


Reviewed and Approved by Executive Director: 
November 3, 2021

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Execute a Revocable Right of Entry Agreement with the State of Hawaii Department of Transportation to Construct Road Improvements on That Certain Road Parcel in the Kalaeloa Community Development District Identified as Tax Map Key No. (1) 9-1-013 for a Two (2) Year Term.

II. BACKGROUND

In 2012, the Hawaii Community Development Authority (HCDA) received a legislative appropriation to design and construct the Enterprise Energy Corridor (Energy Corridor) located in the Kalaeloa Community Development District. The Energy Corridor would bring reliable energy to the district through a new Hawaiian Electric Company (HECO) standard underground 12-kV line extension running along Enterprise Avenue, beginning at the intersection of Fort Barrette Road and Kapolei Parkway and terminating at Midway Road.

In January 2016, the State of Hawaii Department of Transportation (DOT) executed a Quitclaim Deed to formally convey Enterprise Avenue to the HCDA to facilitate the Energy Corridor's construction. The HCDA completed the Energy Corridor in February 2020.

The DOT then began constructing other improvements in Kalaeloa, including widening Fort Barrette Road and making traffic improvements at the intersection of Enterprise Avenue and Franklin Delano Roosevelt Avenue (FDR Project).

On March 17, 2021, the HCDA executed a Right of Entry Agreement with the DOT (ROE 8-20) for a 13,512 square foot portion of the Enterprise Avenue and Franklin Delano Roosevelt Avenue intersection (Premises) to construct the FDR Project. ROE 8-20 is attached hereto as Exhibit A.

ROE 8-20 terminated on October 29, 2021; however, the FDR Project is not yet completed. The DOT requests additional time to complete construction, necessitating the execution of a new Right of Entry Agreement.

III. DISCUSSION

In a letter dated May 26, 2021 and attached hereto as Exhibit B, the DOT requested fee simple conveyance of the 13,512 square foot Premises in connection with the FDR Project. However, the HCDA is interested in conveying the entirety of Enterprise Avenue back to the DOT for long-term maintenance of the roadway.

HCDA staff recommends a two-year term for the new Right of Entry Agreement to allow adequate time for DOT to complete its FDR Project and to also allow for the continued negotiations for transferring the entire Enterprise Avenue parcel back to DOT.


IV. RECOMMENDATION


Authorize the Executive Director to Execute a Revocable Right of Entry Agreement with the State of Hawaii Department of Transportation to Construct Road Improvements on That Certain Road Parcel in the Kalaeloa Community Development District Identified as Tax Map Key No. (1) 9-1-013 for a Two (2) Year Term and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments:

Exhibit A – ROE 8-20 and Exhibit

Exhibit B – DOT Letter Dated May 26, 2021 Requesting Portion of Road

Prepared By: Lindsey Doi, Asset Manager 

Reviewed By: Deepak Neupane, P.E., AIA, Executive Director 

FIRST AMENDMENT TO REVOCABLE RIGHT OF ENTRY (ROE 8-20)

This First Amendment to Revocable Right of Entry 8-20 (“**First Amendment**”) is executed this _____ (“**Execution Date**”), by and between the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY** (“**HCDA**” or “**GRANTOR**”), a body corporate and a public instrumentality of the State of Hawaii, and the **STATE OF HAWAII DEPARTMENT OF TRANSPORTATION**, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813 (“**HDOT**” or “**GRANTEE**”) (GRANTOR and GRANTEE are each called a “**Party**” and collectively called “**the Parties**”).

WHEREAS, the Parties entered into a Revocable Right of Entry (ROE 8-20) on March 17, 2021 (hereinafter, the “**ROE**”), a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, the Parties desire to extend the term of the ROE for one additional year;

WHEREAS, the HCDA Kakaako Board approved the one-year extension at its Authority meeting held on November 3, 2021;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. Section 3 of the ROE is hereby replaced in its entirety as follows:

3. Term and Duration. The term of this ROE shall commence at 12:00 a.m. on October 30, 2020 (“**Commencement Date**”) and terminate at 11:59 p.m. on October 29, 2022 (“**Termination Date**”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

2. This First Amendment, upon execution by the Parties, shall be effective as of the date stated above. All understandings and agreements between the Parties with respect to the ROE are merged into, or superseded by, this First Amendment. Unless specifically amended herein, all provisions of the ROE remain in full force and effect. This First Amendment fully and completely expresses the agreement of the Parties and shall not be modified or amended except by written agreement executed by each of the Parties hereto.

3. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

4. This First Amendment constitutes the entire agreement and understanding between the Parties and shall supersede any and all prior communications, representations or agreements, both verbal and written, between the Parties regarding the amendment of the ROE.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: _____
Deepak Neupane, P.E., AIA
Executive Director

APPROVED AS TO FORM:

Deputy Attorney General

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

By: _____
Jade T. Butay
Director

APPROVED AS TO FORM:

Deputy Attorney General

REVOCABLE RIGHT OF ENTRY (ROE 8-20)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (“ROE”) made and executed this March 17, 2021, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA” or “GRANTOR”), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to STATE OF HAWAII DEPARTMENT OF TRANSPORTATION, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813 (“HDOT” or “GRANTEE”), a nonexclusive revocable right of entry upon and use of the Premises (as defined below) subject to each of the following terms and conditions:

1. **Grant of Right-of-Entry.** The HCDA hereby grants to GRANTEE and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, “Permitted Persons”) a right of entry to enter upon the Premises (as defined below) for the sole purposes set forth in Section 4 herein. GRANTEE is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons and ensuring compliance by Permitted Persons with such terms and conditions.
2. **Premises.** This ROE shall pertain to that approximately 13,512 square feet of roadway along Enterprise Street adjacent to the State of Hawaii Department of Transportation Right-of-Way for Roosevelt Avenue and identified by Oahu Tax Map Key No. 9-1-13-Road and highlighted in the attached Exhibit “A”. Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved in favor of the GRANTOR’s determination.
3. **Term.** The term of this ROE granted hereby shall commence at 12:00 a.m. on October 30, 2020 and terminate at 11:59 p.m. on October 29, 2021 (“Termination Date”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.
4. **Use of Premises.** This ROE is nonexclusive. The right of entry granted hereby shall be for the sole purpose of providing access for Permitted Persons, equipment and construction activities for the installation of a traffic signal system at the intersection of Enterprise Street, Roosevelt Avenue and Fort Barrette Road which includes site excavation, trenching, installing traffic signal poles and foundations, underground conduits, traffic control cabinet, and loop detectors. All landscaping that is removed or damaged during work on Premises must be replaced by GRANTEE with landscaping of similar size and type upon termination of this ROE. GRANTEE shall employ appropriate safety measures at all times, including but not limited to, traffic mitigation measures, environmental protection measures, and roadway protection measures (i.e., steel plates). GRANTEE shall not obstruct or impede access through Enterprise Street. GRANTEE shall coordinate any road closures with HCDA.

5. **Acknowledgement of Use By Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified in Section 4, GRANTEE shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

6. **Due Care and Diligence.** At all times during the term of this ROE, GRANTEE shall exercise due care and diligence in entering upon the Premises and shall not unreasonably disrupt or disturb in any way or manner whatsoever the activities or operations of the HCDA, the HCDA's agents on the Premises, or other persons or entities who have the right to enter/or use the Premises with the approval of the HCDA, and GRANTEE shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, GRANTEE shall be responsible for: (a) removing any debris or trash deposited on the Premises; (b) repairing any damage to the Premises caused by GRANTEE's or Permitted Persons' use or the actions of third-persons due to GRANTEE's or Permitted Persons' actions or inactions in securing the Premises; and (c) restoring the Premises to substantially the same condition it was in at the time of GRANTEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this ROE.

7. **Release and Waiver by GRANTEE.** GRANTEE expressly acknowledges and agrees that GRANTOR assumes no responsibility for any damages to person or property arising out of this ROE. Any items left on the Premises, whether owned and/or operated by GRANTEE or Permitted Persons, are at the sole risk of the GRANTEE. GRANTEE expressly agrees that GRANTOR shall not be responsible for any loss or damage to any persons or property, including but not limited to collision, fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other Permitted Persons or any other individual arising out of the ROE.

8. **Insurance.** (a) GRANTEE shall require its selected Contractor ("Contractor") to obtain and maintain at all times during the term of this ROE, at the Contractor's own expense, insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate

\$1,000,000 Completed Operations Aggregate Limit

\$1,000,000 Each Occurrence Limit

\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate (optional, if other limits cannot be met)

Worker's Compensation:

Coverage A: As required by the laws of the State of Hawaii

Coverage B: Employer's Liability:

\$100,000 Bodily Injury by Accident Each Accident

\$100,000 Bodily Injury by Disease

\$500,000 Policy Limit and \$500,000 Each Employee

Automobile: \$2,000,000 combined single limit OR \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per accident, and \$1,000,000 property damage per damage

- (b) Prior to GRANTEE's first entry onto the Premises, GRANTEE shall provide to the HCDA a certificate of insurance from GRANTEE's Contractor to evidence compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by GRANTEE's Contractor in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (d) The HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or any material change in GRANTEE's Contractor's insurance coverage.
- (e) GRANTEE's Contractor shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE's Contractor or Permitted Persons arising out of the ROE.
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's Contractor's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, GRANTEE's Contractor shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of GRANTEE or the Permitted Persons arising out the ROE.
- (g) GRANTEE's Contractor shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. Upon request, GRANTEE shall furnish a certificate of insurance and copy(ies) of all insurance policies evidencing that HCDA is included as an additional insured in the above limits.

- (h) Failure of GRANTEE's Contractor to provide and keep in force such insurance shall be regarded as a material default under this ROE and the HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of GRANTEE.
- (i) The HCDA and GRANTEE are self-insured State entities. GRANTEE's Contractor's insurance shall be primary.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's discretion, the above insurance does not provide adequate protection for the HCDA, it may require GRANTEE to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

9. **Grantee Responsibility.** GRANTEE shall be responsible, to the extent permitted by law, for damage or injury caused by its officers and employees in the scope of their employment provided that funds are appropriated and allotted for that purpose. GRANTEE shall require its Contractor to indemnify HCDA and include the additional named insureds listed in subparagraph 8(c) in the required insurance policies and with the required limits as specified in subparagraph 8(a) of this ROE.

10. **Condition of Premises/Assumption of Risk.** GRANTEE hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by GRANTEE. GRANTEE agrees that all property, approved improvements, and equipment of GRANTEE kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of GRANTEE. This provision shall survive the expiration or earlier termination of the ROE.

11. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E and HRS Chapter 269E.

12. **No Hazardous Materials.** GRANTEE shall not cause nor permit the escape, disposal or release of any hazardous materials except as permitted by law and as specified in Section 4. GRANTEE shall not allow the handling, storage or use of such materials, nor allow to be brought onto the Premises any such materials, except with the prior written consent of the HCDA and in accordance with Section 4. If any governmental agency should require testing to ascertain whether or not there has been any release of hazardous materials by GRANTEE, then GRANTEE shall be responsible for the reasonable costs thereof. In addition, GRANTEE shall execute affidavits, and

other documents from time to time at the HCDA's request concerning GRANTEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released thereon by GRANTEE.

For the purpose of this ROE "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 by law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. **Prohibited Use.** Any use of the Premises not authorized in Section 4 shall constitute a material breach of this ROE. Upon such breach, the HCDA may terminate this ROE and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give GRANTEE notice thereof and afford GRANTEE forty-eight (48) hours to cure such breach.

14. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by GRANTEE shall remain the property of GRANTEE. GRANTEE shall have the right, prior to the termination or expiration of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises. In the event the GRANTEE shall fail to remove the improvements prior to the termination or expiration of this ROE or within an additional period, the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and any storage to GRANTEE. This provision shall survive the termination or expiration of this ROE.

15. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

16. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the HCDA's express prior written consent.

17. **Additional Terms and Conditions.**

- (a) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.

- (b) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (c) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary. Written notice of any such additional terms and conditions shall be provided to GRANTEE not less than thirty (30) days prior to the effective date in accordance with the provisions of Section 19 Notices below. Any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.

18. **Termination.** Either Party may terminate this ROE at any time upon not less than thirty (30) days prior written notice to the other in accordance with the provisions of Section 19 Notices below.

19. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority
Attention: Lindsey Doi, Asset Manager
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: dbedt.hcda.contact@hawaii.gov

State of Hawaii, Department of Transportation
Highways Division
Right of Way Branch
Attention: Right of Way Manager
601 Kamokila Blvd., Room 691
Kapolei, Hawaii 96707

20. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

21. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.


22. **Representation on Authority of Parties/Signatories.** Each person signing this agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

23. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

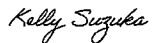
24. **Entire Agreement.** This ROE constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

IN WITNESS WHEREOF, the HCDA and GRANTEE have caused this ROE to be executed as of the day and year first above written.

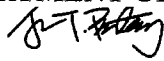
**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: 
DEEPAK NEUPANE, P.E., AIA
Executive Director

APPROVED AS TO FORM:


Deputy Attorney General

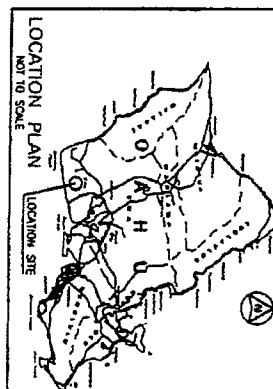
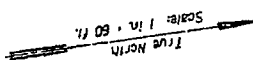
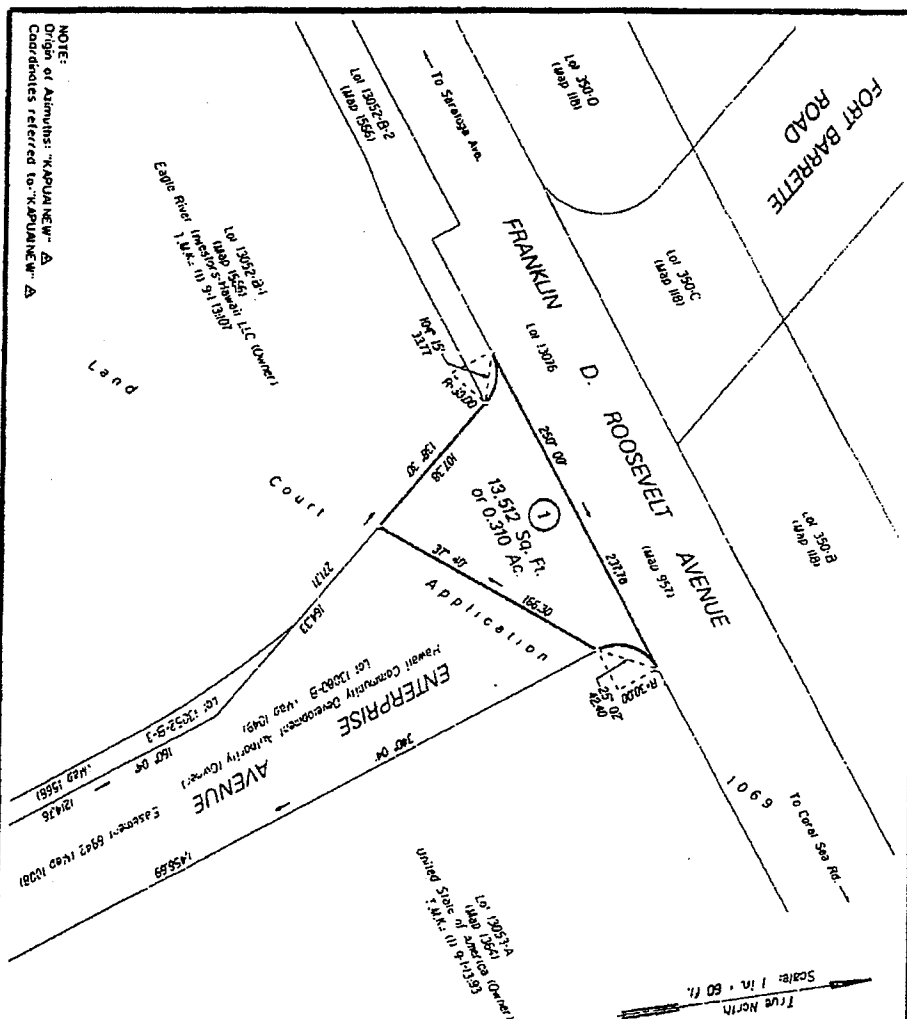
**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

By: 
JADE T. BUTAY
Director

APPROVED AS TO FORM:


Deputy Attorney General

NOTE:
Origin of Azimuths: "KAPUA NEW" Δ
Coordinates referred to: "KAPUA NEW" Δ



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

**RIGHT OF WAY MAP
FORT BARRETTE ROAD
OPERATIONAL IMPROVEMENTS**

**ROOSEVELT AVENUE TO FARRINGTON HIGHWAY
PROJECT NO. 2014-01-13**


AT HONOLULU, EWA, OAHU, HAWAII

HONOLULU, HAWAII
NOVEMBER 14, 2019

John A. ...
CONSULTING ENGINEER

APPROVED: _____
FOR ADMINISTRATION, HIGHWAYS DIVISION

SCALE: 1" = 50'



10' 50'

EXHIBIT "A"

DAVID Y. IGE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 636
TECHNICAL DESIGN SERVICE, ROOM 688
LANDSCAPE DESIGN SECTION, ROOM 609

RIGHT-OF-WAY BRANCH, ROOM 691

TRAFFIC BRANCH, ROOM 602



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

IN REPLY REFER TO:
HWY-RL 3.96804

May 26, 2021

VIA EMAIL ONLY: lindseydoi.leaverton@hawaii.gov

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

Dear Ms. Leaverton:

Subject: Fort Barrette Road Operational Improvements, Roosevelt Avenue to Farrington Highway
Project No. 901A-01-19
at Honouliuli, Ewa, Island of Oahu, Hawaii
Tax Map Key No. (1) 9-1-013: Road

In connection with the subject project, the State of Hawaii, Department of Transportation, Highways Division (State), requires a portion of Hawaii Community Development Authority (HCDA) property situated along Honouliuli, Ewa, Island of Oahu, Hawaii. For your reference, enclosed is a copy of the Revocable Right of Entry dated March 17, 2021.

The fee simple portion of HCDA property required for the project is **Parcel 1**, identified as a portion of Tax Map Key No. (1) 9-1-013: Road, containing an area of approximately 13,512 square feet and as shown on the enclosed right-of-way map in red. As previous legal documents were prepared by HCDA, please prepare and transmit to our office a deed for our execution. If executing a deed is not necessary, please let us know in writing.

For faster processing, you may email the documents to cody-allen.s.ching@hawaii.gov. Should there be questions regarding the project, please contact Ms. Jillian Chen of our Design Section at (808) 692-8439 or email jillian.m.chen@hawaii.gov. Should there be any other questions, please contact Mr. Cody-Allen Ching of our Land Acquisition Section at (808) 692-7320 or email cody-allen.s.ching@hawaii.gov.

Sincerely,

FAWN Y. YAMADA
Right-of-Way Manager

2 Enclosures

1. Revocable Right of Entry dated March 17, 2021
2. Right-of-Way Map dated November 14, 2019

REVOCABLE RIGHT OF ENTRY (ROE 8-20)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (“ROE”) made and executed this March 17, 2021, the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY** (“HCDA” or “GRANTOR”), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to **STATE OF HAWAII DEPARTMENT OF TRANSPORTATION**, whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813 (“HDOT” or “GRANTEE”), a nonexclusive revocable right of entry upon and use of the Premises (as defined below) subject to each of the following terms and conditions:

1. **Grant of Right-of-Entry.** The HCDA hereby grants to GRANTEE and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, “**Permitted Persons**”) a right of entry to enter upon the Premises (as defined below) for the sole purposes set forth in Section 4 herein. GRANTEE is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons and ensuring compliance by Permitted Persons with such terms and conditions.

2. **Premises.** This ROE shall pertain to that approximately 13,512 square feet of roadway along Enterprise Street adjacent to the State of Hawaii Department of Transportation Right-of-Way for Roosevelt Avenue and identified by Oahu Tax Map Key No. 9-1-13-Road and highlighted in the attached Exhibit “A”. Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved in favor of the GRANTOR’s determination.

3. **Term.** The term of this ROE granted hereby shall commence at 12:00 a.m. on October 30, 2020 and terminate at 11:59 p.m. on October 29, 2021 (“**Termination Date**”). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

4. **Use of Premises.** This ROE is nonexclusive. The right of entry granted hereby shall be for the sole purpose of providing access for Permitted Persons, equipment and construction activities for the installation of a traffic signal system at the intersection of Enterprise Street, Roosevelt Avenue and Fort Barrette Road which includes site excavation, trenching, installing traffic signal poles and foundations, underground conduits, traffic control cabinet, and loop detectors. All landscaping that is removed or damaged during work on Premises must be replaced by GRANTEE with landscaping of similar size and type upon termination of this ROE. GRANTEE shall employ appropriate safety measures at all times, including but not limited to, traffic mitigation measures, environmental protection measures, and roadway protection measures (i.e., steel plates). GRANTEE shall not obstruct or impede access through Enterprise Street. GRANTEE shall coordinate any road closures with HCDA.

5. **Acknowledgement of Use By Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified in Section 4, GRANTEE shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

6. **Due Care and Diligence.** At all times during the term of this ROE, GRANTEE shall exercise due care and diligence in entering upon the Premises and shall not unreasonably disrupt or disturb in any way or manner whatsoever the activities or operations of the HCDA, the HCDA's agents on the Premises, or other persons or entities who have the right to enter/or use the Premises with the approval of the HCDA, and GRANTEE shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, GRANTEE shall be responsible for: (a) removing any debris or trash deposited on the Premises; (b) repairing any damage to the Premises caused by GRANTEE's or Permitted Persons' use or the actions of third-persons due to GRANTEE's or Permitted Persons' actions or inactions in securing the Premises; and (c) restoring the Premises to substantially the same condition it was in at the time of GRANTEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this ROE.

7. **Release and Waiver by GRANTEE.** GRANTEE expressly acknowledges and agrees that GRANTOR assumes no responsibility for any damages to person or property arising out of this ROE. Any items left on the Premises, whether owned and/or operated by GRANTEE or Permitted Persons, are at the sole risk of the GRANTEE. GRANTEE expressly agrees that GRANTOR shall not be responsible for any loss or damage to any persons or property, including but not limited to collision, fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other Permitted Persons or any other individual arising out of the ROE.

8. **Insurance.** (a) GRANTEE shall require its selected Contractor ("Contractor") to obtain and maintain at all times during the term of this ROE, at the Contractor's own expense, insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate

\$1,000,000 Completed Operations Aggregate Limit

\$1,000,000 Each Occurrence Limit

\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate (optional, if other limits cannot be met)

Worker's Compensation:

Coverage A: As required by the laws of the State of Hawaii

Coverage B: Employer's Liability:

\$100,000 Bodily Injury by Accident Each Accident

\$100,000 Bodily Injury by Disease

\$500,000 Policy Limit and \$500,000 Each

Employee

Automobile: \$2,000,000 combined single limit OR \$1,000,000
bodily injury per person, \$1,000,000 bodily
injury per accident, and \$1,000,000 property
damage per damage

- (b) Prior to GRANTEE's first entry onto the Premises, GRANTEE shall provide to the HCDA a certificate of insurance from GRANTEE's Contractor to evidence compliance with the insurance requirements set forth in subsection (a) above.
- (c) The insurance policies obtained by GRANTEE's Contractor in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.
- (d) The HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or any material change in GRANTEE's Contractor's insurance coverage.
- (e) GRANTEE's Contractor shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE's Contractor or Permitted Persons arising out of the ROE.
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's Contractor's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, GRANTEE's Contractor shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of GRANTEE or the Permitted Persons arising out the ROE.
- (g) GRANTEE's Contractor shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. Upon request, GRANTEE shall furnish a certificate of insurance and copy(ies) of all insurance policies evidencing that HCDA is included as an additional insured in the above limits.

- (h) Failure of GRANTEE's Contractor to provide and keep in force such insurance shall be regarded as a material default under this ROE and the HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of GRANTEE.
- (i) The HCDA and GRANTEE are self-insured State entities. GRANTEE's Contractor's insurance shall be primary.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's discretion, the above insurance does not provide adequate protection for the HCDA, it may require GRANTEE to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

9. **Grantee Responsibility.** GRANTEE shall be responsible, to the extent permitted by law, for damage or injury caused by its officers and employees in the scope of their employment provided that funds are appropriated and allotted for that purpose. GRANTEE shall require its Contractor to indemnify HCDA and include the additional named insureds listed in subparagraph 8(c) in the required insurance policies and with the required limits as specified in subparagraph 8(a) of this ROE.

10. **Condition of Premises/Assumption of Risk.** GRANTEE hereby agrees and acknowledges that HCDA has not made any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including any dangerous or defective conditions existing in or on the Premises, whether or not such conditions are known to HCDA or reasonably discoverable by GRANTEE. GRANTEE agrees that all property, approved improvements, and equipment of GRANTEE kept or stored on the Premises during the term of this ROE shall be so kept or stored at the sole risk of GRANTEE. This provision shall survive the expiration or earlier termination of the ROE.

11. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E and HRS Chapter 269E.

12. **No Hazardous Materials.** GRANTEE shall not cause nor permit the escape, disposal or release of any hazardous materials except as permitted by law and as specified in Section 4. GRANTEE shall not allow the handling, storage or use of such materials, nor allow to be brought onto the Premises any such materials, except with the prior written consent of the HCDA and in accordance with Section 4. If any governmental agency should require testing to ascertain whether or not there has been any release of hazardous materials by GRANTEE, then GRANTEE shall be responsible for the reasonable costs thereof. In addition, GRANTEE shall execute affidavits, and

other documents from time to time at the HCDA's request concerning GRANTEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released thereon by GRANTEE.

For the purpose of this ROE "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 by law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. **Prohibited Use.** Any use of the Premises not authorized in Section 4 shall constitute a material breach of this ROE. Upon such breach, the HCDA may terminate this ROE and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give GRANTEE notice thereof and afford GRANTEE forty-eight (48) hours to cure such breach.

14. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by GRANTEE shall remain the property of GRANTEE. GRANTEE shall have the right, prior to the termination or expiration of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the Premises. In the event the GRANTEE shall fail to remove the improvements prior to the termination or expiration of this ROE or within an additional period, the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and any storage to GRANTEE. This provision shall survive the termination or expiration of this ROE.

15. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

16. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the HCDA's express prior written consent.

17. **Additional Terms and Conditions.**

- (a) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized herein.

- (b) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (c) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary. Written notice of any such additional terms and conditions shall be provided to GRANTEE not less than thirty (30) days prior to the effective date in accordance with the provisions of Section 19 Notices below. Any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.

18. **Termination.** Either Party may terminate this ROE at any time upon not less than thirty (30) days prior written notice to the other in accordance with the provisions of Section 19 Notices below.

19. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority
Attention: Lindsey Doi, Asset Manager
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: dbedt.hcda.contact@hawaii.gov

State of Hawaii, Department of Transportation
Highways Division
Right of Way Branch
Attention: Right of Way Manager
601 Kamokila Blvd., Room 691
Kapolei, Hawaii 96707

20. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

21. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.

22. **Representation on Authority of Parties/Signatories.** Each person signing this agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

23. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

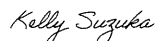
24. **Entire Agreement.** This ROE constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

IN WITNESS WHEREOF, the HCDA and GRANTEE have caused this ROE to be executed as of the day and year first above written.

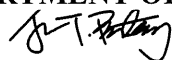
**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

By: 
DEEPAK NEUPANE, P.E., AIA
Executive Director

APPROVED AS TO FORM:


Deputy Attorney General

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

By: 
JADE T. BUTAY
Director

APPROVED AS TO FORM:


Deputy Attorney General

PROJ. NUMBER	1000	DATA FOLDER	
FIELD SHEET	1001	FIELD BOOK	
COMPUTER	1002	CALC. FOLDER	
PLOTTER	1003	P.L. NO.	
DEVELOPER	1004	DEVELOPER	
DATE OF PLAN	1005	DATE OF PLAN	

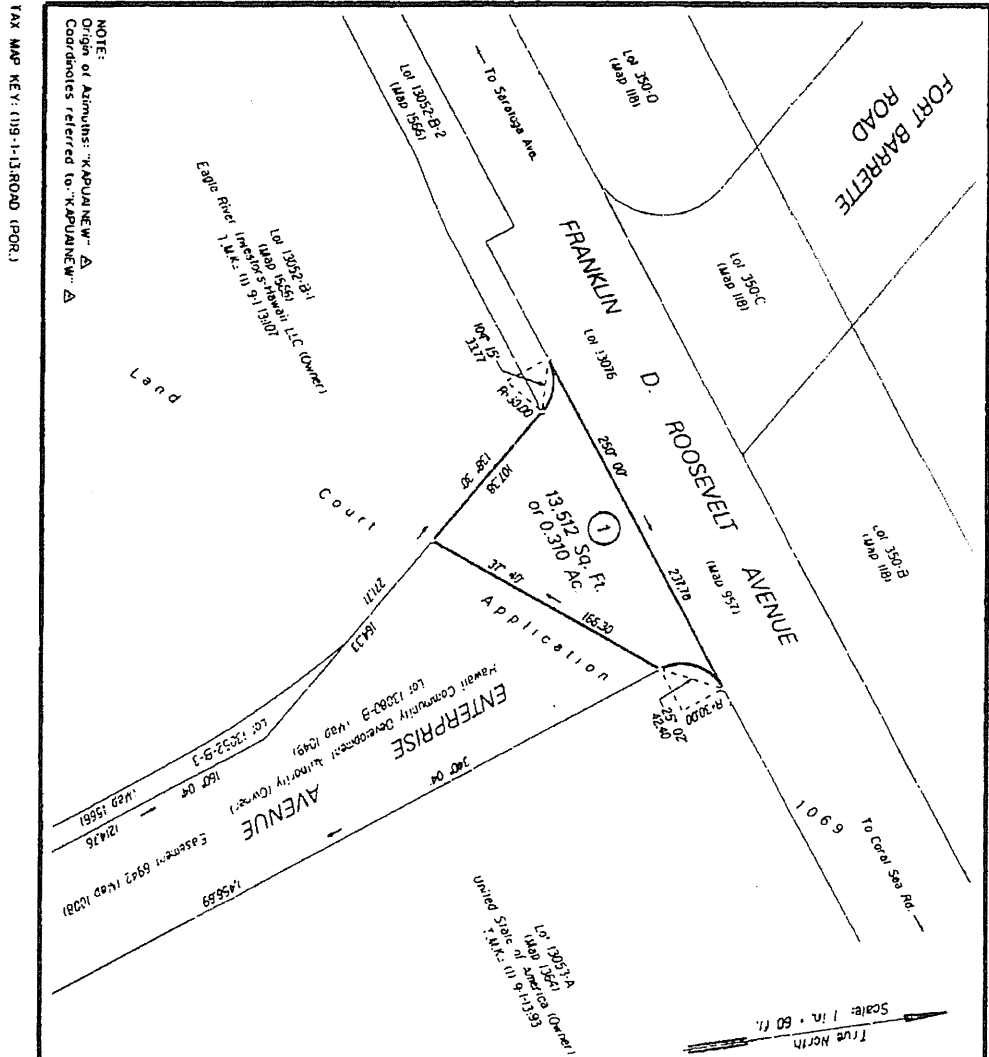
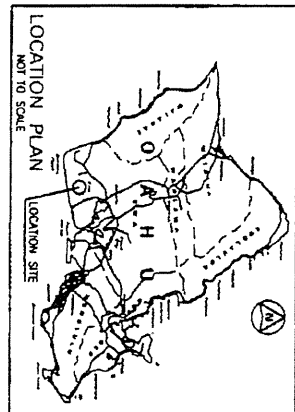


EXHIBIT "A"

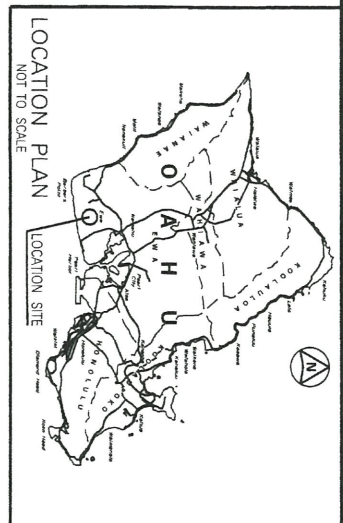
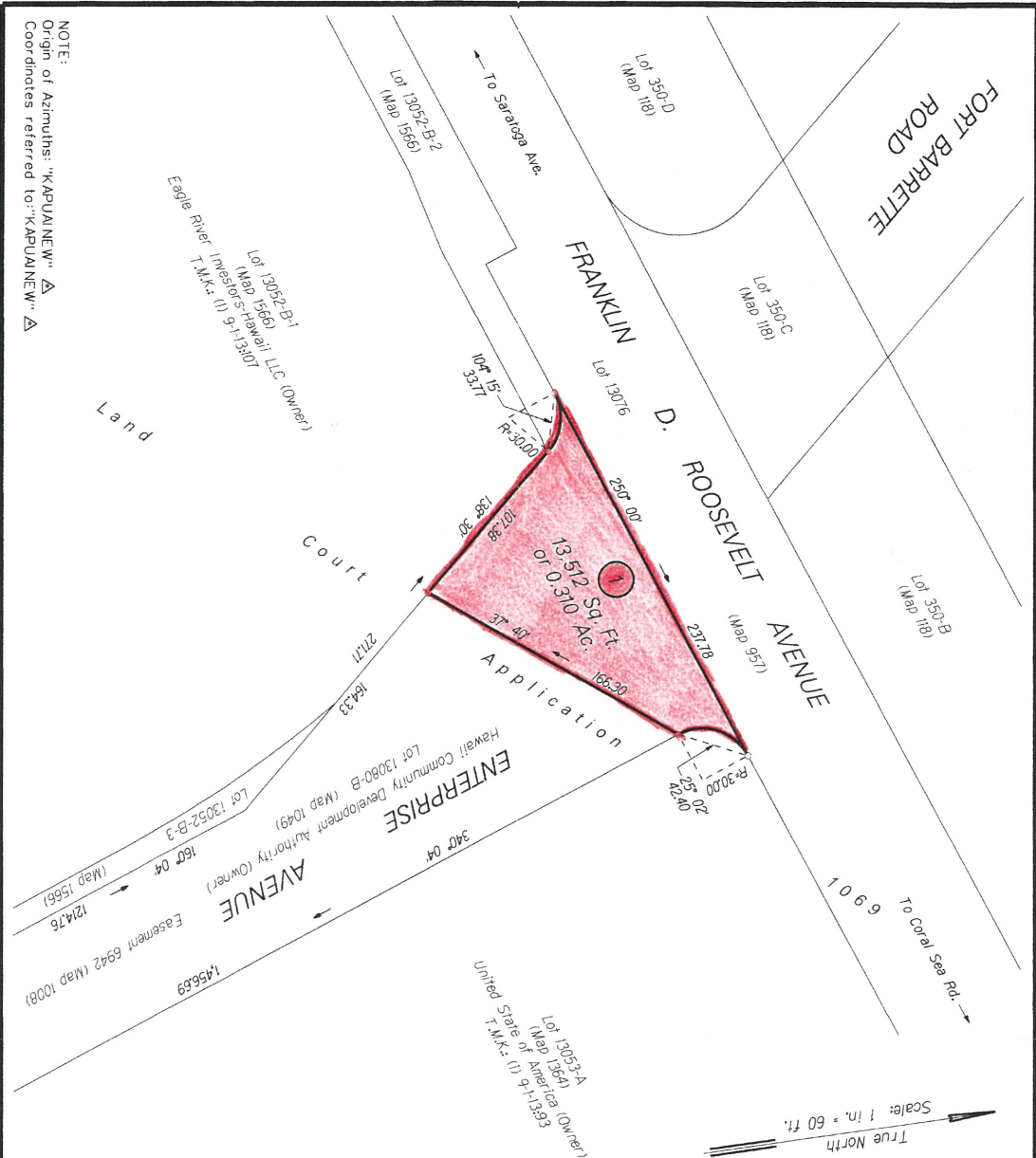


STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT OF WAY MAP
FORT BARRETTE ROAD
OPERATIONAL IMPROVEMENTS
ROOSEVELT AVENUE TO FARRINGTON HIGHWAY
AT HONOLULU, EWA, OAHU, HAWAII
PROJECT NO. 2014-01-13
NOVEMBER 14, 2019
APPROVED: [Signature]
CIVIL ENGINEER
FOR: ADMINISTRATION, HIGHWAYS DIVISION
P.H. 860

PROJ. ENGINEER	NMH	DATA FLOR.	
FIELD CHIEF		FIELD BOOKS	
COMPUTER	NMH	CALC. FLOR.	
PLOTTER	NMH	W.S. NO.	
DRAFTSMAN	NMH	CERT. FLOR.	
CKD BY	KT	DESC. FLOR.	

TAX MAP KEY: (1)9-1-13.ROAD (POR.)

NOTE:
Origin of Azimuths: "KAPUA NEW" Δ
Coordinates referred to: "KAPUA NEW" Δ



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

**RIGHT OF WAY MAP
FORT BARRETTE ROAD
OPERATIONAL IMPROVEMENTS
ROOSEVELT AVENUE TO FARRINGTON HIGHWAY
AT HONOLULU, EWA, OAHU, HAWAII**

PROJECT NO. 901A-01-19
NOVEMBER 14, 2019

APPROVED: *[Signature]*
CADASTRAL ENGINEER

APPROVED: *[Signature]*
FOR ADMINISTRATOR, HIGHWAYS DIVISION

P.H. 860