

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

October 14, 2016

PSF No: 16HD-023
Ref. No.: GLS-5619

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

HAWAII

Amend Prior Board Action of August 26, 2016, Item D-2, Consent to Mortgage of Sublease K-15 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, Keahole Point Hatcheries LLC, Sublessee/Mortgagor, Ulupono Holdings LLC, Mortgagee, Ooma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:092.

Purpose of the amendment is to change the Sublease number referenced. It should have been Sublease K-35, not Sublease K-15.

BACKGROUND:

At its meeting of August 26, 2016, Item D-2, the Board of Land and Natural Resources approved, consent to mortgage of Sublease K-15 with estoppel certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, Keahole Point Hatcheries LLC (KPH), Sublessee/Mortgagor, Ulupono Holdings LLC, Mortgagee, Ooma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:092.
(Exhibit A)

REMARKS:

In the processing of the above, upon receiving an executed copy of NELHA's consent to mortgage document **(Exhibit B)**, it was noted that the sublease number referenced on the consent was Sublease K-35, instead of Sublease K-15 as mentioned in the request.

Upon questioning NELHA of the situation, NELHA explained that when the request was originally sent to Hawaii District Land Office (HDLO), the sublease at that time was identified as Sublease K-15. However, due to certain operating circumstances, it was necessary to cancel Sublease K-15 and to re-issue as Sublease K-35. All parties involved overlooked the situation and failed to notify HDLO of the changes.

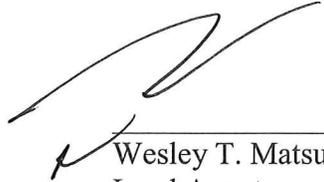
As a result, staff is now requesting that the Land Board amend its prior Board action of

August 26, 2016, under item D-2, to change the sublease number referenced on its prior action from Sublease K-15 to Sublease K-35.

RECOMMENDATION: That the Board:

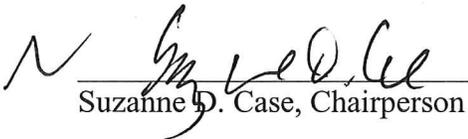
1. Amend its prior Board action of August 26, 2016, under agenda item D-2 by changing the sublease number referenced from Sublease K-15 to Sublease K-35.
2. All terms and conditions listed in its August 26, 2016 approval to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

August 26, 2016

Ref. No.: 16HD-023
GLS-5619

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

HAWAII

Consent to Mortgage of Sublease K-15 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, Keahole Point Hatcheries LLC (KPH), Sublessee/Mortgagor, Ulupono Holdings LLC, Mortgagee, Ooma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:092.

APPLICANT AND REQUEST:

Keahole Point Hatcheries LLC, requesting consent to mortgage of Sublease K-15 with Estoppel Certificate from Ulupono Holdings LLC, Mortgagee, in an amount not to exceed \$3,000,000.00.

LEGAL REFERENCE:

Section 171-22, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of NELHA Small Business Compound, Lots C & D, situated at Ooma 1st, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043:092, as shown on the attached map labeled Exhibit A.

SUBLEASE AREA:

Lots C & D, 2.27 acres, more or less.

Lot C: 1.02 acres (net.)

The subject parcel consists of 2.18 acres, less a required 125-foot conservation setback from the certified shoreline totaling 0.98 acre and an archaeological preserve for 0.18 acre.

Lot D: 1.25 acres.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

August 26, 2016 *LD*

EXHIBIT A

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES _____ NO X

CHARACTER OF USE:

To develop, maintain, and operate an ocean-related high technology industrial park in accordance with Chapter 227D and Chapter 206M, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient.

SUBLEASE CHARACTER OF USE:

To establish a commercial pearl oyster and finfish hatchery for the **Hawaiian black-lip pearl oyster** (*Pinctada margaritifera galsoffi*), **mahimahi** (*Coryphaena hippurus*), **ehu** (*Etelis carbunculus*), **opakapaka** (*Pristipomoides filamentosus*), **onaga** (*E. coruscans*), **uku** (*Aprion virescens*), **hapu'upu'u** (*Ephinephelus quernus*), **flame angelfish** (*Centropyge loriculus*), **long-nosed hawkfish** (*Oxycirrhites typus*), **decorator shrimp** (*Lysmata amboinensis*), and additional species: **hard clams** (*Mercenaria mercenaria*), **giant clams** (*Tridacna crocea*, *T. derasa*, *T. gigas*, *T. maxima*, *T. squamosa*, *Hippopus hippopus*), **grouper** (*Epinephelus lanceolatus*), and **Taiwanese abalone** (*Haliotis diversicolor supertexta*).

TERM OF LEASE:

45 years, commencing on July 3, 2001 and expiring on July 2, 2046. Last rental reopening occurred on July 3, 2011. Next rental reopening is scheduled for July 3, 2021.

TERM OF SUBLEASE:

30 years, commencing on June 1, 2003 and expiring on May 31, 2033.

ANNUAL RENTAL:

For the period July 3, 2011 to July 2, 2021, the annual rental rate shall be \$480 per annum plus fifty percent (50%) of the Net Operating Income pursuant to the Board of Land and Natural Resource's minimum rent policy established in May 2005, which states:

Annual rental shall be fifty percent (50%) of the net operating income (NOI)¹.

¹ NOI is the actual net income remaining after all adjusted operating expenses are deducted from the effective gross income including a reserve for replacement and for major repairs not covered in the operating budget. This does not include federal funds and grants.

SUBLEASE RENTAL:

Fixed Rental Fee: \$908.00 per month.

Rent is calculated at a rate of \$400.00 per acre per month, over 2.27 acres, based upon the following:

Lot C: Consisting of a net total of 1.02 acres of improved land. The gross acreage is 2.18 acres less 0.98 acre of a required 125-foot setback from the certified shoreline and 0.18 acre of an archaeological preserve

Lot D: 1.25 acres

Percentage Rent: If two percent of Sublessee's gross sales for any calendar year exceed the amount of the fixed rental fees already paid for such period, then Sublessee shall pay percentage rent equal to two percent of Sublessee's gross sales less the amount of fixed rental fees already received by Sublessor for said calendar year.

Other Costs: Sublessee agrees to pay all costs incurred by Sublessor that result from the installation of Sublessee's seawater and utility systems, including any metering and monitoring devices; Sublessee agrees to pay all other fees and accumulated variable charges for services and utilities which are based on actual or estimated usage by Sublessee.

USE OF LOAN PROCEEDS:

Total loan distribution will be for working capital purposes related to the expansion of the mariculture business of Blue Ocean Mariculture LLC (parent company of Mortgagor).

REMARKS:

On February 26, 2002, the Chairperson of the Board of Land and Natural Resources approved consent to sublease of General Lease No. S-5619, NELHA, Lessee, to Black Pearls, Inc., Sublessee. At that time, the short termed (1-year) sublease was referred to as a Facility Rental Agreement (FRA), which commenced on March 1, 2002 and expired on February 28, 2003.

Pursuant to Act 103, Session Laws of Hawaii 2002, as approved by the Governor on May 31, 2002, relating to Chapter 171-36, Hawaii Revised Statutes, the Board of Land and Natural Resources was authorized to waive its requirement to obtain prior approval for consents to its subleases for good cause.

On June 27th, 2003, the NELHA Board, as Sublessor, approved the Issuance of Sublease

K-15 to Black Pearls, Inc., Sublessee. Consisting of 2.18 acres, Sublease K-15, a 30-year sublease commenced on June 1, 2003 and is scheduled to expire on May 31, 2033.

At its meeting of June 23, 2006, Agenda Item D-1, the Board approved the amendment of General Lease No. S-5619, to waive its lease requirements to obtain prior approvals from the Board of Land and Natural Resources for consent to its subleases.

At its meeting of April 27, 2012, Item D-6, the Land Board approved the following:

1. After-the-fact, Consent to Assignment of Sublease K-15 of General Lease No. S-5619, Black Pearls, Incorporated, Assignor, to Kona Blue Water Farms, LLC, Assignee.
2. Acknowledge the Conversion of Kona Blue Water Farms, LLC into Kona Blue Water Farms, Inc.
3. Consent to Assign Sublease K-15, under General Lease No. S-5619, Kona Blue Water Farms, Inc., Assignor, to Keahole Point Hatcheries LLC, Assignee, Ooma 1st, North Kona, Hawaii, Tax Map Key: 3rd/7-3-43:92.

By letter dated January 29, 2016, Mr. Eaton O'Neill of Cades Schutte, LLLP, on behalf of Keahole Point Hatcheries LLC, requested consent to mortgage of Sublease K-15 with Estoppel Certificate, General Lease No. S-5619, NELHA, Lessee, Keahole Point Hatcheries LLC, Sublessee/ Mortgagor, in favor of Ulupono Holdings LLC, as Mortgagee.

Loan proceeds with a principal amount of Three Million and 00/100 Dollars (\$3,000,000.00) will be disbursed for working capital with the usual fees associated with mortgage closings.

At its meeting of July 19, 2016, the NELHA Board approved the consent to mortgage for Sublease K-15, Keahole Point Hatcheries LLC.

NELHA 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.

Staff reviewed the file and can report that for the past two (2) years, Lessee has been in compliance with all lease terms and conditions. The Lessee has never been cited for any illegal or unlawful activity on the State property.

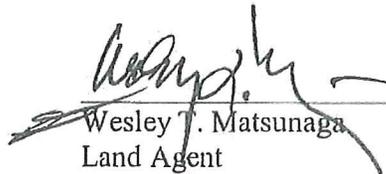
The last rental reopening was on July 3, 2011. The next rental reopening is scheduled for July 3, 2021.

There are no outstanding rental reopening issues.
Staff has no objections to the request.

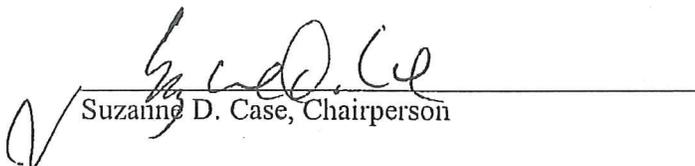
RECOMMENDATION: That the Chairperson:

- A. Consent to the Mortgage of Sublease K-15 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, Between Keahole Point Hatcheries LLC, Sublessee/Mortgagor, and Ulupono Holdings LLC, Mortgagee, subject to the following:
1. The loan proceeds shall be used for the purposes as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
 2. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the execution of an Estoppel Certificate subject to the following:
1. The standard terms and conditions of the most current estoppel certificate form, as may be amended from time to time;

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

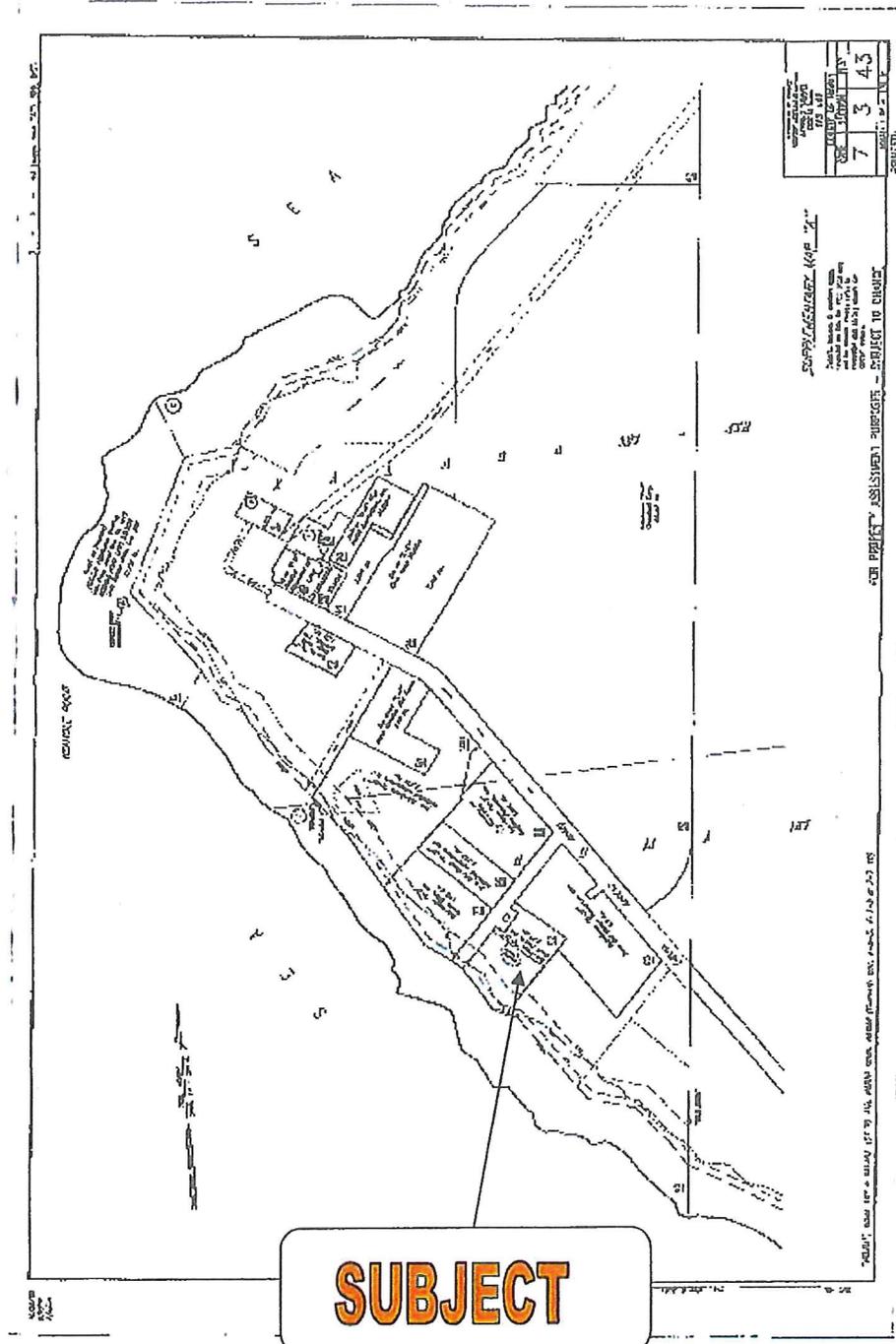
Land Board Meeting: August 26, 2016; D-2: Approved as submitted.

Approved as submitted.¹ See attached page.

Land Board Meeting: August 26, 2016; D-2: Approved as submitted.

Approved as submitted.¹

¹ HDLO to look into (and report back to BLNR) obtaining a percentage of revenues from Cyantotech's sale of bioastin.



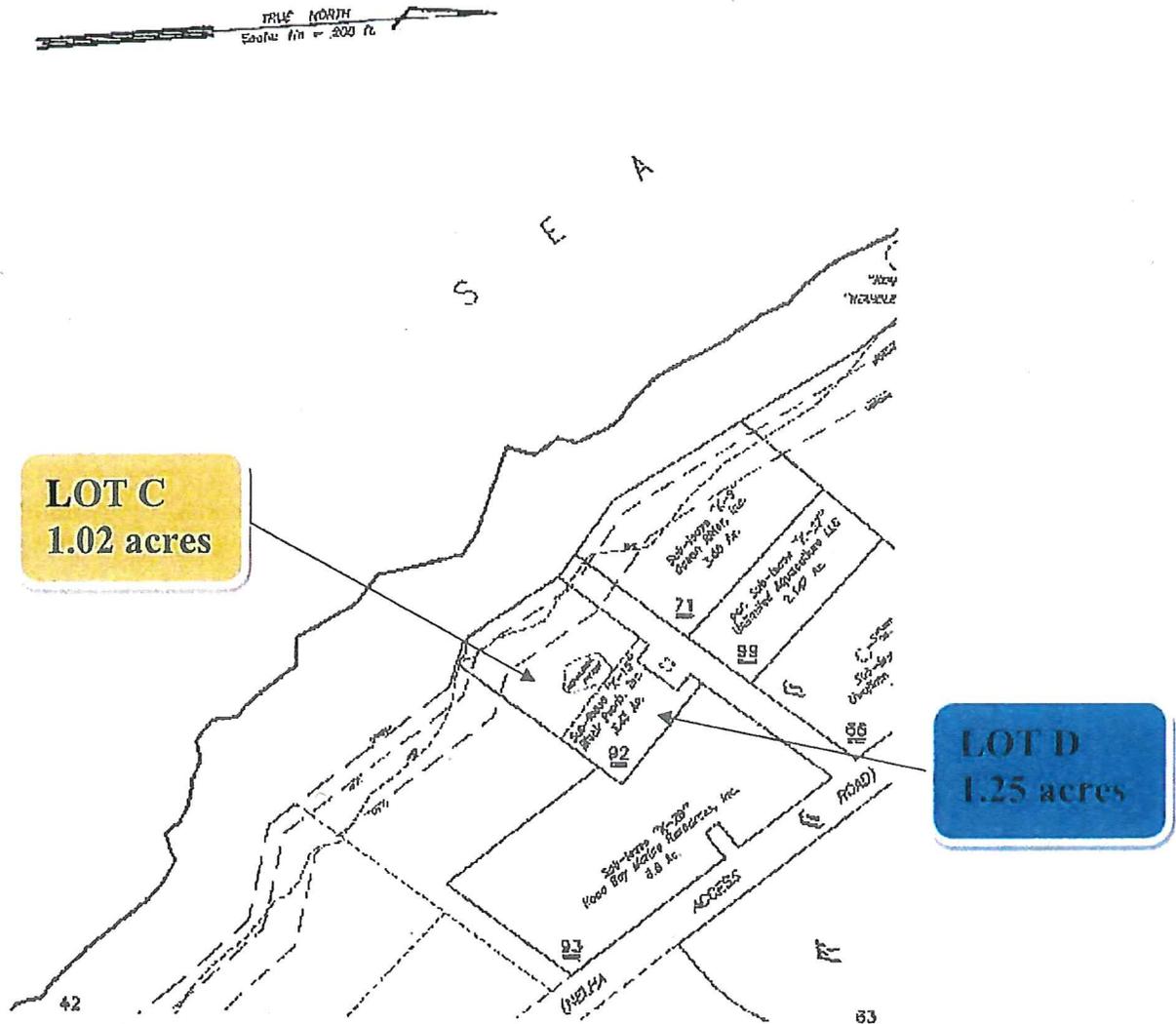


EXHIBIT A

IT IS UNDERSTOOD that, except as provided herein, should there be any conflict between the terms of Sublease No. K-35 and the terms of the mortgage dated December 11, 2015, the former shall control; and, FURTHER, that except as provided herein, this Consent shall not waive any of the terms, covenants and conditions of the general lease and, also, that no further mortgage of the sublease shall be made without the written consent of the Natural Energy Laboratory of Hawaii Authority being first obtained and endorsed thereon.

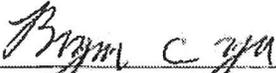
IN WITNESS WHEREOF, the Natural Energy Laboratory of Hawaii Authority, has caused these presents to be duly executed this 7th day of September, 2016.

NATURAL ENERGY LABORATORY OF
HAWAII AUTHORITY

Approved by the Board
Of the Natural Energy
Laboratory of Hawaii
Authority at its meeting
held on July 19, 2016

By 
Gregory P. Barbour
Its Executive Director

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 9/2/16