

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI 96813

July 11, 2008

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

SUBJECT: Sale of Lease at Public Auction for Telecommunications Purposes on Lands Within Līhu'e-Kōloa Forest Reserve, Kawaihau District, Kaua'i, Tax Map Key: (4) 4-2-001: por.2.

REQUEST:

Sale of lease at public auction for telecommunications purposes.

LEGAL REFERENCE:

Sections 171-14, 16, & 17, and other applicable sections of Chapter 171, Section 183-1.5, and other applicable sections of Chapter 183, Hawaii Revised Statutes, as amended.

LOCATION:

Līhu'e-Kōloa Forest Reserve: Portion of Government lands of Forest Reserve situated at Kawaihau, Kaua'i, as identified by Tax Map Key: (4) 4-2-001: por 2 and as shown on the attached map labelled Exhibit "A".

AREA:

19,200 square feet, more or less, to be determined by DAGS, Survey Division.

ZONING:

State Land Use District: Conservation, Protective subzone
Kaua'i County: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaiian Admission Act

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

CURRENT USE STATUS:

Līhu'e-Kōloa Forest Reserve pursuant to Governor's Proclamation dated June 05, 1909; Special Use Permit (SUP) granted through the Forest Reserve System by authority of the Board of Land and Natural Resources, Mr. Jack R. Hendrickson of Mid Pacific Communications, Inc., Permittee, for the purpose of operating and maintaining a telecommunications link site - SUP effective from July 14, 2008 to July 13, 2009.

CHARACTER OF USE:

Telecommunications purposes.

LEASE TERM:

Thirty (30) years.

COMMENCEMENT DATE:

The date of sale if the current Permittee 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 RENT AND COST OF IMPROVEMENTS:

To be determined by independent appraisal establishing fair market rent and depreciated cost of improvements, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

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

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – None.

Existing Improvements – One (1) 14' diameter geodesic dome, one (1) 10' x 10' x 20' communications shed with dish and Yagi antennas attached to the rooftop and/or sidewalls, one (1) 12' x 12' helipad, one (1) solar panel frame, twelve (12) 175 watt solar panels, one (1) 35 pound, 900 watt wind generator.

Legal access to property – No vehicular access - helicopter access only.

Encumbrances – As noted above.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Environmental Impact Assessment published May 1984 with a finding of no significant impact (FONSI).

Existing Conservation District Use Permits (CDUP) for the site:

KA-1701 BLNR approved 12/14/1984 and amended 06/28/1985

KA-2668 BLNR approved 02/24/1994

Site Plan Approval to current Permittee from Office of Conservation and Coastal Lands dated 07/07/2006.

REMARKS:

In 1984, Princeville Communications Company (later known as Princeville Cablevision) requested the use of State land for placement of a television relay station on Mt. Wekiu. A CDUP was approved for this use in 1984 and amended in 1985. On June 14, 1985, under agenda item F-14, the BLNR approved the award of a 40-year direct lease (General Lease S-5208) to Princeville Communications Company.

In January 1992, Kaua'i Cablevision took over ownership of the facility at Mt. Wekiu from Princeville Communications and its lease on the land with the State (GL S-5208). In October 1992, Kaua'i Paging and Communications, Inc. negotiated a Site Lease Agreement with the new leaseholder (Kaua'i Cablevision) for co-location on the property. In January 1993, Kaua'i Paging and Communications, Inc. proceeded to construct facilities on the site without possession of its own CDUP. A Conservation District Use Application (CDUA), After-the-Fact, was initiated in October 1993 and a public hearing was held in January 1994 in association with the application. At its February 23, 1994 meeting, the BLNR found the construction to be a violation of the administrative rules for the Conservation District, Title 13, Chapter 2. Kaua'i Cablevision, the initial leaseholder, was fined \$2,000 for this violation pursuant to Chapter 183-41(e), Hawaii Revised Statutes, as amended, by the BLNR. The CDUA submitted by Kaua'i Paging and Communications, Inc. was approved on February 24, 1994 (see above). GL S-5208 was cancelled by the State on October 09, 2003 for default of payment by the lessee, Kaua'i Cablevision.

At its July 14, 2006 meeting, the BLNR approved the issuance of a Special Use Permit (SUP) to Mr. Jack Hendrickson of Mid Pacific Communications, Inc. The purpose of the SUP was to conduct a six-month study of solar power generation potential and data transmission issues to determine the feasibility of using the existing, but abandoned telecommunications site to transmit and receive high capacity Ethernet digital data from Mt. Wekiu to other locations on Kaua'i. Due to inclement weather, the Permittee was unable complete his study and his SUP was renewed for another year. The Permittee has stayed current on his monthly rent payments and has shown cooperation in voluntarily removing debris and repairing infrastructure left by former tenants. The SUP to Mid Pacific Communications, Inc was renewed again and currently expires on July 13, 2009. The Division of Forestry and Wildlife, with the assistance of the Land Division, wishes to complete the public auction process and develop a lease agreement with the successful bidder. No other parties have expressed an interest in using this site at this time.

Agency and Permittee comments: A draft of this Board submittal was sent to eight State agencies, four Kaua'i County agencies, and the Office of Hawaiian Affairs for review and comment. Seven responses were received; two cited no comments, two cited no objections, and three provided comments. Comments received were (1) from OCCL: Informing that the operator should be made aware of the need to comply with CDUP conditions and also to consult with OCCL for any future actions at the site; (2) from SHPD: The agency believes that no historic properties will be affected. Also includes direction that if any historic resources are identified during activities at the site, all work in the immediate vicinity is to cease and the SHPD Kaua'i Section is to be contacted immediately; and (3) from the County of Kauai Department of Water: Informing the applicant that water service is not available at the site. These points shall be considered in the development of the Lease. The current Permittee has found the site to be acceptable for the intended use and is interested in pursuing continued use of the site (Exhibit "B").

Over the past two years, the current Permittee has repaired existing facilities and made some improvements on the premises in accordance with the SUP. Staff recommends the Board authorize an appraisal to be done on the depreciated cost of the physical improvements to the facilities (Cost). Permittee will be asked to provide records regarding the Cost of the improvements. Further, the Chairperson's decision on the amount of the Cost shall be final and binding on the successful bidder and the Permittee. The successful bidder, provided it is not the Permittee, shall deposit the Cost, in addition to other required charges as stipulated on the conditions of sale, with the Department on the date of the auction. Upon commencement of the new lease, provided the Permittee is not the successful bidder, the Permittee will be reimbursed the Cost as approved by the Chairperson.

RECOMMENDATIONS: That the Board:

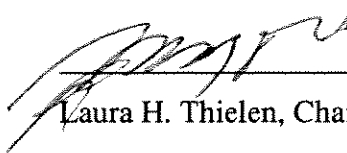
1. Authorize the sale of a lease at public auction covering the subject premises for a high capacity wireless data and telecommunications link site under the terms and conditions listed above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current commercial general lease form, as may be amended from time to time.
 - b. The lessee shall make available to other operators of similar facilities to be located on the premises. On the premise that the State does not own any improvement, the co-location of such operators shall not trigger any sandwich rent receivable by the State.
 - c. Terms and conditions of Conservation District Use Permits KA-1701 approved by the Board at its meeting on December 14, 1984 and amended June 25, 1985, and KA-2668 approved by the Board at its meeting on February 24, 1994.
 - d. The lessee shall be properly licensed by the Federal Communications Commission prior to broadcasting from the premises.
 - e. The subject premises has no vehicular access - helicopter access only.
 - f. Precautions will be taken, including consultation with DOFAW and the Kauai Invasive Species Committee, to prevent introduction of plants or animals not naturally present in the area. Should an infestation develop, the successful bidder is responsible for eradication by methods to be specified by DOFAW.
 - g. Review and approval by the Department of the Attorney General; and
 - h. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Paul Conry
Administrator

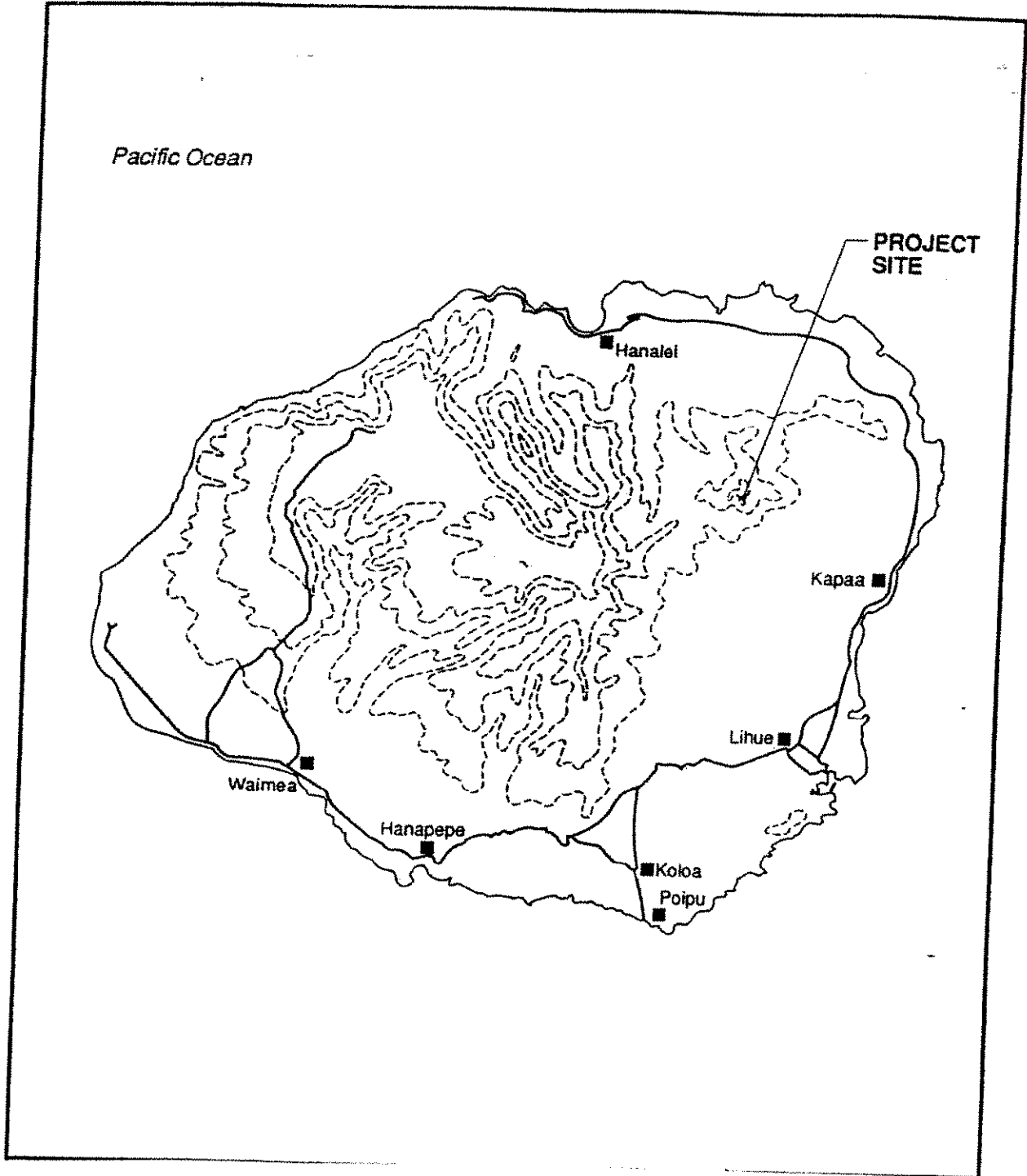
APPROVED FOR SUBMITTAL:



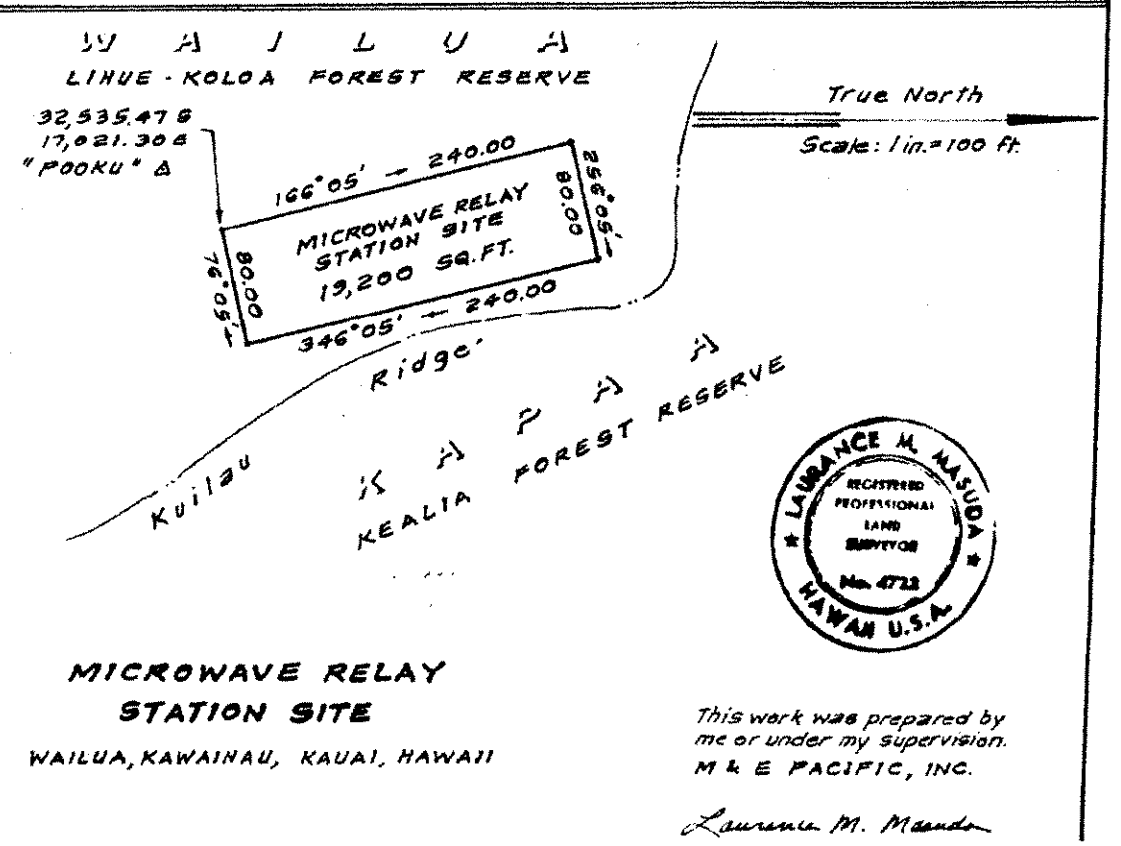
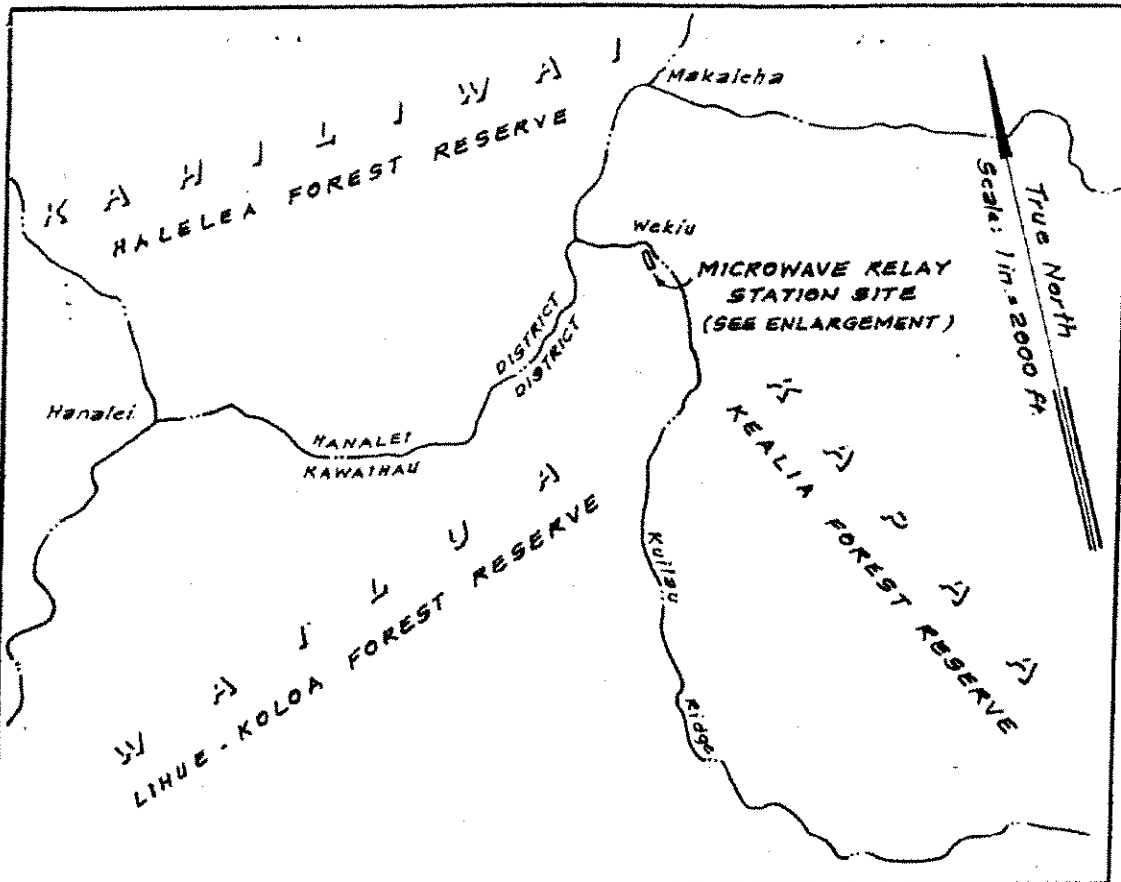
Laura H. Thielen, Chairperson

333.3500/001

EXHIBIT "A"



Location Map



DESCRIPTION OF
MICROWAVE RELAY STATION SITE

Situated at Wailua, Kawaihau, Kauai, Hawaii

Being a portion of the Government (Crown) Land of Wailua

Being also a portion of Lihue-Koloa Forest Reserve covered by Governor's Proclamation dated June 5, 1909 and modified by Governor's Proclamation dated June 21, 1920.

Beginning at the southwest corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 32,535.47 feet South and 17,021.30 feet East, thence running by azimuths measured clockwise from True South:

1. 166° 05' 240.00 feet along the remainder of Government Land;
2. 256° 05' 80.00 feet along the remainder of Government Land;
3. 346° 05' 240.00 feet along the remainder of Government Land;
4. 76° 05' 80.00 feet along the remainder of Government Land to the point of beginning and containing an area of 19,200 Square Feet.

TMK: 4-2-01:2 (por)
January 11, 1985



Laurance M. Masuda
Registered Land Surveyor
Certificate No. 4722



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Alvin M. Kyono
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3060 Eiwa Street, Room 306
Lihue, Hawaii 96766
Ph: (808) 274-3436, Fax: (808) 274-3438

email: Alvin.M.Kyono@hawaii.gov

June 5th, 2008

Re: Wekiu Lease

Dear Alvin;

I wanted to let you know that our work on Mt. Wekiu, in spite of the storm damage of last December, has turned out to be successful.

We have found that a combination of solar panels and a very small wind turbine attached to the shed can generate enough electrical power to our equipment and allow us to maintain three radios in continual operation, even in condition where the mountain is covered by clouds for several days at a time. We would like to continue to research increasing the electrical output of this system so that it can support up to six radios. This may entail adding a second small wind turbine to the building. The wind turbines are a little over three feet in length and weigh about 21 pounds and easily attach to a 2" pipe mount attached to the shed. An addition of this turbine will not impact the site visually or structurally as the pipes are already in place.

We therefore would like to pursue renewing the lease with the DLNR, and request that you proceed in the process of renewing the permit for an additional year under the same terms and conditions.

If you have any questions please contact me at our office in Lihue.

Thanks for all your help.

Jack Hendrickson
President & CEO
Mid Pacific Communications Inc

A handwritten signature in black ink, appearing to read "Jack Hendrickson", is written over a horizontal line.

/ June 6th, 2008