

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

June 8, 2012

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

Hawaii

Consent to Sublease General Lease No. S-3624, 69 Railroad, LLC, Lessee, to Hui Malama Ola Na Oiwi, Kirby Kuoha, Sub-lessees, Subject to State's Participation in Sublease Rent Profits, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-12:26.

APPLICANT:

69 Railroad, LLC, a Hawaii Limited Liability Company, as Sublessor, to:

- 1. Hui Malama Ola Na Oiwi, a Hawaii Non-Profit Agency
- 2. Kirby Kuoha.

As Sub-lessees.

LEGAL REFERENCE:

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

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8.

LOCATION AND AREA:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-1-12:26, consisting of approximately:

- | | | |
|---------------------------|-------------|---------------|
| 1. Hui Malama Ola Na Oiwi | Lease area, | 7,253 sq. ft. |
| 2. Kirby Kuoha | Lease area | 1,000 sq. ft. |

As shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Industrial purposes.

SUBLEASE CHARACTER OF USE:

- | | |
|----------------------------|-----------------------------|
| 1. Hui Malama Ola Na Oihi. | Office and warehouse space. |
| 2. Kirby Kuoha | Office and warehouse space |

TERM OF LEASE:

55 years, commencing on March 6, 1961 and expiring on March 5, 2016. Last rental reopening occurred on March 6, 2006; there are no more rental reopenings for this lease.

TERM OF SUBLEASE:

	<u>Begin Date</u>	<u>End Date</u>
1. Hui Malama Ola Na Oihi	03/01/12	02/28/15
2. Kirby Kuoha	07/01/11	06/30/14

ANNUAL RENTAL:

\$74,500.00

ANNUAL SUBLEASE RENTAL:

1. Hui Malama Ola Na Oihi	\$43,242.36 base rent ¹
2. Kirby Kuoha	\$13,200.00 base rent

Sublease Rent Participation Policy

The primary purpose of establishing the Board's Sublease Rent Participation Policy was to avoid lessees from speculating and profiting on fluctuating land values while benefiting from a State lease.

On May 26, 2000, agenda item D-24, the Board approved the "Revision to Sublease Rent Participation Policy" ("Policy"). On January 26, 2001, agenda item D-8, the Board amended the Policy to address the situation in which the lessee is a non-profit making entity and paying less than fair market rent.

In summary, the Policy applies to three types of situations.

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.

¹ Base rent is for square foot area only and does not include State G. E. Taxes or Common Area Maintenance (CAM) fees.

- c. If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically stated in the lease.

The Board stated on the record that the formulae in the Policy generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board also authorizes the staff to use their discretion in representing the State's interest in applying these formulae to address the varying subleasing arrangements that may not fit neatly into the formulae.

Therefore, notwithstanding the Board adopting the Sublease Rent Participation Policy, the policy was never meant to be followed blindly with rigid adherence but instead, the Board had expected staff to continue to use good land management practices and standards (and common sense) when analyzing a sublease rent proposal and arriving at a reasonable recommendation for the Board to consider that is both fair to both parties and in the best interest of the State.

This lease is silent with regards to sublease rent participation. It only requires the Lessor's consent to sublet. The Lessee, 69 Railroad, LLC does not occupy any portion of the property and operates as a landlord/manager for the sublease tenants on the land. Staff is therefore recommending the State participate in the sublease sandwich profits as the Lessee is using the property purely for rental income generation purposes.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

- 1. Hui Malama Ola Na Oiwi
\$13,358 (Refer to Exhibit B attached review by staff on premium/sandwich calculations.)
- 2. Kirby Kuoha
\$4,230. (Refer to Exhibit C attached review by staff on premium/sandwich calculations.)

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

SUBLEESSEE: Hui Malama Ola Na Oiwi.

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

SUBLEESSEE: Kirby Kuoha

Individuals are not required to register with the DCCA

REMARKS:

General Lease No. S-3624 was first sold at public auction to Hawaii Equipment Co., Ltd. on March 6, 1961. The lease was assigned from Hawaii Equipment Co., Ltd. to Castle & Cooke, Inc. on March 25, 1964. The lease was subsequently assigned from Castle & Cooke, Inc. to E. J. Mahoney, III, Leon Stocksdale and Eliot Merk on November 7, 1986. On April 24, 1987, the lease was assigned from E. J. Mahoney, III, Leon Stocksdale and Eliot Merk to Railroad Avenue Partners.

As the result of a rental delinquency, Railroad Avenue Partners entered into a Special Installment Agreement (SIA) on February 3, 1999 in the amount of \$40,755.00 to be paid in 48 monthly-amortized installments of \$1,037.62. This account was paid off on July 15, 2002.

On August 10, 2001, GE Capital Hawaii, Inc. filed a motion for Summary Judgment and for Interlocutory Decree of Foreclosure. The appointed commissioner held a public auction on March 19, 2002. On June 7, 2002 the court approved and confirmed the Order Approving Report of Commissioner, Confirming Commissioner's Sale of Property at Public Sale, Directing Distribution of Proceeds, Granting Writ of Possession, Private Sale of Personal Property and for Deficiency Judgment. The commissioner, as assignor was ordered and directed to make good and sufficient conveyance of the subject property. GE Capital Hawaii, Inc., the Mortgagee, paid \$733,000.00 at auction for the lease.

At its meeting of September 13, 2002, under agenda item D-10, the Board consented to the assignment of lease from Jerel Yamamoto, Commissioner to GE Capital Hawaii, Inc. In a letter dated January 16, 2003 (Exhibit B), GE Capital Hawaii informed HDLO staff that due to an oversight, they had been incorrectly named the Assignee for GL S-3624. The correct name for the lease should have been GECH Holding, Inc., the real estate holding company for GE Capital Hawaii, Inc. To correct this oversight, the Board at its meeting of February 14, 2003, agenda item D-1, consented to the assignment of lease from GE Capitol Hawaii, Inc., as Assignor to GECH Holdings, Inc., as Assignee.

Then at its meeting of July 25, 2003, under agenda item D-4, the Board did consent to an assignment of lease from GECH Holdings, Inc., Assignor to 69 Railroad, LLC, as Assignee.

The sub-lessees will be occupying areas within the existing structures on the premises. Any alterations to their respective units will be minor.

The Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. The Lessee has not had a notice of default issued for any lease violation.

Last rental reopening occurred on March 6, 2006; there are no more rental reopenings for this lease. There are no outstanding rental reopening issues.

A site inspection was conducted on April 24, 2012. Premises and improvements are clean, orderly and well maintained. The property is managed in adherence to the designed character of use.

RECOMMENDATION:

That the Board consent to the sublease under General Lease No. S-3624 between 69 Railroad, LLC, as Sublessor, and Hui Malama Ola Na Oiwi, Kirby Kuoha as Sub lessees, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The lease rent shall be increased by \$17,588 annually, representing the combined sublease sandwich profits from Hui Malama Ola Na Oiwi and Kirby Kuoha, sub lessees;
2. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
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,



Gordon C. Heit
District Land Agent

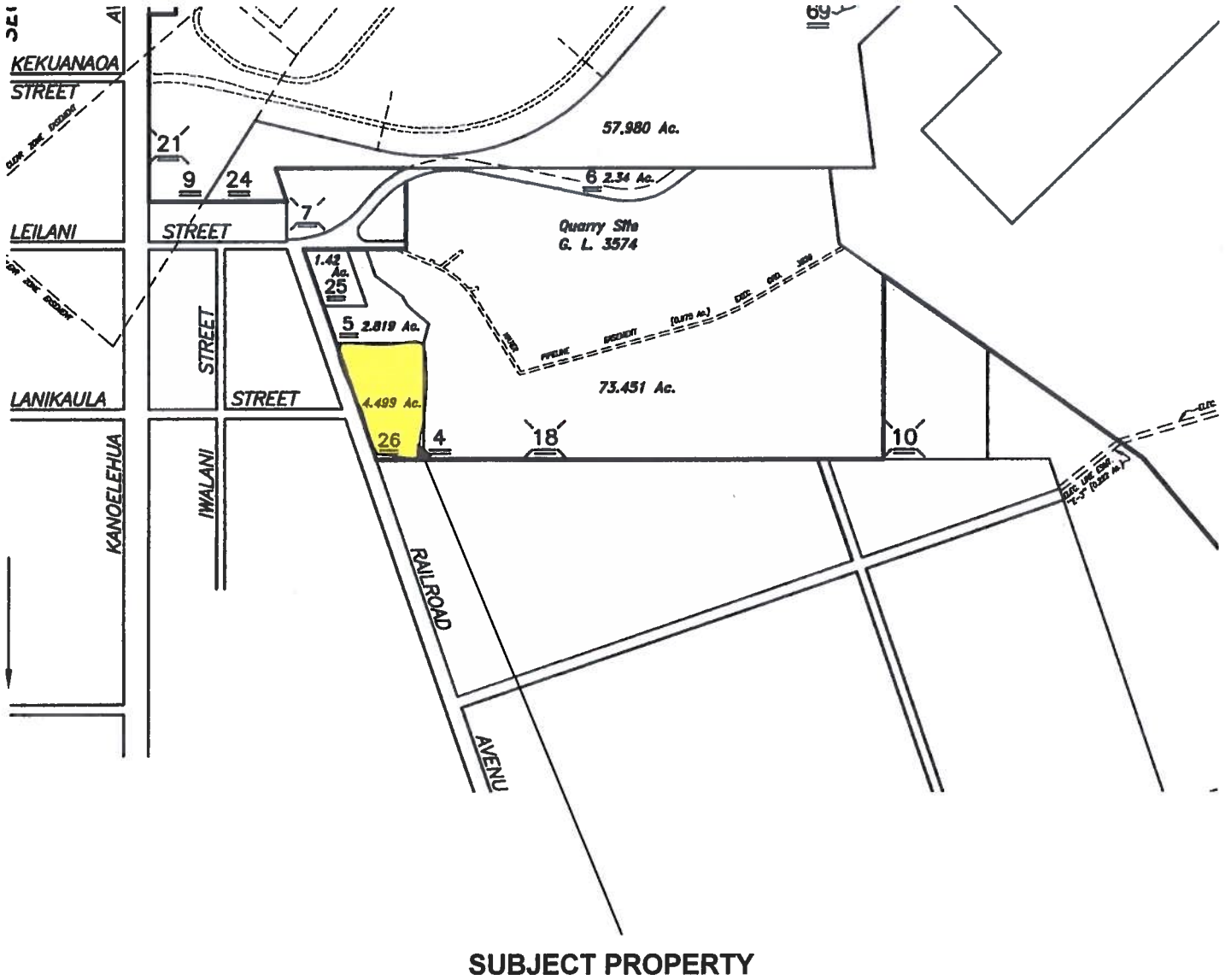
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

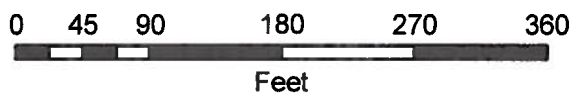
EXHIBIT A

TMK: 3RD/2-1-12:26





69 Railroad, LLC
(3) 2-1-12:26





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 10, 2012

MEMORANDUM

TO: William J. Aila, Jr., Chairperson
THROUGH: Russell Y. Tsuji, Division Administrator
FROM: Gordon C. Heit, District Land Agent
SUBJECT: In-House Recommendation – Sublease Participation Calculation

GL No.: S-3624
Lessee/Sublessor: 69 Railroad, LLC
Sublessee: Hui Malama Ola Na Oihi
Location: Waiakea, South Hilo Hawaii
Lease Area: 4.49 acres (195,584.4 square feet)
Sublease Area: 7,253 square feet
Tax Map Key: 3rd/2-1-12:26
Char. of Use: Industrial purposes

We have been requested to provide an in-house evaluation of the sublease premium due to the State for the subleasing of a portion of GL S-3624, 69 Railroad, LLC, Lessee/Sublessor to Hui Malama Ola Na Oihi, Sublessee. The sublease documents and information provided by Lessee were analyzed and staff applied the formula approved by the Land Board on January 26, 2001, agenda item F-8, comprising of the Sublease Rent Participation Policy.

The original Lessee, Hawaiian Equipment, constructed two large warehouses on the property in 1962 at a cost of approximately \$223,000. The warehouses were used for equipment storage and repairs. After the lease was assigned to Railroad Avenue Partners in 1987, major renovations were done to the structures at a cost of approximately \$140,000 and again in 1989 at a cost of \$76,000. These renovations included the enclosing of the warehouse structures and the creation of individual bays.

The lease is silent regarding sublease rent participation. The Lessee, 69 Railroad, LLC does not occupy any portion of the land and operates as a landlord/manager for the sublease tenants on the property. Staff is therefore recommending the State participate in the sublease sandwich profits as the Lessee is using the property for purely revenue generating purposes.

EXHIBIT B

CALCULATION:

Annual Ground Rent		\$74,500
Annual Sublease Rent	\$43,242	
Less G. E. Tax ¹	\$ 0	
Less Real Property Tax	\$ 0	
Misc. Allowances	\$ 0	
Total Allowances	<u>\$ 0</u>	
Total Sublease Rent	\$43,242	
Income to Land:		\$43,242
Annual Ground rent (7,253 sq. ft.)		(\$2,763)
Annual Rent Increase		\$40,479
DLNR Rent Participation		<u>33%</u>
Additional Annual Rent Due		\$13,358

Based on these calculations the additional annual rent due the State is \$13,358.

Approved/Disapproved:



William J. Aila, Jr., Chairperson

5.11.12

Date

cc: District Branch Files
Central Files

¹ GE Tax is not included in the base sublease rent. Real Property Tax, utilities along with maintenance and repairs are included in a Common Area Maintenance (CAM) fee and are in addition to the base sublease rent paid to the Lessee.



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EXHIBIT C

CALCULATION:

Annual Ground Rent		\$74,500
Annual Sublease Rent	\$13,200	
Less G. E. Tax ¹	\$ 0	
Less Real Property Tax	\$ 0	
Misc. Allowances	\$ 0	
Total Allowances	<u>\$ 0</u>	
Total Sublease Rent	\$13,200	
Income to Land:		\$13,200
Annual Ground rent (1,000 sq. ft.)		(\$380)
Annual Rent Increase		\$12,820
DLNR Rent Participation		<u>33%</u>
Additional Annual Rent Due		\$4,230

Based on these calculations the additional annual rent due the State is \$4,230.

Approved/Disapproved:



William J. Aila, Jr., Chairperson

5.12.12
Date



cc: District Branch Files
Central Files

¹ GE Tax is not included in the base sublease rent. Real Property Tax, utilities along with maintenance and repairs are included in a Common Area Maintenance (CAM) fee and are in addition to the base sublease rent paid to the Lessee.