

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

January 8, 2021

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

PSF No.: 20KD-080

Kauai

Terminate Use, Occupancy and Possession of Premises under Expired General Lease No. S-3795 by InSite Towers Development, LLC; Authorize the Issuance of a Direct Lease to New Cingular Wireless PCS, LLC (New Cingular) for Microwave Station and Microwave Tower Facilities Purposes and Grant of Term, Non-Exclusive Easements to New Cingular for Access and Utility Purposes, Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-4-001:016, 017 and (4) 1-4-001:002 pors.

CURRENT USER:

InSite Towers Development, LLC, a Delaware limited liability company.

APPLICANT FOR NEW LEASE:

New Cingular Wireless PCS, LLC, a Delaware limited liability company and a public utility company registered with the Hawaii Public Utilities Commission.

LEGAL REFERENCE:

Sections 171-6, -11, -13, -26 and -95 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hanapepe, Waimea, Kauai, identified by Tax Map Keys: (4) 1-4-001: 016, 017 and (4) 1-4-001: pors. as shown on the attached maps. (**Exhibits 1-A and 1-B**).

AREA:

Item:	Area:
Puu Ka Pele Microwave Station Site	4,200 sf
Puu Ka Pele Microwave Tower Site	1,225 sf

Item:	Area:
Easement A	8,526 sf
Easement B	2,101 sf
Easement C	8,260 sf
Easement D	5,235 sf
Total:	29,547 sf

ZONING

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

The site is developed with a microwave station, microwave tower and access road constructed under expired General Lease No. S-3795, to Hawaiian Telcom, Inc., Lessee, for telecommunication purposes. The lease expired on November 25, 2013.

LEASE CHARACTER OF USE:

Microwave station and microwave tower facilities together with appurtenant easements.

LEASE TERM:

55 years.

LEASE COMMENCEMENT DATE:

To be determined by the Chairperson.

ANNUAL LEASE RENT:

To be determined by staff or independent appraisal establishing fair market rent for land and improvements, subject to review and approval by the Chairperson. The appraisal shall be procured by the State pursuant to Section 171-17(b), HRS, but paid for by applicant Cingular Wireless PCS, LLC.

METHOD OF LEASE RENT PAYMENT:

Semi-annual payments, in advance.

LEASE RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, and 50th years of the lease term, by staff or independent appraisal.

LEASE PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – electricity

Existing Improvements – Microwave station, microwave tower and related infrastructure

Legal access to property – Staff has verified that there is legal access to the property off of Kokee Road.

Subdivision – Staff has verified the premises are located in the conservation district and therefore not subject to county subdivision requirements. The parcels identified as TMKs: (4) 1-4-001:016 and 017 were subdivided out of the larger parcel TMK: (4) 1-4-001:002. Parcel 16 is the location of the microwave station and Parcel 17 is the location of the tower.

Encumbrances – Staff has verified that the site is located within the boundaries of the Puu Ka Pele Park set aside to the Division of State Parks pursuant to Executive Order No. 69 dated November 10, 1919.

Conservation District – Initial construction of the Puu Ka Pele radio station began in 1960, predating the establishment of the Conservation District. The first tower constructed at the site was 26 feet tall. In 1982, the Board approved Conservation District Use Permit KA – 1464 to replace the 26-foot tower with a 50-foot tower. See **Exhibit 1-C**. Replacement with a higher tower was chosen because line of sight was needed to the Pacific Missile Range at Barking Sands and the proposed alternatives would have required regular trimming or removal of approximately an acre of established forest.

EASEMENT CHARACTER OF USE:

Easements A, B, C and D: Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes, including the right, privilege and authority to construct, use, maintain, repair, replace and remove telecommunication transmission lines, poles, guy wires and anchors over, under and across State-owned land, including the right to trim and keep trimmed any trees in the way of its appliances and equipment.

EASEMENT TERM:

55 years.

EASEMENT COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT CONSIDERATION:

One-time payment to be determined by staff or independent appraisal, subject to review and approval by the Chairperson. The appraisal shall be procured by the State pursuant to Section 171-17(b), HRS, but paid for by applicant New Cingular Wireless PCS, LLC.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 40, that states “Leases of State land involving negligible or no expansion or change of use beyond that previously existing.” (**Exhibit 2**).

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

REMARKS:

INSITE’S NON-PAYMENT OF RENT AND NON-REGISTRATION WITH PUBLIC UTILITIES COMMISSION:

General Lease No. S-3795 (GL3795) was issued to a predecessor of Hawaiian Telcom, Inc. (HTI) on November 26, 1963 for a term of 50 years. The original microwave station and tower were constructed prior to the implementation of the conservation district laws in 1964. At its meeting of October 8, 1982, Item H-4, the Board approved Conservation District Use Permit KA-1464 for the construction of a taller microwave tower on the premises.

At its meeting of December 13, 2013, Item D-3, the Board approved a one-year holdover of the lease to HTI, however, the holdover document was not prepared or executed. On October 24, 2014, under agenda item D-9, the Board approved the assignment of the lease (along with other microwave tower leases on State lands) from HTI to InSite Towers Development, LLC (InSite).

However, even if the one-year holdover had been prepared and executed, GL3795 would have expired a month later on November 25, 2014 before the documentation of the assignment could be finalized. Nevertheless, InSite assumed control of the premises pursuant to the Board's consent to the assignment and continued to operate a microwave tower there.

Beginning in 2014, staff approached InSite about the possibility of a direct negotiation lease of the premises which would require InSite or an affiliate to register with the Hawaii Public Utilities Commission (PUC). Initially, InSite indicated it was not interested in pursuing this option. Kauai District Land Office staff then prepared a Board submittal requesting authorization to issue a lease by public auction and an interim month-to-month revocable permit to InSite retroactive to November 26, 2014. A draft of the submittal was provided to InSite on June 2, 2016 and included a recommendation to charge interim rent to InSite at the rate payable under GL3795 until fair market rent could be determined. InSite provided comments on this draft, including a comment that InSite would pay rent for the premises once the fair market rent was determined by appraisal.

The draft submittal was never finalized for placement on the Board's agenda. Rather, in about 2019, InSite expressed interest in forming a PUC-registered entity. The creation of such an entity would allow the Board to issue a lease to InSite or its PUC-registered affiliate by direct negotiation as a public utility company. Land Division therefore put the 2016 draft submittal for a public auction lease and revocable permit on further hold.

Later in 2019, staff notified InSite that the department would charge rent to InSite at the rate under expired GL3795 retroactive to November 26, 2014.¹ This was intended to be an interim rent until an appraisal could be secured. InSite objected, stating that staff had advised InSite not to pay rent until a new disposition for the premises was issued. Staff advised InSite that there must have been a miscommunication regarding rent. See **Exhibit 3**. Invoices were then sent to InSite, but InSite did not pay them or contact staff to discuss them. A copy of the unpaid invoice from January 19, 2020 is attached as **Exhibit 4**.

Then in May 2020, Land Division sent InSite a demand letter by regular and certified mail advising InSite that it needed to pay the interim rent within 30 days of the receipt of the letter, and, assuming it was still interested in a direct lease of the site, provide Land Division with evidence of its PUC registration within 60 days. If InSite met both of those requirements, the letter explained staff would recommend the Board issue a direct lease to InSite. If InSite did not satisfy either requirement, Land Division would pursue other options for the property. See **Exhibit 5** attached.²

¹ When the Board approved the assignment of GL3795 to InSite at its meeting of October 24, 2014, Item D-9, the rent payable to the State under the lease was \$2,000 per year. The Board also approved a sublease by InSite back to HTI at the sublease rent of \$2,400 per year, of which the Board determined the State should share in the amount of 30% or \$720. Accordingly, the lease rent last payable under GL3795 was \$2,720 per year.

² The letter to InSite is dated May 18, 2020 and the certified mail receipt shows InSite received it on May 26, 2020.

InSite did not timely respond to the demand letter and did not otherwise communicate with Land Division until its letter of September 28, 2020, more than four months after the demand letter was received by InSite. The letter from InSite makes a number of allegations, including that Land Division staff directed it not to pay rent during a telephone conversation, but ultimately offers to pay rent (though at a rate much lower than the \$2,720 last payable under expired GL3795). See **Exhibit 6** attached.³

By letter dated September 30, 2020, Land Division let InSite know that it disagreed with InSite's version of what staff had communicated to InSite. Land Division additionally explained that New Cingular Wireless PCS, LLC (New Cingular) had submitted an application to use the site and that Land Division would be presenting New Cingular's request to the Board. Land Division declined to accept InSite's September 28, 2020 rent offer pending Board action on the present request. See **Exhibit 7** attached.

InSite claims it still owns the tower on the premises despite the expiration of GL3795. The lease provides in relevant part:

15. Surrender. That the Lessee shall and will, except as herein provided~ at the expiration or sooner termination of this lease, peaceably and quietly surrender and deliver possession of the demised premises to the Lessor, together with all buildings ~~and improvements of whatever name or nature~~ now on or hereafter erected or placed upon the same, in good order and condition, reasonable wear and tear excepted.

The lined-out phrase "and improvements of whatever name or nature" bears the letters "A.H.S." and "N.P." "A.H.S." appears to be the initials of the notary public who witnessed the lessee's signatures,⁴ and "N.P." likely stands for "Notary Public." Accordingly, the interlineation was made by the lessee before lessee signed the document and before the Chairperson and a Board member signed the lease. Under current departmental policy, lessees are instructed not to make any changes to leases and other conveyance instruments sent to them for signature. There is good reason for policy. Many leases the department issues are through public auction, including GL3795. Under longstanding Hawaii legal precedent, leases issued through public auction cannot be amended. State v. Kahua Ranch, Ltd., 47 Haw. 28, 36 (Haw. 1963):

The statutory provisions of Hawaii forbid any agreement between the State and a prospective bidder for a lease of State land inconsistent with the terms of the notice of sale as published. Any such agreement contrary to the terms of the published notice of sale would be illegal and unenforceable. Otherwise, the statutory

³ Interestingly, InSite's September 28, 2020 letter with its offer to finally pay rent was sent not long after New Cingular Wireless PCS, LLC contacted Land Division about applying for a lease of the site in early August 2020. As discussed later in this submittal, New Cingular submitted its application for a direct lease of the site on September 1, 2020.

⁴ The notary's name appears to be Alice H. Szczybek.

requirements become meaningless.

It follows that any attempt to amend the lease form was ineffective and that the State now owns all buildings and improvements on the premises. The improvements consist of a lattice tower, equipment and generator shelter, and access road.

On November 24, 2020, InSite tendered partial payment of its delinquent rent. Land Division's May 18, 2020 demand letter sought payment of \$16,320. However, according to InSite's counsel, the check tendered by InSite in the amount of \$15,524.18 represents all rent received from its subtenant, HTI, for the period December 30, 2014 through December 31, 2020. Additionally, InSite's check has an accord and satisfaction notation on it that may bar the State from collecting the shortfall of \$795.82 if the check is deposited. See **Exhibit 8**. Nevertheless, staff recommends accepting the check to resolve this matter as it may prove more difficult to collect payment from InSite if the Board approves the issuance of a lease to New Cingular.

NEW CINGULAR'S APPLICATION FOR DIRECT LEASE:

New Cingular submitted its application for use of State lands through direct negotiation on September 1, 2020. New Cingular operates telecommunications towers as a public utility and therefore qualifies for direct negotiation of a lease.

New Cingular is a subsidiary of AT&T, one of the largest telecommunications companies in the world. Rural communities often lack quality telecommunications service due to the cost of bringing infrastructure to sparsely populated areas. New Cingular has a proven track record of constructing and maintaining communications transmission equipment in Hawaii. Authorizing this lease and easements will provide improved service to the Hanapepe area by installing a new tenant that intends to upgrade the existing facility.

New Cingular has 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.

AT&T AND FIRSTNET IN HAWAII

AT&T is contracted by the U.S. Department of Commerce to build and operate the First Responder Network Authority (FirstNet), a broadband network that equips first responders to save lives and protect communities. FirstNet and AT&T are building – at no cost to the State – a highly secure wireless broadband communications network for Hawaii's first responders and public safety community. The FirstNet network will deliver innovation and create an entire system of modernized devices, apps, and tools for first responders.

Specifically, FirstNet and AT&T will:

- Connect first responder subscribers to the critical information they need in a highly secure manner when handling day-to-day operations and responding to emergencies.
- Create an efficient communications experience for public safety personnel in agencies and

- jurisdictions across the state during natural disasters.
- Drive infrastructure investments and create jobs across the state.
- Usher in a new wave of innovation that first responders can depend on. This will create an ever-evolving set of life-saving tools for public safety, including public safety apps, specialized devices, and Internet of Things technologies.

On August 25, 2017, Governor Ige announced that Hawaii had become the latest state in the country to opt in to FirstNet.

AT&T and Kauai County officials identified the subject parcel and the existing telecommunications infrastructure as critical to expansion of the FirstNet system on Kauai. Waimea Canyon and Kalalau valley are currently critically underserved. The urgent need for increased service in the area was made clear over the course of the search for a tour helicopter which had crashed in the mountainous terrain of the Napali Coast in December 2019. Expansion of FirstNet to include the subject parcel and tower will significantly improve the ability of first responders to coordinate their efforts in addition to providing the diverse users of the area improved cellular service and access to 9-1-1 emergency services.

LEASE:

New Cingular is expanding its telecommunication services in Hawaii. On September 11, 2020, the Board approved agenda Item D-7 granting New Cingular easements to construct and renovate cell towers at two small boat harbors on Oahu. This request would expand service delivery to the Hanapepe area of Kauai by allowing New Cingular to renovate and modernize the existing facilities situated on the subject parcels. Staff is requesting authorization to issue a direct lease to New Cingular as a public utility pursuant to Section 171-95, HRS.

EASEMENTS:

- Easement A: 8,526 square feet for access and utility easement.
- Easement B: 2,101 square feet for access and utility easement.
- Easement C: 8,260 square feet for access and utility easement between parcels 16 and 17.
- Easement D: 5,235 square feet for access and utility easement from Kokee Road to parcel 16.

See Exhibit 1-B for the easement locations.

Section 171-26, HRS, provides in part that:

Prior to the leasing of any lands, the board shall determine the feasibility of hunting on such lands, and if any of them is suitable for hunting or may during the term of the lease become suitable for hunting, the board may reserve such lands as game

management areas or public hunting areas. Where the board finds that hunting on such lands would not be consistent with the rights of the lessee or for other good cause, the board need not reserve such lands as game management areas or public hunting areas.

The subject lands are a very small portion of a much larger tract set aside to the Division of State Parks as part of the Puu Ka Pele Park. Staff does not believe the lands have value as public hunting or game management areas.

Comments were solicited from the agencies below with the results indicated:

Agency:	Comment:
DLNR-DOFAW	No Response by Suspense Date
DLNR-OCCL	No Response by Suspense Date
DLNR-State Parks	See Remarks Below
DLNR-Historic Preservation	No Objections
Office of Hawaiian Affairs	No Response by Suspense Date
Department of Accounting and General Services	See Exhibit 8
Kauai County Police Department	No Response by Suspense Date
Kauai County Planning Department	No Response by Suspense Date

By letter dated November 12, 2020, the State Radio Program under the Office of Enterprise Technology Services (ETS) requested consideration for a reset aside of the subject parcels to the Department of Accounting and General Services (DAGS). See **Exhibit 9**. ETS seeks reset aside of this parcel to provide connectivity between its existing facility at Kukuiolono Park (Kukui) its public safety partners in Kokee. The Kukui facility is approximately two miles down the road from the subject properties. It currently provides coverage to Kokee but cannot provide the range of coverage of the facility on the subject parcels. Additionally, the Kukui site will require significant investment in the near future for renovation and replacement of the aging building and tower. ETS anticipates significant savings due to reduced capital investment need to maintain the facility on the subject parcels compared to Kukui.

The State Radio Program under ETS, officially called the Hawaii Wireless Interoperability Network (HIWIN), is a system of sites connected by the State's microwave network. HIWIN provides voice communication ability to the first responder agencies for the State and Counties via Land Mobile Radio two-way wireless communication devices. Additionally, HIWIN provides agencies with the ability to set up talk groups for varied locations and easily switch between local groups and those at remote emergency locations.

While HIWIN relies on voice communication over radio, FirstNet is wireless data centric. This allows advanced technology to be utilized and resources easily shared and coordinated between first responder agencies. Deployment of FirstNet on the subject parcels will support public safety officials during search and rescues missions, improve cellular reception, and enable the public to

place 9-1-1 calls for emergency services in this heavily trafficked yet remote area.

By letter dated December 14, 2020, Kauai Mayor Derek Kawakami expressed strong support for New Cingular's application to lease the subject parcels to improve wireless telecommunications on Kauai and deploy FirstNet in the remote areas of Kokee and Waimea Canyon. See **Exhibit 10**.

New Cingular has expressed willingness to voluntarily share space on the existing tower with ETS for HIWIN, thereby greatly improving the State's emergency services coverage and interoperability. Interference between the two systems is a possibility. However, issues of interference can be resolved with vertical separation or filters and resolving such issues is a normal part of the co-location process.

Staff evaluated ETS' and New Cingular's requests and is recommending that the Board proceed with a lease to New Cingular based on the comments provided in Mayor Kawakami's December 14, 2020 letter and New Cingular's offer to share tower space with HIWIN. In addition to providing the greatest increase in emergency response capacity, a lease to AT&T will generate revenue during this time of pandemic-driven budget constraints.

Division of State Parks (DSP) employees working in the area currently use cellular phones connected to the cell service provider, Verizon. DSP crews working in the area are currently hampered by poor cellular service on Verizon. DSP explains that adding service in this remote area is critical for DSP's management of the surrounding state park. Should the Board grant a lease to New Cingular, DSP requests that New Cingular consider providing Verizon access to the existing tower should Verizon request it and interference between the two providers' equipment can be avoided. Any request by Verizon to use the site would require Board approval for consent to sublease and may result in additional rent being paid to the State under the standard State lease terms and applicable law.

The proposed use has continued since 1963 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Terminate InSite's use, occupancy and possession of the premises effective as of February 7, 2021, provided that any and all obligations of InSite which have accrued up to said effective date shall endure past such termination date until duly fulfilled, and further provided that the State reserves all other rights and claims allowed by law.
2. Authorize the Chairperson to issue a Notice to Vacate to Insite demanding its removal from the premises by February 7, 2021.
3. Accept InSite's payment of \$15,524.18 to satisfy the amount owed by InSite under

expired General Lease No. S-3795, provided that InSite vacates the premises by February 7, 2021. If InSite fails or refuses to vacate the premises by that date, the State reserves the right to collect additional rent, administrative costs and fines as allowed by law.

4. Find the subject area to be an economic unit in terms of the intended use.
5. Find that the subject area is not suitable for hunting, nor will it become so during the term of a new lease.
6. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
7. Subject to the New Cingular fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to New Cingular covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current telecommunications general lease form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
8. Grant term, non-exclusive easements to New Cingular covering the subject area for access and utility purposes, including telecommunications, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current easement form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Luke Sarvis

Luke J. Sarvis
Project Development Specialist

APPROVED FOR SUBMITTAL:

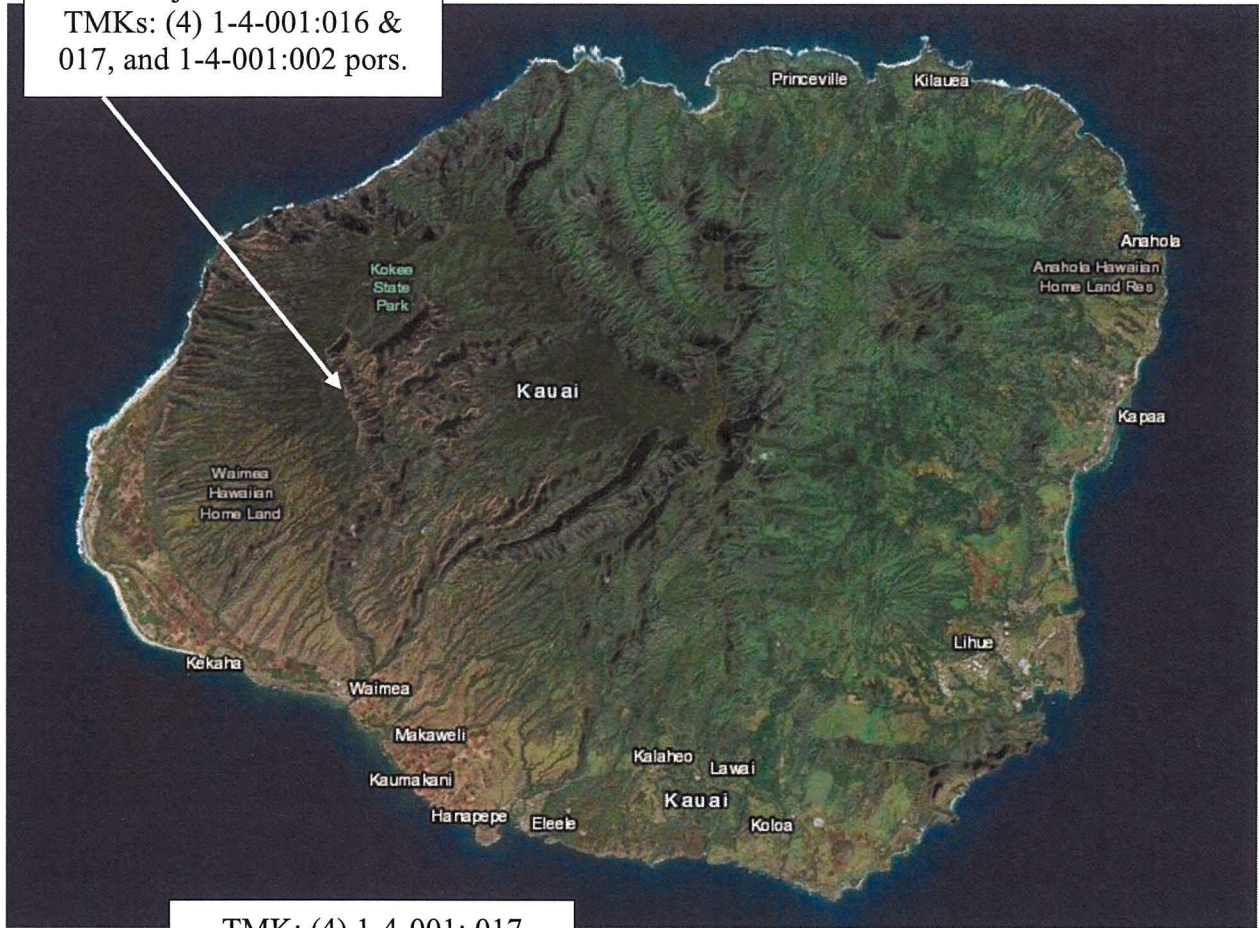
Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT 1-A

Subject Location
TMKs: (4) 1-4-001:016 &
017, and 1-4-001:002 pors.



TMK: (4) 1-4-001: 017



TMK: (4) 1-4-001: 016

EXHIBIT 1-A

EXHIBIT 1-B

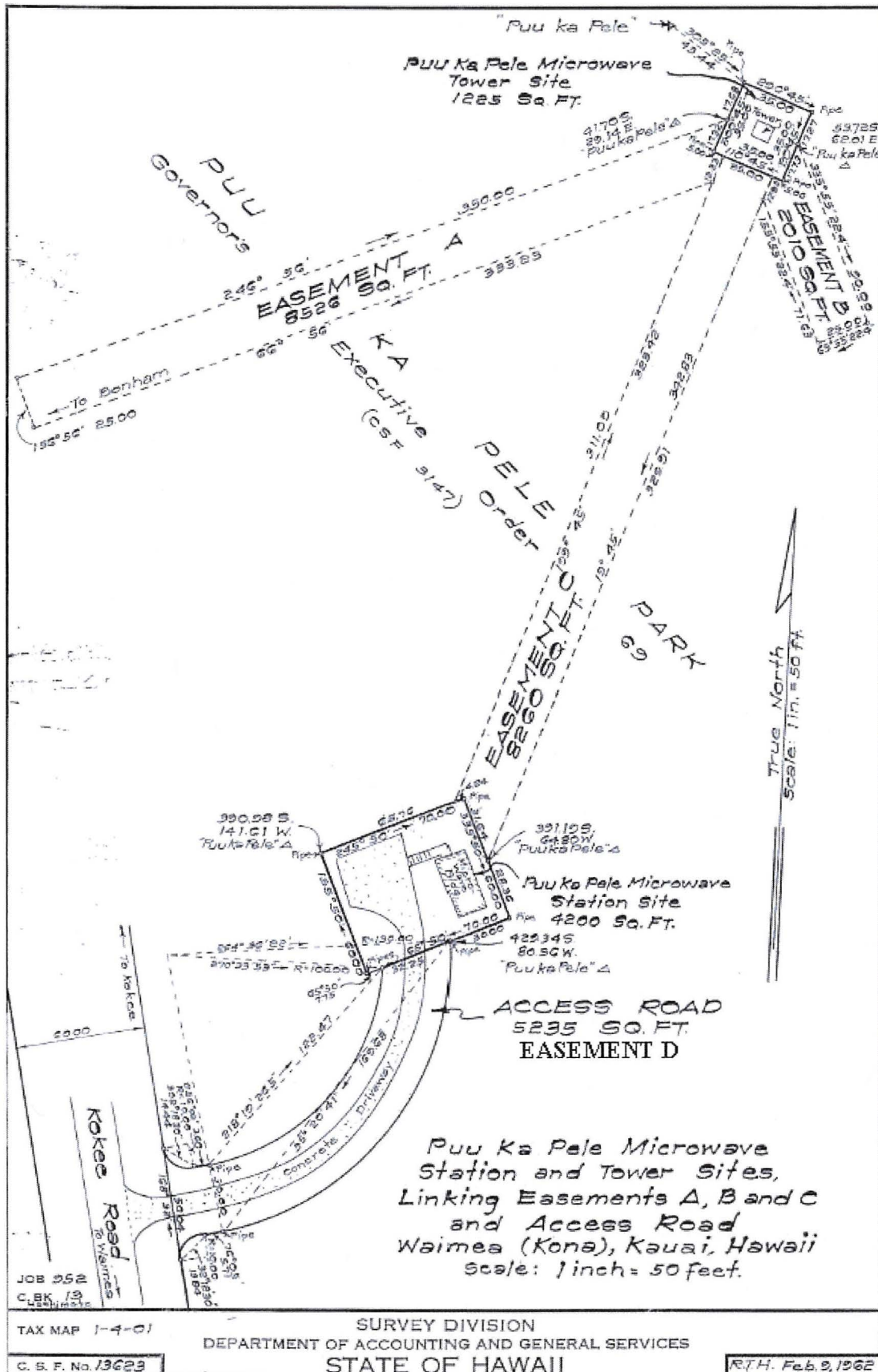


EXHIBIT 1-B

EXHIBIT 1-C

OCT 19 1982

REF. NO.: CPO-708
FILE NO.: KA-5/28/82-1464
180-Day Exp. Date: 11/25/82

Hawaiian Telephone Company
P. O. Box 2200
Honolulu, Hawaii 96841

Gentlemen:

Conservation District Use Application for
Proposed Improvements to Puu Ka Pele Radio
Station Use at Puu Ka Pele, Waimea, Kauai

We are pleased to inform you that the Board of Land and Natural Resources, at its meeting of October 8, 1982, approved your application subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Subchapter 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairman;
4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
5. That the applicant comply with all applicable Public Health Regulations;

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6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction and installation of improvements to the Puu Ka Pele Radio Station;
7. That the structures shall be painted to blend with the surroundings as much as possible;
8. That the applicant shall permit co-location of government public safety radio equipment at the subject sites as required in the future and meets approval of the Board.

Should you have any questions on any of these conditions, please contact Mr. Roger C. Evans of our Planning Office at 548-7837.

Very truly yours,

SUSUMUGNO

SUSUMU ONO, Chairman
Board of Land and Natural Resources

xc: Kauai Board Member
Kauai District Land Agent
Kauai County Planning Dept.
DOH/OEQC/EQC/OHA

bxc: Land Management
State Parks/Historic Sites
DOWALD
DAR
DOFAW
NARS
DOCARE

SS:rw

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GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621
HONOLULU, HAWAII 96809

FILE NO.: KA-5/28/82-1464
180-Day Exp. Date: 11/25/82

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

October 8, 1982

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

Gentlemen:

Conservation District Use Application for
Proposed Improvements to Puu Ka Pele Radio Station
at Puu Ka Pele, Waimea, Kauai

APPLICANT: Hawaiian Telephone Company
P. O. Box 2200
Honolulu, Hawaii 96841

LANDOWNERSHIP: State of Hawaii

LOCATION/AREA OF PARCEL: TMK: 1-4-01: 16 - 4,200 square feet - station site
TMK: 1-4-01: 17 - 1,225 square feet - tower site

AREA OF USE: 5,425 square feet

SUBZONE: Resource

DESCRIPTION OF AREA:

The site is reached by Kokee Road, and is located at an elevation of approximately 3,662 feet within the Puu Ka Pele Forest Reserve.

The project is located in Ahuloulu Heiau Complex, a registered archaeological site.

CURRENT USE:

The Puu Ka Pele Radio Station consists of two (2) sites, the Station Site containing an area of 4,200 square feet and the Tower Site containing an area of 1,225 square feet. The sites are connected by a 25-foot wide road and overhead easement, and are located on State-owned land situated within the Puu Ka Pele Forest Reserve, Waimea, Kauai. The project site is leased to Hawaiian Telephone Company under General Lease No. S-3795 (November 26, 1963). This lease is for a term of 50 years and will therefore expire November 25, 2013.

The Puu Ka Pele Radio Station was established by Hawaiian Telephone in 1960 and provides inter-island communication services primarily for the military, including the National Aeronautic Administration's Kokee Tracking Station, the Pacific Missile Range at Barking Sands, and the Hawaii Air National Guard. The radio station also serves subscribers in the surrounding areas, which include the Kokee and Waimea Canyon Parks, Kokee Camp sites, and Puu Ka Pele Park Lots. Existing facilities include:

ITEM H-4

Board of Land and
Natural Resources

KA-1464
October 8, 1982

1. Station Site - A masonry equipment building containing an area of 700 square feet. Two 8-foot high stub towers are mounted on the building roof, each supporting a 4-foot diameter antenna facing the tower site.
2. Tower Site - A 26-foot high steel tower supporting an 8-foot diameter antenna facing Kukuilolono and a 6-foot by 8-foot perforated reflector facing Barking Sands.

PROPOSED USE:

The applicant states that the proposed improvements at the Puu Ka Pele Radio Station include the construction of a new 50-foot self-supporting steel tower at the Tower Site and installation of a coaxial cable connecting the equipment building and tower. The microwave paths between the Station and Tower Sites and between the Tower Site and Barking Sands are partially obstructed by tree growth causing radio signal attenuation. Obstruction of the Puu Ka Pele to Barking Sands path is especially critical because the system provides the military with voice and data circuits on which critical, high priority government traffic is transmitted. The proposed improvements will increase the service reliability of the system by correcting the existing interference problems without the need for extensive tree trimming or tree relocation along the microwave paths.

The applicant indicates the new 50-foot tower will provide clear line of sight between the Puu Ka Pele Tower Site and Barking Sands, allowing the microwave beam to pass unobstructed above the trees. The existing 8-foot diameter antenna facing Kukuilolono will be relocated to the new tower and the existing reflector will be replaced by an 8-foot diameter antenna. The circuit capacity of the system will remain unchanged. The new tower will comply with all applicable regulations and will be painted and constructed to blend with the surrounding area. The existing 26-foot tower will be removed once the new antennas are in service, which is scheduled for December, 1982.

A coaxial cable connecting the equipment building and tower will be installed within the existing road and aerial easement between the Station and Tower Sites. The cable will eliminate the necessity for microwave line of sight between the two sites and will replace the 4-foot diameter antennas mounted on the building roof. Both antennas will be removed once the cable is in service.

The applicant further indicates the expected duration of the project construction, which involves fabrication of the tower members, excavation and pouring of concrete footing, and erection of the new tower, is approximately 2 months.

The hole for the footing will be dug by workmen using shovels and jackhammer(s) powered by air compressor(s). The concrete for the footing will be delivered by helicopter since no concrete pumps are available.

An archaeologist will be present to monitor all construction activities to ensure that the archaeologically significant structures are not adversely impacted. He shall have complete authority to halt or modify any construction activities that he deems to be a threat.

Board of Land and
Natural Resources

KA-1464
October 8, 1982

SUMMARY OF COMMENT:

The application was sent to the following agencies for review and comment:

County of Kauai, Planning Department, Department of Water Supply, Department of Public Works, Department of Public Works/Division of Parks and Recreation; Federal Aviation Administration, Federal Communications Commission; State Department of Health, Department of Defense, Office of Environmental Quality Control, Environmental Quality Commission, Office of Hawaiian Affairs, Department of Accounting and General Services, and the following Department of Land and Natural Resources' Divisions: Aquatic Resources, Water and Land Development, Land Management, State Parks/Historic Sites, Forestry and Wildlife, Natural Area Reserves System, and the Division of Conservation and Resources Enforcement.

Their comments follow:

U.S. Department of Transportation, Federal Aviation Administration:

Hawaiian Telephone Company's proposed improvements to their Puu Ka Pele Radio Station will have no impact on FAA operations in that area. We have no objections to their request.

County of Kauai, Planning Department:

As requested, we have reviewed the subject permit application and have no objections. We have further determined that:

1. The property is not located within the Special Management Area of the County of Kauai.
2. Since the project is visible from the Waimea Canyon Lookout and Kokee Road, and due to the increase in height which will make the project more noticeable, we recommend that the tower be painted an earth-tone or non-reflective color in order to minimize visual impacts.

Department of Public Works:

We have no comments on Conservation District Use Application KA-5/28/82-1464.

Department of Public Works, Division of Parks and Recreation:

We have no objections to the request of Hawaiian Telephone Company on Conservation District Use Application No. KA-5/28/82-1464. The project will not affect any of our parks and recreational facilities in the area.

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Department of Water:

We do not have a water system in this area and, therefore have no comments to this Conservation District Use Application.

State of Hawaii, Department of Health:

Our staff has reviewed this request and do not foresee any major adverse environmental effects arising from this project.

Please be informed that we have no objections to granting the permit.

Department of Defense:

After reviewing Hawaiian Telephone Company's proposal and your comments, we informally advised the Administrator of Kauai Civil Defense Agency of Hawaiian Telephone Company's improvement plan of the Puu Ka Pele Radio Station.

This department has no objections to Hawaiian Telephone Company's proposal and we concur with the requirements of your letter, CPO-212.

Department of Accounting and General Services:

We have reviewed the Conservation District Use Application for the subject project and find that the proposed project will not affect any of our facilities.

Office of Environmental Quality Control:

We have no objection to this Conservation District Use Application. The only environmental effect that we foresee from this project is the nonaesthetic appearance of the 50-foot tower. We feel this would be more than offset by the benefit of improved communications for the military, NASA's Kokee Tracking Station, the Pacific Missile Range at Barking Sands, and the Hawaii Air National Guard.

Department of Land and Natural Resources, Division of Aquatic Resources:

No objection to proposed project.

Division of Forestry and Wildlife:

Attached is a copy of our previous comments dated April 13, 1982.

April 13, 1982 comments:

The proposed improvements will have minor effect on Forest Reserve management with the provision that any tree trimming within the Puu Ka Pele

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Forest Reserve be approved by the District Forester.

Since the project work is within a State Park, the State Parks Division concerns should weigh the heaviest. From discussing this project with the Kauai District State Parks representative, I understand there is considerable concern related to esthetics over raising the height of the tower.

Division of State Parks, Historic Sites:

The subject project is located within the Waimea Canyon State Park near the peak of Puu Ka Pele, the highest peak in the area, prominently located by the canyon rim. The project is also located in the Ahuloulu Heiau Complex, a registered archaeological site, which has been recommended for a "Valuable Status" to be placed on the State Register. The location of the heiau and habitation sites at such a high elevation make this complex unusual with good research and interpretive potential. Adequate space for visitor parking and other facilities together with its interpretive value and scenic value by the canyon rim offer a good site for future park development.

Unfortunately, the gradual development of the subject facilities and other facilities within Waimea Canyon and Kokee State Parks are eroding the natural and cultural heritage values upon which these parks were established. If these parks are to be preserved and continue to be major tourist destination areas, the trend toward further development must be reversed. We, therefore, recommend that the subject request be denied and the existing communication facilities eventually be relocated. It is our understanding that joint use of communication relay facilities is sometimes feasible and we note that this option was not addressed. We also question the adequacy of the environmental impact assessment and negative declaration.

Division of Land Management:

TMK: 1-4-01: 16 and 17 is leased to Hawaiian Telephone Company under General Lease No. S-3795. Land Management Division has no objection to the proposed improvements.

Division of Water and Land Development:

No objections specific to Division of Water and Land Development programs.

Natural Area Reserves System:

The proposed land use will have no effect on the existing Natural Area Reserves Program.

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Division of Conservation and Resources Enforcement:

Field inspection conducted at site on August 20, 1982.
Division of Conservation and Resources Enforcement Kauai
has no objections to applicant's proposed improvements
to the Puu Ka Pele Radio Station.

ANALYSIS:

Following review and acceptance of the application, for processing,
the applicant, by letter dated August 6, 1982, was notified that:

1. The proposed use, improvements to the Puu Ka Pele Radio Station, is a conditional use of the Resource Subzone of the Conservation District according to Administrative Rules, Title 13, Chapter 2, as amended;
2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended, will be required; and
3. In conformance with Section 1:30, EIS Regulations, a negative declaration was determined for the proposed action, and written clearance from the County of Kauai regarding SMA requirements has been obtained.

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

Subchapter 21 relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

Alternatives:

The applicant has explored three (3) alternatives to the current proposal.

A "no project" alternative is possible: Signal attenuation problems would continue due to trees growing within the microwave paths between the tower and station and between Puu Ka Pele and Barking Sands. Extensive tree trimming or relocation would be periodically required to maintain clear line of site in order to maintain service reliability.

The applicant, with the Kauai Forestry Division Staff has determined that initially 15 to 20 trees must be cut or removed to clear the microwave path between Puu Ka Pele and Barking Sands. They indicate that in the long run, approximately one acre of trees must be cut or removed because of future tree growth within the path. The trees which must be cut or removed are 18-20 inches in diameter and 80-100+ feet, in height.

The second alternative is to establish a new radio station between Kukuilono and Barking Sands. The applicant estimates the cost to be \$1,250,000.00, compared with \$100,000.00 for the proposed tower and cable at Puu Ka Pele. The applicant states that all other suitable

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alternative radio station sites are also situated in the Conservation District. Establishing a new station at a new site, aside from being rather expensive, would generate additional environmental impacts.

The third alternative suggested by the applicant is the installation of a new aerial cable between Kukuilono and Barking Sands along Kaunualii Highway. The applicant estimates the cost to be \$250,000.00. Highway traffic would be disrupted during construction and the trimming would be required periodically. The system would be subject to damage from adverse weather and vehicular accidents. The applicant states the military requires 99 percent service availability and restoration within 10 minutes in the event of failure. The applicant indicates the third alternative will not satisfy the military requirements.

Several other alternatives have been suggested and discussed with the applicant.

Use of a microwave tower on the coastal lowlands in place of an aerial cable was suggested.

The applicant did not consider this alternative but has indicated that a clear line of sight between Kukuilono and Barking Sands would require two or more microwave towers and considers this to be a high cost alternative.

Raising the height of the Barking Sands tower was also brought up as an alternative.

The applicant indicates the Barking Sands tower is presently over 100 feet high. Raising the height of this tower to the required 150 feet would entail gaining both U.S. Federal Aviation Administration and Department of Defense approvals, and would prove to be very expensive.

The applicant's engineering staff further indicates that the antennas on the existing Puu Ka Pele tower would have to be moved to the top of the tower, requiring rebuilding the existing tower to strengthen it. They also expect FAA would not approve the added height on the Barking Sands tower which is adjacent to the runway there.

Staff notes that most agencies reviewing the subject application have no objections to the proposed improvements. Some agencies note the non-aesthetic appearance of a 50-foot tower, and suggest the use of appropriate paint to minimize visual impacts. Some also note this impact will be offset by the benefit of an improved communication system.

The primary objection to the subject proposal comes from the Department of Land and Natural Resources' Division of State Parks, Historic Sites and Outdoor Recreation, the agency charged with responsibility for management of the Kokee and Waimea Canyon State Parks. The subject parcels are within the boundary of the Waimea Canyon State Park.

State Parks' staff has indicated that their comments address the need to return park areas to their natural state and then preserve the area, and its resources for future park use.

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State Parks' staff further maintains that gradual development of this and other similar facilities within park boundaries erodes the natural and cultural heritage values upon which Kokee and Waimea Canyon Parks were established.

Continued, gradual development by way of improvements simply makes the task of returning the park to its natural state and preserving sites more difficult, i.e. such improvements represent investments such that the existing facilities become "more permanent".

However, the Division of Land Management informs us that General Lease No. S-3795, which includes the subject sites, is a negotiated lease, sold directly to the Hawaiian Telephone Company. As such, this lease can only be terminated upon mutual agreement of lessor, the State of Hawaii and lessee, the Hawaiian Telephone Company.

The State Parks suggestion of eventual facility relocation, would therefore hinge on a mutual State of Hawaii/Hawaiian Telephone agreement to terminate the existing lease. Such a termination, based on the request to relocate this facility, would also likely involve relocation costs. It is possible that the agency requesting the relocation, would be required to bear the cost of doing so.

In following up State Parks' comments, Staff found that State Parks would consider use of the existing tower site less objectionable than developing a new adjacent tower.

The alternative of cutting a line of sight through the forest in place of erecting a 50-foot tower was also considered to be acceptable provided the cut could not be seen from the Kokee Road or from various Waimea Canyon viewpoints. Forestry's Kauai staff indicates the cut would not be seen from the road.

However, Forestry and Wildlife's Kauai staff has indicated that 15-20 trees must be cut to achieve the desired line of sight. In the long run, one acre of trees must be cut or removed. Kauai District staff states the trees are 18-20 inches in diameter and 80-100+ feet in height, and are older trees planted in the 1930's under the CCC program. The Kauai District staff would not like to see these trees cut. Their concern is based on the number of trees to be cut or removed.

Conclusion:

In 1963, Hawaiian Telephone was given a 50 year lease for the specific purpose of developing the subject parcels for a microwave tower and station. As such, the land use is established. The present issue is really a matter of maintaining the existing use.

Growth of trees in the line of sight required for microwave transmission now causes interference. The objective is to eliminate that interference. The current proposal seeks to accomplish this by constructing a new tower, 24 feet higher than the adjacent existing tower and by replacing tower to station antennas with an underground cable.

Five different alternatives to this proposal have been explored. The proposal, as well as the alternatives are objectionable, in part, to either the agencies involved in managing the areas, or the applicant.

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Forestry's and State Parks' objectives, preservation of forest and preservation of natural and cultural resources, an archaeological site and scenic views of Waimea Canyon, are quite similar to the objectives of the Resource Subzone, that is, to develop with proper management, areas to ensure the sustained use of the resources present.

If this were a new site, given the same resources present, forest and park area, an archaeological site considered valuable, and the need to preserve these resources, staff would agree with all concerned agencies and based on the objective of the Resource Subzone, deny the application.

However, this is not the case; the land use exists, a 50 year lease exists, with 31 years remaining, the need to maintain the facility usefulness is essential, the alternatives are unacceptable.

Staff does concur with the Division of State Parks management objectives, but presently finds that the need to maintain facility usefulness outweighs any impact evident.

The applicant should be aware of park and forestry management objectives and should anticipate relocation of the existing facility at the expiration of the current lease on the subject parcels.

In reviewing the policies in the State Conservation Lands Plan, Staff maintains that it is difficult to consider the proposal to be consistent with the plan objectives. Consistency in this case can only be achieved in the long term, at the time of the lease expiration.

As such, Staff recommends as follows:

RECOMMENDATION:

That this application for improvements to the Puu Ka Pele Radio Station at Puu Ka Pele, Waimea, Kauai at TMK: 1-4-01: 16 and 17 in the Resource Subzone of the Conservation District be approved subject to the following conditions:

1. That the applicant comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and City and County governments, and applicable parts of Subchapter 13-2-21 of Title 13, Chapter 2, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Other terms and conditions as prescribed by the Chairman;

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October 8, 1982

4. In the event any unanticipated sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are encountered during construction, the applicant shall stop work and contact the Historic Preservation Office at 548-7460 or 548-6408;
5. That the applicant comply with all applicable Public Health Regulations;
6. A fire contingency plan, acceptable to the Division of Forestry and Wildlife shall be implemented during and after the construction and installation of improvements to the Puu Ka Pele Radio Station;
7. That the structures shall be painted to blend with the surroundings as much as possible;
8. That the applicant shall permit co-location of government public safety radio equipment at the subject sites as required in the future.

Respectfully submitted,

Sherrie Samuels

SHERRIE SAMUELS
Staff Planner

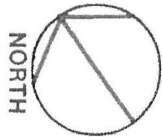


Attachments

APPROVAL FOR SUBMITTAL:

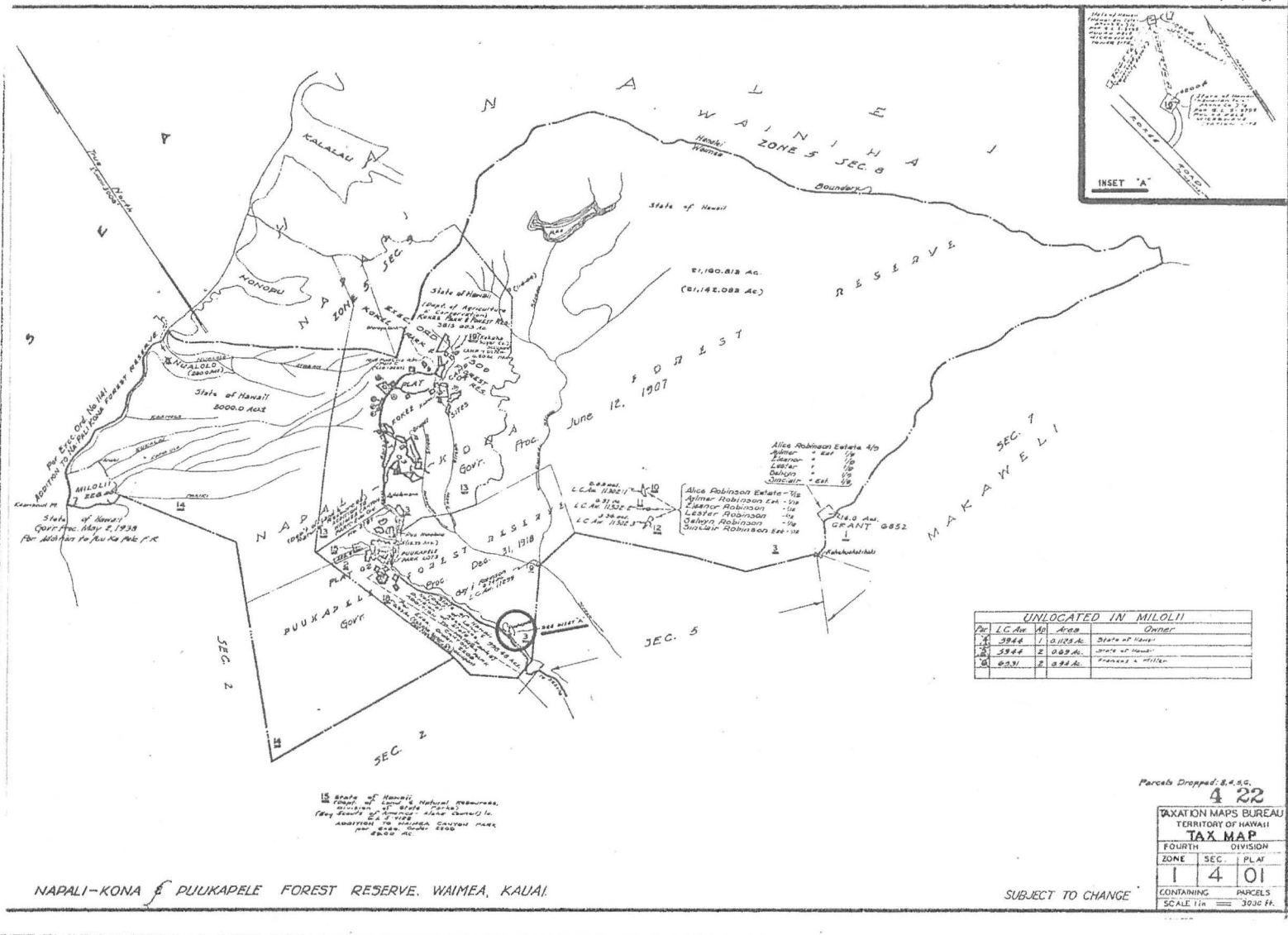
S. Ono

SUSUMU ONO, Chairman
Board of Land and Natural Resources



CDUA no. KA-1464 Exhibit B.
 APPLICANT Hawaiian Telephone Company
 AGENT mtl
 TMK 1-4-01:16 and 17
 SCALE ---

SUBZONE
 PROJECT AREA
 PROTECTIVE
 RESOURCE
 LIMITED
 GENERAL



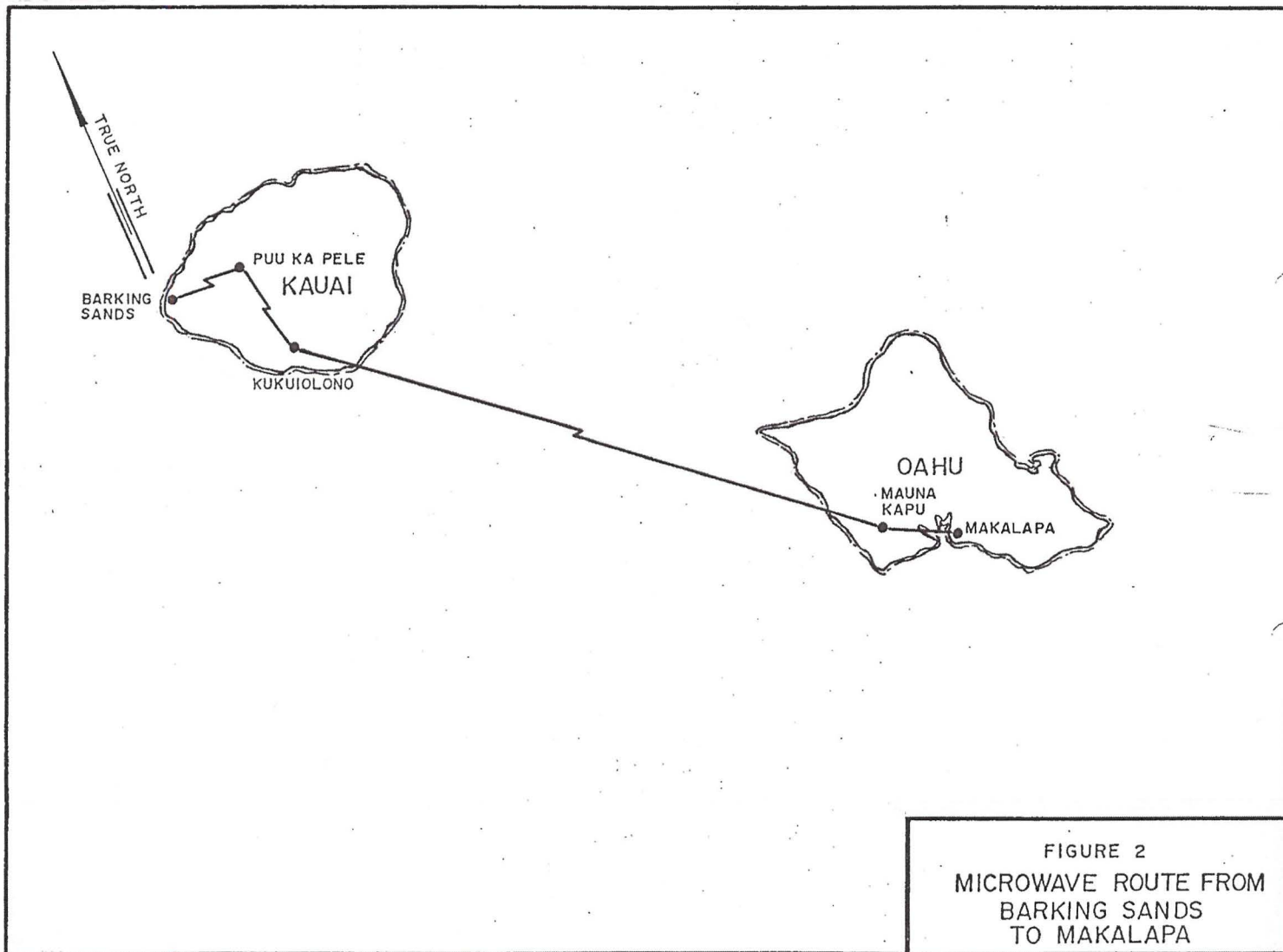


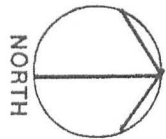
NORTH

CDUA no. KA-1464, Exhibit C
 APPLICANT Hawaiian Telephone Company
 AGENT TMK 1-4-0: 16417
 SCALE 1 inch = 16 miles

SUBZONE
☐ PROTECTIVE
☐ RESOURCE
☐ LIMITED
☐ GENERAL

EXHIBIT C PROJECT AREA





CDUA no. KA-1464 **Exhibit D**
 APPLICANT Hawaiian Telephone Company
 AGENT TMK 1-4-01: 16417
 SCALE _____

EXHIBIT D
 SUBZONE
 PROJECT AREA
 PROTECTIVE
 RESOURCE
 LIMITED
 GENERAL

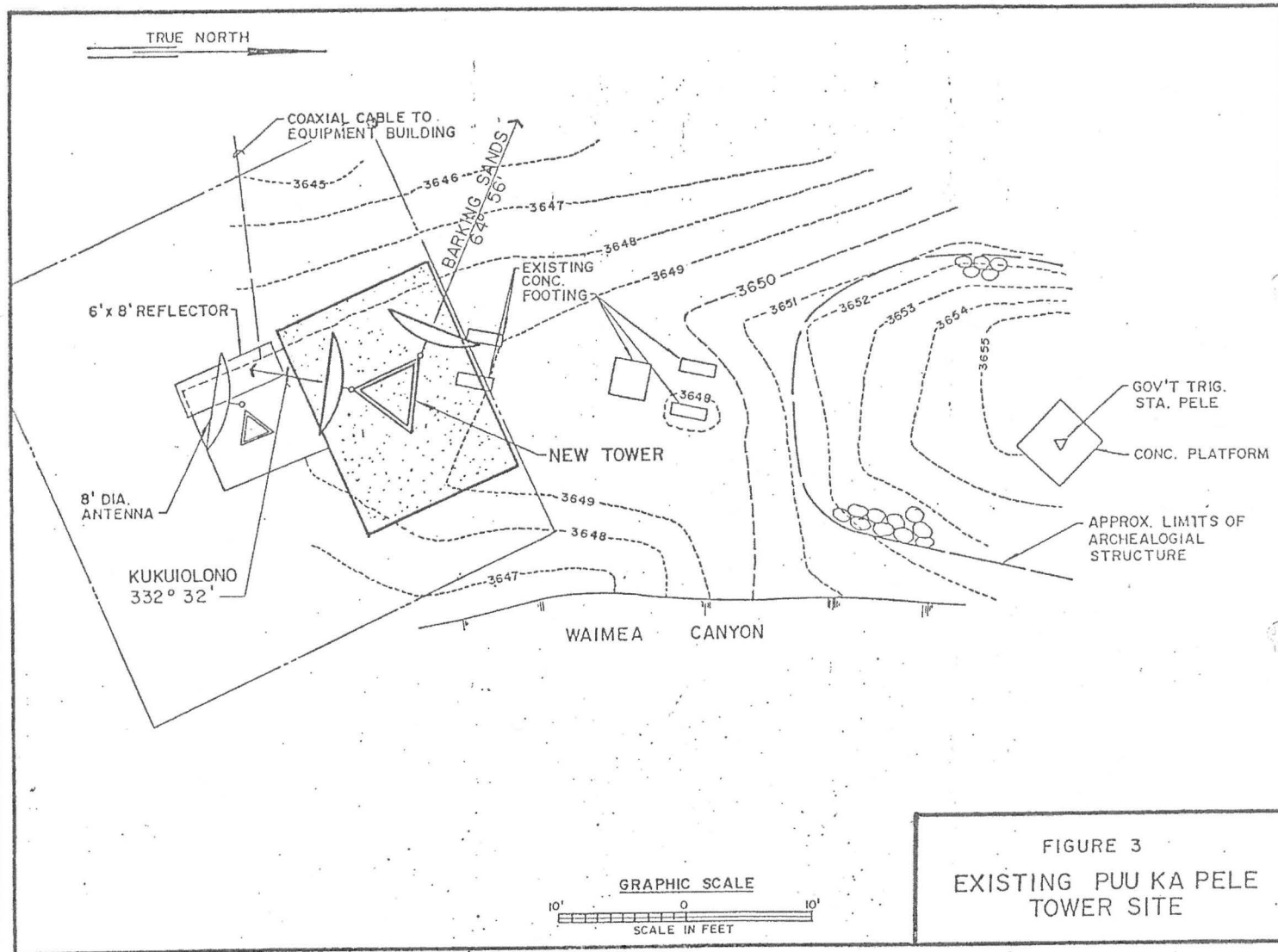


EXHIBIT 2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: Authorize the Issuance of a Direct Lease and Grant of Term, Non-Exclusive Easements to New Cingular Wireless PCS, LLC, for Telecommunication Purposes, Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-4-001:016 & 017 and 1-4-001:002 pors.

Project / Reference No.: 20KD-080

Project Location: Portion of Government lands of Hanapepe, Waimea, Kauai, identified by Tax Map Keys: (4) 1-4-001: 016 & 017 and 1-4-001:002 pors. as shown on the attached map. (**Exhibits 1-A and 1-B**).

Project Description: Authorize a Direct Lease and Grant of Easements to New Cingular Wireless PCS, LLC, for microwave station and microwave tower facilities together with appurtenant easements.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on November 10, 2020, the subject request for issuance for right-of-entry is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 40 that states, "Leases of State land involving negligible or no expansion or change of use beyond that previously existing."

The subject parcels have been under continuous lease for telecommunication purposes since 1963. No change in use is authorized by this Board action.

Cumulative Impact of Planned Successive Actions in Same Place Significant?

No, the requested locations have been used for same uses since the initial lease was granted in 1963.

Action May Have

No.

EXHIBIT 2

Significant Impact on
Particularly Sensitive
Environment?

Analysis:	Staff believes that the request would involve negligible or no expansion or change in use of the subject location beyond that previously existing.
Consulted Parties	Agencies listed in submittal.
Recommendation:	That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT 3

Moore, Kevin E

From: Moore, Kevin E
Sent: Monday, August 26, 2019 9:19 AM
To: Roni Jackson
Cc: Tsuji, Russell Y; Kaanehe, Blue; Rosemary T. Fazio; Naomi U. Kuwaye; Matsunaga, Wesley T; Neustein, Alison
Subject: RE: Expired GL S-3795; HI029 - DLNR

Roni,

Thank you for the email. We must have had a miscommunication about the rent for the expired lease on Kauai. It was never our intention for InSite to occupy the premises without paying rent (or providing liability insurance) for these past years. We acknowledge the situation developed in large part because our Fiscal Office stopped issuing invoices for the lease, which was an oversight on our part. We are working to remedy that now and are glad to hear that a subsidiary of InSite will be seeking public utility status in Hawaii. We look forward to working with you to resolve the situation. Thanks again.

Kevin

From: Roni Jackson [REDACTED]
Sent: Friday, August 23, 2019 5:21 PM
To: Moore, Kevin E [REDACTED]
Cc: Tsuji, Russell Y <[REDACTED]>; Kaanehe, Blue [REDACTED]; Rosemary T. Fazio [REDACTED]; Naomi U. Kuwaye [REDACTED]
Subject: Re: Expired GL S-3795; HI029 - DLNR

Dear Kevin- I apologize for my delayed response to your July 20th email. InSite has been extremely busy with acquisitions, that coupled with my family's cross-country move (from VA to CA) in mid-June, have made this a very challenging and busy summer.

Nonetheless, I followed up with you for well over a 18 months following InSite's 12/30/2014 closing of its acquisition of HT's communications sites regarding the revocable license that you advised would be issued given the expired status of Lease No. 3795 (including the provision of a redline requesting limited changes to DLNR's original draft), but did not receive a response. You expressly instructed that InSite was NOT to tender payment to DLNR until the new, revocable license was issued. Hence, InSite respectfully objects to the allegation that InSite is in any way delinquent.

I brought this site to Russell's attention in May while having had the privilege to meet with him and Blue Kaanehe following a meditation pertaining to another lease in Honolulu. It was after that meeting that I heard from you regarding Lease S-3795.

I will review this important matter early next week and will reply promptly. InSite has recently formed a subsidiary that will apply for status as a public utility in Hawaii. This entity is that which will pursue lease negotiations with DLNR for this site (referred to by InSite as HI029 Kapele). InSite will be advised by Rosemary Fazio and Naomi Kuwaye of Ashford + Wriston (both of whom are copied on this email) on the application.

I much look forward to working with you again (it is always a pleasure), and will be in touch next week.

With kindest regards from Virginia,

Roni

Roni Jackson
General Counsel
InSite Wireless Group, LLC
1199 N. Fairfax Street, Suite 700
Alexandria, VA 22314
(o) (703) 258-1725
[REDACTED]

On Aug 23, 2019, at 10:51 PM, Moore, Kevin E [REDACTED] wrote:

[External email]

Hi Roni,

I'm following up on my email of July 10, 2019 below. Our accounting system shows no payments made by InSite for the use of the premises under expired General Lease No. S-3795. We need to address that delinquency as well as the plan for moving ahead with a new lease of the site. Please let me know if you would like to discuss. Thank you.

Kevin

Kevin E. Moore
State Lands Assistant Administrator
Department of Land and Natural Resources, Land Division
1151 Punchbowl Street, Room 220
Honolulu, HI 96813
[REDACTED]

From: Moore, Kevin E
Sent: Wednesday, July 10, 2019 3:30 PM
To: Roni Jackson <[REDACTED]>
Cc: Tsuji, Russell Y [REDACTED]
Subject: Expired GL S-3795; HI029 - DLNR

Hi Roni,

As you may recall, the Board of Land and Natural Resources approved a one-year holdover of the subject lease at its meeting of December 13, 2013, Item D-3. Then at its meeting of October 24, 2014, Item D-9, the Board approved the assignment of the lease to InSite. The lease expired before the assignment could be executed, but InSite continued to use the property after lease expiration.

It recently came to our attention that at the expiration of the holdover period, our Fiscal Office stopped billing for this site. We have now instructed Fiscal to resume billing at the rate last charged under the lease, which is \$2,000 per annum, plus 30% of the sublease rent collected from Hawaiian Telcom, Inc. (30% of \$2,400 is an additional \$720 per year). We wanted to give you an advance notice that InSite will be receiving a bill shortly. The rent we are charging is an interim arrangement until we can determine what the new disposition for this site will be and what the appropriate charge is. In this connection, can you please let us know whether HTI is still subleasing at the site at the same rate (\$2,400 per year). Are there any other subleases?

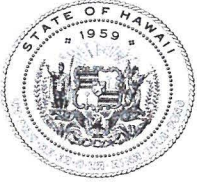
Finally, Russell mentioned that InSite might be reconsidering registering itself or an affiliate with the Public Utilities Commission so that it could attain status as a public utility and be eligible for direct leasing under our statute. Has any final decision been made on this point? We really need to get a Board-approved disposition in place for this location. Thank you.

Kevin

Kevin E. Moore
State Lands Assistant Administrator
Department of Land and Natural Resources, Land Division
1151 Punchbowl Street, Room 220
Honolulu, HI 96813
[REDACTED]

EXHIBIT 4

DEPARTMENT OF LAND AND NATURAL RESOURCES



FISCAL OFFICE
P.O. BOX 621
HONOLULU, HAWAII 96809-0621
(808) 587-0353
01/19/20

DOCUMENT NUMBER
gl3795

COST CENTER: 0550

SOURCE: 1724

TOTAL DUE: \$16,320.00

INSITE TOWERS DEVELOPMENT, LLC
 1199 N. FAIRFAX ST., SUITE 700
 ALEXANDRIA, VA 22314

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

AMOUNT PAID: _____

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
06/30/2019	C-298331	Balance Due	M006340 06/30/2019	RENT-11/26/14-11/25/19	10,000.00
06/30/2019	C-298332	Balance Due	M006341 06/30/2019	SBLS PARTICIPATION RNT-11/26/14-11/	3,600.00
11/26/2019	C-301652	Balance Due	11/26/2019 - 11/25/2020	USE OF LAND-SPECIFIC PURPOSE (11/20	2,720.00

Please Make Check Payable To: "Land & Natural Resources"
 PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE
 THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	1-30	31-60	OVER 60	TOTAL DUE
0.00	0.00	2,720.00	13,600.00	\$ 16,320.00

DOCUMENT
NUMBER

gl3795

EXHIBIT 5

DAVID Y. IGE
GOVERNOR OF HAWAII



943173
SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 18, 2020

VIA FIRST CLASS MAIL &
CERTIFIED MAIL RETURN RECEIPT REQUESTED: 7015 3010 0000 3812 9536

InSite Towers Development, LLC
Attn: Roni Jackson, General Counsel
1199 N. Fairfax Street, Suite 700
Alexandria, VA 22314

Subject: InSite Towers Development, LLC's Use of State Land under Expired General Lease No. S-3795, Hanapepe Microwave Tower Site and Linking Easements A and B, Hanapepe, Waimea, Kauai, TMKs: (4) 1-4-001:016, and 017 and other portions of plat 001.

Dear Ms. Jackson:

As you will recall, General Lease No. S-3795 (GL3795) was issued to a predecessor of Hawaiian Telcom, Inc. (HTI) on November 26, 1963 for a term of 50 years. At its meeting of December 13, 2013, Item D-3, the Board of Land and Natural Resources (Board) approved a one-year holdover of the lease to HTI for an annual rent of \$2,000, which HTI paid. On October 24, 2014, under agenda item D-9, the Board approved the assignment of GL3795 (along with other microwave tower leases on State lands) from HTI to InSite Towers Development, LLC (InSite). However, GL3795 expired a month later on November 25, 2014 before the documentation of the assignment could be finalized. InSite assumed control of the premises pursuant to the Board's consent to the assignment and has used the premises for approximately 5½ years. To date, InSite has not paid any rent to the State for the use of this location.

Beginning in 2014, our staff communicated with InSite about the possibility of a direct negotiation lease of the premises which would require InSite or an affiliate to register with the Hawaii Public Utilities Commission (PUC). Initially, InSite indicated it was not interested in pursuing this option. Our Kauai District Land Office staff then prepared a draft Board submittal requesting authorization to issue a lease by public auction and an interim month-to-month revocable permit to InSite retroactive to November 26, 2014. InSite provided comments on this draft, including a comment that InSite would pay rent for the premises once the fair market rent was determined by appraisal.

EXHIBIT 5

6/4/20

The draft submittal was never finalized for placement on the Board's agenda. Rather, in about 2019, InSite expressed interest in forming a PUC-registered entity. The creation of such an entity would allow the Board to issue a lease to InSite or its PUC-registered affiliate by direct negotiation as a public utility company. We therefore put the 2016 draft submittal for a public auction lease and revocable permit on further hold.

Later in 2019, we notified InSite that we would charge InSite rent at the rate under expired GL3795 retroactive to November 26, 2014, together with sublease rent participation, until the fair market rent could be determined. This is intended to be an interim rent because the actual rent payable for InSite's use of the premises will still need to be determined by appraisal as we have previously explained. If the appraised rent turns out to be greater or lesser than the interim rent, adjustments will be made to the account as appropriate. InSite objected to the notice stating that staff had advised InSite not to pay rent until a new disposition for the premises was issued.

Please be advised that InSite's use of the premises without payment of rent cannot continue. If InSite remains interested in securing a revocable permit or lease for the premises, please:

- 1. Pay interim rent to the State of Hawaii, Department of Land and Natural Resources, in the amount of \$16,320 for the period November 26, 2014 and November 25, 2020 within 30 days of your receipt of this letter;¹ and**
- 2. Provide the name of the InSite affiliate registered with the PUC as a public utility and evidence of its registration within 60 days of your receipt of this letter.**

If InSite timely satisfies both items 1 and 2 above, we will prepare a staff submittal to the Board requesting the issuance of a direct lease to the InSite affiliate as a public utility retroactive to November 26, 2014. If InSite timely satisfies item 1 above but not item 2, we will prepare a staff submittal to request a revocable permit to InSite retroactive to November 26, 2014 and additionally seek Board authorization to conduct a public auction sale of a new lease for the premises at which InSite will be welcome to apply as a bidder. If InSite does not satisfy item 1 above (regardless of whether it satisfies item 2), we will request the Board to issue InSite an order to vacate the premises and recover payment of reasonable back rent for InSite's use of the premises as well as administrative costs and other relief as permitted by law.

¹ As you will recall, the Board approved the sublease to HTI under GL3795 at the same meeting the assignment to InSite was approved, October 24, 2014, Item D-9. The sublease rent payable by HTI was indicated at \$2,400 per annum, and the State was to share in 30% of that, which equals an additional \$720 per annum payable to the State. Therefore, the interim annual rent for InSite's use of the premises under expired GL3795 is \$2,720 per annum or \$16,320 for the period November 26, 2014 through November 25, 2020. As stated above, the actual rent will be determined by appraisal and any necessary adjustments made to the account once fair market rent is determined.

InSite Towers Development, LLC

May 18, 2020

Page 3

Please be assured our preference is to work toward a cooperative resolution of this longstanding matter. Please contact me should you have any questions.

Very truly yours,

Russell Tsuji

Russell Y. Tsuji
Land Division Administrator

cc: Kauai District Land Office

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

InSite Towers Development, LLC
Attn: Roni Jackson, Gen. Coun.
1199 N. Fairfax St., Ste. 700
Alexandria, VA 22314



9590 9401 0127 5225 8701 67

2. Article Number (Transfer from service label)

7015 3010 0000 3812 9536

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

R. White

C. Date of Delivery

5/26

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery

(all

Mail Restricted Delivery

0)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

EXHIBIT 6



September 28, 2020

VIA CERTIFIED MAIL
ADVANCE COPY VIA ELECTRONIC MAIL

Mr. Russell Y. Tsuji
Land Division Administrator
State of Hawaii
Department of Land and Natural Resources ("DLNR")
P.O. Box 621
Honolulu, HI 96809

Re: Your May 18, 2020 Correspondence re Expired General Lease No. S-3795 ("DLNR's Correspondence") – InSite Site No. HI029 Kapele

Dear Russell:

I hope that this letter finds you and family during well during these challenging times. IWG II, LLC, an affiliate of and successor-in-interest to, InSite Towers Development, LLC ("collectively, "InSite"), acknowledges receipt of DLNR's Correspondence regarding General Lease No. S-3795 and respectfully offers the following in response:

1. InSite agrees and acknowledges that General Lease No. S-3795 dated November 26, 1963 between the State of Hawaii by its Board of Land and Natural Resources ("BLNR"), as Lessor, and Hawaiian Telcom, Inc., formerly known as Hawaiian Telephone Company ("Hawaiian Telcom"), InSite's predecessor-in-interest, expired on November 25, 2014 ("Lease No. S-3795" or the "Expired Lease" herein). InSite also agrees and acknowledges that BLNR consented to Hawaiian Telcom's assignment of the Lease to InSite pursuant to the terms of that certain Decision issued on October 24, 2014 as Agenda Item D-9 (the "BLNR Decision"), and that the annual rent specified in the Decision as applicable to Lease No. S-3795 is \$2,000.
2. Throughout 2015, InSite made a number of attempts to engage the DLNR Staff with respect to commencing negotiations for a replacement ground lease for Lease No. S-3795 (the "Replacement Lease"). However, the DLNR Staff, presumably occupied with more pressing matters, was unresponsive. In effort to move this matter forward, I contacted and began working with Kevin Moore of DLNR in June of 2016. Kevin advised as to the lengthy and complex nature of the auction process for a Replacement Lease (the "Auction Process") given that InSite Towers Development, LLC is not registered as a public utility with the Hawaii Public Utilities Commission (the "PUC").
3. As Kevin advised that the Auction Process could take a period of years, he recommended that InSite and BLNR enter into an interim license for use of the premises subject to Lease No. S-3795 (the "Premises") that would be retroactive to December 30, 2014, the date on which InSite acquired the communications tower site located on the Premises from Hawaiian Telcom (the "Interim License"). During my discussions with Kevin, I expressly inquired as to whether InSite should tender payment under the Expired Ground Lease prior to the issuance of the Interim License or Replacement Lease. **He advised that DLNR could not accept rent payments under the Expired Lease.**



Mr. Russell Y. Tsuji
September 28, 2020
Page 2

4. In furtherance of Kevin's recommendation that InSite pursue the Interim License, he provided a draft submittal for presentation to the BLNR on which he requested InSite's feedback. A copy of the Draft Submittal reflecting InSite's limited comments is enclosed (the "Draft Submittal"). By his June 17, 2016 email, Kevin agreed that DLNR would present the Draft Submittal to the BLNR for consideration at its July 2016 meeting. However, **until receipt of your May 18, 2020 correspondence, InSite was entirely unaware that the Draft Submittal had never been placed on the BLNR's Agenda for review and decision.**
5. Because of the significant difficulty InSite experienced in getting the DLNR Staff to respond to our inquiries regarding the Interim License, InSite's counsel, Rosemary Fazio of Ashford + Wriston, and I requested a brief meeting with you and Blue Kanahe following the May 1, 2019 mediation in Honolulu pertaining to General Lease No. S-4588. You and Ms. Kanahe kindly obliged and advised that the finalization of the Replacement Lease could be expedited if InSite or one of its affiliates were to register with the Hawaii PUC as a public utility.
6. Presumably after you brought the matters that we discussed during the meeting discussed in the previous paragraph to Kevin Moore's attention, I received an email from Kevin dated July 10, 2019 in which he alleged, in direct contradiction to our conversations in 2016, that InSite owed "back rent" of \$2,000 per year under the Expired Lease in addition to the thirty percent (30%) revenue share referenced in the October 2014 BLNR Decision pertaining to rent received by InSite since December 30, 2014 under its Site License Agreement with Hawaiian Telcom (the "InSite-HT License Agreement"). Kevin was aware of the InSite-HT License Agreement as, to ensure transparency, I discussed it with him in 2016, specifically noting that: (i) Hawaiian Telcom was InSite's sole tenant at the Premises (this continues to be correct), (ii) the License Agreement commenced on December 30, 2014 with a 10 year initial term, and (iii) initial annual rent payable under the Agreement was \$2,400 with a three percent (3%) annual escalation. I responded to Kevin's aforementioned email on August 23, 2019, reminding Kevin that he had expressly instructed InSite not to tender payment to DLNR until the Interim License was issued. Oddly, **Kevin's email provided no explanation as to why DLNR did not present the Draft Submittal to BLNR or why DLNR failed to notify InSite of same.** Kevin's August 26, 2019 email in response to mine stated that *"the situation developed in large part because our Fiscal Office stopped issuing invoices for the lease, which was an oversight on our part."* With all due respect, this statement is in direct contradiction to DLNR's 2016 statement that it could not accept rent payments on an Expired Lease.
7. As you know, InSite greatly values its relationship with DLNR and has at all times acted with candor and in good faith in all dealings with DLNR. In furtherance of this course of conduct, I have enclosed a statement reflecting all rent payments received by InSite from Hawaiian Telcom, its sole tenant at the Premises, for the period December 30, 2014-December 29, 2020. As you will note, **the rents received for this six (6) year period total to \$15,524.18.**
8. As the result of its 2019 discussions with DLNR, InSite formed InSite Hawaii, LLC, a Delaware corporation ("InSite Hawaii") in July of 2019. InSite Hawaii qualified to do business in Hawaii in October 2019 and filed its Application for a Certificate of Authority with the Hawaii Public Utilities Commission on August 6, 2020 (the "Application"). If InSite Hawaii's application is approved, it will pursue a Replacement Lease with DLNR with respect to the Premises. However, the finalization of that Lease must include terms, including financial terms, that make sense for both parties. As you will note from the enclosed, confidential Tower Cash Flow or "TCF" calculations, after site operating and maintenance expenses (which do not yet include ground rent or a revenue share given that the Replacement Lease has not yet been negotiated), InSite nets only \$62.69 per month, \$752.28 annually, from operating the Premises. **While AT&T has expressed interest in co-locating on the Premises to the benefit of both DLNR and InSite, it will not commit to entering into a license agreement absent the finalization and execution of a Replacement Lease by InSite and DLNR.**

TOWERS • DAS

1199 N. Fairfax Street • Suite 700 • Alexandria, VA 22314
703.535.3009 • insitewireless.com



Mr. Russell Y. Tsuji
September 28, 2020
Page 3

9. In the interim and while InSite awaits the PUC's decision on InSite Hawaii's PUC Application, InSite proposes as follows: not later than October 31, 2020, InSite will make a lump sum payment of \$7,762.09 to DLNR, which sum represents fifty percent (50%) of all rents received by InSite pertaining to the Premises for the period December 30, 2014 through December 29, 2020, in full and final settlement of the amount due for InSite's occupancy of the Site for such six year period. In the interim, DLNR and InSite will commence negotiations with respect to the Replacement Lease such that, upon the PUC's approval of InSite Hawaii's Application, the Replacement Lease would be complete pending only submission to the Board of Land and Natural Resources by the DLNR Staff for the Board's final review and approval.

InSite looks forward to working with DLNR toward a mutually-satisfactory resolution of this matter. I personally appreciate the opportunity to work with you and your team again on another transaction to the mutual benefit of DLNR and InSite.

Best regards,

A handwritten signature in black ink, appearing to read "Roni".

Roni D. Jackson
General Counsel

A black rectangular redaction box covering contact information, likely a phone number and email address.

Enclosures

cc: Kevin E. Moore/DLNR
Michael H. Ferreira/DLNR
Rosemary Fazio, Esq./Ashford + Wriston

TOWERS • DAS

1199 N. Fairfax Street • Suite 700 • Alexandria, VA 22314
703.535.3009 • insitewireless.com

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

_____, 2016

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

PSF No.: 15KD-008

Kauai

Sale of Lease at Public Auction for Telecommunications Purposes; Issuance of After-the-Fact Revocable Permit to InSite Towers Development, LLC, for Telecommunication Purposes, Retroactive to November 26, 2014, Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-4-001:016, 017 and other portions of plat 016.

APPLICANT:

InSite Towers Development, LLC, a Delaware limited liability company.

LEGAL REFERENCE:

Sections 171-13, -14, -16, -17, -41 and -55, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hanapepe, Waimea, Kauai, identified by Tax Map Keys: (4) 1-4-001:016, 017 and other portions of plat 016 as shown on the attached map. (**Exhibit A**).

AREA:

Item:	Area:
Puu Ka Pele Microwave Station Site	4,200 sf
Puu Ka Pele Microwave Tower Site	1,225 sf
Access Road	5,235 sf
Easement A	8,526 sf
Easement B	2,101 sf
Easement C	8,260 sf
Total:	29,547 sf

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

The site is developed with a microwave station, microwave tower and access road constructed under expired General Lease No. S-3795, to Hawaiian Telcom, Inc., Lessee, for telecommunication purposes. The lease expired on November 25, 2014.

LEASE CHARACTER OF USE:

Telecommunication purposes.

LEASE TERM:

55 years.

LEASE COMMENCEMENT DATE:

The date of sale if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL LEASE RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

METHOD OF LEASE RENT PAYMENT:

Semi-annual payments, in advance.

LEASE RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, and 50th years of the lease term, by staff or independent appraisal.

LEASE PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – electricity

Existing Improvements – Microwave station, microwave tower and related infrastructure

Legal access to property – Staff has verified that there is legal access to the property off of Kokee Road.

Subdivision – Staff has verified the premises are located in the conservation district and therefore not subject to county subdivision requirements.

Encumbrances – Staff has verified that the site is located within the boundaries of the Puu Ka Pele Park set aside to _____ pursuant to Executive Order No. 69 dated November 10, 1919.

REVOCABLE PERMIT COMMENCEMENT DATE:

Retroactive to November 26, 2014.

REVOCABLE PERMIT MONTHLY RENTAL:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

REVOCABLE PERMIT SECURITY DEPOSIT:

Twice the monthly rent.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT FOR LEASE AND REVOCABLE PERMIT:

In accordance with Hawaii Administrative Rules Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47, that states “lease of State land involving negligible or no expansion or change of use beyond that previously existing.” (**Exhibit B**).

The premises are located within the conservation district. However, the prior lease for the premises was issued in 1963, before the enactment of the conservation district laws. As such, staff believes the premises are “grandfathered” for leasing as an economic unit but is soliciting comments from the Office of Coastal and Conservation Lands on the project.

DCCA VERIFICATION FOR REVOCABLE PERMIT:

InSite Towers Development, LLC:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

REMARKS:

General Lease No. S-3795 was issued to a predecessor of Hawaiian Telcom, Inc. (HTI) on November 26, 1963 for a term of 50 years. At its meeting of December 13, 2013, Item D-3, the Board approved a one-year holdover of the lease to HTI. On October 24, 2014, under agenda item D-9, the Board approved the assignment of the lease (along with other microwave tower leases on State lands) from HTI to InSite Towers Development, LLC (InSite). However, General Lease (GL) No. S-3795 expired a month later on November 25, 2014 before the documentation of the assignment could be finalized. Nevertheless, InSite assumed control of the premises pursuant to the Board's consent to the assignment, ~~continues to pay the last rent established under expired GL No. S-3795 (\$2,000 per year),~~ and continues to operate a microwave station and tower there.

Staff has been in communication with InSite about the possibility of a direct negotiation lease of the premises, however, InSite has not pursued this option. Accordingly, staff recommends putting a lease of the site out for public action. In the interim, InSite has requested a month-to-month revocable permit to continue its use of the premises. The standard revocable permit provisions prohibit subleasing or assignment of a revocable permit. In this case, however, InSite and HTI contemplated a sublease back to HTI, and the Board action of October 24, 2014 approved the sublease back to HTI on the condition that the Board participate in the sublease rents. Accordingly, staff is recommending that the revocable permit specifically authorize a sublicense to HTI, subject to the same rent participation that was set forth in the October 24, 2014 Board action (30% of gross rents of the first sublease, 40% of the gross rents from the second sublease, and 50% of the gross rents from the third and any subsequent sublease).

Upon the expiration of GL No. S-3795, the ~~improvements equipment building located on the premises, consisting of a microwave station, tower and related infrastructure but not the tower and related improvements which are owned by InSite,~~ reverted to State ownership. Staff will request an appraisal to determine the upset rent to charge for the improved property at auction, and will also request the appraiser to determine the appropriate rent to charge for the revocable permit from November 26, 2014 going forward. InSite will be credited for the rental payments it has continued to make after the expiration of GL No. S-3795.

General Lease No. S-3795 was an older form lease that did not require any evaluation of hazardous materials on the premises by the lessee at lease termination. Staff has discussed with _____ the possibility of it paying for a Phase I Environmental Site Assessment of the premises to establish a baseline prior to the issuance of a new lease. If _____ is not the successful bidder at

Commented [RJ1]: Kevin—Per our TC, the RP Rent will be retroactive to 11/26/14 and a true-up payment will be required upon execution of the RP. Please advise if this understanding is incorrect.

Commented [RJ2]: Per Section 15 of the Ground Lease which includes a deletion (initialed by both parties) of the references to "improvements" at the premises, but retains the reference to buildings located thereon.

~~auction for the lease, the auction package will require the successful bidder to reimburse _____ for this expenditure.~~ As a courtesy, InSite provided a copy of the Phase I Environmental Site Assessment issued by The Lotis Engineering Group, P.C. on February 13, 2014, together with Lotis' Reliance Letter issued to InSite on April 9, 2014, for the Board's reference.

InSite has 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.

InSite and its affiliates now owns and operates ~~nearly 800~~over 1,300 wireless communications sites through the United States, Puerto Rico, and the U.S. Virgin Islands. InSite 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 and casinos, airports, sports stadiums, and transit systems.

Comments were solicited from the agencies below with the results indicated:

Agency:	Comment:
Division of Forestry and Wildlife	
Office of Conservation and Coastal Lands	
State Parks	
Historic Preservation	
Engineering	
Office of Hawaiian Affairs	
Planning Department	
Public Works Department	
Board of Water Supply	

The proposed use has continued since 1963 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
3. Declare that, after considering the potential effects of the proposed disposition as

provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

4. Authorize the sale of a lease at public auction covering the subject area for telecommunication purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current telecommunications general lease form, as may be amended from time to time;
 - b. ~~If _____ is not the successful bidder at auction, the successful bidder shall reimburse _____ for the actual cost incurred in conducting a Phase I Environmental Site Assessment of the premises.~~
 - e**b**. Review and approval by the Department of the Attorney General; and
 - e**c**. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance after-the-fact of a revocable permit to InSite Towers Development, LLC retroactive to November 26, 2014 covering the subject area for telecommunication purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

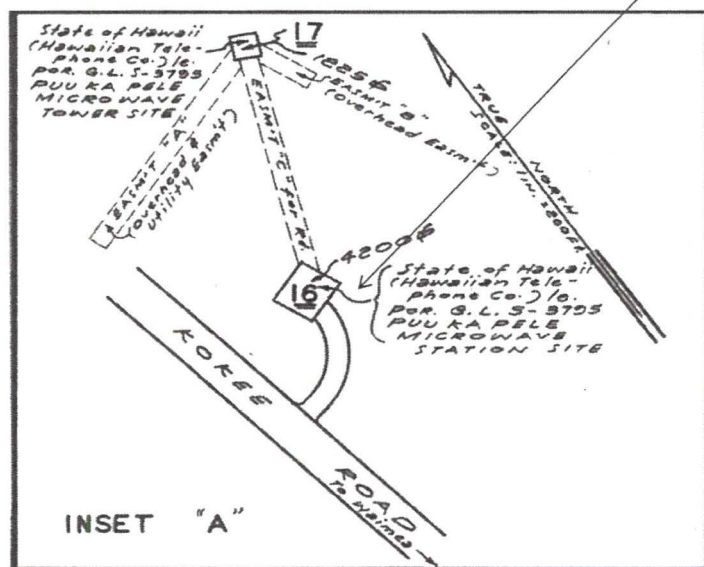
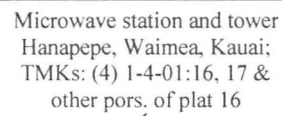


EXHIBIT A

BLDGID	Customer Name		12/30/2014-12/29/2015	12/30/2015-12/29/2016	12/30/2016-12/29/2017	12/30/2017-12/29/2018	12/30/2018-12/29/2019	12/30/2019-12/29/2020	Grand Total
HI029	Hawaiian Telcom	Annual Rent	2,400.00	2,472.00	2,546.16	2,622.54	2,701.22	2,782.26	15,524.18
		HI Tax	99.98	102.98	106.07	109.25	112.53	131.09	661.90
		Payment	(2,499.98)		(2,575.39)	(5,384.03)		(5,727.11)	(16,186.51)
Grand Total			-	2,574.98	76.84	(2,652.24)	2,813.75	(2,813.76)	(0.43)

Monthly TCF Breakdown**HI029 Kapele; Expired General Lease No. S-3795****as of September 2020**

Revenue	HI029	Notes
HI Telecom	\$231.85	
Total Revenue	\$231.85	

Expenses	HI029	Notes
Ground Rent	\$0.00	
Rev Share	\$0.00	
Insurance	\$4.74	
Maintenance	\$164.42	
Total	\$169.16	

TCF (monthly)	\$62.69	
TCF (Annualized)	\$752.28	

EXHIBIT 7

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 30, 2020

Roni Jackson, General Counsel
InSite Towers Development, LLC
1199 N. Fairfax Street, Suite 700
Alexandria, VA 22314

Subject: InSite Towers Development, LLC's Use of State Land under Expired General Lease No. S-3795, Hanapepe Microwave Tower Site and Linking Easements A and B, Hanapepe, Waimea, Kauai, TMKs: (4) 1-4-001:016, and 017 and other portions of plat 001.

Dear Ms. Jackson:

Thank you for your letter of September 28, 2020 responding to our demand letter of May 18, 2020, which was received by InSite Towers Development, LLC (InSite) on May 26, 2020.

As you are aware, our May 18, 2020 letter required InSite to:

1. Pay interim rent to the State of Hawaii, Department of Land and Natural Resources, in the amount of \$16,320 for the period November 26, 2014 through November 25, 2020 within 30 days of its receipt of the letter; and
2. If it remained interested in a direct lease of the premises, provide the name of an InSite affiliate registered with the Public Utilities Commission as a public utility and evidence of its registration within 60 days of its receipt of the letter.

InSite did not timely comply with either requirement. In fact, we received no communication from InSite at all until your letter of September 28, more than four months after InSite received our May 18 letter. In the interim, New Cingular Wireless PCS, LLC (New Cingular) submitted an application for a direct lease of this site on September 1, 2020 and we are now preparing a staff recommendation to the Board of Land and Natural Resources (Board) to approve the lease, collect unpaid back rent from InSite and issue InSite a notice to vacate the premises. We will notify you when the matter is placed on a Board agenda and InSite will have an opportunity to address any concerns to the Board at a public meeting.

EXHIBIT 7

Roni Jackson, General Counsel
InSite Towers Development, LLC
September 30, 2020
Page 2

We dispute a number of the assertions in your September 28 letter, chief among them that our staff instructed you by telephone not to pay rent. Mr. Moore's emails to you of July 10, 2019, August 23, 2019 and August 26, 2019 were a clear indication that the department was not agreeable to InSite's use of the premises without payment of rent. Yet InSite continued to occupy and use the premises without any offer to address outstanding rent until your September 28 letter. As noted above, the issue of back rent owed by InSite will be addressed at an upcoming Board meeting to consider the direct lease to New Cingular. As such, we are not able to accept the rent offer included in your September 28, 2020 letter.

Very truly yours,

Russell Tsuji

Russell Y. Tsuji
Land Division Administrator

cc: Kauai District Land Office

EXHIBIT 8



ASHFORD + WRISTON
A LIMITED LIABILITY LAW PARTNERSHIP LLP

EXHIBIT 8

ROSEMARY T. FAZIO
A Law Corporation
Direct: (808) 539-0415
rfazio@awlaw.com

November 24, 2020

Russell Y. Tsuji
Land Division Administrator
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Re: Expired General Lease No. S-3795 (Ka Pele)

Dear Mr. Tsuji,

This letter follows your recent call with my colleague, Naomi Kuwaye.

DLNR's perspective differs from InSite's understanding of the situation. Nevertheless, InSite believes it to be appropriate to pay the rent under expired Lease No. S-3795 for the period from December 30, 2014, the date on which InSite acquired the site from Hawaiian Telcom, through December 31, 2020. To that end, enclosed is a check (InSite Wireless Check No. 067836 dated November 10, 2020) in the amount of \$15,524.18. This amount is 100% of all rent collected by InSite during this period from Hawaiian Telcom, its sole tenant at the site, during the aforementioned six year period, and does not reflect any offset(s) or deduction(s) for site operating and maintenance expenses incurred by InSite during this time.

Should you have any questions, please do not hesitate to contact Ms. Kuwaye or me. Thank you for your attention to this matter.

Very truly yours,
ASHFORD & WRISTON
A Limited Liability Law Partnership LLP

By 
ROSEMARY T. FAZIO

RTF:lms

cc: Daniel A. Morris, Esq.

MAILING ADDRESS

Post Office Box 131 / Honolulu, HI 96810

STREET ADDRESS

First Hawaiian Center / 999 Bishop Street, Suite 1400 / Honolulu, HI 96813

T 808 539-0400 / F 808 533-4915 / E atty@awlaw.com / www.ashfordwriston.com

2609580v2

Ent	Name	Acct No	Invoice	Date	P.O. Num	Reference	Amount	Discount	Net
HI029	Kapele RS		PIREDLEASE	11/6/2020		FINAL SETTLEMENT	15,524.18	0.00	15,524.18
<p><i>In Full & Final Settlement; Expired Lease No. S-3795</i> <i>12/30/14 - 12/29/20</i></p>									
Payor: InSite Wireless Group, LLC				Date	Check No.		Check Amount		
Payee: State of Hawaii DLNR				11/10/2020	067836		15,524.18		

Retain this statement for your records

InSite Wireless Group, LLC
1199 N. Fairfax Street
Suite 700
Alexandria, VA 22314

Wells Fargo Bank
Baltimore, MD 21202

65-320
550

703-535-3009

Date
11/10/2020

Check No.
067836

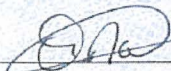
Check Amount
\$15,524.18

Fifteen Thousand Five Hundred Twenty Four AND 18/100 Dollars

Pay to the order of:

State of Hawaii DLNR
Dept of Land & Nat Resources
P.O. Box 621
Honolulu, HI 96809

TWO SIGNATURES REQUIRED OVER \$50,000



VOID IF NOT CASHED WITHIN 180 DAYS WITHIN DATE OF ISSUANCE

Full & Final Settlement: Expired Lease No. S-3795; 12/30/14 - 12/29/20

EXHIBIT 9

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER

AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

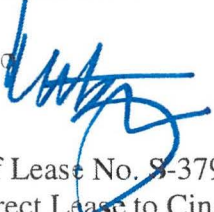
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

(P)20-182

NOV 12 2020

MEMORANDUM

TO: Suzanne D. Case, Chairperson
Department of Land and Natural Resources

FROM: Curt T. Otaguro
Comptroller 

SUBJECT: Termination of Lease No. S-3795 by InSite Towers Development, LLC;
Issuance of Direct Lease to Cingular Wireless PCS, LLC
Tax Map Keys: (4) 1-4-001:016, 017 and (4) 1-4-001:002 pors.
Hanapepe, Waimea, Island of Kauai

This is in response to the Department of Land and Natural Resources' (DLNR's) October 26, 2020, letter (Ref. No.: 20KD-080) requesting comments on the subject request involving State lands.

The State Radio Program under the Office of Enterprise Services (ETS) requests consideration for reset aside of the subject properties to the Department of Accounting and General Services (DAGS). These properties and the existing improvements will be used to expand communication coverage of the Statewide First Responder Communications System which supports various Federal, State, and County agencies.

This communication facility would provide connectivity between ETS' existing facilities at Kukuilono Park and our public safety partners at the end of the canyon road in the area known as Kokee, allowing for improved coverage into Kalalau Valley, Waimea Canyon, and towards Polihale Beach. Communications coverage in these areas are crucial for law enforcement (including DLNR's Green-Net), fire-fighting, and search and rescue efforts.

DAGS currently has a facility (Kukui), approximately two (2) miles down the road from the subject properties on a site identified by TMK (4) 1-2-001:009. Although the Kukui facility

Suzanne D. Case
(P)20.182
Page 2

currently provides connectivity between Kukuilono and Kokee, it does not provide the coverage that the subject properties would (see attached site map). In addition, the Kukui site will require significant investment in the near future to renovate and replace the existing equipment building and radio tower. While ETS staff has not had a chance to assess the physical condition of the facilities at the subject location, it is anticipated that the State would see significant savings due to reduced capital investment needed to maintain this facility compared to Kukui. State funding would also be preserved by reducing the number of sites that needs to be developed that would otherwise be required to provide similar communications coverage.

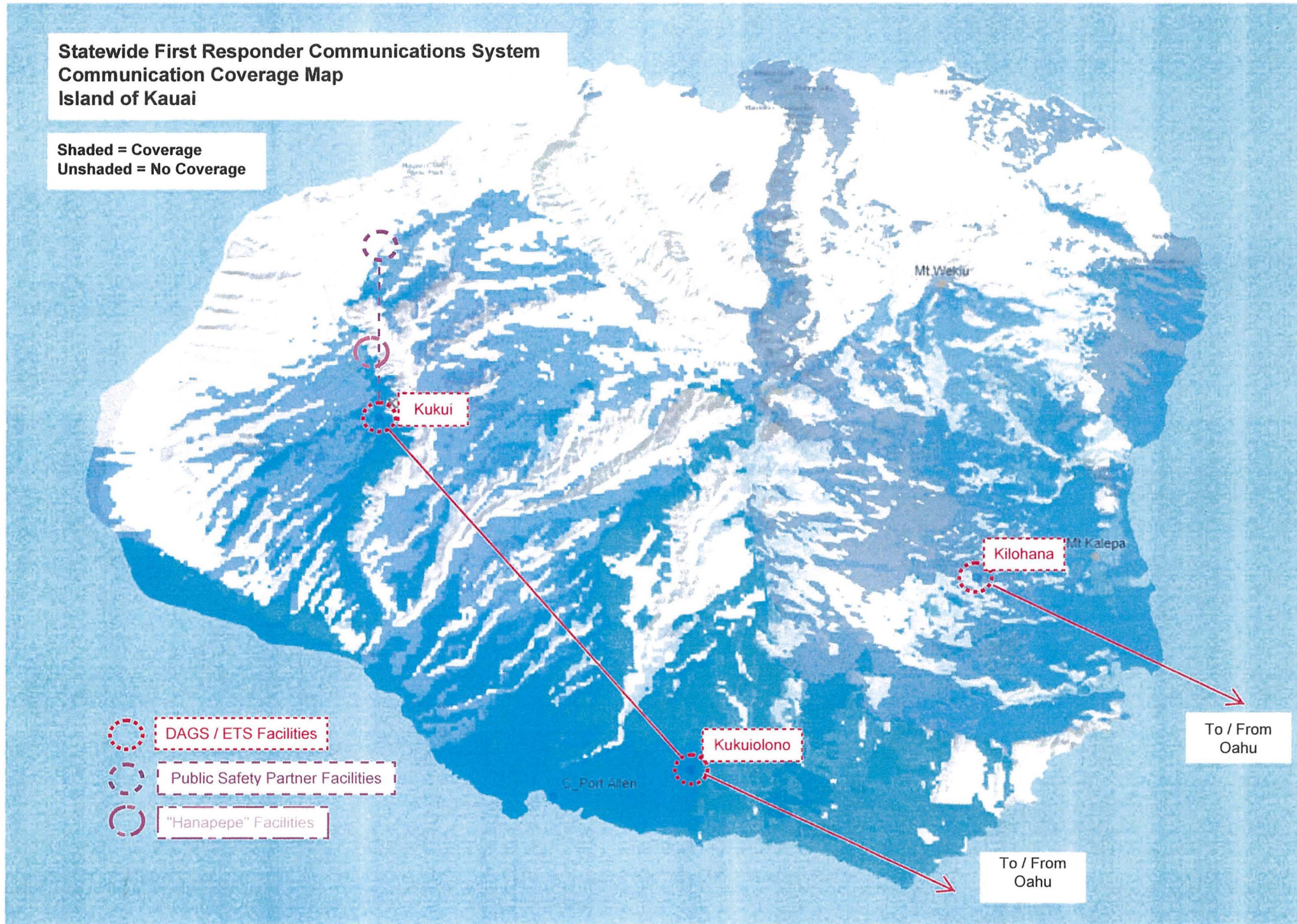
If you have any questions, your staff may call Mr. David DePonte of the Public Works Division at (808) 586-0492 or email to david.c.deponte@hawaii.gov, or Mr. Vincent Krog, State Radio Engineer, of the Office of Enterprise Technology Services at (808) 492-0807 or email at vincent.e.krog@hawaii.gov.

Attachments

- c: Mr. Russell Tsuji, DLNR Land Division w/ attachments
- Mr. Luke Sarvis, DLNR Land Division w/ attachments
- Mr. Douglas Murdock, ETS w/ attachments
- Mr. Vincent Krog, ETS w/ attachments

Statewide First Responder Communications System Communication Coverage Map Island of Kauai

Shaded = Coverage
Unshaded = No Coverage



To / From
Kukuilono

EXHIBIT 10



OFFICE OF THE MAYOR
THE COUNTY OF KAUAI

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

EXHIBIT 10

December 14, 2020

Suzanne D. Case
Chairperson
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

RE: AT&T HIL04129 Waimea 2 - Request for State Lands Application, TMK:1-4-001:016, 017

Dear Chair Case,

I am writing in support of AT&T's application with the Department of Land and Natural Resources (DLNR) to lease state lands at TMK:1-4-001:016, 017 to improve wireless telecommunications services on Kaua'i. AT&T proposes to use the lands and the existing tower and supporting infrastructure located on the property to deploy FirstNet and commercial wireless services in the remote areas of Kōke'e and Waimea Canyon.

This deployment directly responds to Kaua'i County's concerns of the lack of wireless coverage in the area and the lack of appropriate technology to support our public safety officials during search and rescue missions. Improved wireless services and FirstNet coverage would allow Kaua'i County's search and rescue teams to more readily and rapidly find lost individuals, perform other critical public safety operations, and reduce risks to the general public and responders. Furthermore, enhanced wireless services would enable the general public to place 9-1-1 calls for emergency services in this heavily trafficked yet remote area.

Kaua'i County is in support of FirstNet, the nationwide public safety broadband network being built by AT&T; however, there is much to be done on Kaua'i. In this age of technology, Kaua'i County's public safety should be equipped with all tools available to keep our community – residents and tourists – safe. We appreciate the efforts to improve wireless coverage in Kaua'i County with this in mind.

For these reasons, I strongly encourage the Board of Land and Natural Resources to approve AT&T's application.

Thank you for your consideration.

Derek S. K. Kawakami
Mayor, County of Kaua'i

