

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

September 28, 2012

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

Hawaii

Resubmittal: 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:3<sup>rd</sup>/2-1-12:26.

BACKGROUND:

At its meeting of July 13, 2012, Item D-3, the Board of Land and Natural Resources deferred action on the initial submission of this request for consent to two subleases. The staff recommendation was for the State to participate in the sublease rents. See Exhibit 1 attached. The deferral was granted at the request of the Board's counsel.

REMARKS:

The staff recommendation for sublease rent participation was and is based on the Board's statutory authority and its written sublease rent participation policy. The applicable statute, Hawaii Revised Statutes Section 171-36(a)(6), reads as follows:

The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward....

Under this authority, the Board adopted its sublease rent participation policy at its meeting of May 26, 2000, Item D-24, as amended at its meeting of January 26, 2001, Item D-8 (and as further described in Exhibit 1).

At its meeting of August 24, 2012, under agenda item D-14, the Board approved the modification of the staff recommendation contained in the prior Board sublease rent participation policy by making the staff recommendation consistent with the Board's directives and practice in past years in implementing the policy. The modified staff recommendation now reads as follows:

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: (i) that right and method of calculation are specifically stated in the lease, or (ii) participation in sublease rents is warranted considering the age of the improvements (including but not limited to the extent to which the improvements have been depreciated or amortized), lessee's expenditures to maintain the same in relation to sublease revenues, and the extent to which the lessee actually occupies and uses the lease premises for its own business.<sup>1</sup>

Based on the foregoing, and for the additional reasons given in the initial submittal of the subject sublease requests (see Exhibit 1), staff is recommending that the Board consent to the subleases on the condition that the rent payable under the lease be increased as detailed below.

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 Sublessees, 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, sublessees;
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

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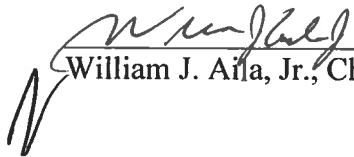
<sup>1</sup> New language is underscored.

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. Aifa, Jr., Chairperson

**DEFERRED**

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

July 13, 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:3<sup>rd</sup>/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: 3<sup>rd</sup>/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

*Deferred*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES *DM*  
AT ITS MEETING HELD ON  
*July 13, 2012*

**EXHIBIT 1**

D-3

LEASE CHARACTER OF USE:

Industrial purposes.

SUBLEASE CHARACTER OF USE:

- |                            |                             |
|----------------------------|-----------------------------|
| 1. Hui Malama Ola Na Oiwi. | 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 Oiwi | 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 Oiwi | \$43,242.36 base rent <sup>1</sup> |
| 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.

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<sup>1</sup> 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 reflects 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 Lessors 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 for purely rental income 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> |

**SUBLESSEE: 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> |

**SUBLESSEE: 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 Stocksdales and Eliot Merk on November 7, 1986. On April 24, 1987, the lease was assigned from E. J. Mahoney, III, Leon Stocksdales 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 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 heavy construction 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 several individual bays. The Lessee also created self-storage units in the open base yard area of the lease land. Given the age of the structures on the property, staff believes that the construction and renovation costs of the improvements have largely been depreciated over the past decades. The Lessee itself does not occupy a portion of the lease premises, but instead operates as a landlord/manager for the sublease tenants in the property. For these reasons, staff is recommending a sublease rent participation rate of 33%.<sup>2</sup>

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<sup>2</sup> Staff also notes the current Lessee has included a Common Area Maintenance fee (CAM) to the Sublessee's agreement. The sublease premium is based on the sublease rent exclusive of CAM charges.

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

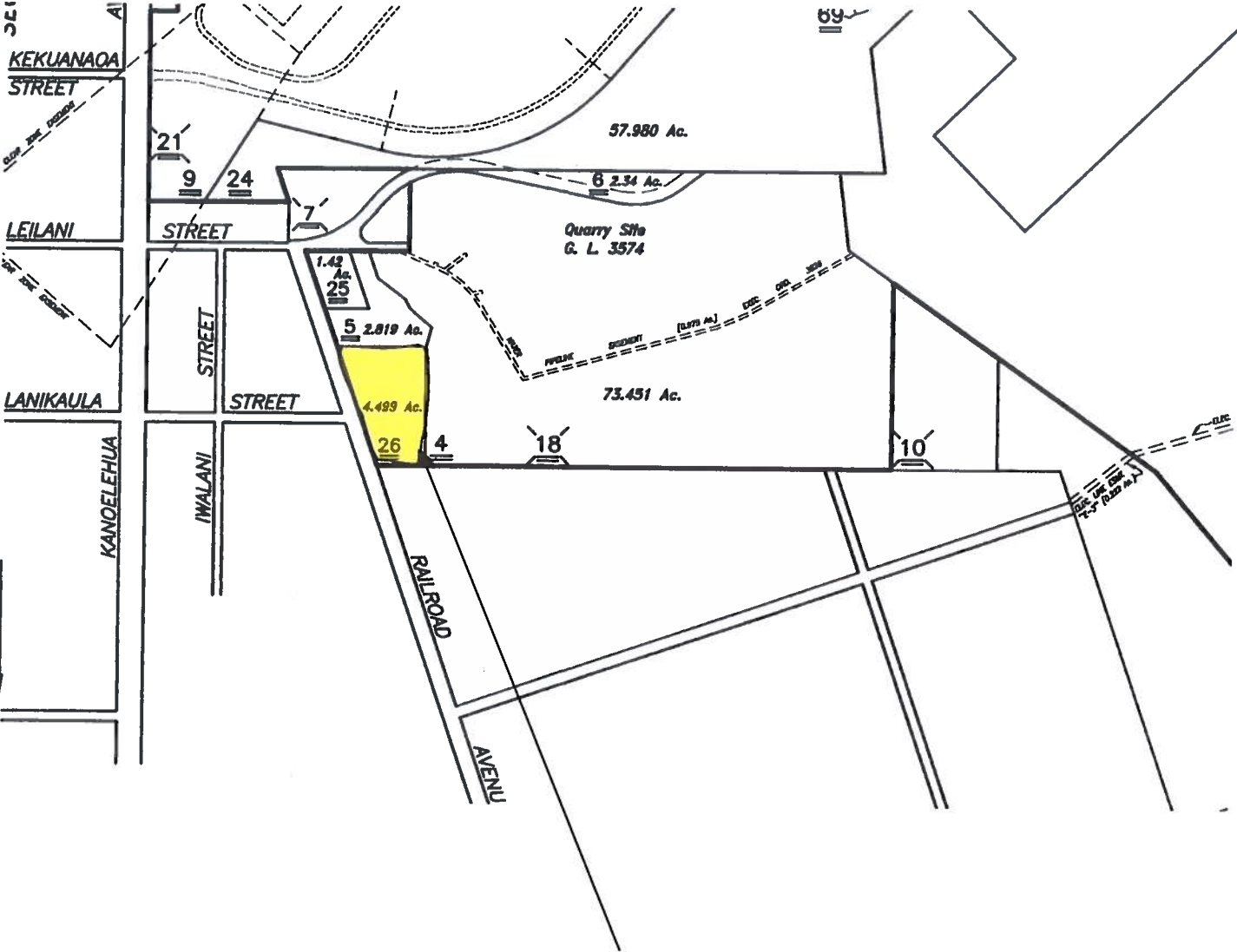
APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson



**EXHIBIT A**

TMK: 3<sup>RD</sup>/2-1-12:26

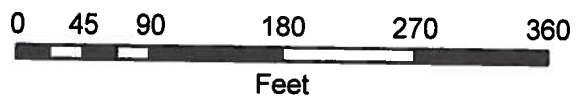


**SUBJECT PROPERTY**

# GL S-3624



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 OIwi  
Location: Waiakea, South Hilo Hawaii  
Lease Area: 4.49 acres (195,584.4 square feet)  
Sublease Area: 7,253 square feet  
Tax Map Key: 3<sup>rd</sup>/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 OIwi, 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          |             | <b>\$74,500</b> |
| Annual Sublease Rent        | \$43,242    |                 |
| Less G. E. Tax <sup>1</sup> | \$ 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>      |
| <b>Additional Annual Rent Due</b>  | <b>\$13,358</b> |

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

Approved/Disapproved:

  
\_\_\_\_\_  
William J. Alla, Jr., Chairperson

5.11.12  
Date

cc: District Branch Files  
Central Files

<sup>1</sup> 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.



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. Alla, 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: Kirby Kuoha  
Location: Waiakea, South Hilo Hawaii  
Lease Area: 4.49 acres (195,584.4 square feet)  
Sublease Area: 1,000 square feet  
Tax Map Key: 3<sup>rd</sup>/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 Kirby Kuoha, 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 C**

CALCULATION:

|                                    |          |                |
|------------------------------------|----------|----------------|
| Annual Ground Rent                 |          | \$74,500       |
| Annual Sublease Rent               | \$13,200 |                |
| Less G. E. Tax <sup>1</sup>        | \$ 0     |                |
| Less Real Property Tax             | \$ 0     |                |
| Misc. Allowances                   | \$ 0     |                |
| Total Allowances                   | \$ 0     |                |
| 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            |          | 33%            |
| <b>Additional Annual Rent Due</b>  |          | <b>\$4,230</b> |

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

<sup>1</sup> 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.