

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

August 9, 2013

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

Statewide

Consent to Assign General Lease Nos.:

S-3795, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-4-01: pors.;
S-4028, Papaanui, Makawao, Maui, Tax Map Key: (2) 2-2-07: pors.;
S-4130, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-02: pors.;
S-4320, Punahoa 2nd, South Hilo, Hawaii, Tax Map Key: (3) 2-3-22: pors.;
S-4402, Nanakuli, Waianae, Oahu, Tax Map Key: (1) 8-9-08: pors.; and
S-4614, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-01: 1 & 10 pors.
Hawaiian Telcom, Inc., Assignor, to Global Tower Assets, LLC, Assignee;
Authorize Chairperson to Execute Estoppel Certificates in Favor of Global Tower
Assets, LLC;

Consent to Assign General Lease Nos.:

S-4223, Mount Kaala, Mokuleia, Waiialua, Oahu, Tax Map Key: (1) 6-7-03:
pors.; and
S-4588, Kalawahine and Opu, Honolulu, Oahu, Tax Map Key: (1) 2-5-19: pors.
Hawaiian Telcom, Inc., Assignor, to GTP Structures I, LLC, Assignee; Authorize
Chairperson to Execute Estoppel Certificates in Favor of GTP Structures I, LLC;

Amendment of General Lease Nos. S-3795, S-4028, S-4130, S-4223, S-4320,
S-4402, S-4588, and S-4614 to Update the Provisions Relating to Assignment and
Subletting, and to Provide that the State shall Receive a Percentage of New
Sublease Rents;

Amendment of General Lease No. S-4130 To Set forth the Correct Termination
Date of the 31st day of December, 2022; Amendment of General Lease No.
S-4320 To Set forth the Correct Termination Date of the 31st day of December,
2034; and

Consent to Sublease General Lease Nos. S-3795, S-4028, S-4130, S-4320,
S-4402, S-4614, Global Tower Assets, LLC, Sublessor, to Hawaiian Telcom, Inc.,
Sublessee; Consent to Sublease General Lease Nos. S-4223 and S-4588, GTP
Structures I, LLC, Sublessor, to Hawaiian Telcom, Inc., Sublessee

APPLICANT:

Hawaiian Telcom, Inc., Assignor, to Global Tower Assets, LLC, a Delaware limited liability company, as Assignee (as to six leases).

Hawaiian Telcom, Inc., Assignor, to GTP Structures I, LLC, a Delaware limited liability company, as Assignee (as to two leases).

LEGAL REFERENCE:

Section 171-6, -36(a)(5), (6), Hawaii Revised Statutes, as amended.

TABLE 1: LOCATION/ TAX MAP KEY/ AREA/ ANNUAL RENT/ TERM OF LEASE:

GL No.	Location	Tax Map Key:	Area*	Annual Rent	Term
S-3795	Hanapepe, Waimea, Kauai	(4) 1-4-01: pors.	45,414 sf Exhibit A	\$2,000	11/26/63- 11/25/13
S-4028	Papaanui, Makawao, Maui	(2) 2-2-07: pors.	.262 acre Exhibit B	14,840	07/01/66- 06/30/31
S-4130	Humuula, North Hilo, Hawaii	(3) 3-9-02: pors.	1.047 acres Exhibit C	21,000	01/01/68- 12/31/22**
S-4223	Mount Kaala, Mokuleia, Waialua, Oahu	(1) 6-7-03: pors.	9,200 sf Exhibit D	31,400	03/01/66- 02/28/31
S-4320	Punahoa 2 nd , South Hilo, Hawaii	(3) 2-3-22: pors.	13,990 sf Exhibit E	13,200	01/01/70- 12/31/34**
S-4402	Nanakuli, Waianae, Oahu	(1) 8-9-08: pors.	.898 acre Exhibit F	685	04/04/72- 04/03/37
S-4588	Kalawahine and Opu, Honolulu, Oahu	(1) 2-5-19: pors.	56,653 sf Exhibit G	26,600	06/06/73- 06/05/38
S-4614	Humuula, North Hilo, Hawaii	(3) 3-8-01: por. of 1 & 10	7,500 sf Exhibit H	18,250	12/01/77- 11/30/42
			Total:	\$127,975	

*The areas shown include the facility sites as well as appurtenant easements and access roads, where applicable. Refer to the exhibit letters referenced in this column for maps of the lease sites (attached).

**For the two leases indicated, the termination dates set forth in the leases are incorrect. The correct dates are shown in this column. The discrepancy is discussed further below.

TABLE 2: TRUST LAND STATUS/ CHARACTER OF USE/ RENTAL REOPENINGS:

GL No.	Trust Land Status***	Character of Use	Rental Reopenings	
			Last	Next
S-3795	Section 5(b) DHHL: No	Microwave transmission facilities and appurtenant easements purposes	11/26/88	N/A
S-4028	Section 5(b) DHHL: No	Microwave station and other radio communications facilities together with easement for power and communication lines purposes	07/01/06	07/01/16
S-4130	Section 5(b) DHHL: No	Microwave radio station and other radio communications purposes	01/01/13	N/A
S-4223	Section 5(b) DHHL: No	Microwave station and other radio communication facilities, together with appurtenant easements purposes	03/01/06	03/01/16
S-4320	Non-ceded DHHL: No	Public utility purposes	01/01/00	01/01/15
S-4402	Section 5(b) DHHL: No	Maintenance and operation of radio-telephone transmission facilities purposes	04/04/97	04/04/17
S-4588	Section 5(b) DHHL: No	Maintenance and operation of radio-telephone transmission facilities purposes	06/06/98	06/06/18
S-4614	Section 5(b) DHHL: No	Microwave radio relay station site purposes	12/01/12	12/01/22

*** “Section 5(b)” refers to Section 5(b) lands of the Hawaii Admission Act. “DHHL: No” means the lease premises are not former sugar cane lands, and DHHL is therefore not entitled to 30% of the revenues as provided for under the Hawaii State Constitution

CONSIDERATION:

The assignment of the subject leases is part of a larger transfer of Hawaiian Telcom, Inc.’s (HTI) tower facilities to Global Tower Partners’ subsidiaries. Pursuant to the parties’ Asset Purchase and Sale Agreement (APSA) dated January 8, 2012, the purchase price for all the facilities, including fee simple and leasehold sites, is \$3,600,000, assuming the annual cash flow from all tower sites is at least \$238,000 at the time of closing. The cash flow attributable to the facilities on State leases is approximately \$22,788. The purchase price allocated to the State lease facilities in the APSA is \$344,790.

RECOMMENDED PREMIUM ON ASSIGNMENTS:

None. See discussion in remarks section.

RECOMMENDED PREMIUM ON SUBLEASES:

30% of gross sublease revenues for the first sublease under each lease, 40% of gross

sublease revenues for the second sublease under each lease, and 50% of gross sublease revenues for the third and subsequent subleases under each lease.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Good standing confirmed: YES X NO __

ASSIGNEE GLOBAL TOWER ASSETS, LLC:

Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Good standing confirmed: YES X NO __

ASSIGNEE GTP STRUCTURES I, LLC:

Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Good standing confirmed: YES X NO __

REMARKS:

Assignment

The subject leases were all issued to Hawaiian Telephone Company by direct negotiation in the 1960s and '70s for communications purposes (the specific character of use is indicated in Table 2 above). Hawaiian Telephone Company had a number of name changes over the years and is now known as Hawaiian Telcom, Inc. (HTI). HTI requests the consent of the Board of Land and Natural Resources to the assignment of six of these leases to Global Tower Assets, LLC (GTA), and two of the leases to GTP Structures I, LLC (GTP).

HTI explains the reason for the assignment is to streamline its operations. HTI recently emerged from bankruptcy and has made a business decision that there are economic benefits to be gained by transferring the subject leases to GTA/GTP who will then sublease space on the facilities back to HTI.¹

GTA and GTP appear to be qualified to assume the leases. HTI has advised staff that the parent of GTA and GTP, Global Tower Partners, is the largest privately owned tower operator in the United States, and the fourth largest independent owner and operator of towers in the country. Global Tower Partners currently owns, operates or manages over 6,400 towers and 8,500 rooftops. Global Tower Partners leases space on towers and rooftops to telecommunications carriers and other users of wireless technology.

¹ HTI is also assigning a number of leases on private lands to GTA/GTP or their affiliates as part of this transaction pursuant to an Asset Purchase and Sale Agreement dated January 8, 2012.

The subject leases are all older form leases that do not provide for the assessment of a premium on assignment. However, a law passed in 1989 (Act 104 SLH 1989) authorized the Board to assess a premium as a condition to consent to a lease assignment. At its meeting of June 13, 2003, Item D-28, the Board adopted a policy setting forth criteria under which the Board could waive the assessment of a premium on assignment. These criteria are:

1. The lessee is required to make or made substantial capital improvements to the leased premises (i.e., buildings) and the major source of income to the lessee is generated from these improvements.
2. The market value of the lessee’s improvements is primarily attributable to the operations conducted by the lessee on the leased premises and the cash flow generated by the operations, rather than the cost of improvements.
3. The lease includes provisions that ensure ground rents keep up with market rents (e.g., frequent rental re-openings, step-ups, etc.).

In this case, HTI has made substantial capital improvements to each lease premises as follows:

TABLE 3 – HTI’s Capital Improvements to Each Lease

GL No.	Location	Tax Map Key:	HTI Site Identifier	Cost of Improvements
S-3795	Hanapepe, Waimea, Kauai	(4) 1-4-01: pors.	Kapele RS, WDU332	\$142,064.01
S-4028	Papaanui, Makawao, Maui	(2) 2-2-07: pors.	Haleakala 1, KUV88	801,557.00
S-4130	Humuula, North Hilo, Hawaii	(3) 3-9-02: pors.	Ookala, KUV86	46,829.13
S-4223	Mount Kaala, Mokuleia, Waialua, Oahu	(1) 6-7-03: pors.	Kaala PR 1, KUV95 and Kaala RS, KUV95	344,442.00
S-4320	Punahoa 2 nd , South Hilo, Hawaii	(3) 2-3-22: pors.	Halai Hill RS, WAY90	183,463.71
S-4402	Nanakuli, Waianae, Oahu	(1) 8-9-08: pors.	Maunakapu N, KZS32 and Summit Camp, WHE593	387,511.68
S-4588	Kalawahine and Opu, Honolulu, Oahu	(1) 2-5-19: pors.	Tantalus R, KUV80 and Tantalus T 1, KUV83	249,521.40
S-4614	Humuula, North Hilo, Hawaii	(3) 3-8-01: por. of 1 & 10	Mauna Loa, WCU202	10,804.97

The major source of HTI’s income is generated from the cell towers constructed on the lands. Further, the market value of HTI’s improvements is primarily attributable to the communications operations HTI and its sublessees conduct on the leased premises and the cash flow generated by the operations, rather than the cost of improvements. All the leases include periodic rent reopenings, usually at intervals of ten years. Accordingly, staff is recommending that the Board waive any assignment premium for this transaction. As discussed below, staff is recommending that the State participate in existing and future subleases.

HTI is compliant with all lease terms and conditions (rent, insurance, performance bond).² Information on the subleases under the leases is set forth in the table below.

TABLE 4 – Existing Subleases

GL No.	Sublessee	Sublease Term	Annual Sublease Rent	Options to Extend
S-4130	Cellco Partnership, d/b/a Verizon Wireless	10/01/08 – 09/30/13	\$17,400	Up to 09/30/18
S-4223	Hawaiian Electric Co., Inc.	05/01/10 – 04/30/15	33,324	Up to 04/30/30
S-4588	Clear Wireless LLC	10/15/07 – 10/14/17	32,064	N/A
S-4588	Hochman Hawaii-Three, Inc.	11/01/11 – 10/31/21	21,576	N/A
S-4614	T-Mobile West LLC	Month-to-month commencing 02/17/99	14,544 (annualized)	N/A
		Total:	\$118,908	

In the companion submittal, staff is recommending that the State share in the gross revenues from these subleases at the rate of 30% for the first sublease under each lease, 40% for the second sublease under each lease, and 50% for the third and subsequent subleases under each lease.³

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

² There are unauthorized subleases under some the leases, as discussed in more detail in a companion submittal before the Board today (which seeks the Board’s after-the-fact consent to the subleases). If after-the-fact consent is given, this non-compliance will be resolved.

³ There is one exception to the 30-40-50% participation standard. For GL S-4223, the Board already approved sublease rent participation for the first sublease in the amount of 50% at its meeting of October 28, 2011, Item D-27. Accordingly, for GL S-4223, the sublease rent participation will be 50% for the first sublease, 40% for the second sublease, and 50% for the third and subsequent subleases.

The status of rental reopenings of the leases is as shown in Table 2 above. There are no outstanding rental reopening issues.

No agency or community comments were solicited as there is no change in use under any of the leases.

Estoppel Certification

HTI presented staff with a form of “Lessor/Landlord Consent to Assignment and Assumption of Ground Lease” for the Board to sign. A copy of the first page of this document is attached as Exhibit I. In addition to consenting to the assignment, the document includes estoppel language as follows:

3. All rent payable under the Lease is current and no defaults or unresolved claims arising prior to the date hereof exist under the Lease.
4. Hawaiian Telcom, Inc. is the current tenant under the Lease (a full copy of which, including all amendments thereto is annexed as Exhibit B) and the Lease is in full force and effect and contains the entire agreement between Landlord and Hawaiian Telcom, Inc. with respect to the property.

Staff is able to report that the statements above are accurate as of the date of this Board action. However, the Department of the Attorney General (AG) prepares its own form of consent that does not normally include estoppel language of this sort. Accordingly, staff is including a recommendation below that the standard AG consent be modified to include this estoppel language, or that the AG prepare a separate estoppel certificate incorporating these statements, as the AG deems appropriate. As to General Lease Nos. S-4130 and S-4320, the estoppel language should probably note the discrepancy in the leases regarding their termination dates.

Amendment of Leases

GTA/GTP have requested the amendment of the leases to specify the percentage share the State will take on new subleases. The leases generally provide that the State may condition its consent to a sublease on an adjustment to rent charged under the lease.⁴ The Board’s sublease rent participation policy, which is discussed in more detail in the companion submittal before the Board at today’s meeting, allows for participation in sublease rents at an unspecified level determined by evaluating various factors.

GTA/GTP are looking for greater certainty as they operate under the leases and initially

⁴ General Lease No. S-3795 (the oldest of the leases) has an outdated sublease provision that is very restrictive. HTI is required to show “extreme economic hardship” before an assignment or sublease will be approved. Because all the leases were issued by direct negotiation (as opposed to public auction), the lease terms and conditions can be amended.

proposed a 25% share to the State on new subleases. Based on staff’s research, landowners generally share in sublease rents under tower leases at rates between 25-50%. Staff confirmed with the Army that its standard cell tower lease form provides for a 40% share of the first sublease rent, and 50% of the second and subsequent subleases. Staff is including a recommendation below that the assignment and sublease provisions of all the leases be updated with the current language used by the AG, and that the sublease provision provide that all subleases require prior written approval of the Board, and the State shall share in the gross revenues from subleases at the rate of 30% for the first sublease under each lease, 40% for the second sublease under each lease, and 50% for the third and subsequent subleases under each lease.⁵

Additionally, two of the leases contain errors as to their termination dates. General Lease No. S-4130 states that it is for a term of 55 years, “commencing on the 1st day of January 1968, up to and including the 31st day of December 2023.” But the period of time commencing and terminating on the dates indicated is actually 56 years. Similarly, General Lease No. S-4320 states that it is for a term of 65 years, “commencing on the 1st day of January 1970, up to and including the 31st day of December 2035.” But the period of time commencing and terminating on the dates indicated is actually 66 years. Pursuant to HRS Section 171-36(a)(2), the longest lease term the Board can approve is 65 years. Staff is therefore including a recommendation below that the leases be amended to correct these errors.

Subleases to HTI

As mentioned above, once the assignments to GTA/GTP are consummated, HTI will take a sublease back on most of the sites under the following terms:

TABLE 5 – Subleases Back to HTI

GL No.	Sublessor	Sublessee	Annual Rent	Initial Term
S-3795	GTA	HTI	\$2,400	10 years
S-4028	GTA	HTI	12,000	10 years
<i>S-4130</i>				<i>No sublease to HTI</i>
S-4223	GTP	HTI	4,800	10 years
S-4223	GTP	HTI	9,600	10 years
S-4320	GTA	HTI	2,400	10 years
<i>S-4402</i>				<i>No sublease to HTI</i>
S-4588	GTP	HTI	2,400	10 years
S-4614	GTA	HTI	2,400	10 years
		Total:	\$36,000	

Staff is proposing that these subleases be treated as new subleases under the amendments discussed above so that the State would receive a percentage of the gross revenues from

⁵ As mentioned above, the sublease rent participation for GL S-4223 will be 50-40-50%

them.⁶ Staff's recommendation is to consent to the subleases to HTI on this condition.

RECOMMENDATION:

That the Board:

- A. Consent to the assignment of General Lease Nos. S-3795, S-4028, S-4130, S-4320, S-4402, and S-4614, Hawaiian Telcom, Inc., Assignor, to Global Tower Assets, LLC, Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time, provided that the Department of the Attorney General shall include estoppel language in substantially the form noted above in the consent instrument or in a separate estoppel certificate, as the Department of the Attorney General deems appropriate;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Consent to the assignment of General Lease Nos. S-4223 and S-4588, Hawaiian Telcom, Inc., Assignor, to GTP Structures I, LLC, Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time, provided that the Department of the Attorney General shall include estoppel language in substantially the form noted above in the consent instrument or in a separate estoppel certificate, as the Department of the Attorney General deems appropriate;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the amendment of General Lease Nos. S-3795, S-4028, S-4130, S-4320, S-4402, S-4588, and S-4614 to update the provisions relating to assignments and subletting, and to provide that the State will share in the gross revenues from subleases at the rate of 30% for the first sublease under each lease, 40% for the second sublease under each lease, and 50% for the third and subsequent subleases under each lease as set forth above, subject to the following:
1. The standard terms and conditions of the most current amendment of lease form,

⁶ The percentage would be 30%, 40% or 50%, depending on the number of subleases already in existence under the leases.

as may be amended from time to time;

2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- D. Authorize the amendment of General Lease No. S-4223 to update the provisions relating to assignments and subletting, and to provide that the State will share in the gross revenues from subleases at the rate of 50% for the first sublease under the lease, 40% for the second sublease under the lease, and 50% for the third and subsequent subleases under the lease, subject to the following:
1. The standard terms and conditions of the most current amendment of lease form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Authorize the amendment of General Lease No. S-4130 to set forth the correct termination date of the lease, clarifying that it is for a term of 55 years, “commencing on the 1st day of January 1968, up to and including the 31st day of December 2022”, subject to the following:
1. The standard terms and conditions of the most current amendment of lease form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- F. Authorize the amendment of General Lease No. S-4320 to set forth the correct termination date of the lease, clarifying that it is for a term of 65 years, “commencing on the 1st day of January 1970, up to and including the 31st day of December 2034”, subject to the following:
1. The standard terms and conditions of the most current amendment of lease form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

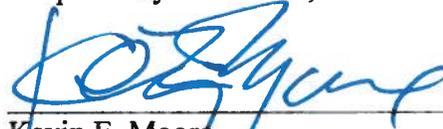
G. Consent to the sublease of General Lease Nos. S-3795, S-4028, S-4130, S-4320, S-4402, and S-4614, Global Tower Assets, LLC, Sublessor, to Hawaiian Telcom, Inc., Sublessee, subject to the following:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Any options to extend granted to Hawaiian Telcom, Inc. in the subleases are also consented to in the event they are exercised, provided that the extended sublease term does not exceed the applicable lease term;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

H. Consent to the sublease of General Lease Nos. S-4223 and S-4588, GTP Structures I, LLC, Sublessor, to Hawaiian Telcom, Inc., Sublessee, subject to the following:

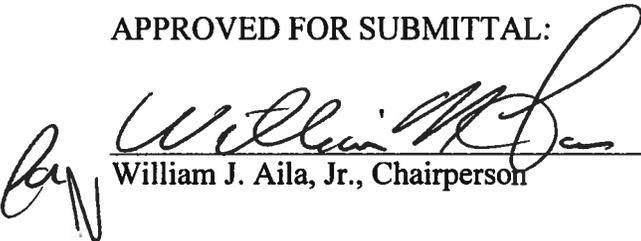
1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Any options to extend granted to Hawaiian Telcom, Inc. in the subleases are also consented to in the event they are exercised, provided that the extended sublease term does not exceed the applicable lease term;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

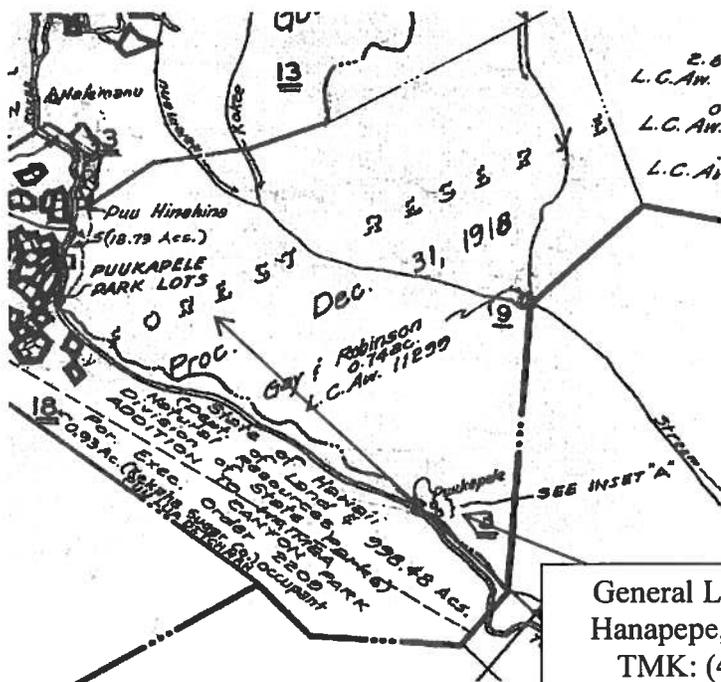


Kevin E. Moore
Assistant Administrator

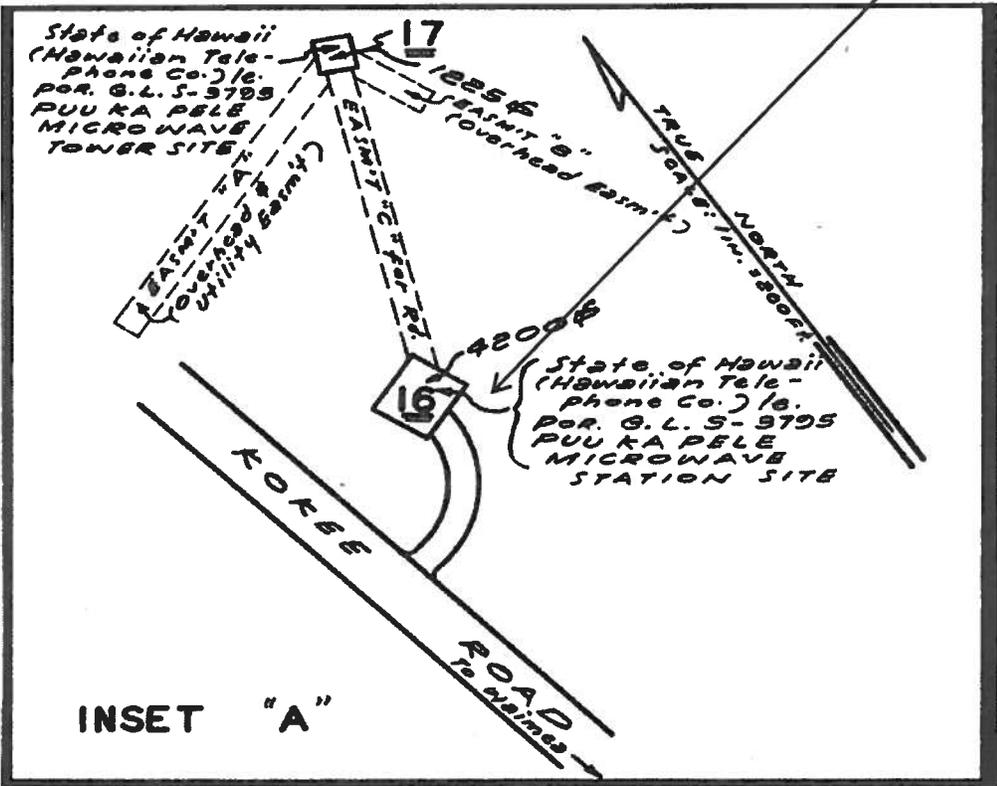
APPROVED FOR SUBMITTAL:

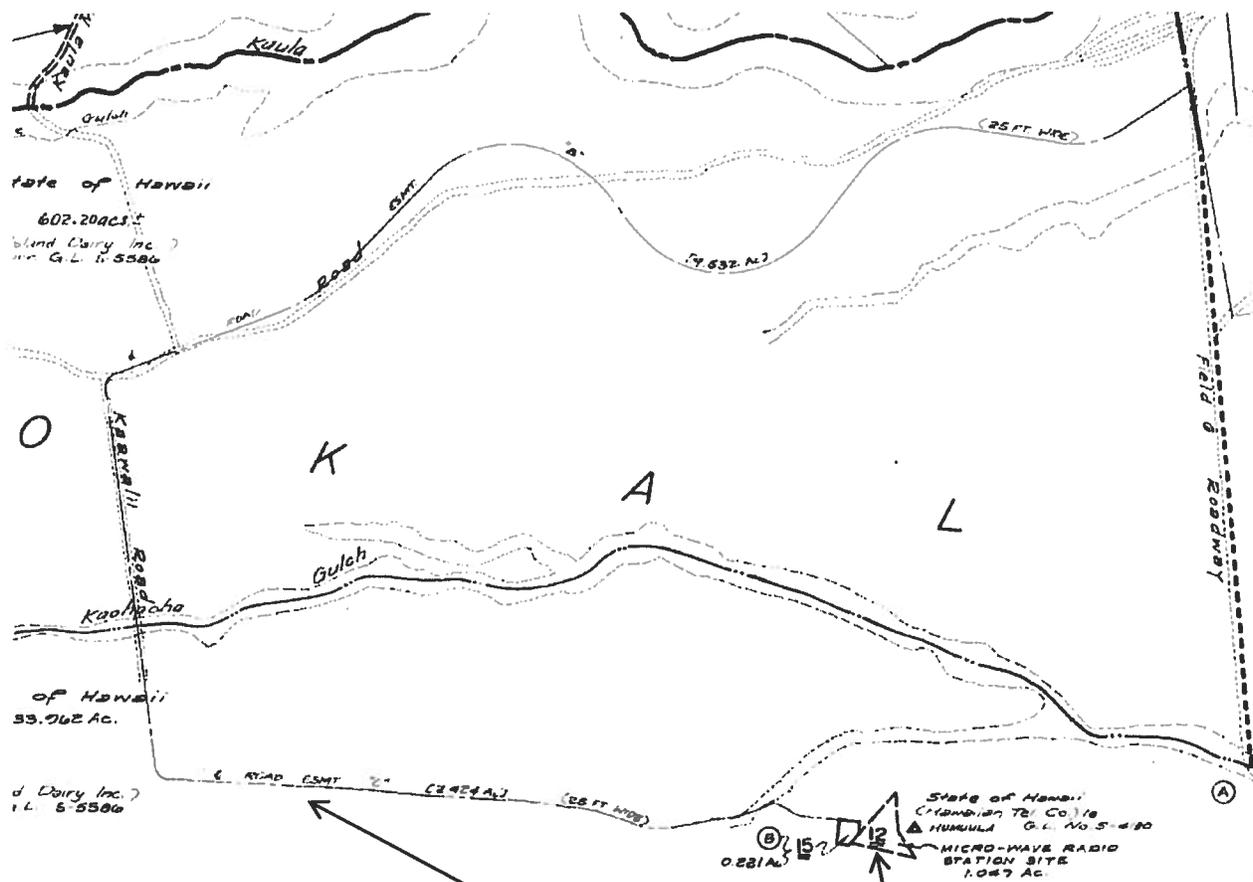


William J. Aila, Jr., Chairperson



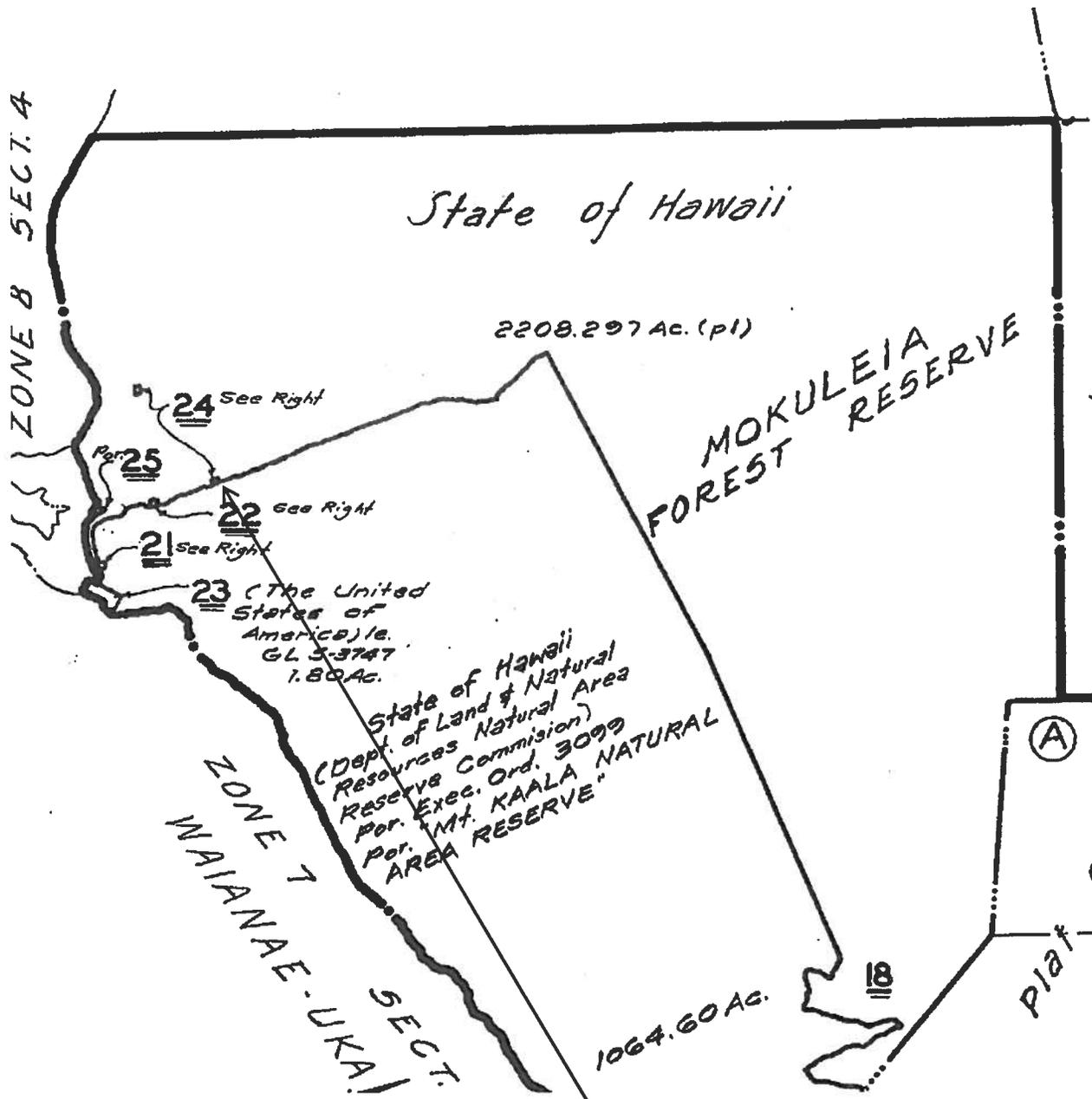
General Lease No. S-3795,
Hanapepe, Waimea, Kauai;
TMK: (4) 1-4-01: pors.





General Lease No. S-4130,
Humuula, North Hilo,
Hawaii, TMK: (3) 3-9-02:
pors.

EXHIBIT C



General Lease No. S-4223,
Mount Kaala, Mokuleia,
Waialua, Oahu, TMK: (1) 6-
7-03: pors.

EXHIBIT D

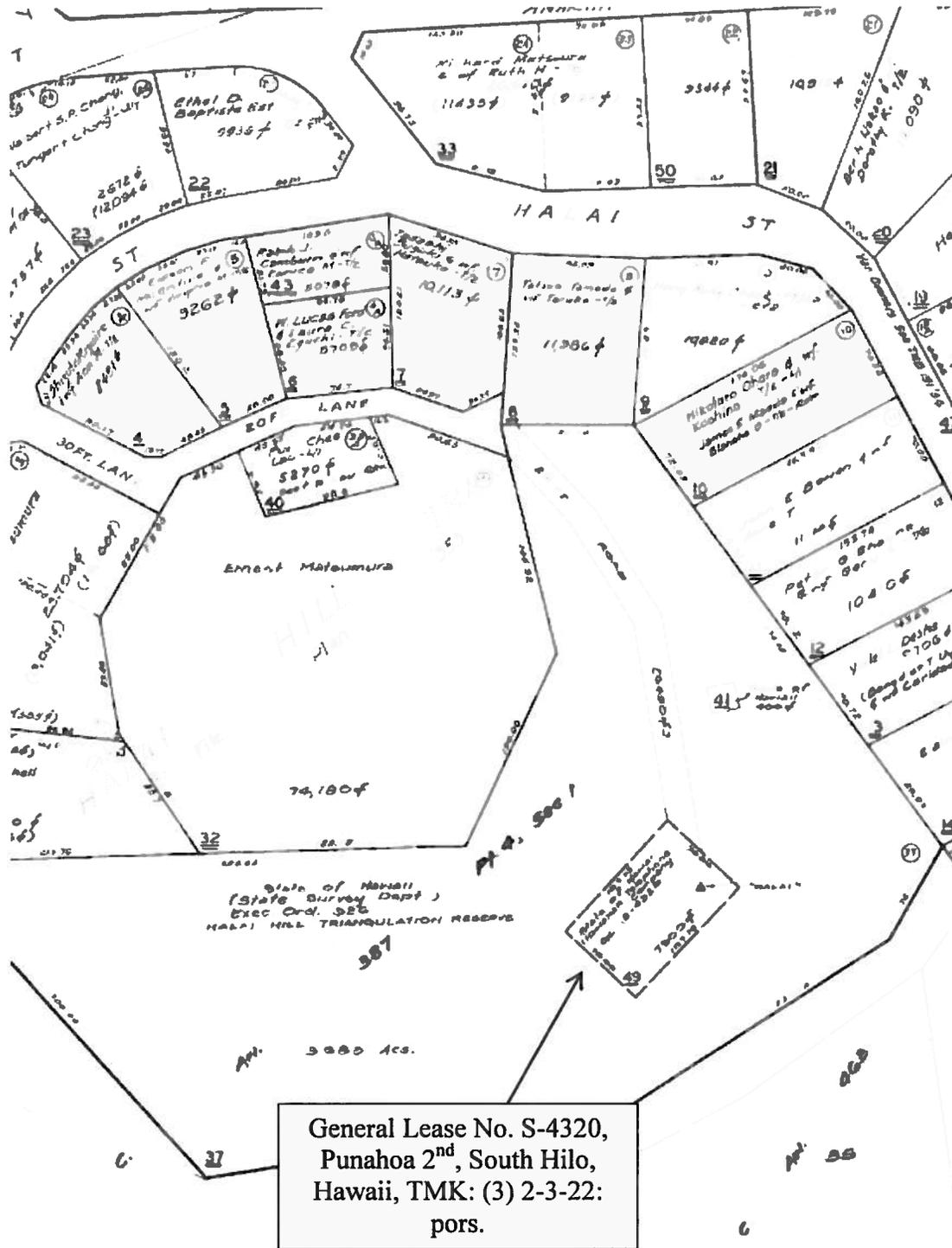
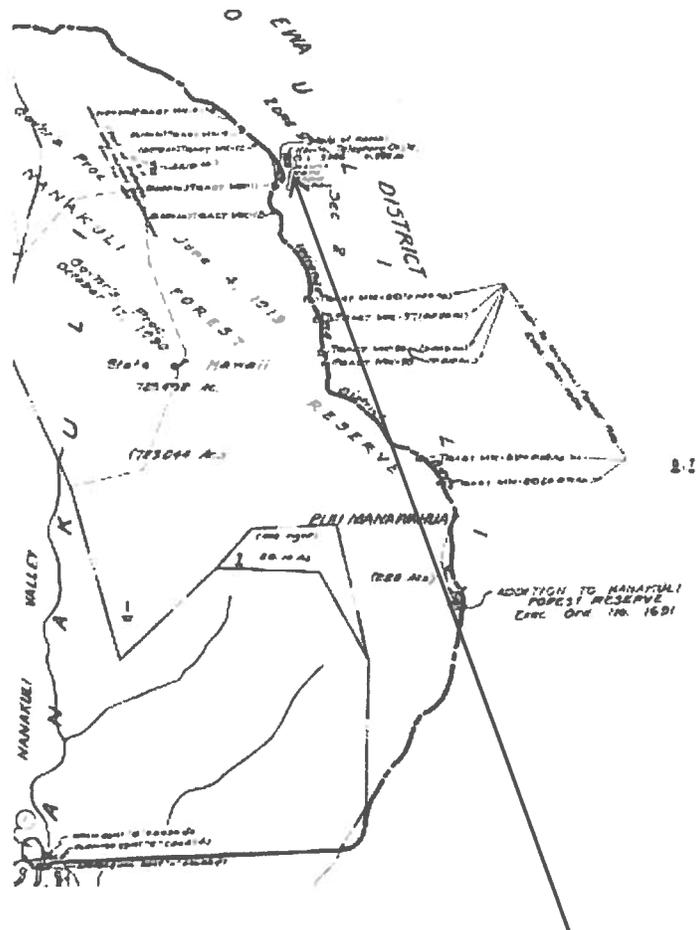


EXHIBIT E



General Lease No. S-4402
Nanakuli, Waianae, Oahu,
TMK: (1) 8-9-08: pors.

EXHIBIT F

**LESSOR/LANDLORD CONSENT TO
ASSIGNMENT AND ASSUMPTION OF GROUND LEASE**

The undersigned represents and warrants that he/she is fully authorized to bind the Lessor/Landlord in connection with the lease agreement described on Exhibit A hereto (the "Lease") and further confirms and agrees that:

1. Landlord hereby consents to the assignment and assumption of ground lease by and between Hawaiian Telcom, Inc. and Global Tower Properties, LLC, or one of its affiliates, subsidiaries and/or assigns.

2. Our records indicate that the Lessor/Landlord's contact information (and the address where all future payments and notices should be sent) is as follows:

State of Hawaii DLNR
P.O. Box 621
Honolulu, HI 96809

3. All rent payable under the Lease is current and no defaults or unresolved claims arising prior to the date hereof exist under the Lease.

4. Hawaiian Telcom, Inc. is the current tenant under the Lease (a full copy of which, including all amendments thereto is annexed as Exhibit B) and the Lease is in full force and effect and contains the entire agreement between Landlord and Hawaiian Telcom, Inc. with respect to the property.

Dated _____, 2013.

Landlord

EXHIBIT I