

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

October 24, 2014

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-4130, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-02: pors.;
- S-4223, Mount Kaala, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-03: pors.;
- S-4588, Kalawahine and Opu, Honolulu, Oahu, Tax Map Key: (1) 2-5-19: pors.;

and
S-4614, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-01: 1 & 10 pors.
Hawaiian Telcom, Inc., Assignor, to InSite Towers Development, LLC, Assignee;

Consent to Assign General Lease Nos.:

- S-4028, Papaanui, Makawao, Maui, Tax Map Key: (2) 2-2-07: pors.;
- S-4320, Punahoa 2nd, South Hilo, Hawaii, Tax Map Key: (3) 2-3-22: pors.; and
- S-4402, Nanakuli, Waianae, Oahu, Tax Map Key: (1) 8-9-08: pors.

Hawaiian Telcom, Inc., Assignor, to Mauna Tower of Hawaii, LLC, Assignee;

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-4130, S-4223, S-4588, and S-4614, InSite Towers Development, LLC, Sublessor, to Hawaiian Telcom, Inc., Sublessee; Consent to Sublease General Lease Nos. S-4028 and S-4320, Mauna Towers of Hawaii, LLC, Sublessor, to Hawaiian Telcom, Inc., Sublessee

APPLICANT:

Hawaiian Telcom, Inc., Assignor, to InSite Towers Development, LLC, a Delaware limited liability company, as Assignee (as to five leases).

Hawaiian Telcom, Inc., Assignor, to Mauna Towers of Hawaii, LLC, a Colorado limited liability company, as Assignee (as to three 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- 11/25/14
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 the Department of Hawaiian Home Lands 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 InSite Towers Development, LLC (“InSite”) and Mauna Towers of Hawaii, LLC (“Mauna”). Pursuant to the HTI and InSite’s Asset Purchase and Sale Agreement (APSA) dated March 19, 2014, the purchase price for five (5) of the facilities and leasehold sites, is \$290,030.

Pursuant to the HTI and Mauna’s APSA dated March 2014, the purchase price for three (3) of the facilities and leasehold sites, is \$89,878.

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 INSITE TOWERS DEVELOPMENT, LLC:¹

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

ASSIGNEE MAUNA TOWERS OF HAWAII, 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 ("Board") to the assignment of five of these leases to InSite and three of the leases to Mauna.

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 InSite/Mauna who will then sublease space on the facilities back to HTI.

InSite is a wholly-owned affiliate of InSite Wireless Group LLC ("IWG"), a Delaware limited liability company, which owns and operates nearly 800 wireless communications sites through the United States, Puerto Rico, and the U.S. Virgin Islands. IWG also has a distributed antenna system ("DAS") division which specializes in the design, installation, operation and maintenance of DAS infrastructure solutions in convention centers, hotels

¹ InSite advised staff that it intends to register to do business in the State of Hawaii prior to the close of the HTI – InSite transaction, scheduled for mid-November, 2014.

and casinos, airports, sports stadiums, and transit systems.

Mauna, a Colorado limited liability company, based in Loveland, Colorado is a regional tower site leasing, maintenance, and development company. It is a private, family owned and operated company that has been serving tenants for 15 years in Colorado, Wyoming, South Dakota, Nebraska, and Pennsylvania and continues to expand.

Both InSite and Mauna appear to be qualified to assume the leases.

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, Waiialua, Oahu	(1) 6-7-03: pors.	Kaala PR 1, KUV95 and Kaala RS, KUV95	344,442.00
S-4320	Punahoa 2 nd , South Hilo,	(3) 2-3-22: pors.	Halai Hill RS, WAY90	183,463.71

GL No.	Location	Tax Map Key:	HTI Site Identifier	Cost of Improvements
	Hawaii			
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). 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 – 09/30/18	\$18,460	N/A
S-4223	Hawaiian Electric Co., Inc.	05/01/10 – 04/30/15	34,327	Up to 04/30/30
S-4588	Clear Wireless LLC	10/15/07 – 10/14/17	29,579	N/A
S-4588	Hochman Hawaii-Three, Inc.	11/01/11 – 10/31/21	22,218	N/A
S-4614	T-Mobile West LLC	Month-to-month commencing 02/17/99	15,430 (annualized)	N/A
		Total:	\$120,014	

On August 9, 2013, Item D-1, the Board approved 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.²

² 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.

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.

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.

Amendment of Leases

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 Department of the Attorney General 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 sublease under each lease.³

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 InSite / Mauna 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	InSite	HTI	\$2,400	10 years
S-4028	Mauna	HTI	12,000	10 years
S-4130	InSite			No sublease to HTI
S-4223	InSite	HTI	9,600	5/10 years (two antennas)

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.

³ As mentioned above, the sublease rent participation for GL S-4223 will be 50-40-50%.

GL No.	Sublessor	Sublessee	Annual Rent	Initial Term
				will be decommissioned after year 5)
S-4320	Mauna	HTI	2,400	10 years
S-4402	Mauna			No sublease to HTI
S-4588	InSite	HTI	2,400	10 years
S-4614	InSite	HTI	2,400	10 years
		Total:	\$31,200	

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 them.⁴ 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-4130, S-4223, S-4588, and S-4614, Hawaiian Telcom, Inc., Assignor, to InSite Towers Development, 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;
2. InSite Towers Development, LLC shall register to do business with the Department of Commerce and Consumer Affairs prior to the Department of the Attorney General's preparation of the consent to assignment instrument;
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.

B. Consent to the assignment of General Lease Nos. S-4028, S-4320 and S-4402, Hawaiian Telcom, Inc., Assignor, to Mauna Towers of Hawaii, 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;
2. Review and approval by the Department of the Attorney General; and

⁴ The percentage would be 30%, 40% or 50%, depending on the number of subleases already in existence under the leases.

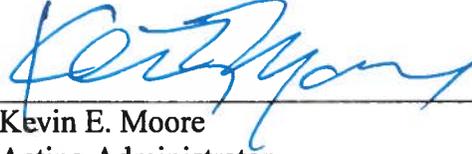
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the amendment of General Lease Nos. S-3795, S-4028, S-4130, S-4320, S-4402, S-4588, and S-4614 to update the provisions relating to assignments and subletting, and to provide 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, 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-4130, S-4223, S-4588, and S-4614, InSite Towers Development, 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-4028 and S-4320, Mauna Towers of Hawaii, 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

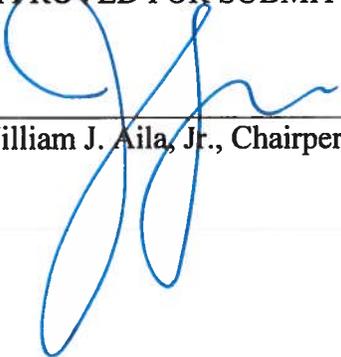
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

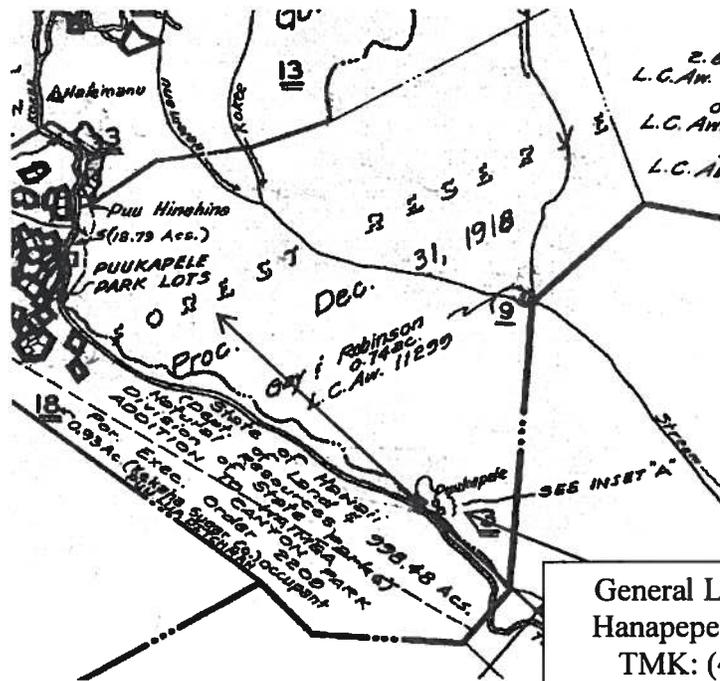
Respectfully Submitted,



Kevin E. Moore
Acting Administrator

APPROVED FOR SUBMITTAL:


for William J. Aila, Jr., Chairperson 



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

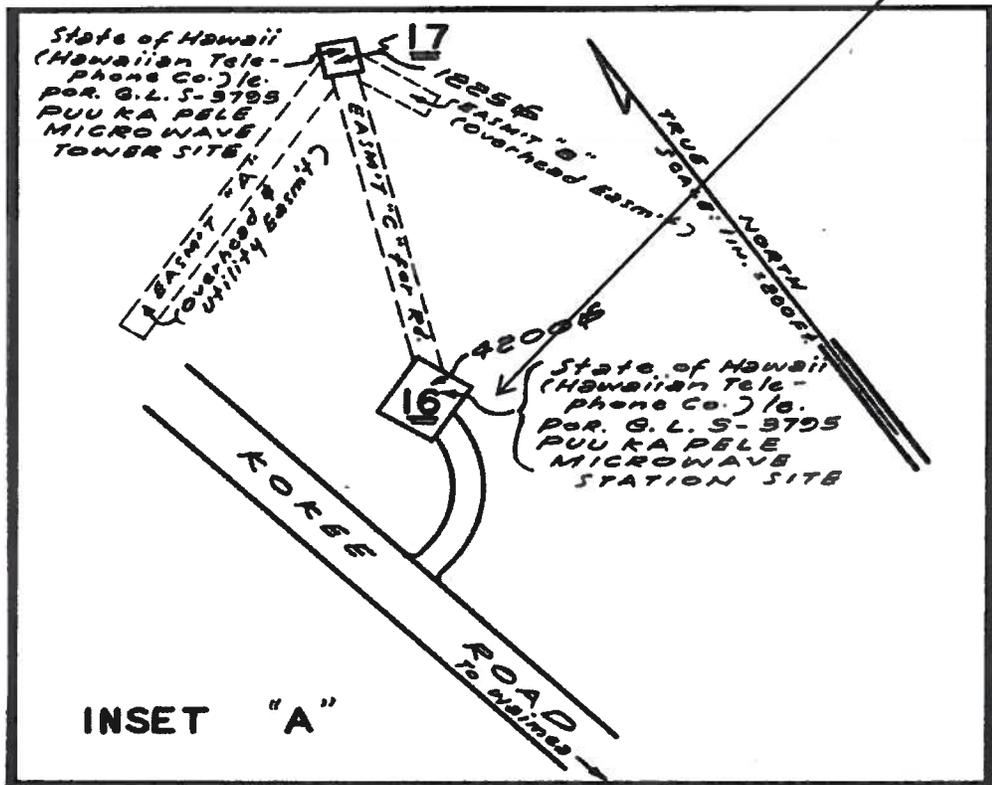
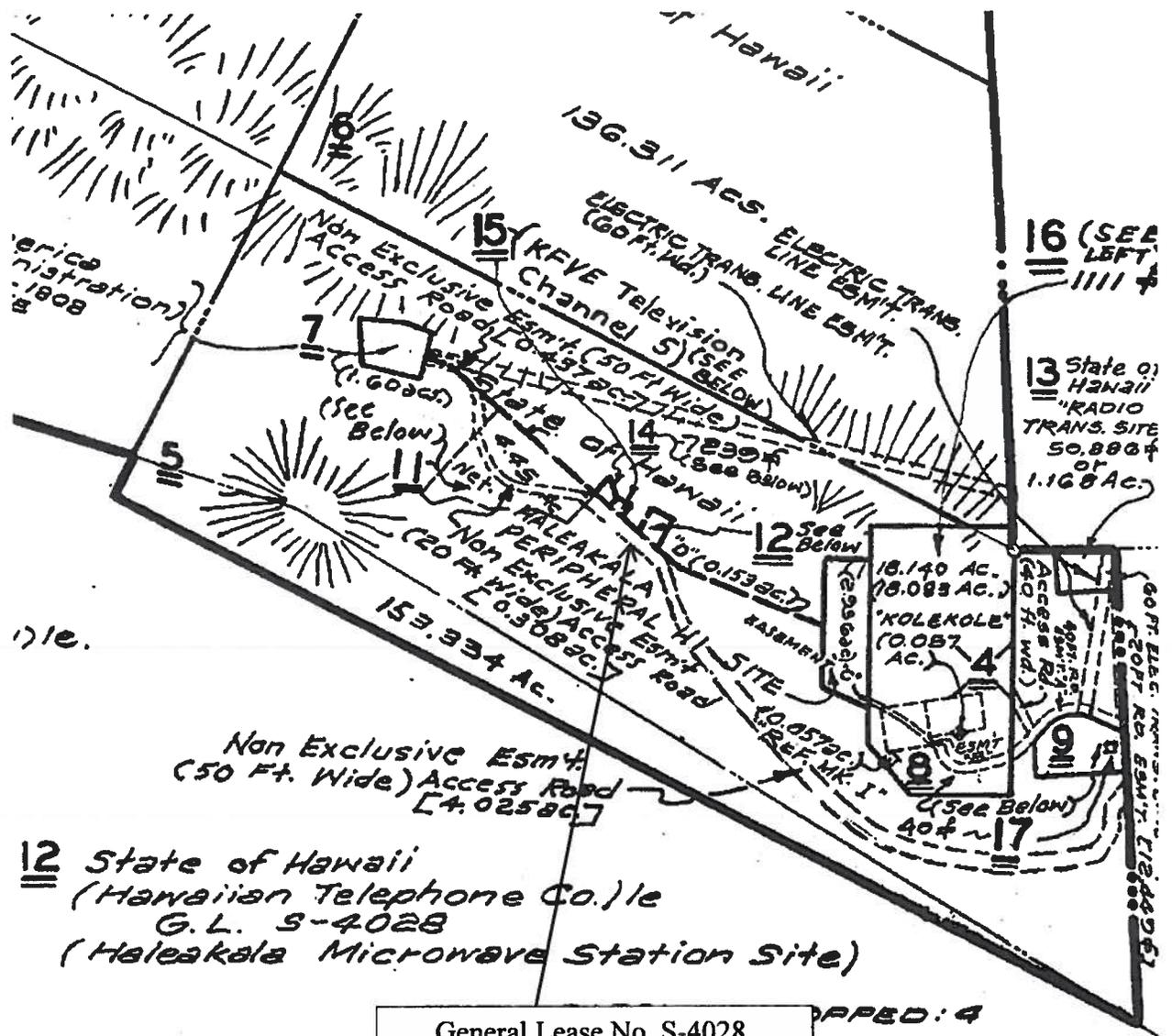


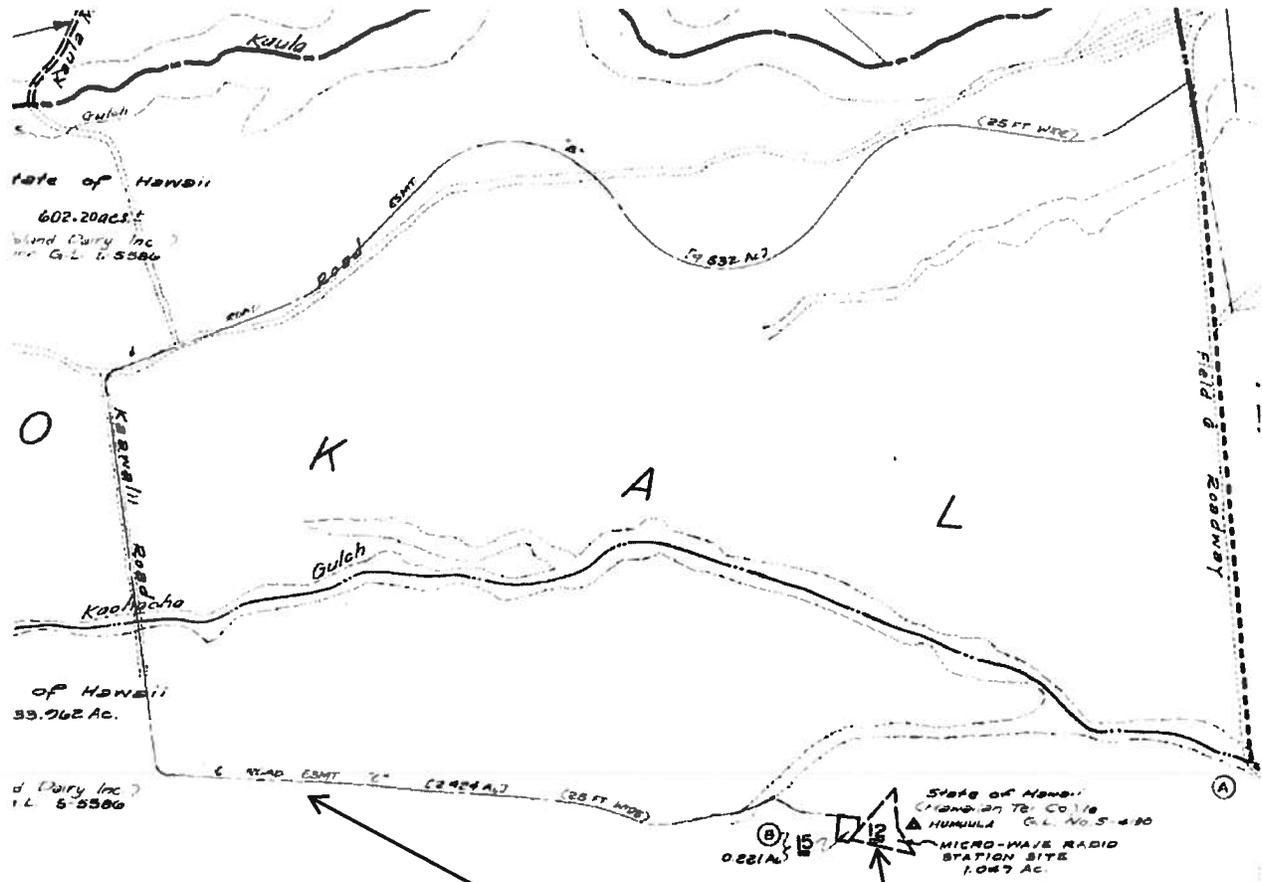
EXHIBIT A



12 State of Hawaii
(Hawaiian Telephone Co.)
G.L. S-4028
(Haleakala Microwave Station Site)

General Lease No. S-4028,
Papanui, Makawao, Maui,
TMK: (2) 2-2-07: pors.

EXHIBIT B



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

EXHIBIT C

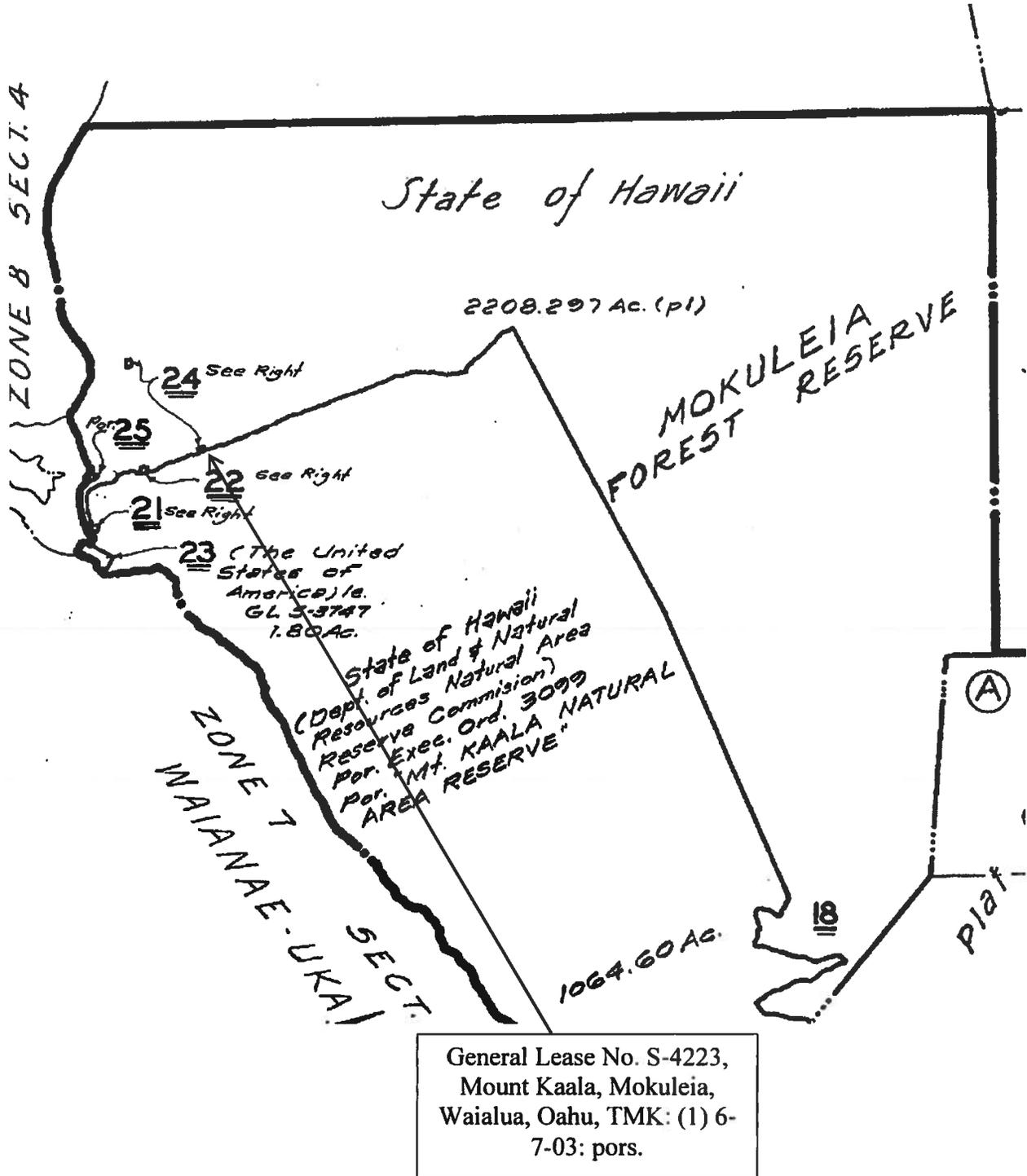


EXHIBIT D

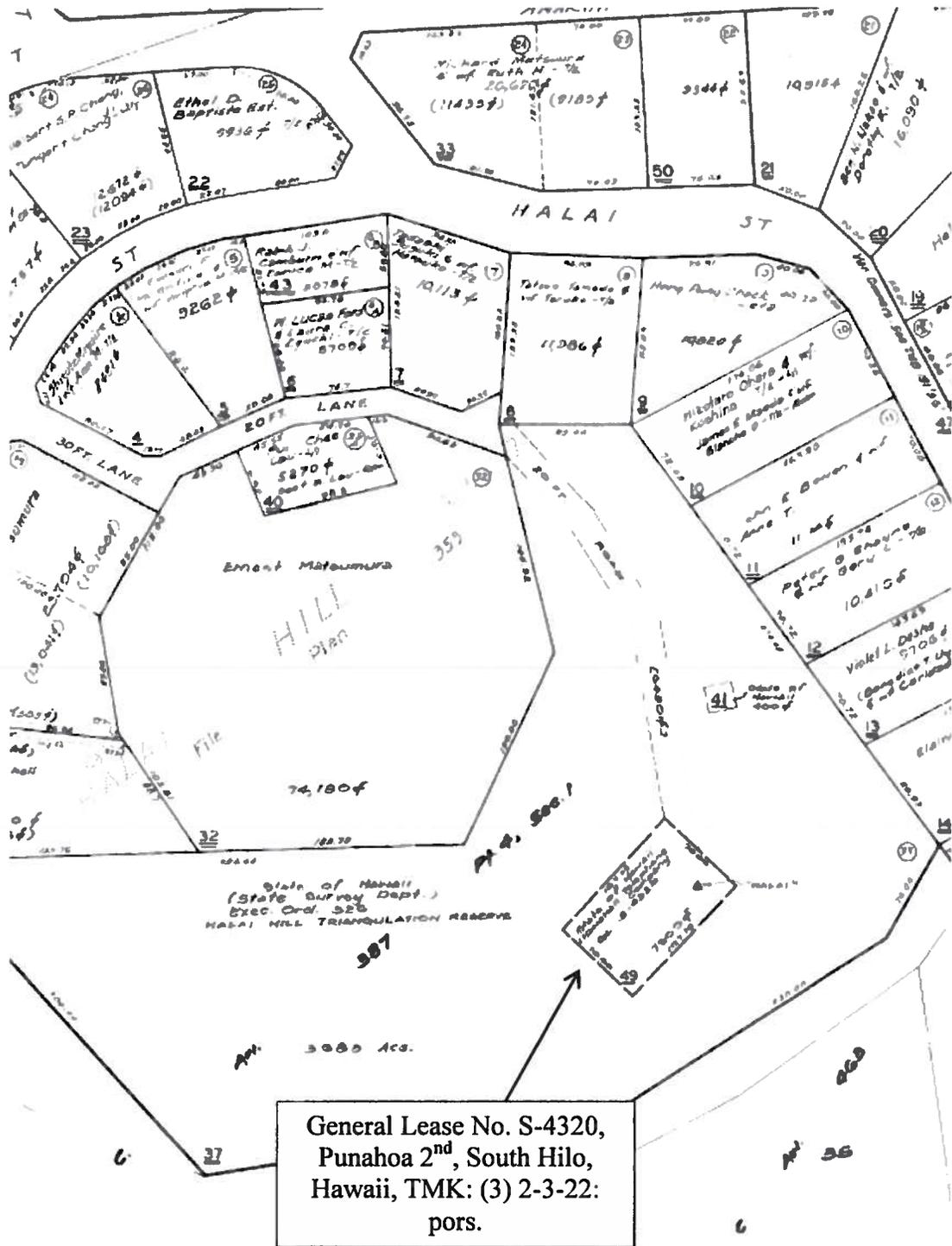
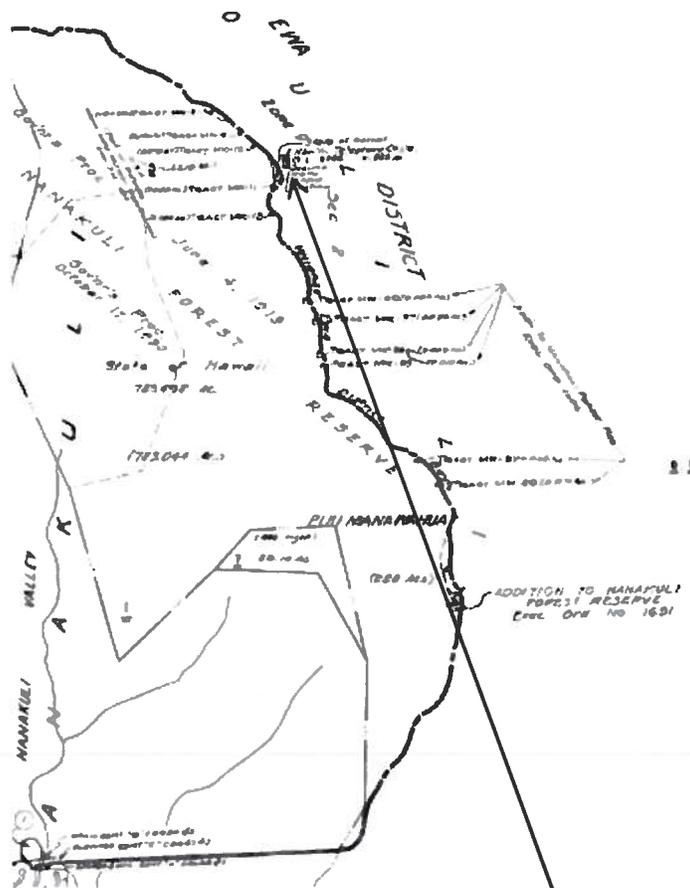


EXHIBIT E



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

EXHIBIT F

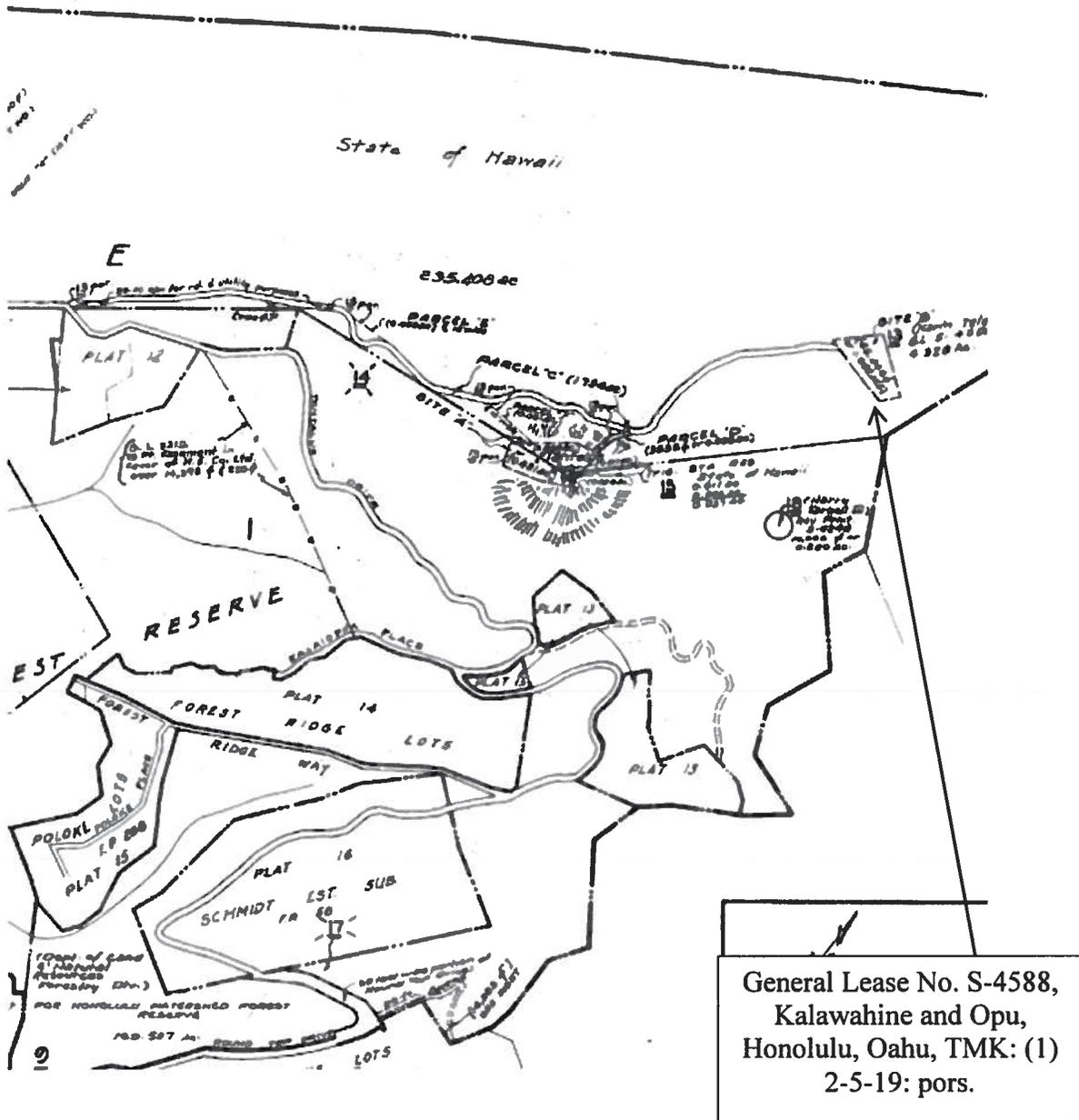
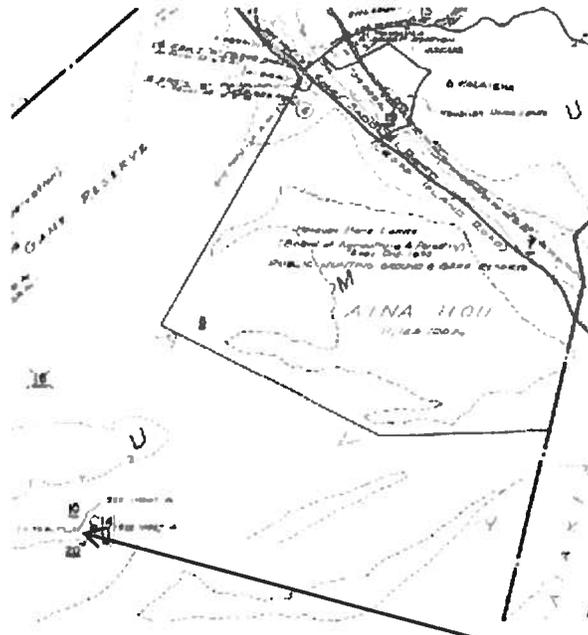
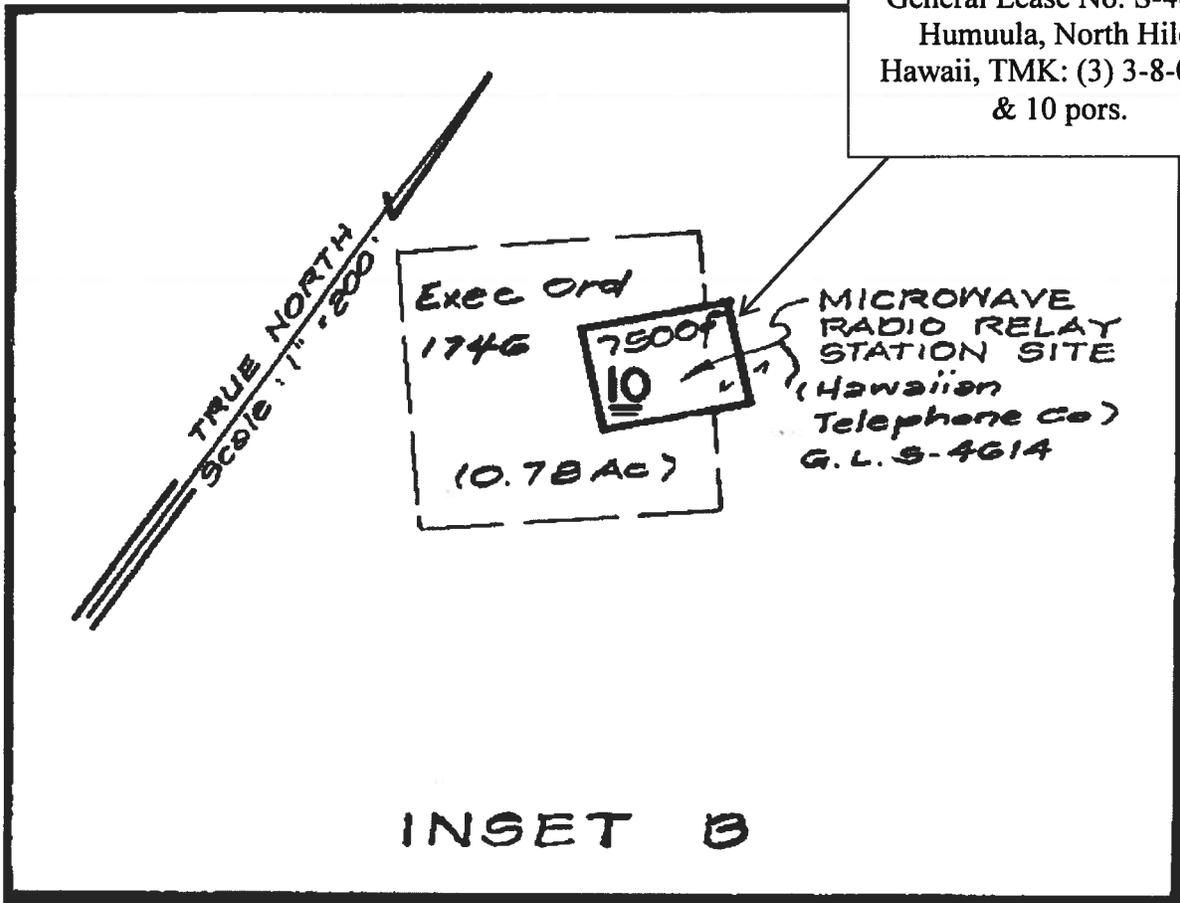


EXHIBIT G



General Lease No. S-4614,
Humuula, North Hilo,
Hawaii, TMK: (3) 3-8-01: 1
& 10 pors.



INSET B

EXHIBIT H