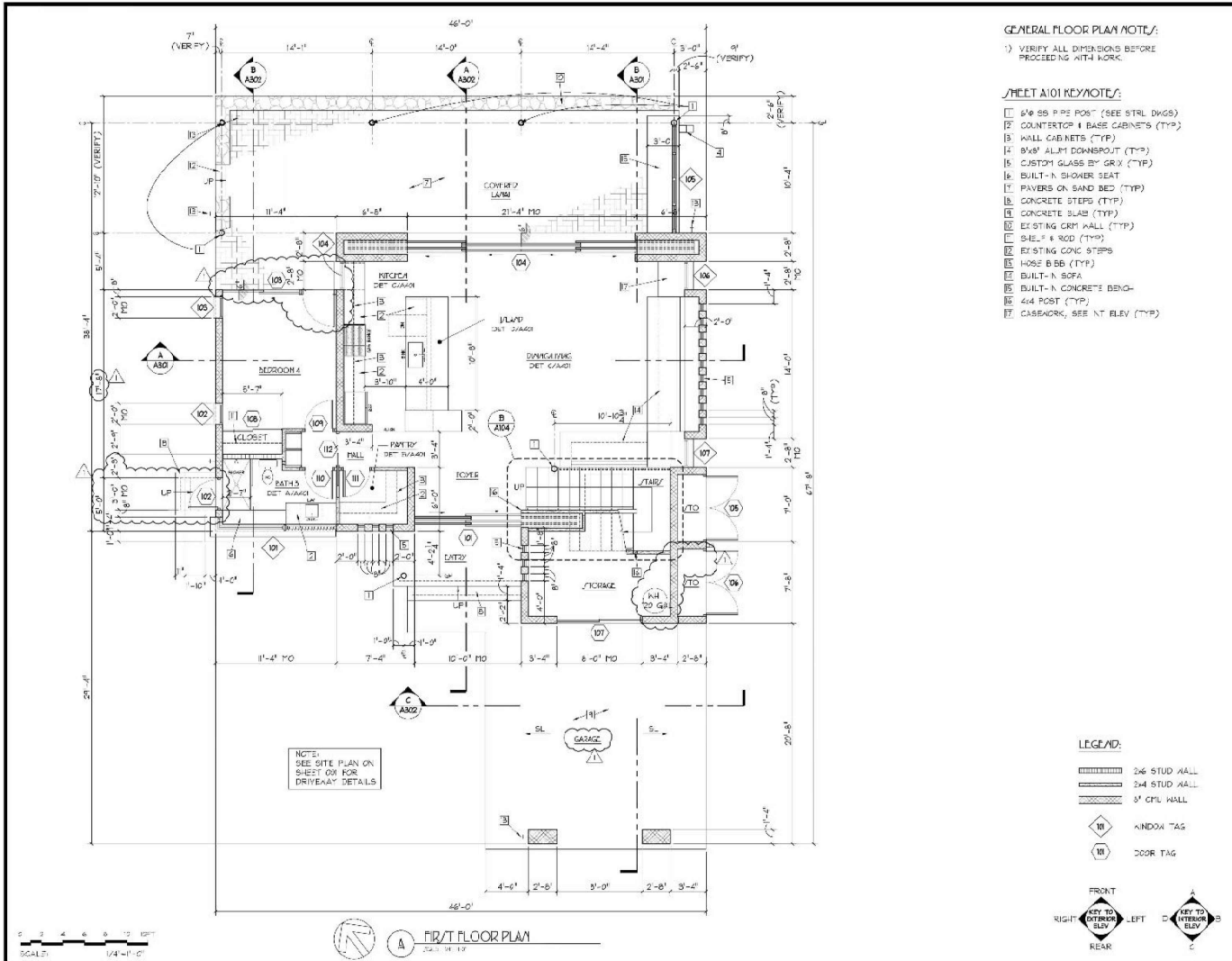
Sunset Beach Encroachments

April 20, 2006

Page 3 of 3







**WELCH & WEEKS** LLC  
 ARCHITECTS

4TH FLOOR OF THE HISTORIC ALOHA TOWER

HALLIWAI, HAWAII  
 96746  
 TEL: 808-545-8522  
 FAX: 808-545-8522  
 WWW.WELCHANDWEEKS.COM  
 WWW.WELCHANDWEEKS.COM

PROJECT TITLE

**HEGAN RESIDENCE**

HALLIWAI, HAWAII 96712  
 TRK 5-9-001.089

REVISION

5/11/23

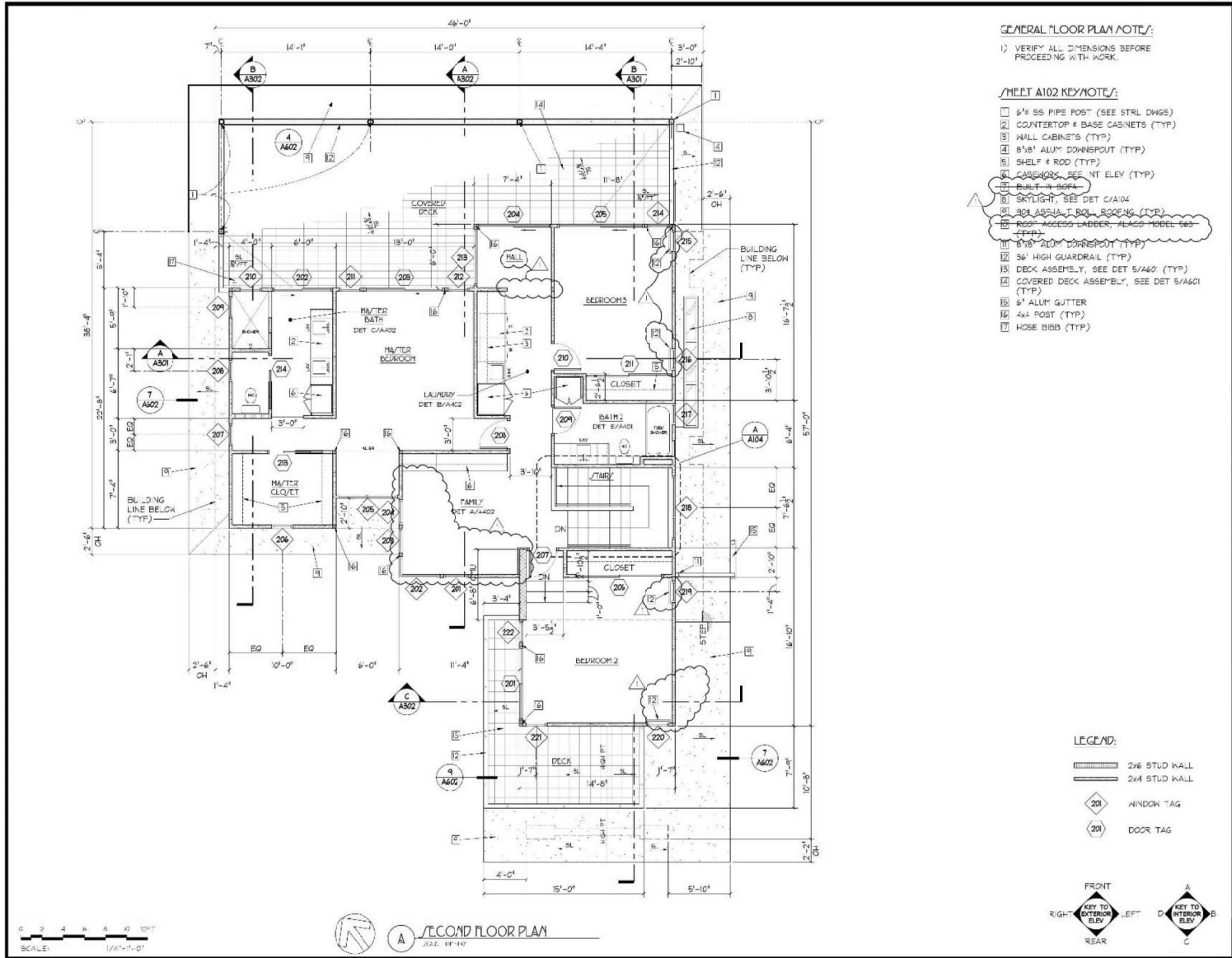
DATE: 05/13/2020 DRAWN BY: AGD

SHEET TITLE

FIRST FLOOR PLAN

SHEET NUMBER

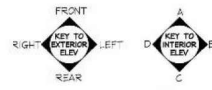
**A101**



**GENERAL FLOOR PLAN NOTE:**  
 1) VERIFY ALL DIMENSIONS BEFORE PROCEEDING WITH WORK.

- /SHEET A102 KEY/NOTE:**
- 1 6" x 6" SS PIPE POST (SEE STRL DWGS)
  - 2 COUNTERTOP & BASE CABINETS (TYP)
  - 3 WALL CABINETS (TYP)
  - 4 8" x 8" ALUM DOWNSPOUT (TYP)
  - 5 SHELF & ROD (TYP)
  - 6 CROWN MOULD (TYP)
  - 7 BUILT-IN BENCH
  - 8 SKYLIGHT, SEE DET C/A104
  - 9 20" JASPER BOLL ROPE (TYP)
  - 10 ROOF ACCESS CABER, ALCO- MODEL 563 (TYP)
  - 11 8" x 8" 210" DOWNSPOUT (TYP)
  - 12 36" HIGH GUARDRAIL (TYP)
  - 13 DECK ASSEMBLY, SEE DET 5/A40 (TYP)
  - 14 COVERED DECK ASSEMBLY, SEE DET 5/A401 (TYP)
  - 15 6" ALUM GUTTER
  - 16 4x4 POST (TYP)
  - 17 HOSE BIBB (TYP)

- LEGEND:**
- 2x6 STUD WALL
  - 2x4 STUD WALL
  - 20 WINDOW TAG
  - 20 DOOR TAG



**WELCH & WEEKY LLC**  
 ARCHITECT/

**4TH FLOOR OF THE HISTORIC ALOHA TOWER**

MAILING ADDRESS:  
 P.O. BOX 8307  
 HONOLULU HAWAII 96812  
 TEL. 808-585-6322  
 FAX. 808-585-6622  
 WELCH@WELCHANDWEEKY.COM  
 WWW.WELCHANDWEEKY.COM

PROJECT TITLE

**HEGAN RESIDENCE**

HALEIWA, HAWAII 95712  
 TMK 5-9-001-089

REVISION

5/14/20

DATE DRAWN BY

05/13/2020 AGD

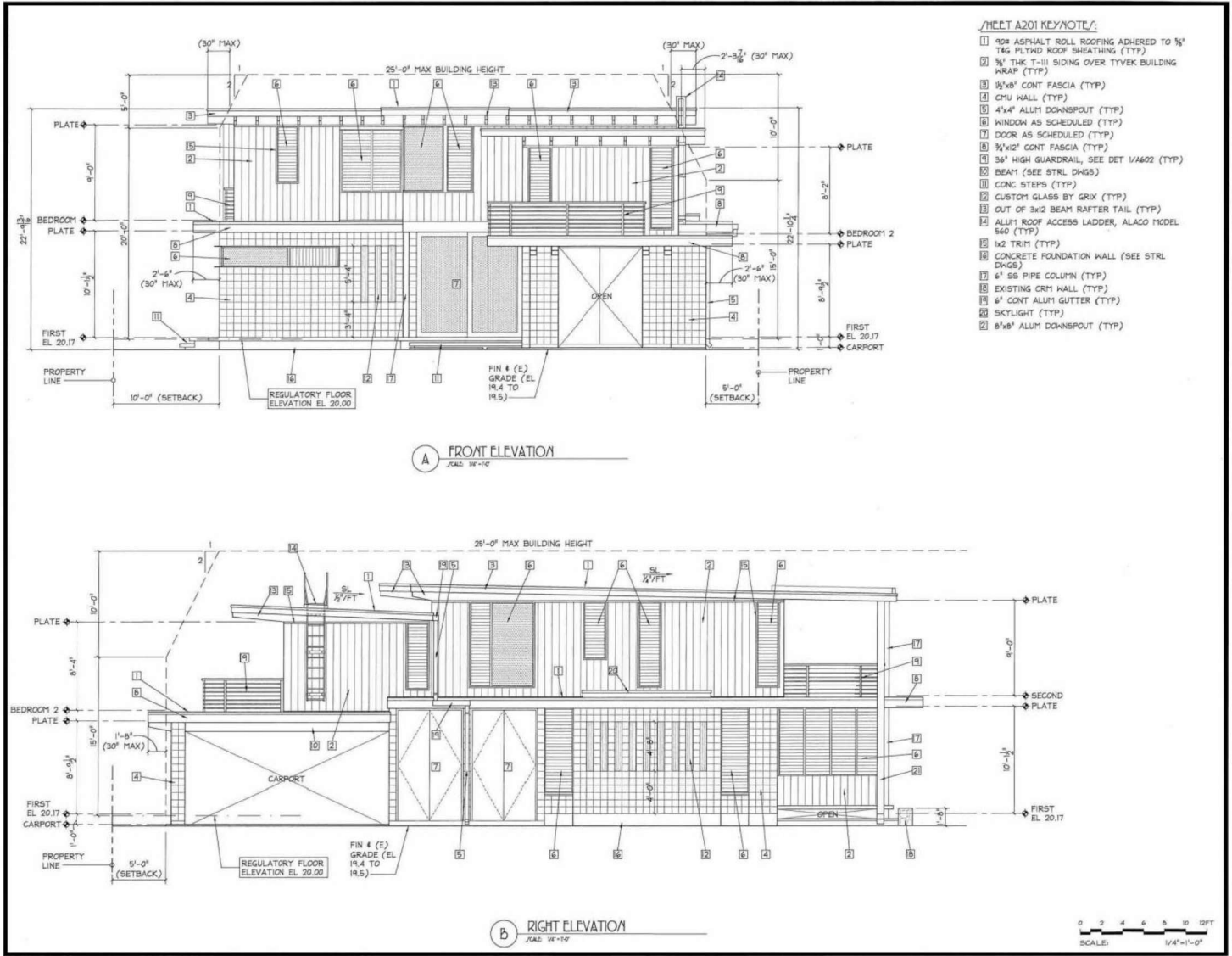
SHEET TITLE

SECOND FLOOR PLAN

SHEET NUMBER

**A102**





**WELCH & WEEKS LLC**  
ARCHITECTS

4TH FLOOR OF THE HISTORIC ALOHA TOWER

HAILING ADDRESS:  
P.O. BOX 4337  
HONOLULU, HAWAII 96812  
TEL. 808-585-8322  
FAX. 808-585-8522  
WELCHANDWEEKS@HAWAIIERES.COM  
WWW.WELCHANDWEEKS.COM

**PROJECT TITLE**

**HEGAN RESIDENCE**

HALEIWA, HAWAII 96712  
TRK. 5-9-001.089

**REVISION**

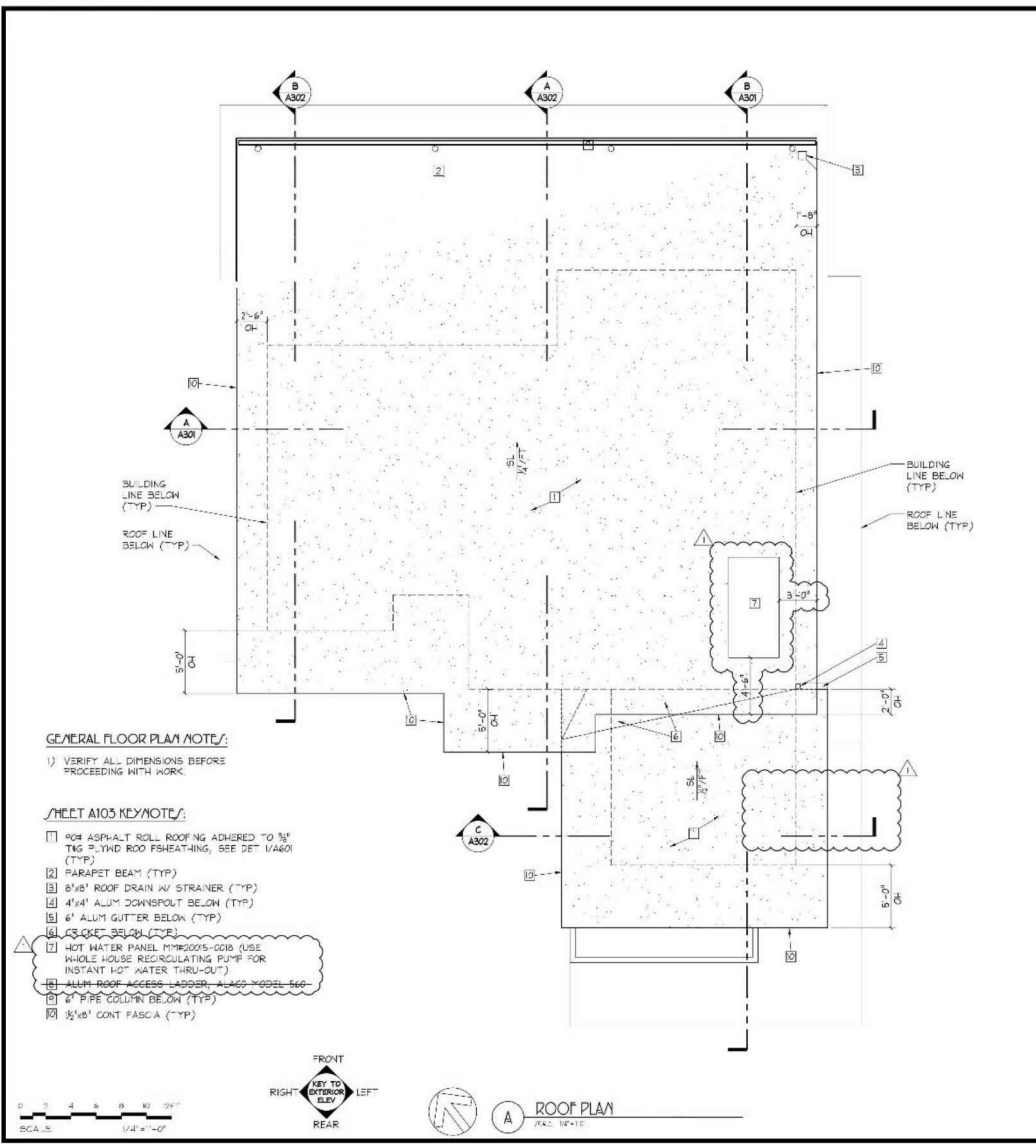
DATE	DRAWN BY
04/21/2020	AGD

**SHEET TITLE**

EXTERIOR ELEVATIONS

**SHEET NUMBER**

A201



ROOM FINISH/SCHEDULE						
LEVEL	ROOM NAME	FLOOR	BASE	WALL	CEILING	REMARKS
FIRST	GARAGE	TC		CU		STO
	ENTRY	CS		CU		STO
	STORAGE (CARPORT/STAIRS)	CS	WB	CU/PG		PG
	STORAGE (EXTERIOR)	CS		CU		PG
	FOYER	PC	WB	CU/PG		PG
	DINING/LIVING	PC		CU		PG
	KITCHEN	PC		CU		PG
	PANTRY	PC	WB	CU/PG		PG
	HALL	PC	WB	CU/PG		PG
	BATH-3	PC	(WB)	CU/PG (CT)		PG 1
	BEDROOM 4 & CLOSET	PC	WB	CU/PG		PG
COVERED LANAI	PP		CU		STO	
SECOND	STAIRS	LW		CU/PG		PG
	FAMILY	W	WB	PG		PG
	BEDROOM 2 & CLOSET	W	WB	PG		PG
	BATH-2	CT	(WB)	PG (CT)		PG 1
	LAUNDRY	W	WB	PG		PG
	BEDROOM 3 & CLOSET	W	WB	PG		PG
	HALL	W	WB	PG		PG
	MASTER BEDROOM	W	WB	PG		PG
	MASTER CLOSET	W	WB	PG		PG
	MASTER BATH	CT	(WB)	PG (CT)		PG 1
	DECK	CT		TP		STO
COVERED DECK	CT		TP		STO	

**FINISH REMARKS**  
 \* W - IN A SCHEDULE COLUMN DENOTES A REMARK. SEE REMARKS COLUMN & FINISH SCHEDULE REMARKS LIST ORDER OF NUMBERS IN REMARKS COLUMN. S AS THEY OCCUR FROM LEFT TO RIGHT IN SCHEDULE.

**FOR DESCRIPTION OF FINISHES, SEE FOLLOWING SPECIFICATION SECTIONS:**  
 \*CS - CONCRETE (SEALED)  
 \*CU - CU (NATURAL, SEALED)  
 \*CT - CERAMIC TILE  
 \*LW - LAMINATED WOOD  
 \*PC - POLISHED CONCRETE  
 \*PG - PAINTED GYP BO  
 \*PP - PRECAST PAVERS  
 \*STO - EXTERIOR FINISH SYSTEM  
 \*TC - TEXTURED CONCRETE (SEALED)  
 \*TP - T-11 SIDING, PAINTED (VERIFY MATERIAL)  
 \*WB - WOOD BASE (1/4, PAINTED)  
 \*W - WOOD FLOORING

**REMARKS LIST**  
 1. SEE INTERIOR ELEVATIONS FOR EXTENT OF MATERIALS.



**WELCH & WEEKS** LLC  
 ARCHITECTS  
 4TH FLOOR OF THE HISTORIC ALOHA TOWER  
 HONOLULU, HAWAII 96812  
 TEL: 808-585-8232  
 FAX: 808-508-9232  
 WWW.WELCHANDWEEKS.COM

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PROJECT TITLE

**HEGON RESIDENCE**

HALLUA, HAWAII 96712  
 TMK S-9-001089

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REVISION

5/14/20

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DATE: 05/18/2020      DRAWN BY: AGD

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SHEET TITLE

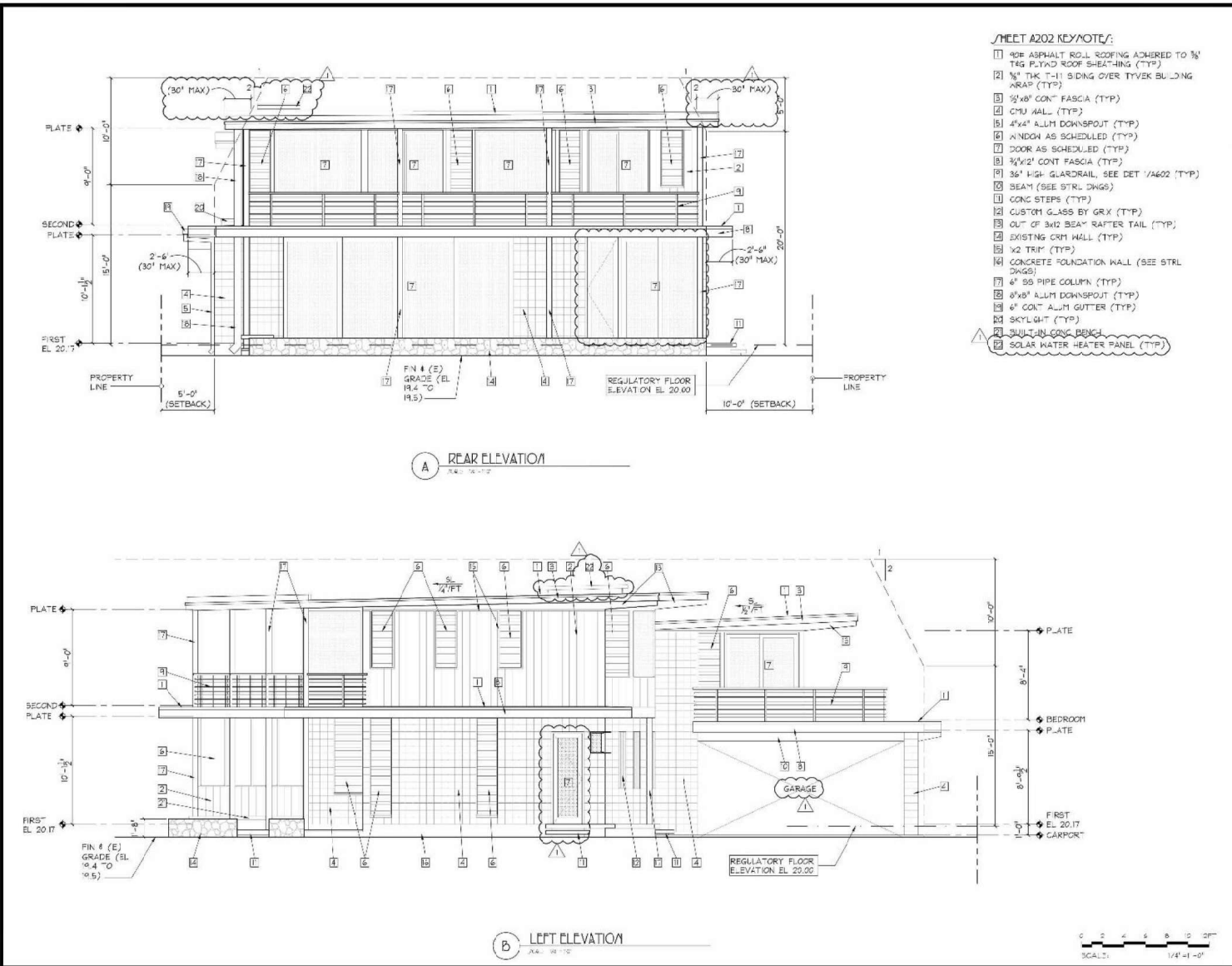
ROOF PLAN, ROOM FINISH SCHEDULE

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SHEET NUMBER

**A103**





**WELCH & WEEKS** LLC  
ARCHITECTS

4TH FLOOR OF THE HISTORIC ALOHA TOWER  
HAWAIIAN ARCHITECT  
P.O. BOX 4337  
HONOLULU HAWAII 96812  
TEL 808 583 4332  
FAX 808 583 4333  
WWW.WELCHANDWEEDS.COM

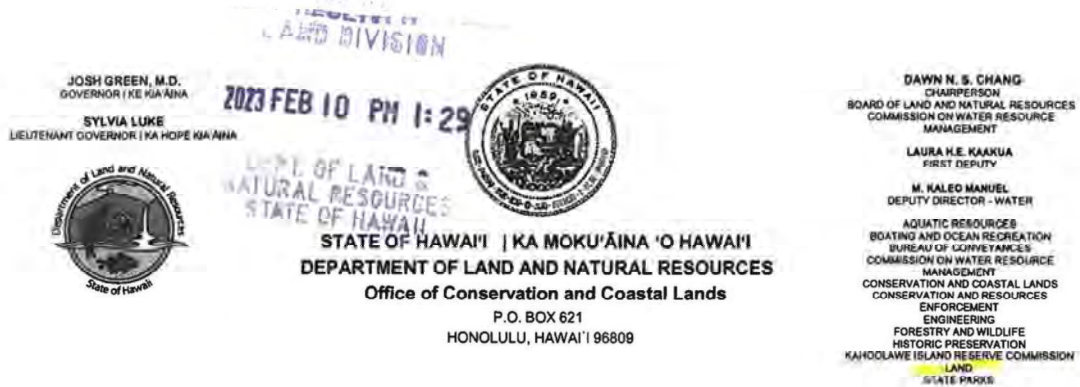
PROJECT TITLE  
**HEGAN RESIDENCE**  
HALEIWA, HAWAII 96712  
TKK 5-9-001.089

REV./NO./DATE  
5/4/20

DATE DRAWN BY  
7/13/2020 AGD

/SHEET TITLE  
EXTERIOR ELEVATIONS

/SHEET NUMBER  
**A202**



REF:OCCL:CM

Encroachment: OA 23-06

Feb 8, 2023

Darene K. Matsuoka, Esq.  
 Cades Schutte, LLP  
 1000 Bishop Street, Suite 1200  
 Honolulu, HI 96813

SUBJECT: Determination of Shoreline Encroachment for Seawall Located at [REDACTED]  
 [REDACTED] Pupukeya-Paumalu Beach Lots, Oahu; Tax Map Key (TMK):  
 (1) 5-9-001:seaward of 089

Dear Ms. Matsuoka,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), has reviewed the Shoreline Encroachment Information Sheet you submitted on behalf of your clients, Pema and Rosalynn Hegan, regarding the subject matter. Accordingly, there is an existing retaining seawall, steps, and landscaped area encroaching on State lands makai of the seaward property boundary (see **Exhibit 1 – 2020 shoreline survey map**). The survey map also identified approximately 1,098 square feet of encroaching area. Your client’s intent is to resolve the encroachment issue through a land disposition. Additionally, the State lands makai of the subject property is covered by an Executive Order No. 2895 (EO) authorized by the Governor to the City and County of Honolulu, Department of Parks and Recreation.

Based on the information provided, it appears that the seawall may have been constructed mauka of the shoreline, and not in the Conservation District. The OCCL regulates land use within the Conservation District pursuant to the Hawaii Administrative Rules, Chapter 13-5.

Additional staff research revealed an OCCL correspondence dated April 21, 2006, stating a review and investigation of the subject property identified the encroachments (see **Exhibit 2**). The correspondence further states the DLNR recommends removal of the encroachments and restoration of the area to public beach condition as the encroachments do not serve the interest of the public. Also, the correspondence states that information provided in 2006 to OCCL showed the seawall appeared to have been

**EXHIBIT F**

Cades Schutte, LLP  
Hegan's seawall encroachment

Encroachment OA 23-06

built before the Conservation District rules were promulgated in October 1964. Structures built on State lands prior to October 1964 are defined as being non-conforming.

Since the encroachments are determined to be a non-conforming structure, it does not require a Conservation District Use Permit (CDUP) from our office, but please be advised that any future proposed work and/or repair to the structure may require a review and possibly authorization from the Department or the Board of Land and Natural Resources. If you have any questions about the rules and regulations of the Conservation District, please read the Hawaii Administrative Rules, Chapter 13-5, which can be found on our website at <https://dlnr.hawaii.gov/occl/files/2013/08/HAR-13-5-2021.pdf>.

Although a CDUP is not required for the seawall, steps, and landscaped area, a land disposition may be needed to resolve the encroachments. Please contact the Land Division to assess whether a disposition may be needed.

Should you have any questions regarding this correspondence, please contact Cal Miyahara of our office at (808) 798-6147 or [calen.miyahara@hawaii.gov](mailto:calen.miyahara@hawaii.gov).

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

CC: ODLO  
City-Department of Planning and Permitting  
City-Department of Parks and Recreation



Cades Schutte, LLP  
Hegan's seawall encroachment

Encroachment OA 23-06

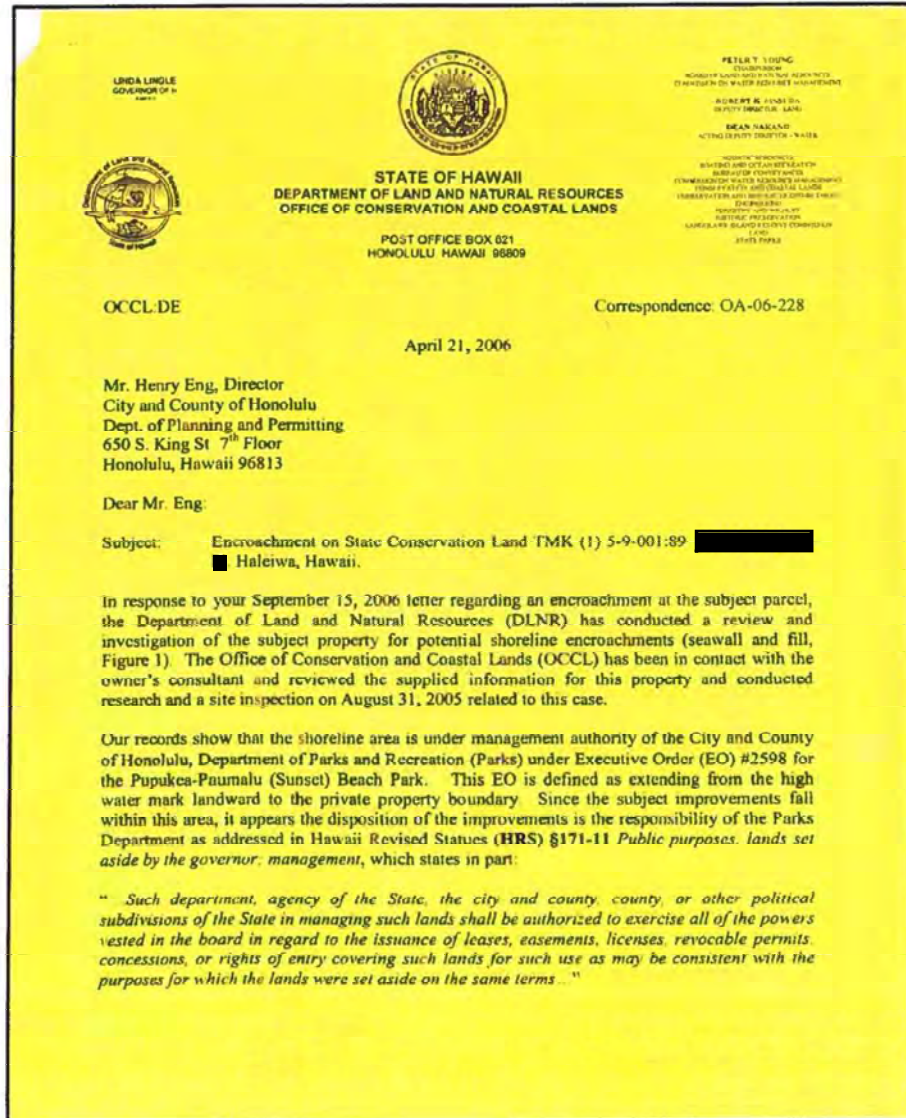


Exhibit 2

Cades Schutte, LLP  
Hegan's seawall encroachment

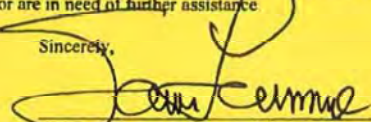
Encroachment OA 23-06

The subject improvements (1037 ft<sup>2</sup> area) within the EO area consist of a seawall, stairs, fill, and landscaping. The DLNR does not believe these land uses are consistent with the intent of the EO for the Pamalu-Pupukea beach park. This EO states in part "...is hereby set aside for the following public purposes: FOR PARK AND RELATED PUPOSES..." Based on the public-benefit intent of the EO, the DLNR recommends removal of the subject encroachments and restoration of the area to a public beach condition since the subject encroachments do not serve the interest of the public.

Based on the information available it appears the seawall was built before the establishment of the Conservation District in 1964 and may be exempt from the rules governing land use activities in this area. This does not include any unauthorized improvements to the structure that increase the footprint or size of the structure.

I hope this helps clarify the jurisdiction of this important area. Please feel free to contact Dolan Eversole of the University of Hawaii Sea Grant Program at 587-0321, should you have any questions on this matter or are in need of further assistance

Sincerely,

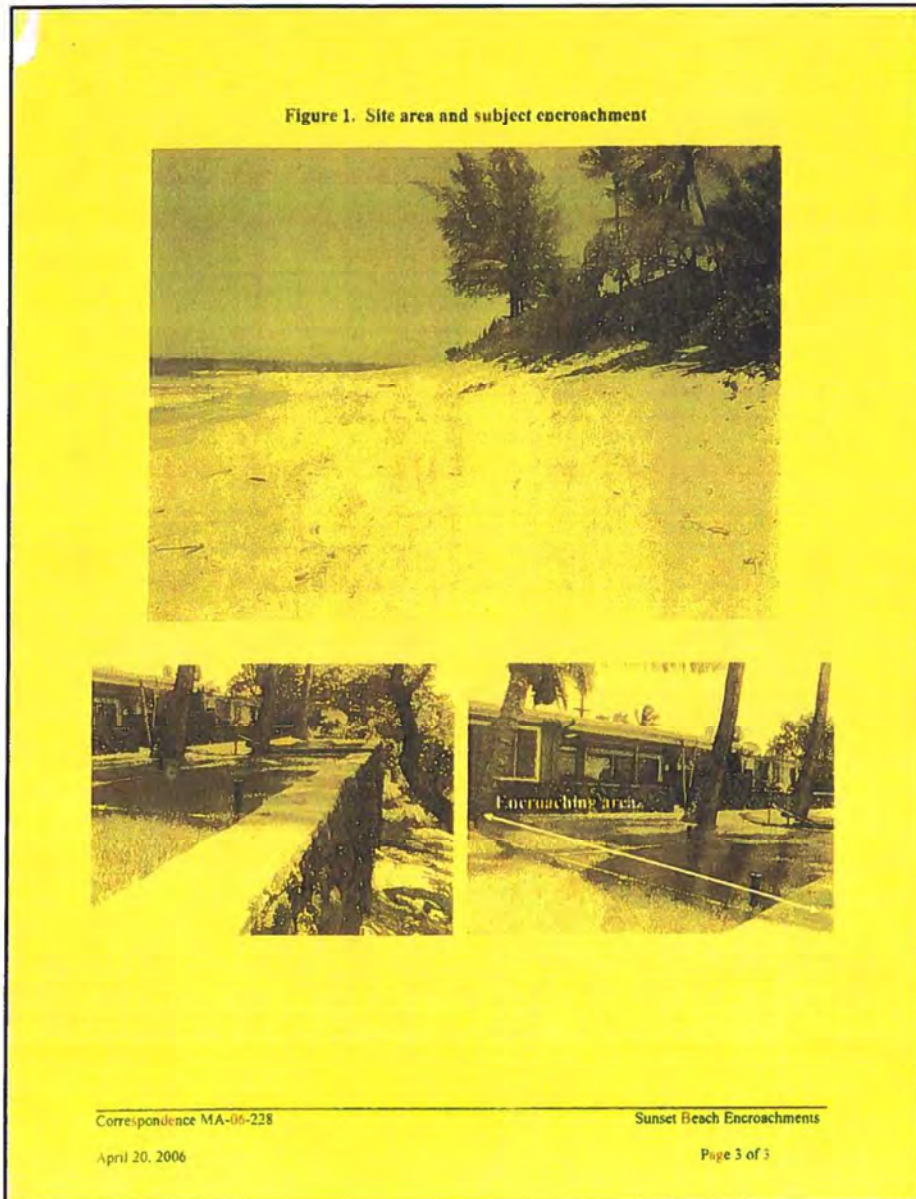
  
SAMUEL LEMMO, Administrator  
Office of Conservation and Coastal Lands

- cc: Chairperson
- Oahu Board Member
- Land Division
- Mr. Lester Chang, Director City and County of Honolulu Dept. of Parks and Recreation  
1000 Uluohia St. Suite 309 Kapolei, Hawaii 96707
- Mr. Richard Furst, South Pacific Design Group  
66-250 Kamehameha Hwy Suite D-101 Haleiwa, Hawaii 96712
- Mr. James Vitale [Redacted] San Carlos, Cal 94070
- North Shore Neighborhood Board Kathleen M. Pahinui (Chair)  
[Redacted] 96791
- Sunset Beach Community Association (Via Email)



Cades Schutte, LLP  
Hegan's seawall encroachment

Encroachment OA 23-06





### Shoreline Encroachment Information Sheet

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS



Please provide complete and detailed answers for each question and include any relevant maps and photos. Attach additional sheets, if necessary. If you have any questions, feel free to contact the Office of Conservation and Coastal Lands at 808-587-0377. Mail completed information sheet and attachments to:

Office of Conservation and Coastal Lands  
Post Office Box 621  
Honolulu, HI 96809

This information will be used by the Department of Land and Natural Resources (DLNR) to help recommend the appropriate disposition of the encroachment(s). The Board of Land and Natural Resources (BLNR) is not obligated to grant an easement and may do so only when it is consistent with the policies and laws of the State and DLNR. If the BLNR is willing to grant an easement, you will be required to execute an easement document with the State with terms and conditions, including monetary compensation. If the BLNR does not grant an easement, you may be required to remove the encroachment(s). The BLNR reserves the right to institute enforcement proceedings.

1. Please provide your name, the landowner's name (if different than you), and contact information.

Darene K. Matsuoka, Esq.  
Attorney for landowners Pema and Rosalynn Hegan  
1000 Bishop Street, Suite 1200, Honolulu, HI 96813  
(808) 521-9252, [REDACTED]

2. Please provide the physical address and Tax Map Key (TMK) of the property. Provide photos and survey map.

TMK No. (1) 5-9-001-089  
Photos and survey map attached.

3. Identify and describe the encroachment(s) including the approximate area (square feet) of the encroachment(s). Provide photos of encroachment(s).

Rock retaining wall at the makai boundary of Parcel 89 and located on TMK No. 5-9-001-038, which is owned by the State and under City's management and control. The wall is not a shoreline protection structure, because it does not artificially fix the location of the shoreline. The wall provides structural support for Parcel 89 and Parcel 38 (see attached report by Meta Engineering) and continues parallel to the ocean for the adjoining property identified by TMK No. 5-9-001-088. Photos of the retaining wall are attached.

4. What is the approximate date of establishment of the encroachment(s)? Please submit documentation.

The retaining wall was constructed on Parcel 38 before 1967. Aerial imagery dated April 22, 1967 is attached.

5. Are there any previous Shoreline Certifications for this property? Date(s)? Provide survey map(s).

No.

**EXHIBIT G**



### **Shoreline Encroachment Information Sheet**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS



**6. Please identify all surrounding land uses and any adjacent and upland development.**

Parcel 89 borders Parcel 38 (makai) and residential properties. Parcel 38, which is owned by the State, is set aside as a "Beach Reserve."

**7. Please identify any surrounding (artificial) coastal structures.**

Unclear on what "coastal structure" means. Instead: A low rock wall at the makai boundary of Parcel 89 separates the parcel from Parcel 38. Makai of this low wall is a portion of Parcel 38, which is owned by the State and set aside as a "Beach Reserve." The portion of Parcel 38 that fronts Parcel 89 has an area of approximately 1,098 square feet and ends at the retaining wall (the encroachment identified above) with steps down to the beach. There is approximately 1,106 square feet of vegetation between the retaining wall and the open beach.

**8. Describe the shoreline environment in the area (i.e., types of beach, any observed shoreline erosion and beach loss, backshore geology, recreational activities observed).**

The "Beach Reserve" is open to the public. The nearest public access to the "Beach Reserve" is located between TMK Nos. 5-9-001-087 and 5-9-001-088. There is no observed shoreline erosion or beach loss.

**9. Describe the public shoreline access in the area (i.e., nearest public access points and feasibility of alongshore access).**

The "Beach Reserve" is open to the public. The nearest public access to the "Beach Reserve" is located between Parcels 87 and 88.

**10. What would be the effect of removing the encroachment(s) on adjacent properties and upland development?**

Meta Engineering opined that there would be physical disruption to the adjoining propert(ies) if the retaining wall was removed. Meta Engineering's report is attached.

**11. How would removal of the encroachment(s) improve or affect the shoreline/beach environment?**

Removal is not advisable. See attached report by Meta Engineering.

**12. How would removal of the encroachment(s) improve or hinder alongshore public shoreline access?**

The removal of the encroachment would not improve access to the public to the "Beach Reserve." The nearest public access to the "Beach Reserve" is one lot away. Removal will likely cause subsidence and compromise the structural integrity of what remains of the retaining wall, which could render access to and use of the portion of the "Beach" Reserve unsafe.

**Shoreline Encroachment Information Sheet**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS

**INFORMATION CHECKLIST**

To ensure timely processing, please check that the following are included before submitting:

- Correct mailing address and contact information
- Tax Map Key (TMK) Map
- Current survey map showing property boundaries and encroaching area (survey map should provide calculation of encroaching area in square feet).
- Recent photos showing the encroachment(s) and beach resources from various angles. Include photographs of adjacent public access points and adjacent coastal structures, if applicable.
- Previous shoreline maps (if applicable).
- Documentation or permit(s) for encroachment(s).
- Documentation of non-conforming status of encroachment, i.e. stamped aerial photographs, building permits, authorization letters from Federal, State or County agency (if applicable).
- Attach additional sheets as necessary.

