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

July 22, 2011

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

OAHU

Amend Prior Chairperson's Action dated February 22, 2011; Consent to Assignment and Assumption of Contract (Mt. Kaala: Hawaiian Telcom License Agreement); General Lease No. S-4223, Kahuku Wind Power, LLC, Assignor; Hawaiian Electric Company, Inc., Assignee; Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:portion of 024.

Sublease Rent Participation Policy

The primary purpose of establishing the Board's Sublease Rent Participation Policy was to avoid lessees from speculating and profiting on fluctuating land values while benefiting from a State lease.

On May 26, 2000, agenda item D-24, the Board approved the "Revision to Sublease Rent Participation Policy" ("Policy"). On January 26, 2001, agenda item D-8, the Board amended the Policy to address the situation in which the lessee is a non-profit making entity and paying less than fair market rent. A copy of the 2001 submittal is attached as **Exhibit 1**.

In summary, the Policy applies to three types of situations.

a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
c. If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically stated in the lease.

The Board stated on the record that the formulae in the Policy generally reflects the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board also authorizes the staff to use their discretion in representing the State's interest in applying these formulae to address the varying subleasing arrangements that may not fit neatly into the formulae.

Therefore, notwithstanding the Board adopting the Sublease Rent Participation Policy, the policy was never meant to be followed blindly with rigid adherence but instead, the Board had expected staff to continue to use good land management practices and standards (and common sense) when analyzing a sublease rent proposal and arriving at a reasonable recommendation for the Board to consider that is both fair to both parties and in the best interest of the State.

Consent to Sublease for General Lease No. 4223

In 1969, GL 4223 was issued to Hawaiian Telcom, Inc. (HTI) for microwave station and other radio communication facilities, together with appurtenant easements. GL 4223 expires in 2031 and HTI is paying fair market rent at $31,400 due annually. The area of the leased premises is 9,200 square feet located at Mt Kaala overlooking the North Shore.

Around April/May 2010, the Chairperson, pursuant to the Policy and staff's initial analysis and recommendation, gave his consent to a license agreement dated April 15, 2010 (License Agreement) between HTI and Kahuku Wind Power, LLC (KWP) under GL 4223. Consent document has been executed without the State receiving a share of the sublease rent.

Under the License Agreement, KWP installed three (3) new antennas on the existing communication tower, a new generator and underground fuel storage tank, and use or occupy about 80 square feet inside the existing tower to store equipment.

On February 22, 2011, (**Exhibit 2**) the Chairperson, again pursuant to the Policy and staff's initial analysis and recommendation, gave another consent to the transfer of KWP's interest under the License Agreement to Hawaiian Electric Company, Inc. (HECO). The License Agreement is treated similar to a sublease where the Board or Chairperson's review and approval is required.

For the Board's information, the leased area under GL 4223 is 9,200 square feet, of which the tower occupies roughly 400 square feet. KWP have three antennas, a fuel tank, and a generator on the leased area (**see Exhibit 3** for layout of the License area). The land area occupied by KWP is about 100 square feet, while another 80 square feet inside the tower is being used by KWP to house the required equipment.

Division of Forestry and Wildlife (DOFAW), who manages the Mokuleia Forest Reserve in the vicinity of the subject location, subsequently questioned the appropriateness of not charging any sandwich rent. Based on further discussions, DOFAW and Land Division conducted additional analysis of the issue and now brings the subject request back to the Board for decision.

Evaluation:

Technology in the communications industries has advanced greatly since GL 4223 was issued in 1960s. When the lease was issued, it was very unlikely there was any thought a communication tower would command an enormous potential in generating revenue, as has occurred with the subject location. With the booming communications industries and the strong demand for favorable sites, staff believes there is a need to more carefully re-visit the applicability of the Policy when the request involves a telecommunication site.

HTI has its own equipment at the subject location and the annual license rental collected from the sublessee ($33,153.57) is more than the ground rent ($31,400) payable under GL 4223 to the State. Staff notes that the HTI's equipment on the subject property was constructed and installed years ago and probably has been fully amortized by now. Therefore, the rental collected from KWP is probably not intended to recoup the initial investment by HTI roughly 40 years ago.

KWP is paying for the cost of the improvements and equipment it requires for its operation, with the exception of the 80 square feet within the existing building or tower being used by KWP for equipment storage. Therefore, staff does not believe HTI should be entitled to retain 100% of the sublease rent generated from the License Agreement with KWP.

Sublease Sandwich Rent

As noted in the Policy, the State takes a 50% share of the sublease rent whenever there is a sandwich rent component. Staff notes that KWP paid for the cost of its own improvements and equipment except as aforesaid. Therefore, the sublease rent payable by KWP to HTI is primarily from the value reflected by the favorable location of the land itself, and not coming from any improvement built and paid for by HTI.

As the underlying fee owner of the location, the State may collect up to 100% of the sublease rent from HTI, as provided in Condition 13 "Subletting" of GL 4223, which says "prior to approval, the Board shall have the right to ... revise the rent of the demised premises based upon the rental rate charged to the said sublessee."

Meanwhile, staff does not believe HTI should be precluded from enjoying a portion of the financial benefit of subleasing a favorably located parcel and the anticipated growth of the communication technology.

Staff recommends the Board amend the prior Chairperson approval (based upon an initial rigid analysis by staff) dated February 22, 2011 by requesting an annual sandwich rent payment equivalent to 50% of the sublease rents collected by HTI pursuant to the License Agreement. Currently, KWP is paying $33,153.57 annually, and 50% of the rent equates to $16,577 (rounded).

Comments from Hawaiian Telcom, Inc.

Staff notes that HTI does not agree with staffs' recommendation. HTI contends that its transfer to HECO was mentioned in the License Agreement between HTI and KWP. The consent document was signed by the Chairperson in July 2010.

Staff explained to HTI that HECO did not sign the License Agreement and was never a party to the License Agreement. This "consent" given was solely to allow HTI to enter the License Agreement with KWP and not a "consent" to all or a further assignment of the License Agreement to HECO. Any future transfer contemplated under the License Agreement still requires review and approval (via a consent) from the State.

Considering all of the aforesaid facts and circumstances related to this license arrangement (i.e., akin to a sublease arrangement) including the fact that the subleased rents exceeds the ground rent paid to the State and the improvement placed on the premised by the underlying Lessee, HTI, probably has been fully amortized over the past 40-year period, staff believes it is reasonable for the Land Board to condition its "consent" upon the State receiving a portion of the subleased rent.

Transfer the management jurisdiction of GL 4223 to DOFAW
The subject leased area is a portion of the Mokuleia Forest Reserve under the management jurisdiction of the DOFAW. Both Land Division and DOFAW agree that the subject lease should be transferred to the latter for future lease management.

RECOMMENDATION: That the Board

A. Amend the prior action of the Chairperson dated February 22, 2011 by requesting an annual additional rent payment equivalent to 50% of the rental collected by Hawaiian Telecom, Inc. pursuant to the License Agreement dated April 15, 2010 until April 30, 2030 or the early termination of such License Agreement.

B. Authorize the transfer of General Lease No. 4223 to the Division of Forestry and Wildlife for future management.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

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

January 26, 2001

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

Statewide

RESUBMITTAL: Amendment to the Sublease Rent Participation Policy

BACKGROUND:

On May 26, 2000, under agenda item D-24, the Board of Land and Natural Resources ("Board") approved the "Revision to Sublease Rent Participation Policy" (refer to Exhibit A). The policy was stated as follows:

"The following policy shall apply to leases under the direct management of the Land Division.

1) For unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.

2) For improved lands, the Board shall not receive any portion of sublease rents obtained from subleasing improved space unless that right and method of calculation are specifically stated in the lease."

Recently, staff has come across a situation which this sublease policy does not address. The non-profit Waimanalo Teen Project was issued general lease S-5468 under section 171-43.1, HRS, and received nominal rent (25% of fair market) at $317 per year (see Exhibit B for calculation). Sometime in mid-1999, the Waimanalo Teen Project requested that they be able to sublet part of their building to Castle Medical Center.

On July 9, 1999, under agenda item D-16, the Board approved and amended staff's recommendation to amend General Lease S-5468 by allowing for subleasing under the lease. The Board amended staff's recommendation by deleting the consent to sublease with Castle Medical Center due to concerns regarding the calculation of the sublease sandwich amount and the issue of whether Castle Medical Center was a for-profit operation circumventing the public auction process.

Based on staff's addressing of these concerns, the Board

As Amended
APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON January 26, 2001. per

ITEM D-8

EXHIBIT "1"

consented to the sublease between Waimanalo Teen Project and Castle Medical Center on November 19, 1999 under agenda item D-27. Item 4 of the recommendation was amended as follows:

> "Increase of the annual rental by the amount of the annual sandwich rental profit as calculated by the staff appraiser, subject to adjustment upon renegotiation of the sublease or reopening of General Lease S-5468, or change in the policy."

Regarding the added language, Board meeting minutes reveal that there had been concern about a discrepancy in the sandwich rental calculations. The Administrator suggested deferring this item until a Board briefing to discuss a revision to the sublease policy could be conducted. The Waimanalo Teen Project accepted the rent as calculated and indicated a need to get Castle Medical Center onto the property. In response, the Board approved the consent to sublease and added that the consent would be subject to any future change in the sublease policy.

Based on this situation, staff is recommending changes to the Sublease Rent Participation Policy in this submittal. (This submittal was deferred by the Board on December 15, 2000 to allow the new Chairperson and Board Member McCrory the opportunity to comment on this matter.)

REMARKS:

When the Revision to Sublease Rent Participation Policy was drafted, staff did not account for the situation where a non-profit pays less than fair market rent. As such, staff did not address the public policy question of whether a non-profit, which is being subsidized by the State through nominal rent, should be subject to the same sublease policy provisions as lessees who are paying fair market rent.

Upon discussion among staff, including the staff appraiser, we believe that the sublease policy, as approved, should not apply to any lessee who is paying less than fair market rent. In this case, the lessee is receiving a State subsidy and should not be allowed to solely benefit from subleasing the State property without participation by the State, even where the improvements constructed by the lessee are being subleased rather than raw land.

Further, staff noticed that the approved sublease policy stated "for improved lands, the Board shall not receive any portion of sublease rents obtained from subleasing improved space unless that right and method of calculation are specifically stated in the lease." This provision was based on the premise that the lessee constructed the improvements and assumed the risk and therefore should solely benefit from any subleasing arrangements. Staff would like to clarify where the State owns the improvements (i.e., the lessee assumed no risk), then the lease rent would be revised to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent.

RECOMMENDATION:

That the Board amend the Revision to Sublease Rent Participation Policy approved by the Board on May 26, 2000, under agenda item D-24, by:

A. Amending paragraph 2) of the Recommendation section by replacing the entire "Policy" statement to read as follows:

"Policy
This policy shall apply to leases under the direct management of the Land Division.

1. For lessees paying fair market rent:

a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Ground Rent	$
LESS: General Excise Tax	$( )
Net Annual Sublease Ground Rent	$
LESS: Annual Ground Rent	$( )
Additional Annual Rent	$
MULTIPLIED by 50%	x .50
Additional Annual Rent Due DLNR	$

b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Income	$
LESS: General Excise Tax	$( )
Net Annual Sublease Income	$
LESS: Allowances	$( )
Management and vacancy loss (eff. inc.	x %)
Repair and maintenance	
Real property tax	
Insurance	
Ground lease rent	
Additional Annual Income	$
MULTIPLIED by 50%	x .50
Additional Annual Rent Due DLNR	$

c. If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically state in the lease.

2. For lessees paying any amount less than fair market rent:

a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The calculation delineated in 1.a. above shall be used.

b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The calculation delineated in 1.b. above shall be used.

changed to 100%

c. If the lessee subleases improvements not owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State. The following calculation shall be used:

Annual Sublease Income	$
LESS: General Excise Tax	$( )
Net Annual Sublease Income	$
LESS: Allowances	$( )
Management and vacancy loss (eff. inc. x %)	
Investment return (total invest. X %)	
Repair and maintenance	
Real property tax	
Insurance	
Ground lease rent	
Additional Annual Income	$
MULTIPLIED by 50%	x .50
Additional Annual Rent Due DLNR	$ "

B. Deleting paragraph 4) of the Recommendation section in its entirety.

C. The remaining approved recommendations of agenda item D-24 shall remain in effect.

Respectfully Submitted,

DIERDRE S. MAMIYA, Asst Administrator

APPROVED FOR SUBMITTAL:

GILBERT S. COLOMA-AGARAN, Chairperson

D-24

STATE OF HAWAII
Department of Land and Natural Resources
Land Division
Honolulu, Hawaii 96813

May 26, 2000

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

STATEWIDE

Subject: RESUBMITTAL - REVISION TO SUBLEASE RENT PARTICIPATION POLICY

Background

Chapter 171-36(a) (6), 1998 Hawaii Revised Statutes states:

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

On July 9, 1982, under agenda item F-9, the Land Board approved staff's recommendation to adopt a sublease evaluation policy. As stated in this submittal, staff recommended the Board formally adopt the format and procedure used to determine the amount of sandwich profit which was first developed and utilized in 1968. The rationale behind the policy was that the State should not allow anyone to make sandwich profits from the use of State owned property. As stated, the purpose of this policy was "to prevent speculation and to prevent the sublessor from becoming the predominant landlord." The policy also recognized the lessee's right to receive a fair return on his investment. Presently, sandwich profits are estimated using the computation sheet identified as Exhibit A. On the computation sheet, the ground rent and that portion of the rent attributable to the lessee's investment are subtracted from the sublease income to determine what rent, if any, is due DLNR.

EXHIBIT A

APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES IN ITS MEETING ON May 26, 2000. BR

ITEM D-24

Problem Definition

In light of the changed economic environment in which we operate – in particular, the dramatic decline in property values since the Japanese bubble burst in or about 1990 -- staff revisited the Sublease Evaluation Policy. In evaluating the appropriateness of current policies, staff examined appraisal-related policies, including the sublease rent participation policy. Staff identified the following concerns regarding this policy and accompanying worksheet:

Fairness to Lessees: The current sublease evaluation policy may be unfair to the lessee because it assigns 100% of the sandwich profit to DLNR even though it is the lessee who assumes the risk.

Reduced Marketability: DLNR ground leases may not be as marketable because of the sublease evaluation policy. This may be particularly true in today's depressed economy or when a business savvy lessee is involved.

Lack of Clarity: The current worksheet is open to considerable interpretation and difficult to support.

Cost/Benefit of Implementation: The additional income received may not justify the time spent calculating and applying sandwich profits. For example, one industrial lease may have several subleases with terms of one year or less. Each time these subleases are extended and/or the rents changed, staff must re-evaluate the rents for sandwich profits. Because the law requires that we revise the lessee's rent based on the sublease rent, staff ends up continually changing the lessee's rent based on the sandwich profits determined.

Analysis

Staff's concern is the current worksheet may be too harsh on lessees who essentially act as entrepreneurs and assume much of the risk. This concern was addressed in a January 8, 1987 study done by Ming Chew Associates for the Department of Hawaiian Home Lands (DHHL). The study noted that "many lessees felt that having entered into the original lease in good faith at a set rental, it was unfair to change the rental terms of the lease during "mid-stream" with rental adjustments that were neither discussed nor agreed to during the initial signing of the lease."

The DHHL study also indicated the attempt to prevent speculation is based on the wrong circumstance (the sublease). If the intent is to have lease rents keep up with increases in land value, then the lease should be modified to consider step up rents, percentage rents, rent adjustments based on the CPI, and/or shorter reopening periods. The report stated that in the private sector, most lessors do not participate in sublease rents.

On December 9, 1999, staff conducted a briefing to provide background on the relevant issues of the sublease policy and to explore the Board's views and opinions on different alternatives for the policy.

At this Board briefing, the following issues were discussed:

1) The Board questioned whether other large land owners participated in sublease rents and requested that staff expand its survey of other large land owners.

2) The Board agreed that a 50% split was more reasonable but questioned the policy's cost/benefit.

Following this Board briefing, staff surveyed large Hawaii landowners and found the following:

Campbell Estate: The estate may take 50% of a sandwich when vacant land is concerned. Once the site is improved, Campbell does not directly participate in sandwich rents.

Bishop Estate: Bishop may also take 50% of a sandwich when vacant land is subleased; however, when a vacant parcel is leased Bishop typically knows what is planned and accounts for this via percentage rent, step-ups, etc. Finding that one of their lessees has created an unexpected sandwich position is rare. Bishop stated that either the lease prohibits such a sandwich or the lessee is being forced to sublease due to difficult economic conditions, hence a sandwich position is unlikely. Bishop would not rule out participating in sandwich rents should one ever exist.

Kaneohe Ranch: Kaneohe Ranch does not directly participate in sandwich rents. Like Bishop, Kaneohe Ranch typically knows what is planned at the start of a lease and does not expect to find unauthorized sandwich positions on its property.

Department of Hawaiian Home Lands: DHHL collects sandwich rents on both vacant and improved sites. The department revises the rent based on 50% of the amount by which the sublease rent exceeds the original rent for that portion of the property. DHHL estimates it receives less than $5,000 per year in sandwich rents.

Damon Estate: The Damon Estate does not participate in sandwich rents and does not condemn a lessee when one is created. They have no unimproved lands.

Robinson Estate: The Robinson Estate also does not participate in sandwich rents nor does it discourage a lessee from creating a sandwich position. They stated that in fact, much of their lands got developed because sandwich positions on vacant land were permitted. The estate deals only with ground leases.

Based on these findings, staff recommends revisions to the Sublease Evaluation Policy presented at the December 9, 1999 Board briefing to ensure fairness in our dealings with lessees and increase the marketability of our leases.

Staff now believes that when a lessee improves a vacant site and subsequently subleases improved space, the State should not participate in sandwich profits obtained from subleasing that space. Staff recognizes that it is the lessee who has the vision and assumes the risk, and it is the lessee who should benefit.

Staff also believes sublease rent participation should apply when vacant land is leased and subsequently subleased. Staff suggests that when vacant land is subleased the rent paid to the State should be revised to include as additional rent, 50% of that portion of the sublease rent in excess of the rent paid to the State. This leaves the lessee with some economic incentive and allows the State to participate in sandwich profits. This should also help discourage lessees from overtly speculating with State land. The Sublease Participation Worksheet, examples of rent due and rent loss are attached as Exhibits C and D. Note the only expense is G.E. tax (4%) on the sublease rent received, which the sublessor is required to pay.

Staff notes that we are requesting the Board delegate its authority to the Chairperson when sandwich profits do not exist due to: 1) application of the new, recommended policy or; 2) the absence of a sandwich provision in the lease. This request is made to streamline the consent to sublease process.

Policy:

The following policy shall apply to leases under the direct management of the Land Division.

1) For unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.

2) For improved lands, the Board shall not receive any portion of sublease rents obtained from subleasing improved space unless that right and method of calculation are specifically stated in the lease.

The Revision to Sublease Rent Participation Policy dated April 28, 2000 was deferred due to concerns the Board had regarding the Sublease Participation Worksheet. The Board questioned the worksheet's clarity and was particularly concerned about deductions for property taxes and miscellaneous allowances. Upon review, staff determined these and all other deductions, with the exception of G.E. tax, should not be included. The revised Sublease Participation Worksheet identified as Exhibits B eliminated these deductions and simplified the line item descriptions.

Recommendation: That the Board:

1) Rescind its prior Board action of July 9, 1982, under agenda item F-9, including the computation worksheet identified as Exhibit A.

2) Approve the above stated policy.

3) Authorize the Chairperson to consent to a sublease when no sandwich profit exists because: 1) the lease has no provision which allows for sandwich profits or 2) the sublease involves improved property and according to the above stated policy, the State is not entitled to a sandwich profit; subject to the review and approval of the Department of the Attorney General.

4) Approve the revised Sublease Participation Worksheet identified as Exhibit B.

Respectfully submitted,

Benjamin L. Marx III, Staff Appraiser

Approved for Submittal:

Timothy E. Johns, Chairperson

EXHIBIT A

Format

COMPUTATION SHEET

General Lease No. S-____, _____, Sublessor, sublease to _____, Sublessee

Gross Annual Sublease Income		$
Less 4% tax		- _____
Effective Income		$
Less Allowances:		
Management, and vacancy loss (Eff. Inc. x %)	$	
Investment return (Total Inv. x %)		
Other operating expenses paid by sublessor such as real property tax, insurance premium, painting, repair and maintenance, etc.		
Reserves for Replacements		
General Lease No. S-____ rental	_____	
Total Allowances:		_____
SANDWICH PROFIT:		$

Exhibit B

SUBLEASE PARTICIPATION WORKSHEET
LAND ONLY

General Lease No.	xxxx	
Lessee:	xxxx	
Location:	xxxx	
Tax Map Key:	xxxx	
Land Area (sf):		0
Annual Ground Rent:		$0

CALCULATIONS:

Annual Sublease Ground Rent	$0
LESS: G.E. tax	0
Net Annual Sublease Ground Rent:	$0
LESS: Annual Ground Rent	0
Additional Annual Rent	$0
Additional Annual Rent Due DLNR (50%)	**$0**

Exhibit C

SUBLEASE PARTICIPATION WORKSHEET
LAND ONLY

General Lease No.	S-xxxx
Lessee:	John Doe
Location:	Honolulu, Hawaii
Tax Map Key:	(1) x-x-xx:xx
Land Area (sf):	20,000
Annual Ground Rent:	$5,000

CALCULATIONS:

Annual Sublease Ground Rent	$10,000
LESS: G.E. tax	400
Net Annual Sublease Ground Rent:	$9,600
LESS: Annual Ground Rent	5,000
Additional Annual Rent	$4,600
Additional Annual Rent Due DLNR (50%)	**$2,300**

Exhibit D

SUBLEASE PARTICIPATION WORKSHEET
LAND ONLY

General Lease No.	S-xxxx
Lessee:	John Doe
Location:	Honolulu, Hawaii
Tax Map Key:	(1) x-x-xx:xx
Land Area (sf):	20,000
Annual Ground Rent:	$10,000

CALCULATIONS:

Annual Sublease Ground Rent	$10,000
LESS: G.E. tax	400
Net Annual Sublease Ground Rent:	$9,600
LESS: Annual Ground Rent	10,000
Additional Annual Rent	($400)
Additional Annual Rent Due DLNR (50%)	**$0**

VALUE ESTIMATE

REVOCABLE PERMIT NO. S-5870 (LOT B of TMK: 4-1-09-01)

TOTAL LAND AREA:	=	10.8930 Acres.
Adjustment: Less: Open Stream Ditch	=	0.0953 Acre
Net Area	=	10.7977 Acres

1. Total value of banana crop products for Oahu in 1990 = $1,489,000 (10/12/90 Value Date)

2. Total acreage devoted to banana crop products for Oahu in 1990 = 485 acres

THUS: $1,489,000 + 485 = $3,070.10 per acre per year

$3,070.10 x 3.5% = $ 107.45 per acre per annum lease rental

ROUNDED = $ 107.00 per acre per annum

VALUATION:

Total Net Land Acreas 10.7977 acs. @ $107.00 p/acre = $1,155.35
(FAIR MARKET ANNUAL RENTAL)

Adjustments:

Permitted use of land for multi-community facility use	+10%	=	115.53
TOTAL FAIR MARKET LEASE RENTAL PER ANNUM		=	$1,270.88
SPECIAL DISCOUNT (See Attached Board Approval) Minimum annual rent which is 20% of the market annual rental and 5% management fee which is 5% of the annual market rental)		=	.25
ADJUSTED FAIR MARKET LEASE RENTAL PER ANNUM		=	$ 317.72
	ROUNDED	=	$ 317.00

FINAL ESTIMATE

$317.00

ANNUAL LEASE RENTAL

DATE OF VALUE: October 12, 1990

EXHIBIT B

8. **Approved as Amended.**—The staff recommendation was amended to read as follows:

This policy shall apply to leases under the direct management of the Land Division. ***Furthermore, the following formulae generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board authorizes staff to use their discretion in representing the State's interest in applying these formulae to address the varying subleasing arrangements that may not fit neatly into the formulae.***

Condition 2.b. was also amended by changing ". . . [50%] to ***100%*** of that portion of the sublease rent . . ."

GL 4223

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

February 22, 2011

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

OAHU

Consent to Assignment and Assumption of Contract (Mt. Kaala: Hawaiian Telcom License Agreement); General Lease No. S-4223, Kahuku Wind Power, LLC, Assignor; Hawaiian Electric Company, Inc., Assignee; Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:portion of 024.

APPLICANT:

Kahuku Wind Power, LLC a Delaware limited liability company, as Assignor, to Hawaiian Electric Company, Inc., a Hawaii corporation, as Assignee.

LEGAL REFERENCE:

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

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8.

LOCATION:

Portion of Government lands situated at Mokuleia, Waialua, Oahu, identified by Tax Map Key: (1) 6-7-003:024 por. as shown on the attached map labeled Exhibit A.

AREA:

0.211 acre (portions only), 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

EXHIBIT "2"

LEASE CHARACTER OF USE:

For a site for a microwave station and other radio communication facilities, together with appurtenant easement purposes.

LICENSE CHARACTER OF USE:

Transmission and reception of wireless telecommunication services purposes.

TERM OF LEASE:

65 years, commencing on March 1, 1966 and expiring on February 28, 2031. Last rental reopening occurred on March 1, 2006; next rental reopening is scheduled for March 1, 2016.

TERM OF LICENSE:

May 1, 2010 to April 30, 2030.

ANNUAL LEASE RENTAL:

$31,400 paid annually.

ANNUAL LICENSE RENTAL:

$33,153.57.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None, as the subject sublease is for improved property only and the improvements are not owned by the State and the Lessee pays fair market rent.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES _X_	NO __
Registered business name confirmed:	YES _X_	NO __
Good standing confirmed:	YES _X_	NO __

ASSIGNEE:

Place of business registration confirmed:	YES _X_	NO __
Registered business name confirmed:	YES _X_	NO __
Good standing confirmed:	YES _X_	NO __

REMARKS:

Pursuant to the "Revision to Sublease Rent Participation Policy" adopted by the Board at its meeting of May 26, 2000, agenda item D-24, the Board authorized the Chairperson to consent to subleases where no sandwich profits exist in two situations: 1) the lease has no provision which allows for sandwich profits or 2) the sublease involves improved property and according to this policy, the State is not entitled to any sandwich profits.

On April 28, 2010, as amended on May 17, 2010, the Chairperson gave its consent to the license agreement ("License") between Hawaiian Telcom, Inc. (HTI), lessee of GL 4223, and Kahuku Wind Power, LLC (KWF) regarding the use of some telecommunication activities at the subject location. On July 9, 2010, the Chairperson signed the consent document (Exhibit B).

Paragraph 21 of the License (not executed or approved by the BLNR) stipulates that KWF will assign its right under the License to Hawaiian Electric, Inc. (HECO), and consent from HTI as the Licensor is not required. KWF believes that consent from the Chairperson to the assumption of the License by HECO is not necessary as such arrangement was mentioned in the License which the State has given its consent.

Staff views the situation differently. HECO was never mentioned in the Land Board submittal in April and May 2010 and never mentioned in the actual consent document signed by the Chairperson in July 2010. Therefore, HECO needs to obtain the consent to the Assumption of the License Agreement, and this need triggers today's request. Staff has explained the Department's position to the representative of KWF. KWF is in the process of transferring its license rights to HECO pursuant to their previous agreement. Upon receipt of approval of the subject request, an executed copy of the "Assignment and Assumption of Contract" (Exhibit C) will be submitted to the Department of the Attorney General for review and approval.

Staff is requesting your consent to the Assignment and Assumption of Contract (Mt. Kaala: Hawaiian Telcom License Agreement) under General Lease No. 4223, as the subject license is for improved property only, the improvements are not owned by the State, and HTI pays fair market rent under the subject lease. Pursuant to the "Amendment to the Sublease Rent Participation Policy" approved as amended by the Board on January 26, 2001, for lessees paying fair market rent, "If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless that right and method of calculation are specifically stated in the lease."

The lessee is in compliance with all lease terms and conditions (rent, insurance, performance bond, conservation plan, inspections, etc.).

The most recent rental reopening of the master lease occurred in 2006. There is no outstanding rental reopening issue at the time of writing this submittal.

Staff did not solicit comments from other agencies as the request does not trigger any change of its existing use at the location.

There are no other pertinent issues or concerns, and staff has no objections to the request.

RECOMMENDATION:

That the Chairperson consent to the Assignment and Assumption of Contract (Mt. Kaala: Hawaiian Telcom License Agreement) under General Lease No. S-4223 between Kahuku Wind Power, LLC., as Assignor, and Hawaiian Electric Company, Inc., as Assignee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent form, as may be amended from time to time;

2. Review and approval by the Department of the Attorney General; and

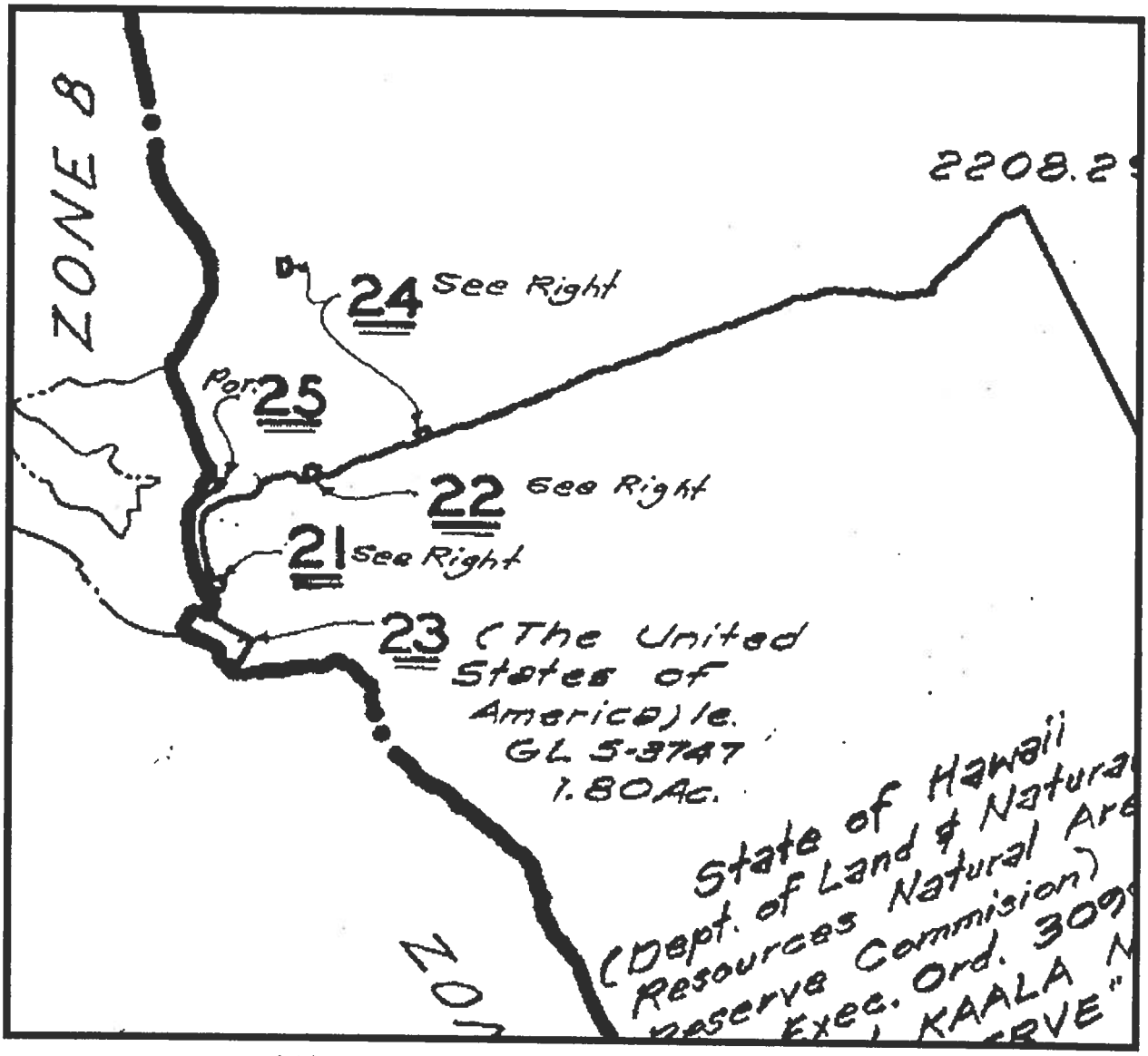
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung
District Land Agent

APPROVED/DENIED:

William J. Aila, Jr., Chairperson



(1) 6-7-003:portion of 024

EXHIBIT A

LAND COURT SYSTEM) REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Total Number of Pages:

Tax Map Key No. (1)6-7-3:Por. 24

CONSENT TO LICENSE AGREEMENT UNDER
GENERAL LEASE NO. S-4223

CONSENT is hereby given by the STATE OF HAWAII, by its Chairperson of and on behalf of the Board of Land and Natural Resources, Lessor under unrecorded General Lease No. S-4223 dated May 7, 1969, issued to Hawaiian Telephone Company, a Hawaii corporation, as "Lessee," said Lessee's name changed to be GTE Hawaiian Telephone Company Incorporated by that certain name change dated December 29, 1987, and further name change dated July 5, 2000, to Verizon Hawaii Inc., and further name change dated May 2, 2005, to Hawaiian Telcom, Inc., a Hawaii corporation, to the License Agreement dated April 15, 2010, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____, between HAWAIIAN TELCOM, INC., a Hawaii corporation, whose address is 1117 Bishop Street, Honolulu, Hawaii 96813, as "Licensor," and KAHUKU WIND POWER, LLC, a Delaware limited liability company, whose address is 179 Lincoln Street, Suite 500, Boston, MA 02111, as

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

PRELIM. APPR'D
Department of the
Attorney General

EXHIBIT "B"

"Licensee"; SUBJECT, HOWEVER, to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to the rights of holder of security interests; PROVIDED, FURTHER, that nothing contained herein shall change, modify, waive or amend the provisions, terms, conditions and covenants or the duties and obligations of the Lessee or Licensee under General Lease No. S-4223.

IT IS UNDERSTOOD that except as provided herein, should there be any conflict between the terms of General Lease No. S-4223 and the terms of the License Agreement, the former shall control; and that no further License Agreement or assignment of any interest of the premises or any portion thereof shall be made without the prior written consent of the Chairperson of the Board of Land and Natural Resources or the Board of Land and Natural Resources.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Chairperson of the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 9th day of July, 2010.

STATE OF HAWAII

Approved by the Chairperson of the Board of Land and Natural Resources on April 28, 2010 and May 17, 2010.

By _____
Chairperson
Board of Land and
Natural Resources

LESSOR

HAWAIIAN TELCOM, INC., a Hawaii corporation

APPROVED AS TO FORM:

_____
Deputy Attorney General

Dated: 6/8/10

By _____
JOHN T. KOMEIJI
Its SVP & General Counsel

And by _____
[illegible]
Its [illegible]

Approved as to form
LEGAL DEPT.
By _____
Date 6/9/10

LICENSOR

379182_1.DOC

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

PRELIM. APPR'D.
Department of the
Attorney General

STATE OF HAWAII)
) SS.
CITY + COUNTY OF Honolulu)

On this 23rd day of June, 2010, before me appeared JOHN T. KONELIO and ROBERT REICH, to me personally known, who, being by me duly sworn, did say that they are the SVP & General Counsel and Sr. Vice President, respectively, of HAWAIIAN TELCOM, INC., a Hawaii corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said JOHN T. KONELIO and ROBERT REICH acknowledged said instrument to be the free act and deed of said corporation.

Gwendolyn A. Massiah
Notary Public, State of Hawaii

GWENDOLYN A. MASSIAH

My commission expires: FEB. 22, 2012

Doc. Date: Undated # Pages: 3
Name: GWENDOLYN A. MASSIAH 1st Circuit
Doc. Description: Consent to License Agmt Under General Lease No. S-4223
Gwendolyn A. Massiah 6/23/10
Signature Date
NOTARY CERTIFICATION

379182_1.DOC

PRELIM. APPR'D. Department of the Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

DRAFT

ASSIGNMENT AND ASSUMPTION OF CONTRACT
(MT. KAALA: HAWAIIAN TELCOM LICENSE AGREEMENT)

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT (this "**Agreement**") is made and entered into as of _____, 2011, by and between KAHUKU WIND POWER, LLC, a Delaware limited liability company ("**Assignor**"), and HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation ("**Assignee**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. Pursuant to that certain Power Purchase Agreement for As-Available Renewable Energy dated July 2, 2009 by and between Assignor (as "Seller" thereunder) and Assignee (as "Company" thereunder), as amended, Assignor does bargain, sell, transfer, assign and set over unto Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to that certain contract described in Exhibit "A" attached hereto (the "**Assigned Contract**"), together with all interests appertaining thereto and the personal property and fixtures installed by or on behalf of Assignor thereunder.

2. Assignor's Representations and Warranties. Assignor hereby represents and warrants that it holds the right, title and interest in and to both the contractual rights and benefits conferred upon "Licensee" under the Assigned Contract and the aforesaid personal property and fixtures; that all obligations under the Assigned Contract to be performed by "Licensee" prior to the date hereof (including but not limited to the payment of all sums required of "Licensee" prior to the date hereof) have been fully and satisfactorily performed; that the Assigned Contract has not been amended or modified except as described in Exhibit "A" hereto, is in full force and effect, and is not in default; that Assignor's right, title and interest in and to the Assigned Contract and the aforesaid personal property and fixtures is free and clear of all liens and encumbrances; that Assignor has the right to sell and assign its right, title and interest in the Assigned Contract and the aforesaid personal property and fixtures to Assignee without the consent of any other person or entity except for such consent(s) (if any) that Assignor has provided to Assignee prior to the date hereof; and that the Assignor will warrant and defend the foregoing unto the Assignee against the lawful claims and demands of all persons.

EXHIBIT "C"

3. Assignee's Assumption. By its acceptance and execution hereof, Assignee assumes and agrees to perform all of the covenants, agreements and obligations of Assignor arising out of or related to the Assigned Contract that arise and relate to the period from and after the date hereof.

4. Assignor Obligations After the Date Hereof. Assignor shall perform the following obligations related to the Assigned Contract from and after the date hereof: (i) payment of all amounts payable by "Licensee" under the Assigned Contract that arise or relate to, or otherwise accrue during, the period prior to the date hereof but which have not yet become due as of the date hereof; and (ii) payment of 50% of the amounts payable by "Licensee" under the Assigned Contract that arise or relate to, or otherwise accrue during, the period from and after the date hereof. Assignee shall invoice Assignor for the foregoing amounts on a monthly basis together with Hawaii general excise tax thereon and Assignor shall make payment to Assignee within 30 days of the billing date.

5. Indemnification. Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including reasonable attorneys' fees) arising under the Assigned Contract on or after the date hereof with respect to the obligations assumed by Assignee pursuant to Section 3 hereof. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including reasonable attorneys' fees) arising (i) under the Assigned Contract prior to the date hereof and/or (ii) under the Assigned Contract with respect to Assignor obligations under Section 4 hereof.

6. Applicable Law. This Agreement shall be construed under and enforced in accordance with the laws of the State of Hawaii.

7. Binding. This Agreement and all of its terms and provisions shall be binding upon and inure to the benefit of Assignor and its successors and assigns, and Assignee and its successors and assigns.

8. Counterparts. This document may be executed in any number of counterparts, each to be an original, but all of which shall constitute one instrument, and it shall be sufficient if any party hereto signs any such counterpart, so long as each of the parties hereto executes at least one such counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

ASSIGNOR:

Kahuku Wind Power, LLC

By: _____
Name: _____
Title: _____

ASSIGNEE:

Hawaiian Electric Company, Inc.

By: _____
Name: _____
Title: _____

EXHIBIT A

Assigned Contract

1. License Agreement dated April 15, 2010 between Hawaiian Telcom, Inc., a Hawaii corporation, (as "Licensor") and Kahuku Wind Power, LLC, a Delaware limited liability company, (as "Licensee") for the Hawaiian Telcom Mount Kaala Radio Station, Mokuleia, Waialua, Oahu, Hawaii TMK: (1) 6-7-03:24 (por.)

Equipment Room Layout sketched over Site Plan

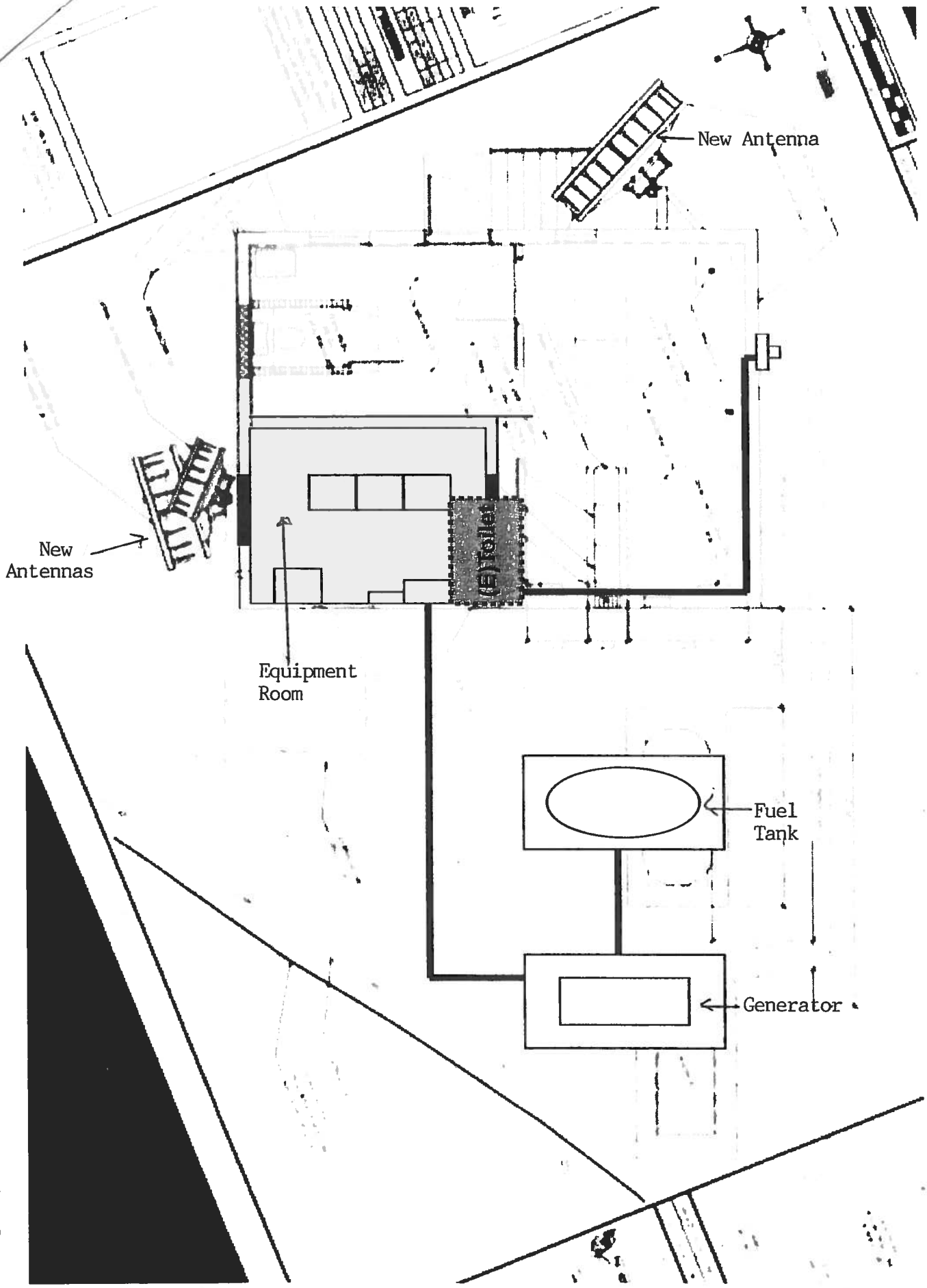


EXHIBIT "3"