

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

February 23, 2024

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

PSF No.: 23HD-083

HAWAII

Issuance of Direct Lease to InSite Hawaii, LLC for Telecommunication Station and
Telecommunication Tower Purposes, Humuula, North Hilo, Hawaii, Tax Map Key:
(3) 3-9-002: 012.

APPLICANT:

InSite Hawaii, LLC (InSite), a Delaware limited liability company.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Government lands of Humuula situated at North Hilo, Hawaii, identified by Tax
Map Key: (3) 3-9-002: 012, as shown on the attached map labeled Exhibit A.

AREA:

1.047 acres (45,607 sq. ft.), more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-20a

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:

At its meeting of December 7, 2023, under Agenda Item D-4, as amended, the Board of Land and Natural Resources (Board) authorized the issuance of a revocable permit to InSite Towers Development, LLC as a stopgap disposition while this request for a new lease is processed and a right-of-entry (ROE) permit to the existing sublessee, Cellco Partnership dba Verizon Wireless (Cellco), to allow it to continue to operate its existing telecommunication infrastructure on the tower structure.

CHARACTER OF USE:

Telecommunication station and telecommunication tower purposes.

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th, and 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

REMOVAL BOND:

InSite shall be required to post a removal bond under the lease in an amount satisfactory to the Department of Land and Natural Resources to ensure the

complete removal of all improvements from the premises at lease expiration or earlier termination (InSite Towers Development, LLC (ITD) has submitted a removal bond in the amount of \$415,393.00 under expired General Lease S-4130 (GL4130) and will transfer this bond to a new lease if approved).

PROPERTY CHARACTERISTICS:

Utilities – Electric via buried cables.

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

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – RP 7960 to ITD and ROE 4585 to Cellco.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansions or minor change of use beyond that previously existing;" Item 40: "Leases of State land involving negligible or no expansion or change of use beyond that previously existing." (Exhibit B)

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine fair market rent.

REMARKS:

At its meeting on February 25, 1966, under agenda item F-3, the Board approved a lease of the subject land for a fifty-five (55) year term to Hawaiian Telephone Company by direct negotiation for microwave radio station and other radio communications purposes covering approximately 1.047 acres. Hawaiian Telephone Company changed its name several times over the years and is

currently known as Hawaiian Telcom, Inc. (HTI). GL4130 was executed on January 3, 1968.

On March 2, 2009, HTI entered into a license agreement with Cellco for cellular communications purposes, with an effective date of October 1, 2008. Staff was not aware of this agreement at the time, but it was later approved by the Board at its August 9, 2013 meeting, Item D-1. At this meeting the Board also consented to the assignment of GL4130 to Global Tower Assets, LLC (GTA), amended GL4130 to include sandwich rent provisions and correct the termination date, and approved a sublease from GTA to HTI.

At its meeting of October 25, 2013, Item D-9, the Board amended its prior action of August 9, 2013, Item D-17, by changing the approved Assignee/Sublessor for GL4130, from GTA to GTP Structures I, LLC.

At its meeting of October 24, 2014, Item D-8, the Board rescinded its prior actions of August 9, 2013, Item D-17, and October 25, 2013, Item D-9, as HTI would not be consummating the proposed assignments and subleases. Instead, HTI identified a new entity as the Assignee/Sublessor for GL4130. At this meeting, the Board approved the consent to assignment of GL4130 from HTI to ITD, amended GL4130 as noted above, and consented to the sublease of GL4130 from ITD to HTI.

In December 2020, American Tower Corporation (ATC) acquired InSite Wireless Group, the parent company of InSite and ITD. At its meeting of May 26, 2023, Item D-3, as amended, the Board consented to the transfer of 100% stock ownership of ITD, authorized a retroactive ROE to ITD for the premises, and authorized the issuance of a RP to ITD. These dispositions were intended as a stopgap to provide continued tenancy of the premises pending the eventual issuance of a new lease to InSite to replace GL4130 which expired on December 31, 2022.

After the Board's May 26, 2023 approval, the Department of the Attorney General (AG) identified some issues that led to staff requesting the approval be amended. At its December 7, 2023 meeting, Item D-4, the Board clarified that the approval was for consent to the assignment rather than a transfer of stock ownership, authorized a retroactive holdover of GL4130 through December 31, 2023, and authorized the issuance of a RP to ITD and an ROE to Cellco. As noted above, these dispositions were intended as a stopgap pending the issuance of the new lease staff is now recommending.

InSite is now requesting a new lease to operate the existing telecommunication facility. InSite does not intend to make changes to the existing facility, nor add any improvements to the subject area at this time. Pursuant to HRS 171-95(2), the Board may, without public auction, lease to public utilities public lands for terms up to, but not in excess of, sixty-five (65) years at such rental and on such other terms

and conditions as the Board may determine. InSite is eligible for such a lease as it is a registered public utility regulated by the Public Utilities Commission.

The applicant has not had any lease, permit, easement, or other disposition of State lands terminated within the last five years due to noncompliance with such terms and conditions.

Comments were solicited to various State, County, Federal, and community agencies which included the Division of Forestry and Wildlife, the State Historic Preservation Division, Department of Hawaiian Home Lands, Department of Agriculture, Hawaii County Planning Department, Hawaii County Public Works Department, Natural Resources Conservation Service, and the Office of Hawaiian Affairs. If any agency comments or objections are submitted, they will be addressed in this submittal.

The proposed use has continued since 1968 and will continue as is. 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. 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.
2. Subject to the Applicant fulfilling the Applicant requirement listed above, authorize the issuance of a direct lease to InSite Hawaii, LLC 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 lease document 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,

Dan Gushiken

Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

gch

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Exhibit A

**Subject State Parcel
TMK: (3)3-9-002:012**





Exhibit B



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9599

February 23, 2024

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):

Project Title:	Issuance of Direct Lease to InSite Hawaii, LLC for Telecommunication Station and Telecommunication Tower Purposes, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-002:012.
Project / Reference No.:	PSF No. 23HD-083.
Project Location:	Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-002:012.
Project Description:	Issuance of Direct Lease to InSite Hawaii, LLC for Telecommunication Station and Telecommunication Tower Purposes, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-9-002:012.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.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: "Leases of State land involving negligible or no expansion or change of use beyond that previously existing."

Cumulative Impact of Planned Successive Actions in Same Place Significant?:

No. The cumulative impact of planned successive actions on the subject parcels is negligible.

No. The impact to this area will be negligible.

Action May Have Significant Impact on Particularly Sensitive Environment?:

The issuance of a new lease to InSite Hawaii, LLC will result in minimal material change or significant cumulative impact as the prospective Lessee will be utilizing the existing facility that has been in operation for the same use since 1968 with no known significant impacts, whether immediate or cumulative to the natural environment and/or cultural resources. There are no plans to make changes to the existing facility, nor add any improvements to the subject area.

Analysis:

As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond previously existing and will result in no significant impacts to the natural environment and/or cultural resources.

Consulted Parties:

DLNR Division of Forestry and Wildlife, State Historic Preservation Division; Department of Agriculture, Department of Hawaiian Home Lands; Office of Hawaiian Affairs; County of Hawaii Planning Department, Public Works; Natural Resource Conservation Service

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.