



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAHAKO
KALAELOA

Neil Abercrombie
Governor

Brian Lee
Chairperson

Anthony J. H. Ching
Executive Director

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Honolulu, Hawaii
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Ref. No.: PL KALAELOA 17.6.2

August 23, 2012

Mr. Sean Mullen, President
Sunetric Capital LLC
2006 Kalihi Street
Honolulu, Hawaii 96819

Dear Mr. Mullen:

Re: Parcel 13073-E, Tax Map Key: 9-1-013: 070, Kalaeloa
Community Development District, Oahu, Hawaii

On August 16, 2012, the members of the Hawaii Community Development Authority ("HCDA") authorized the Executive Director to accept the remediation measures proposed by Aloha Solar Energy/Sunetric ("ASE") to address damages resulting from unauthorized activities on Parcel 13073-E. HCDA's issuance of the Right-of-Entry ("ROE") is contingent on ASE agreeing to all of the conditions and specifications included in the ROE.

The following mitigation measures are included in the ROE:

- Hire an archaeologist to conduct an Environmental Assessment that includes a resource inventory and damage report for the documented Sites 5119 and 5120. Also include in the report any previous documented and undocumented sites that may be discovered on Parcel 13073-E.
- Hire the Civic Club ('Ahahui Siwila Hawai'i O Kapōlei) as a consultant.
- Erect perimeter fencing to ensure no unauthorized entry into Parcel 13073-E and also into the Kalaeloa Heritage Park site located north Parcel 13073-B.
- Provide the HCDA with written status reports every 30 days on the status of the mitigation measures.

Prior to implementation, the ASE will provide the proposed mitigation measures to the State Historic Preservation Division ("SHPD") for their concurrence and notify the HCDA of such concurrence. The ASE will implement

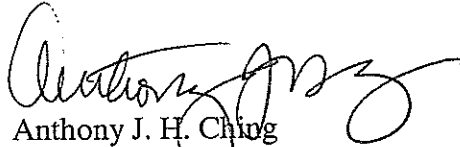
EXHIBIT R

Mr. Sean Mullen, President
Parcel 13073-E, Tax Map Key: 9-1-013: 070, Kalaeloa
Community Development District, Oahu, Hawaii
Page Two
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the mitigation measures for damages to the Archaeological Sites 5119 and 5120 within 60 (sixty) working days from the date in which the ROE is executed.

Please acknowledge your receipt of this letter by signing on the line below and mailing the original back to the HCDA in the enclosed envelope. If you should have any questions or require additional information, please feel free to contact Ms. Tesha Malama, at 692-7245 or email at: tesha@hcdaweb.org.

Sincerely,



Anthony J. H. Ching
Executive Director

I acknowledge receipt of this letter:

SUNETRIC CAPITAL LLC

_____ Date _____
Sean Mullen, President

AJHC/TM:ak

Encs.

- c: Lori Tanigawa, Esq., Deputy Attorney General
(State of Hawaii, Office of the Attorney General)
- Pua Aiu, Ph.D., Administrator
(State Historic Preservation Division)
- Ms. Deona Naboa, Historic Preservation Archaeologist
(State Historic Preservation Division)
- Ms. Rona Rodenhurst, President
(‘Ahahui Siwila Hawai‘i O Kapōlei)
- Mr. Jeff Overton, Principal/Chief Environmental Planner
(Group 70 International)
- Mr. Kawika McKeague, Senior Planner
(Group 70 International)

REVOCABLE RIGHT OF ENTRY (ROE 11-12)

By this agreement executed this ____ day of September 2012, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA"), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to Sunetric ("SUNETRIC") (collectively, the "Parties") a nonexclusive right of entry upon and subject to the following terms and conditions:

1. **Grant of Right-of-Entry.** HCDA hereby grants to SUNETRIC and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, "Permitted Persons") a nonexclusive Right of Entry for the purposes of conducting environmental and archaeological surveying activities and reporting, preliminary project site layout projections, metes and bounds surveying activities and other related pre-planning activities for the development of a photovoltaic solar project in Kalaeloa, commonly referred to as the Coral Sea Lot, identified as Tax Map Key No. (1) 9-1-013: 70 ("ROE"). SUNETRIC is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons.
2. **Premises.** This ROE shall pertain to an approximately 44.280-acre parcel of land identified as Parcel No. 13073-E and further identified by Tax Map Key No. (1) 9-1-013: 70 ("Premises") depicted on the map attached to this ROE as Exhibit "A" and made a part hereof. The ROE granted hereby shall be for Parcel No. 13073-E not to exceed 44.280 acres of area on the Premises; bounded at the west perimeter by a six-foot chain-link fence owned by the State of Hawaii, Department of Transportation - Kalaeloa Airport, bounded at the north perimeter by Tripoli Street and bounded at the east perimeter by Coral Sea Road.
3. **Term and Duration.** The term of this ROE granted hereby shall be applicable from 12:00 a.m. on September ____, 2012 ("Commencement Date") through 11:59 p.m. on March ____, 2013 ("Termination Date"). This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided below. SUNETRIC agrees to be bound by the terms and conditions of the ROE and any amendments to this ROE.
4. **Use of Premises.** This ROE shall be for the purposes of conducting environmental and archaeological surveying activities and reporting, document all previously documented and undocumented sites historic, cultural and archaeological sites, preliminary project site layout projections, metes and bounds surveying activities and other related activities related to remediation of damages to archaeological sites 5119 and 5120.
5. **Acknowledgement of Use by Other Persons.** SUNETRIC acknowledges that other persons or entities have the right to enter and/or use the lands adjacent to the Premises, and with the exception of the activities described in paragraph 4, shall not otherwise interfere with these persons or entities use and enjoyment of the lands adjacent to the Premises.
6. **Due Care and Diligence.** SUNETRIC will exercise due care and diligence in entering upon the Premises and will not disrupt or disturb in any way or in any manner

whatsoever the activities customary to the operations of HCDA or its agents, and SUNETRIC shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, SUNETRIC shall be responsible for: (a) removing any debris or trash deposited by Permitted Persons on the Premises; (b) repairing any damage to the Premises caused by its use by Permitted Persons; and (c) restoring the Premises to its original or better than original condition. This provision shall survive the termination of this ROE.

7. **Indemnity.** SUNETRIC shall defend, indemnify, and hold harmless HCDA and the State of Hawaii, and their respective officials, directors, members, employees, and agents from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) SUNETRIC's breach of this ROE; (b) a Permitted Person's tortious conduct or violation of law; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of this ROE (collectively, "Covered Claims"). SUNETRIC shall also reimburse HCDA for all its costs and expenses, including reasonable attorneys' fees, incurred in connection with HCDA's defense of any Covered Claims. This provision shall survive the termination of this ROE.

8. **Insurance.**

(a) SUNETRIC shall obtain on an occurrence basis and maintain at all times during the term of this ROE at its 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

Worker's Compensation: Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

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

(b) Prior to first entry onto the Premise, SUNETRIC shall provide to HCDA an insurance binder to show compliance with subsection (a) above.

(c) The insurance policy obtained by SUNETRIC 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) HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or material change in SUNETRIC's insurance coverage.

(e) SUNETRIC shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of SUNETRIC or Permitted Persons in connection with SUNETRIC's use or occupancy of the Premises.

(f) The procuring of such required policy or policies of insurance shall not be construed to limit SUNETRIC's liability under this ROE or to fulfill the indemnification provisions and requirements of this ROE. Notwithstanding said policy or policies of insurance, SUNETRIC shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this ROE.

(g) SUNETRIC shall keep such insurance in effect and the certificate(s) on deposit with HCDA during the entire term of this ROE. Upon request by the HCDA, SUNETRIC shall furnish a copy of the policy or policies.

(h) Failure of SUNETRIC to provide and keep in force such insurance shall be regarded as a material default under this ROE and HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of SUNETRIC.

(i) HCDA is a self insured State agency. SUNETRIC's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by SUNETRIC.

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

9. **Condition of Premises/Assumption of Risk.** SUNETRIC 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 SUNETRIC. SUNETRIC agrees that HCDA shall not be held responsible for any injury or damage to SUNETRIC or Permitted Persons due to the presence of hazardous materials or dangerous or defective conditions on or in the Premises. SUNETRIC further agrees that any property left on the Premises during the term of this ROE shall be left there at the sole risk of SUNETRIC.

10. **Compliance with Laws and Regulations.** SUNETRIC 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 use of the Premises.

11. **Prohibited Use.** Any use of the Premises not authorized in Paragraph 4 above shall constitute a material breach of this ROE and upon such breach, HCDA may terminate this

ROE forthwith without notice and pursue any other remedies to which HCDA is entitled to by law or under this ROE.

12. **Improvements.** SUNETRIC shall not construct any improvements of any kind or nature upon the Premises or any other properties of HCDA without HCDA's express prior written consent, which consent may be granted or withheld in HCDA's sole discretion. SUNETRIC shall submit a plan to erect perimeter fencing for HCDA approval prior to installation. Any unauthorized improvements, including but not limited to structures, erected on or moved onto the Premises by SUNETRIC shall remain the property of SUNETRIC and SUNETRIC shall have the right, prior to the termination or revocation of this ROE, or within an additional period HCDA in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the SUNETRIC shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to SUNETRIC. This provision shall survive the termination of this ROE.

13. **No Lien.** SUNETRIC 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 HCDA.

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

15. **Additional Terms and Conditions.**

(a) There will be no usage fee during the term of this ROE.

(b) No one may reside on the premises, and the premises may not be accessed for any other purpose except as authorized.

(c) Animals, plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.

(d) If SUNETRIC continues to enter or remain on the Premises after the Termination Date, SUNETRIC shall pay HCDA as liquidated damages \$1,000 for each calendar day (or part thereof) that such unlawful entrance and occupation of the Premises continues beyond the Termination Date. Such damages are not a penalty, but rather are reasonable estimates of the losses that HCDA would suffer and that the Parties acknowledge would be difficult to ascertain under the circumstances triggering the damages and are HCDA's exclusive remedy, other than equitable relief (such as an injunction barring SUNETRIC from entering and remaining on the Premises) or legal relief (in the form of eviction of SUNETRIC from the Premises or similar legal relief, but not damages) for such entrance or use.

(e) Prior to implementation SUNETRIC will provide proposed mitigation measures to SHPD for their concurrence and notify HCDA of such concurrence. SUNETRIC will implement the mitigation measures for damages to archaeological sites 5119 and 5120 as formerly agreed upon by SUNETRIC AND HCDA. The mitigation measures are to be implemented within 60 (sixty) working days from September ____, 2012 and are to include, but are not limited, to the following:

- Hire an archaeologist to conduct an environmental assessment that includes a resource inventory and damage report for documented sites 5119 and 5120. Also include in the report any undocumented sites that may be discovered on Parcel 13073-E.
- Hire the Civic Club (Ahahui Siwila Hawaii O Kapolei) as a consultant.
- Erect perimeter fencing to ensure no unauthorized entry into Parcel 13073-E and also into the Kalaeloa Heritage Park site located north Parcel 13073-B.
- Provide HCDA with written status reports every 30 days on the status of the mitigation measures.

(f) HCDA reserves the right to impose following additional terms and conditions, if deemed necessary.

16. **Termination.** HCDA may terminate this ROE at any time upon forty-eight (48) hours written notice to SUNETRIC in accordance with Paragraph 17 below.

17. **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: Anthony J. H. Ching, Executive Director
461 Cooke Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Facsimile: (808) 594-0299
E-mail: tony@hcdaweb.org

Sunetric
Attention: Chad Christopher
905 Kalaniana'ole Highway, #21
Kailua, Hawaii 96734
Telephone: (808) 262-6600
Cell: (808) 554-9784
Facsimile: (808) 262-6602
E-mail: CChristopher@sunetric.com

18. **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.

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

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

21. **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, HCDA and SUNETRIC have caused this ROE to be executed as of the day and year first above written.

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, STATE OF HAWAII

By: _____
Anthony J. H. Ching
Executive Director

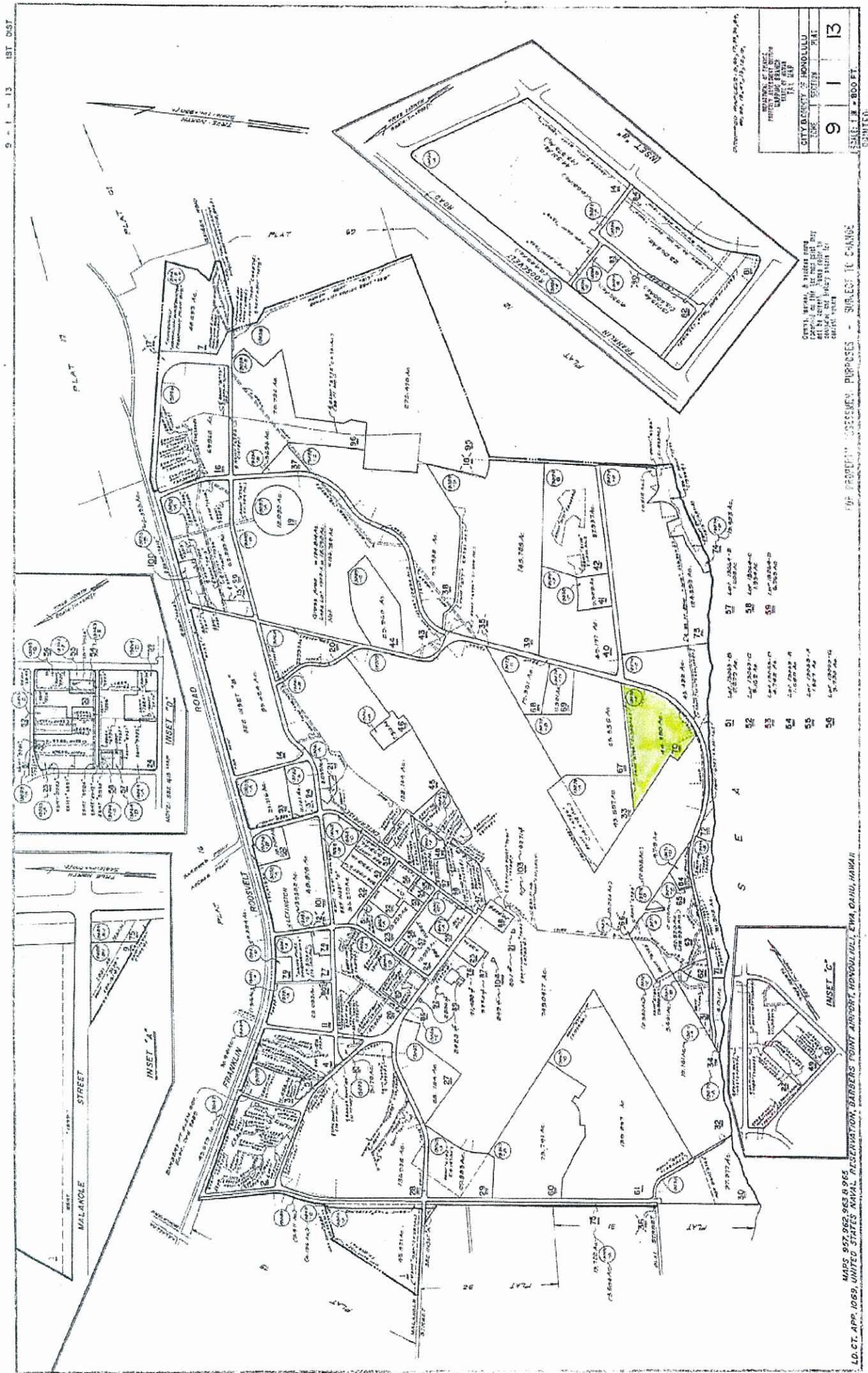
APPROVED AS TO FORM:

Deputy Attorney General

SUNETRIC

By: _____
Name: Chad Christopher
Title: Senior Project Manager

Exhibit A
Coral Sea Lot, Parcel No. 13073-E
Tax Map Key No.: (1) 9-1-013: 70
Not to Scale



DIAMOND HEAD

FWA