

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

April 25, 2014

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

OAHU

Consent to License Agreement between City and County of Honolulu and the Department of Defense for Installation, Operation and Maintenance of Civil Defense Disaster Warning and Communication Devices Purposes over Lands Setting Aside to City and County of Honolulu, Oahu at the following TMKs:

(1) 1-1-063:014, (1) 1-3-027:001; (1) 1-8-020:013, (1) 2-7-036:005,
(1) 3-1-031:004, (1) 3-1-042:005, (1) 3-5-022:023, (1) 4-1-009:264,
(1) 5-3-002:031, (1) 5-9-001:038, (1) 8-3-001:001, (1) 8-7-005:001,
and (1) 9-9-006:020.

CONTROLLING AGENCY (of subject executive orders):

City and County of Honolulu

APPLICANT (requesting license):

Department of Defense and Department of Accounting and General Services

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LICENSE AREA:

Typically for each location, 16 square feet, more or less, located within the locations shown on **Exhibit A**.

CHARACTER OF USE:

Civil Defense Disaster Warning and Communication Devices purposes

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The applicant agency shall be responsible for ensuring compliance with Chapter 343, HRS.

REMARKS:Project

State Department of Defense (“DOD”) is implementing the Statewide disaster warning and communication system, by either replacing the old sirens or installing new equipment (“Project”). The planned locations, with a total of about 500¹, cover all major islands on sites including beach parks, schools, harbors, airports etc. Department of Accounting and General Services (“DAGS”) is DOD’s consultant in planning and construction of the Project. Some proposed locations are over State lands which have been set aside to the City and County of Honolulu (“City”) for park purposes.

DOD, DAGS, and the City² discussed the logistics, including right of entry and future maintenance, of the Project. A Memorandum of Agreement dated June 1, 2011 (“MOA”) signed by the parties and now attached as **Exhibit B** provides the framework for the respective responsibilities among the parties. It was also agreed by the parties that a site-referenced license agreement, containing construction drawing and map of the equipment, and other conditions would be issued by the City to DOD. A boiler plate for the license is attached as **Exhibit C**.

Disposition manner for the equipment

In the past, DOD and DAGS requested the Board issue perpetual, non-exclusive easements for similar purposes. Majority of the past requests are still pending for the submission of maps and legal descriptions from DAGS, which will form part of the easement document to be prepared by the Department of the Attorney General. In addition, designation of easement is required from the City’s Department of Planning Permitting (“DPP”). As advised by DAGS, the funding allotted for the Project currently does not account for the hiring of licensed land surveyor to prepare the relevant map and legal description and the DPP process.

Upon review of the situation, particularly, regarding the number of possible locations, staff believes the MOA and the license mentioned in the preceding paragraphs adopted by the City, DOD, and DAGS provide a good alternative to achieve the objectives of the Project, namely, installing the required devices in a timely manner for public safety purpose and defining responsibilities of the stakeholders.

Board Consent under 171-11, HRS

Pursuant to 171-11, HRS, approval from the Board is required for dispositions over land

¹ Figures provided by DOD and DAGS: Oahu 198; Maui 102; Hawaii 128; Kauai 54.

² Including Department of Parks and Recreation, and Department of Emergency Management.

set aside to an agency for public purpose in excess of 14 days. The Project is an integral part of the safety of the users of the public facilities. Therefore, the Project is consistent with the public purposes stipulated in the respective Governor's executive orders.

For all locations that fall under the jurisdiction of the City pursuant to respective executive orders as shown on Exhibit A, staff recommends the Board consent to the issuance of license agreements by the City pursuant to the manner described above. Staff understands the construction at some of these locations is ready to commence, and parties concerned desire to obtain all appropriate authorizations as soon as possible.

Further, staff recommends the Board extend its consent to the City for other locations under the City's jurisdiction but not covered in Exhibit A at this moment, subject to the same manner of disposition described above. The construction at those sites may become finalized subsequently upon discussion among all parties concerned. The extended consent will facilitate the smooth implementation of the Project, without any potential delay.

Other locations in the future

Because the great number of sirens needing improvements, the sirens are being implemented incrementally. Thus, there are other sirens under jurisdiction of other agencies pursuant to other executive orders. Depending on the discussion between DOD/DAGs and those agencies, staff will bring the request for consent under 171-11, HRS, using similar approach, to the Board at a later date.

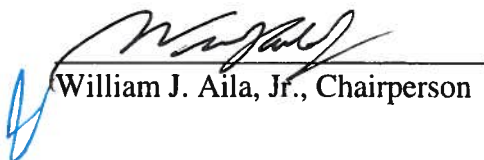
RECOMMENDATION: That the Board consent to the license agreement between the City and County of Honolulu and the Department of Defense, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Location	TMK	Executive Order(s)	Siren #	
Salt Lake District Park	(1) 1-1-063:014	2502	OA136	
DeCorte Park	(1) 1-3-027:001	1922	OA126A	
Iholena Park	(1) 1-8-020:013	167 and 196	OA124A	
Ala Wai Community Park	(1) 2-7-036:005	1428	OA114	*
Kapiolani Beach Park	(1) 3-1-031:004	22	OA112A	*
Diamond Head Lighthouse	(1) 3-1-042:005	3667	OA112	*
Wailupe Beach Park	(1) 3-5-022:023	2066	OA106	*
Waimanalo District Park	(1) 4-1-009:264	3983	OA402	*
Punaluu Beach Park	(1) 5-3-002:031	385 and 1702	OA422	*
Sunset Beach	(1) 5-9-001:038	2598	OA201	*
Keau Beach Park	(1) 8-3-001:001	1402	OA327	*
Mali South	(1) 8-7-005:001	2464	OA318	*
Aiea Heights	(1) 9-9-006:020	1672	OA303	

Note: *Locations under Phase 1 of the Project ready to commence construction

EXHIBIT A

MEMORANDUM OF AGREEMENT

BETWEEN THE

CITY AND COUNTY OF HONOLULU

AND

STATE OF HAWAII

This **MEMORANDUM OF AGREEMENT (MOA)**, entered into on this 1st day of June 2011, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813 ("CITY"), the STATE OF HAWAII by its DEPARTMENT OF DEFENSE, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816 ("DOD"), and the STATE OF HAWAII by its DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813 ("DAGS").

The purpose of this MOA is to coordinate the implementation, including planning, design and construction, of Civil Defense Outdoor Siren Warning System, together with improvements, equipment, facilities and appurtenances related thereto ("sirens and related equipment"), throughout the CITY.

Hawaii Revised Statutes ("HRS") § 128-2 defines a "local organization for civil defense" to include an organization created in accordance with HRS Chapter 128 to perform civil defense functions in the City and County of Honolulu. Civil defense functions include all those provided pursuant to HRS Chapter 128 which includes air raid warning services and communications. HRS § 128-3 provides for the appointment of a Deputy Director for each political subdivision. HRS § 128-6 establishes Civil Defense powers provides for direction or control of warnings and signals for alerts or attacks, and the devices to be used.

Additionally, HRS § 128-18 grants the State and the City immunity from any liability for death of or injury to persons, or property damage, as a result of any act or omission in the course of employment or in the performance of duties pursuant to HRS Chapter 128, except in cases of willful misconduct.

The DOD, DAGS, and the CITY by mutual consent, agree to jointly manage efforts and projects undertaken to fulfill the responsibility for the installation, maintenance and control of such warnings and devices.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. DOD's responsibilities:

EXHIBIT "B",

- a. Develop and maintain a list of proposed locations for sirens and related equipment.
- b. Participate in meetings with the CITY to discuss proposed siren sites.
- c. Submit listings of proposed siren sites for review and concurrence.
- d. Initiate a License Agreement with the CITY which will address site specific issues for existing and new siren sites.
- e. Seek appropriations for siren warning projects on behalf of the CITY, and where such appropriations are made, fund the design and construction of the sirens and related equipment.
- f. Inspect, repair, and maintain the sirens and related equipment.
- g. For the installation, operation, repair and maintenance of the sirens and related equipment:
 - 1) DOD's contractor shall obtain a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 2) DOD shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, DOD and DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days prior written notice to the CITY, DOD, and DAGS.
 - 3) DOD's consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 4) DOD's consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to

the commencement of the contractor's activity under each right-of-entry permit.

- 5) DOD, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its work at each siren site.

2. CITY's responsibilities:

- a. Review and approve the proposed location of the siren sites.
- b. Review and approve the construction plans provided by DOD for the installation of the sirens and related equipment.
- c. Grant DOD a license to install, operate, and maintain sirens and related equipment on the siren sites approved by the CITY.
- d. Issue right-of-entry permits to DAGS' and DOD's contractor for approved siren sites.
- e. Provide assistance to DOD for the repair and maintenance of the sirens and related equipment at the request of DOD.
- f. The City, its officers, employees, agents, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its siren project activities.

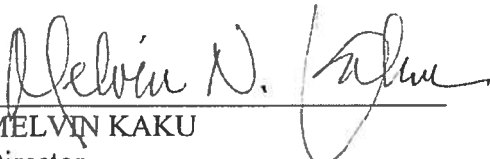
3. DAGS' responsibilities are as follows:

- a. Provide DOD staff with technical services and overview coordination support for the implementation of DOD siren projects on CITY controlled siren sites.
- b. Procure the design consultants, negotiate and approve the consultant's fees, prepare the design contracts and make payments using funding appropriated to DOD for this purpose.
- c. Oversee the design, bidding, and construction phases of the work in accordance with all applicable regulatory requirements. Prepare the construction contracts and make payments.
- d. When overseeing design and construction phase work for DOD sirens and related equipment:

- 1) If a siren site is located on State-owned property, DAGS shall be responsible for obtaining an easement (on behalf of DOD) for the siren, related equipment and siren maintenance from the State Department of Land and Natural Resources.
 - 2) DAGS' consultants and contractors will process a right-of-entry permit for the installation of the siren and related equipment at each siren site.
 - 3) DOD shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and including the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the CITY, DOD and DAGS, and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days' prior written notice to the CITY, DOD, and DAGS.
 - 4) DAGS' consultants and contractors shall maintain and exercise due care to keep the area surrounding the siren site clear and safe for public use during the term of the right-of-entry permit.
 - 5) DAGS' consultants and contractors shall restore the siren site to a condition that is substantially similar to that which existed prior to the commencement of the contractor's activity under each right-of-entry permit.
 - 6) DAGS, its officers, employees, agents, consultants, contractors, and subcontractors shall comply with and satisfy all applicable statutes, ordinances, rules and regulations of the Federal, State and City governments in performing its work at each siren site.
4. Modifications: Any extensions, changes or alterations to this MOA shall be agreed to by all affected parties in writing before being undertaken.
 5. Termination: Any party to this MOA shall have the privilege, with or without cause, to cancel or annul this MOA at any time upon written notice given thirty (30) days in advance of such termination.

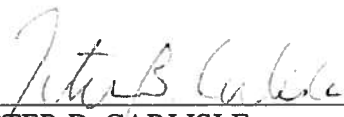
IN WITNESS THEREOF, the parties have executed this MOA on the day, month, and year mentioned above.

CITY AND COUNTY OF HONOLULU
DEPARTMENT OF EMERGENCY
MANAGEMENT



MELVIN KAKU
Director

CITY AND CITY OF HONOLULU



PETER B. CARLISLE,
Mayor

APPROVED AS TO FORM
LEGALITY




Deputy Corporation Counsel

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

By 

BRUCE A. COPPA
State Comptroller

STATE OF HAWAII
DEPARTMENT OF DEFENSE

By 

DARRYLL D. M. WONG
Major General
Hawaii National Guard
Adjutant General

APPROVED AS TO FORM:



Deputy Attorney General

LICENSE AGREEMENT

THIS LICENSE AGREEMENT entered into this _____ day of _____, 201__, by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose address is 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "Licensor," and the STATE OF HAWAII by its Department of Defense, whose address is 3949 Diamond Head Road, Honolulu, Hawaii 96816, hereinafter called the "Licensee."

W I T N E S S E T H:

WHEREAS, Licensor is the owner or manager of those certain parcels of land more particularly described in Exhibit A attached hereto as final siren locations are approved, and made a part hereof (hereinafter referred to as the "parcel"); and

WHEREAS, Licensee desires to license a portion of the parcel for the installation, operation and maintenance of civil defense disaster warning and communication devices, together with improvements, equipment, facilities and appurtenances related thereto; and

WHEREAS, Licensor does not object to granting Licensee a non-exclusive license over the parcel provided Licensee fully complies with the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. **Purpose of License.** It is mutually agreed and understood by and between the parties that the primary purpose for this License is to improve and expand emergency and civil defense communications in times of disaster or national emergency.

EXHIBIT " c "

2. Grant of License. Licensor hereby grants Licensee a revocable non-exclusive license to install, operate and maintain civil defense disaster warning and communication devices, together with improvements, equipment, facilities and appurtenances related thereto (hereinafter referred to as the "Equipment") in portions of the parcel ("Siren Site") and the right of ingress to and egress from the said Equipment and parcel. This License shall not be construed to include the granting of any permanent rights, ownership, title, or easements in the parcel.

3. Licensed Area. The Siren Site subject to this license is listed in Exhibit A attached hereto and incorporated herein as siren number OA316 (Siren Name Designation: Nanakuli Beach Park). Licensee shall obtain Licensor's approval of the final location for siting of the equipment and official siren location name.

4. License Term. This License shall become effective on the day and year first above written, and shall continue in full force and effect for until such time that either Licensor or Licensee choose to terminate this License upon giving one (1) year written notice.

5. Right to Construct the Equipment. Licensee may construct and maintain the Equipment on, within, under, over and across the Siren Site provided that Licensee obtains the Licensor's written approval of the plans and specifications for the Equipment and any subsequent alterations thereto prior to commencing the construction of any portion of the Equipment on the Siren Site. Licensee shall be solely responsible for all costs and expenses incurred in connection with the Equipment and the maintenance of the Equipment, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

6. Equipment. The initial installation of the Equipment shall be comprised of a solar powered siren attached to a composite pole which will be tested once a month as shown on

Exhibit "B," attached hereto and made a part hereof. No electrical connection or underground utility trenching are required or shall be allowed.

7. Maintenance. Licensee shall, at its sole cost and expense, maintain said Equipment and appurtenances relating thereto in a good, safe and workmanlike manner, including, but not limited to, making all necessary repairs to the Equipment, and shall not make, permit or suffer any unlawful, improper or offensive use of the Siren Site.

8. Damage. Licensee shall not damage, undermine or otherwise destroy any portion of the Siren Site, including, without limitation, any Licensor facilities or improvements situated on or near the Siren Site or any equipment or appurtenances relating thereto, including, but not limited to drainage system, irrigation, landscaping, and underground utility systems. Licensee shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Siren Site so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

9. Reservation of Rights. Licensor reserves unto itself the full use and enjoyment of the Siren Site and to grant to others rights and privileges for any and all purposes affecting the Siren Site, all without charge by and without the consent of Licensee, provided that such use by Licensor and/or third parties does not unreasonably interfere with Licensee's rights to use the Siren Site under this License. Licensee shall take steps necessary to ensure that its exercise of the rights and privileges granted hereunder does not cause any substantial interference with Licensor's operations in or near the Siren Site.

10. Licensor Work Within or Affecting the Siren Site. If Licensor decides to perform any work of any kind within, on, over, under, across, near, or affecting the Siren Site, Licensor

will coordinate such work with Licensee. Licensee shall not prevent Licensor from performing such work, provided, however, that Licensor will take protective measures to assure that such work does not unreasonably interfere with Licensee's Equipment or use of the Siren Site for the purpose of performing routine or necessary maintenance of the Equipment.

11. Ownership of Equipment. The Equipment and appurtenances and all equipment and tools for the maintenance and use thereof placed in or upon the Siren Site shall remain the property of Licensee and may be removed by Licensee at its own cost and expense at any time during the life of this and shall be removed within a reasonable time from the date of receiving written notice from Licensor to change the location of said Equipment and appurtenances or any part thereof upon the said described property. Licensee shall not in any way alter or relocate said Equipment on the Siren Site without prior written consent of Licensor. Upon removal or relocation of said Equipment and appurtenances, Licensee shall restore the Siren Site to as good a condition as existed prior to the commencement of this License.

12. Removal of Equipment. If Licensor shall at any time in the future deem it necessary to use the Siren Site for any public purpose and/or physical expansion of its current operations, Licensee shall remove, at its own cost and expense, its Equipment and its appurtenances from the Siren Site, and without any liability on the Licensor's part; provided, however, that the Licensor shall give Licensee at least one (1) year prior written notice of any requirement for such removal.

13. Assignment. Licensee shall not transfer or assign this License or sublet any part of the Siren Site or grant any interest, privilege or license whatsoever in connection with this License or the Siren Site.

14. Damages or Injury. Licensor and Licensee understand and recognize that by entering into this License, that both are engaged in a civil defense function as contemplated in Hawaii Revised Statutes, Chapter 128, as amended. Neither Licensor nor Licensee shall be civilly liable for the death of or injuries to persons or property damage, as a result of any act or omission in the course of the employment or duties under Hawaii Revised Statutes Chapter 128, as amended.

15. Waiver of Claims. Nothing contained in this Agreement shall be construed by any party as a waiver of any immunity currently authorized by law or that may in the future be so authorized.

16. Insurance. Licensee shall require its consultants and contractors to procure and maintain, during the life of each right-of-entry permit and any extensions thereof, comprehensive general liability insurance covering bodily injury and property damage with limits not less than \$1,000,000 combined single limit per occurrence and include the following extensions: (1) contractual liability to cover liability assumed under the right-of-entry permit; and (2) all insurance that may be required under the laws, ordinances or rules or regulations of any governmental authority. All required policies of insurance shall name the Licensor and Licensee and their elected and appointed officials, employees and agents as additional insured and provide that the policy will not be canceled, terminated, lapsed, or materially changed without 30 days prior written notice to the Licensor and Licensee.

17. Abandonment. This License and all of Licensee's rights hereunder shall terminate, without any action on the part of Licensor, in the event of non-use or abandonment by Licensee of the Siren Site, or any portion thereof, for a period of one (1) year.

18. Removal upon Termination. Upon termination or cancellation of this License, Licensee shall, at its sole cost and expense, remove any and all portions of the Equipment installed or constructed on, within, under, over or across the Siren Site and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Siren Site to as good a condition as existed prior to the installation of this License, satisfactory to the Licensor, and if Licensee fails to restore the Siren Site to a condition satisfactory to the Licensor, Licensor shall have the right to charge Licensee, and Licensee shall be solely responsible for, any and all costs and expenses incurred by Licensor in completing and accomplishing such restoration, including, but not limited to any costs the Licensor incurs in removing and disposing of Licensee's Equipment.

19. Default.

i) Notice of default. If Licensee defaults on or otherwise fails to perform its obligations under this License, Licensor will issue a written notice of default to Licensee by hand-delivery or first-class mail.

ii) Licensee to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the Licensor's satisfaction within fifteen (15) days of the date of the Licensor's written notice to Licensee or such further time as may be authorized by the Licensor in writing. Licensee's failure to construct the Equipment in accordance with the plans and specifications approved by Licensor shall be deemed a default of this License.

iii) City remedies for failure to cure. If Licensee fails to cure said defaults or failures to perform within the required time, the Licensor may, but shall not be obligated to, cure

or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure and remedy to Licensee, who shall immediately pay said costs and expenses to the Licensor upon receiving notice from the Licensor.

20. Costs and Attorneys' Fees. In the event of any litigation by reason of this License, Licensor and Licensee agree that each shall be responsible for their own attorney fees and costs and not for the attorney fees and costs of the other party. Nothing contained herein shall preclude Licensor or Licensee from pursuing an award of attorney fees and costs against any third party in any related litigation.

21. Agreement/Amendments. This License constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments of this License must be in writing and executed by both parties.

22. Compliance with Laws. Licensee, at all times during the term of this License, shall comply with all of the requirements of federal, state, and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force.

23. Binding Effect. All provisions contained in this License shall be binding upon and inure to the benefit of the respective parties, their successors, and officers, agents, and employees or any person acting for and on their behalf.

IN WITNESS WHEREOF, the parties, represented by the County Department Head for the Licensor and the Vice Director of Civil Defense for the Licensee, have caused these presents to be executed the day and year first above written.

CITY AND COUNTY OF HONOLULU

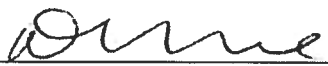
By _____
Its

"LICENSOR"

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel

STATE OF HAWAII
By its Department of Defense

By 

Doug Mayne
Hawaii State Civil Defense
Vice Director

"LICENSEE"

APPROVED AS TO FORM:



Deputy Attorney General
State of Hawaii

EXHIBIT A (Page 1 of 2)
SITE LOCATION MAP

ISLAND: Oahu
SITE NUMBER: 316
SITE NAME: Nanakuli Beach Park

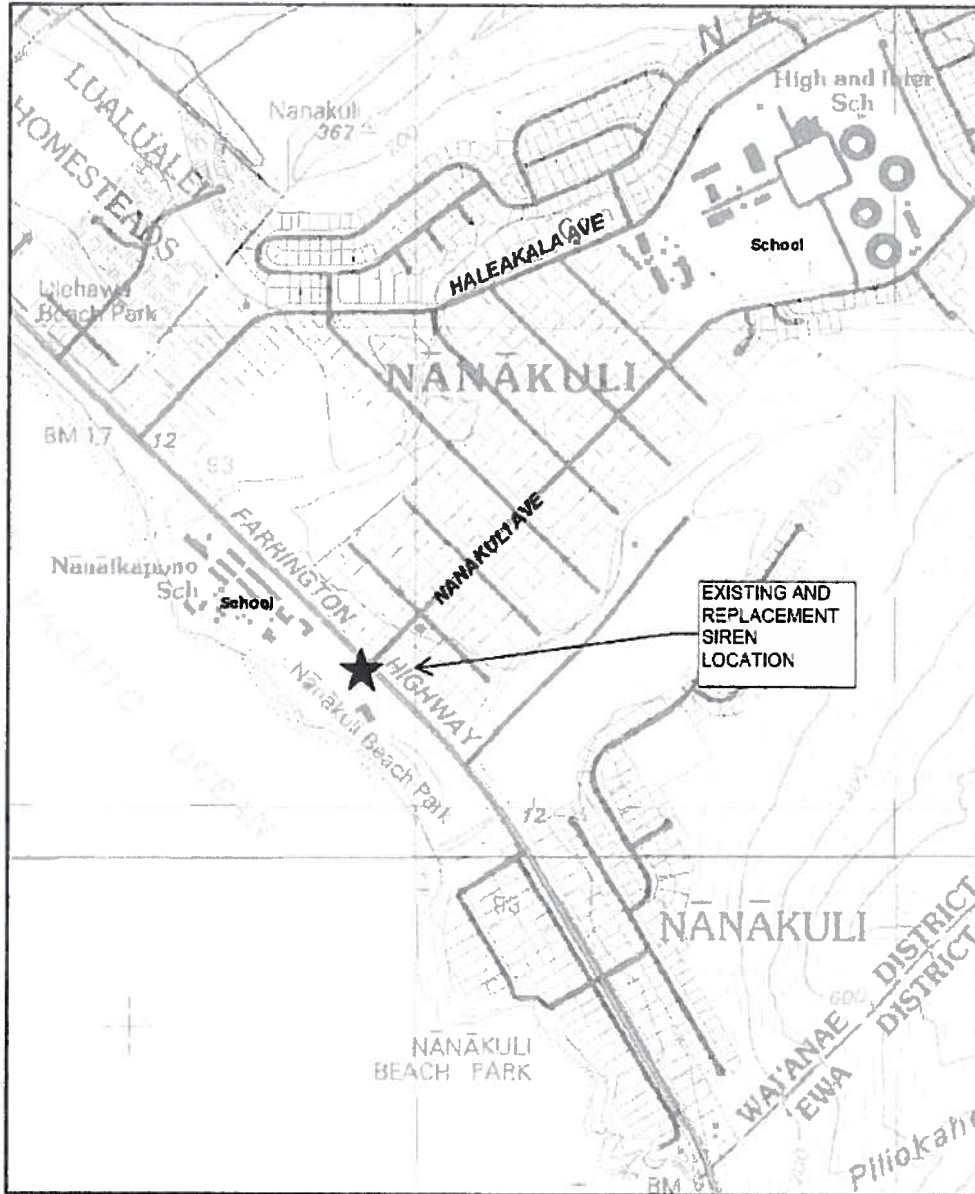
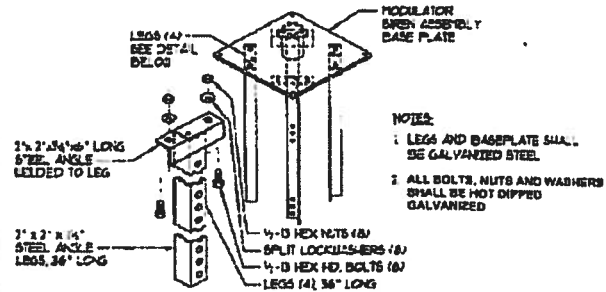
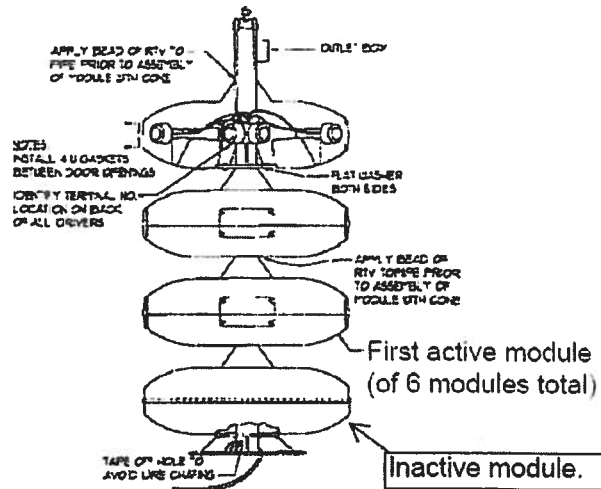
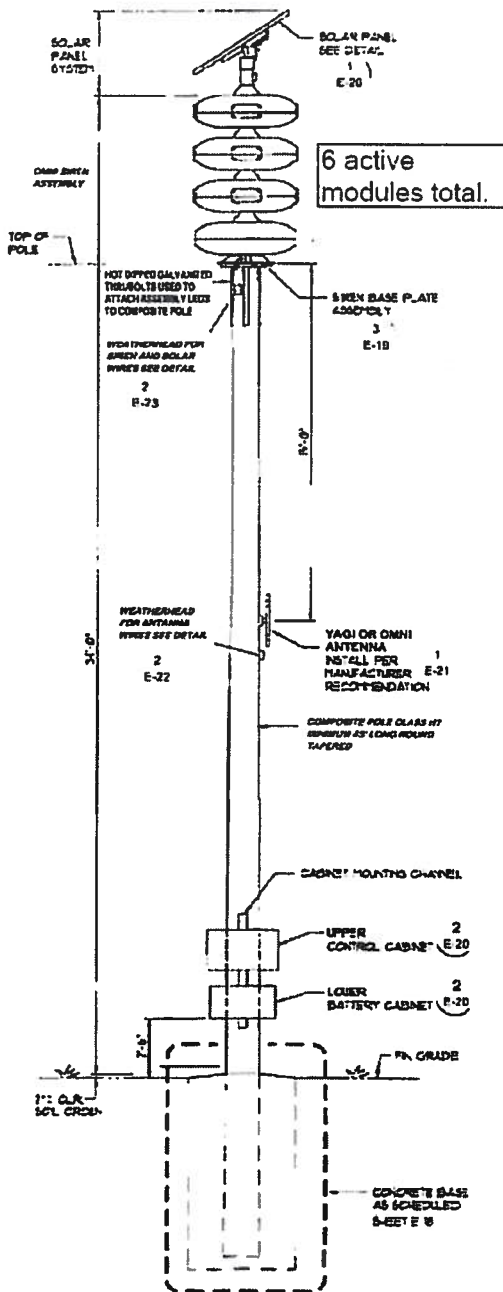


EXHIBIT A (Page 2 of 2)

ISLAND: Oahu
SITE NUMBER: 316
SITE NAME: Nanakuli Beach Park



EXHIBIT B



Hawaii State Civil Defense			
POLE ELEVATION, SIREN AND BASEPLATE DETAIL			
Siren Type MOD 6024			
DATE	SCALE	SHEET	OF
	NOT TO SCALE		1