

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

January 10, 2025

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

Ref. No. GL4588

OAHU

After the Fact Consent to Two (2) License Agreements under General Lease No. S-4588, Insite Towers Development, LLC, Licensor, to (a) Blow Up, LLC and (b) Polynesian Broadcasting, Inc., as Licensees, Kalawahine and Opu, Honolulu, Oahu, Tax Map Key: (1) 2-5-019: portions of 013.

APPLICANT:

Insite Towers Development, LLC, a Delaware limited liability company, as Licensor; and

(a) Blow Up, LLC, a Hawaii limited liability company, and (b) Polynesian Broadcasting, Inc., a Hawaii for profit corporation, as Licensees.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kalawahine and Opu, Honolulu, Oahu, identified by Tax Map Key: (1) 2-5-019: portions of 013, as shown on **Exhibit A1** and **A2**.

MASTER LEASE AREA:

4.329 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

MASTER LEASE CHARACTER OF USE:

For maintenance and operation of radio-telephone transmission facilities purposes.

LICENSE AGREEMENT CHARACTER OF USE:

Transmission and reception of communications signals, including wireless communication purposes and uses incidental thereto.

TERM OF MASTER LEASE:

65 years, commencing on June 6, 1973 and expiring on June 5, 2038. Last rental reopening occurred on June 6, 2018; next rental reopening is scheduled for June 6, 2028.

TERM OF LICENSE AGREEMENTS and RENT:

Blow Up, LLC

Five (5) years, commencing on November 1, 2024 and expiring on October 31, 2029, at monthly rent of \$1,000.00. Additionally, the license agreement provides for a renewal term of four (4) additional periods of five (5) years each that will commence automatically without further action on the part of Licensor or Licensee, extending the license agreement term, if not terminated, to October 31, 2049, which would extend the license agreement term beyond the expiration date of the master lease of June 5, 2038. Staff is recommending that the requested consent only be applicable up to June 5, 2038, i.e. the expiration of the master lease.

Polynesian Broadcasting, Inc.

Five (5) years, commencing on November 1, 2024 and expiring on October 31, 2029 at a monthly rent of \$1,000.00. Additionally, the license agreement provides for a renewal term of five (5) additional periods of five (5) years each that will commence automatically without further action on the part of Licensor or Licensee, extending the license agreement term, if not terminated, to October 31, 2054, which would extend the license agreement term beyond the expiration date of the master lease of June 5, 2038. Staff is recommending that the requested consent only be applicable up to June 5, 2038, i.e. the expiration of the master lease.

MASTER LEASE ANNUAL RENTAL:

\$39,300.00

RECOMMENDED ADJUSTMENT TO MASTER LEASE RENTAL:

Lessee is required to pay 50% of the prevailing rent for the licensee agreements covered in this submittal to the State, during the effective term of such licensee agreements.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and -16 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, that states, "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". Part 1, Item 40, that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

DCCA VERIFICATION: (for Licensor and Licensees)

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

REMARKS:

The subject lease ("GL 4588") was issued to Hawaiian Telephone Company by direct negotiation in 1973. At its meeting of October 24, 2014, item D-9, the Board gave its consent to the assignment of various leases, one of them being GL 4588, to InSite Towers Development, LLC. At the October 24, 2014 meeting, the Board also authorized the amendment of GL 4588 regarding the sublet provision. The language pertaining to the subletting in the amendment document, which was executed on May 16, 2016, is provided below.

"14. Subletting. The Lessee shall not rent, license, or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and licensee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee and licensee or any subsequent sublessees and licensees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee and licensee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent, license, or sublet all or any portion of the premises.

The Lessor will share in the gross revenues from subleases and licenses at the rate of thirty percent (30%) for the first sublease and license, forty percent (40%) for the second sublease and license, and fifty percent (50%) for the third and subsequent sublease and licenses.”

Currently, there are four active subleases under GL S-4588;¹ to Hochman Hawaii-Three, Inc., the United States Secret Service, Salem Media of Hawaii, Inc. and Blow Up, LLC.² Therefore, the two (2) sublessees mentioned in this request, Blow Up, LLC and Polynesian Broadcasting, Inc. are the fifth and sixth sublessees, which trigger a sandwich rent of 50% to be collected by the State pursuant to the above-mentioned amendment regarding subletting. The Sublessor should remit \$6,000.00 annually (\$500.00 per month) for Blow Up, LLC and \$6000.00 annually for Polynesian Broadcasting, Inc. to the State. This will be an additional sublease to Blow Up, LLC as they are seeking a second site on another tower separate from the tower they are currently occupying. A map showing the proposed locations of the subleases is attached as **Exhibit B**.

As noted previously, both licensee agreements provide options to extend past the term of the master lease GL 4588. Staff recommends that the consents granted by the Board be applicable up to June 5, 2038, i.e., the expiration of the master lease. The Lessee intends to seek a new lease to continue use of the leased premises upon the expiration of GL 4588. Furthermore, Lessee understands that any sublease will be subordinate to the master lease and in the event they do not obtain a new lease, the Lessee will be responsible for the removal of all improvements upon the expiration of GL 4588. The license agreements between the Licensor and Licensees contain the following provision:

20. SUBORDINATION TO GROUND LEASE.

The Parties acknowledge and agree that in the event Licensor’s rights in the Licensed Space and/or any part of the Tower Facility is derived in whole or part pursuant to an underlying lease, sublease, permit, easement or other right of use agreement (a “Ground Lease”), all terms, conditions and covenants contained in this Agreement shall be specifically subject to and subordinate to the terms and conditions of the applicable Ground Lease. In the event that any of the provisions of the Ground Lease are in conflict with any of the provisions of this Agreement (other than those provisions relating to the length of term, termination rights or financial consideration), the terms of the Ground Lease shall control. Further, Licensee agrees to comply with the terms of such Ground Lease as applicable to the access and occupancy of the Licensed Space. Notwithstanding anything contained in this Agreement to the contrary, if the Ground Lease expires or is terminated for any reason, this Agreement shall terminate on the effective date of such termination and Licensor shall have no liability to Licensee as a result of the termination of this Agreement. Licensor is under no obligation to extend the term of or renew the Ground Lease. Licensor shall give Licensee written notice of such

¹ Lessee/Sublessor uses a “License Agreement” in conducting commercial business with other users on the towers, and the subject lease uses “sublease” in the document. In this submittal, both terms are interchangeable.

² A fifth sublicense to Hawaiian Telcom, Inc. will expire on December 29, 2024 and will not be extended.

termination or expiration of this Agreement as a result of the termination or expiration of the Ground Lease as soon as practicable. Unless prohibited by the terms of such Ground Lease, upon Licensee's written request, Licensor shall provide a copy of any applicable Ground Lease with the economic terms and other terms that Licensor deems reasonably confidential redacted.

The Licensor is compliant with all lease terms and conditions. There are no other pertinent issues or concerns regarding the subject issue.

RECOMMENDATION: That the Board

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15 and -16, 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 as a de minimis action.
2. Consent to the license agreement under General Lease No. S-4588 between InSite Towers Development, LLC, as Licensor, and (a) Blow Up, LLC and (b) Polynesian Broadcasting, Inc., as Licensees, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - A. InSite Towers Development, LLC shall remit 50% of the prevailing rent collected under the license agreements to the State;
 - B. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson *km*

RT



TMK (1) 2-5-019:013

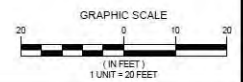
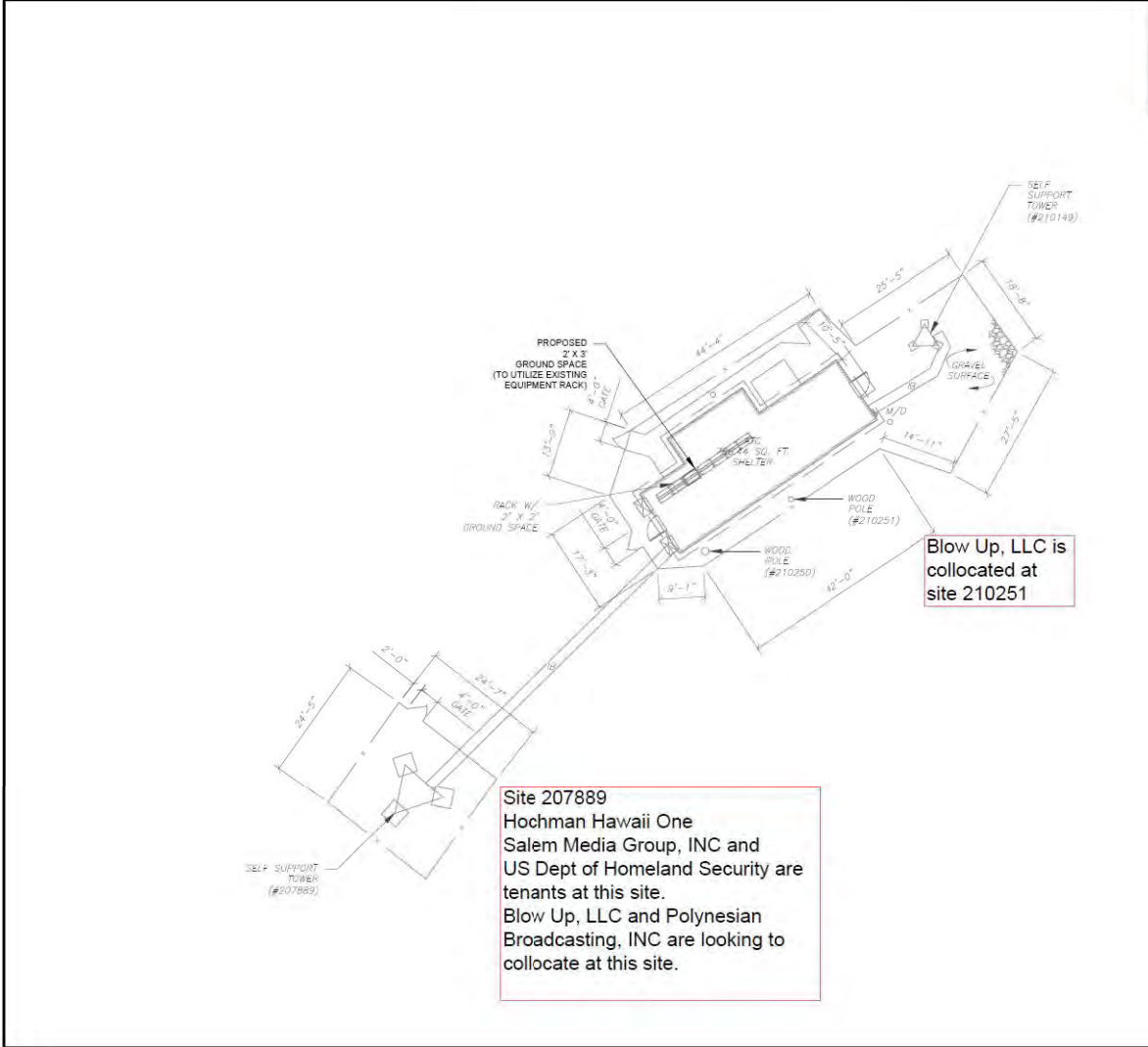
Exhibit A1



(1) 2-5-019: portion of 013

Exhibit A2

Acrobat found comments in the PDF and opened the Comments Pane. Do you want to retain this behaviour?
Yes No



SUITE 100 CARY, NC 27518 PHONE: (919) 469-0112	
THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATIONS AND INSTRUMENTS OF SERVICE ARE THE EXCLUSIVE PROPERTY OF LESSOR/DISTRICT OWNER AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM LESSOR/DISTRICT OWNER. TITLE TO THESE PLANS AND/OR SPECIFICATIONS SHALL REMAIN WITH LESSOR/DISTRICT OWNER WITHOUT PREJUDICE AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.	
ALL MEASUREMENTS AND LOCATIONS USED IN THIS SITE DESIGN ARE APPROXIMATE AND LESSOR/DISTRICT OWNER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO UNDERGROUND FEATURES, INCLUDING BUT NOT LIMITED TO UTILITIES, ROCK FORMATIONS, ETC. THIS SITE DESIGN SHALL NOT BE USED FOR CONSTRUCTION PURPOSES AND LESSEE SHOULD CONTACT AND UTILIZE A UTILITY LOCATOR SERVICE PRIOR TO COMMENCING CONSTRUCTION TO AVOID SERVICE DISRUPTION TO OTHER USERS AND INJURY OR DEATH.	
ATC SITE NUMBER: 207889	
ATC SITE NAME: TANTALUS T 1 HAWAII	
LEGEND GW GROUNDING TEST WELL AV AIR VENT ATS AUTOMATIC TRANSFER SWITCH B BOLLARD C CABINET CS COAX SHROUD CSC CELL SITE CABINET D DISCONNECT E ELECTRICAL F FIBER GEN GENERATOR G GENERATOR RECEPTACLE H4 V HANDHOLE VAULT HFC HYDROGEN FUEL CELL HSM HYDROGEN STORAGE MATERIAL IB ICE BRIDGE K KENTROX BOX LC LIGHTING CONTROL LPG LIQUID PROPANE GAS M METER MTS MANUAL TRANSFER SWITCH OH-W OVERHEAD WIRE P POWER PP POWER POLE T TELCO TRN TRANSFORMER --- BUFFER (PROPERTY LINE) --- GROUND SPACE (LEASE AREA) --- EASEMENT	
DRAWN BY: H. DEGRDOUT DATE DRAWN: 08/11/2021 CUSTOMER: ATC PROJECT NO.: ATC ASSET NO.: 207889	
SITE PLAN LAYOUT	
SHEET NUMBER: SITE-1	AUDITED BY: ON

Exhibit B