

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

January 27, 2017

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

HAWAII

Mutual Cancellation of General Lease No. S-6017, Hawaii Oceanic Technology, Inc. for Aquaculture Purposes, Offshore Waters of Puanui, Puaiki, Kiiokalani, and Kaihooa, North Kohala, Hawaii, Tax Map Keys: 3rd/ 5-8-001: and 5-9-003: Seaward of Puanui, Puaiki, Kiiokalani, and Kaihooa

APPLICANT:

Hawaii Oceanic Technology, Inc., a Delaware corporation.

LEGAL REFERENCE:

Section 171-59(b), Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government submerged lands and marine waters offshore of Puanui, Puaiki, Kiiokalani, and Kaihooa situated at North Kohala, Hawaii, identified by Tax Map Keys: 3rd/ 5-8-001: and 5-9-003: Seaward of Puanui, Puaiki, Kiiokalani, and Kaihooa, as shown on the attached maps labeled Exhibit A.

AREA:

247.129 acres, more or less. The area includes the seafloor (247.129 acres of submerged land), the surface waters directly above and the water column between the seafloor and the surface waters.

ZONING:

State Land Use District:	Conservation
County of Hawaii CZO:	Unplanned

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:

Encumbered by General Lease No. S-6017, Hawaii Oceanic Technology, Inc.

CHARACTER OF USE:

Aquaculture purposes.

LEASE TERM:

Thirty-five (35) years

COMMENCEMENT DATE:

Original commencement date of October 1, 2011 was amended by the Chairperson. The revised start date was set at August 1, 2012.

ANNUAL RENT:

\$3,500.00 annual rent due in semi-annual payments.

REMARKS:

At its meeting of October 28, 2010 under agenda item D-4 (as amended), the Board authorized the direct lease to Hawaii Oceanic Technology, Inc. (HOTI) for aquaculture purposes. The Board action allows HOTI to occupy the lease premises to farm pelagic fish in self-propelled fish cages called "oceanspheres" that are not anchored to the ocean floor. The initial start date for this lease was October 1, 2011 with a provision for rent for the first year to be waived. The Board action also included a special requirement regarding the performance bond for the lease.

Prior to the lease agreement being signed, the applicant requested changes in the lease be made with regards to the assignment of lease, liability insurance, performance bond and mortgage requirements. HOTI explained that it would take some time, perhaps a year or more after lease execution, before they are ready to deploy their first oceansphere.

At its meeting of February 24, 2012 under agenda item D-3, the Board amended its prior action by modifying the performance bond provision with language that required the Lessee to provide a bond in an amount equal to two times the annual rent until such time as the first

oceansphere is installed. At that time, the required amount will increase to \$100,000. All other provisions of the original performance bond are to remain the same.

However, the date of the original lease document indicated a start date of October 1, 2011 with a one year waiver of payment of rent. HOTI began receiving invoices for rent in September, 2012. HOTI pointed out that the lease was not signed until July 18, 2012, and its rent waiver should have run from some time after that date.<sup>1</sup> Staff consulted with the DAG on the issue of the lease commencement date, and DAG advised that the Chairperson has authority to amend the lease to set forth a commencement date occurring after the lease execution date. Accordingly, the lease was amended to reflect the starting date of August 1, 2012.

In a letter dated December 14, 2016 (Exhibit B)<sup>2</sup>, the Lessee explained that the Board of Directors of Hawaii Oceanic Technology, Inc. has consented to the dissolution of the company effective December 31, 2016. As a result of the dissolution of the company, the Lessee is no longer able to proceed with their business venture.

Staff has reviewed the lease account. The Lessee is current with the lease rent and liability insurance. A joint savings account with Central Pacific Bank is securing a bond equal to twice the annual rent. There are no outstanding rental reopening issues.

As a result of the Lessee having not made any improvements, staff is recommending the Board waive the Phase I Environmental Site Assessment requirement as described in paragraph 55 of the lease agreement.

Staff is recommending the Board authorize the mutual cancellation of General Lease No. S-6017, Hawaii Oceanic Technology, Inc., Lessee.

RECOMMENDATION: That the Board:

1. Authorize the mutual cancellation of General Lease No. S-6017, Hawaii Oceanic Technology, Inc., Lessee, 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 mutual cancellation lease document form, as may be amended from time to time;

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<sup>1</sup> The Board action of October 8, 2010, Item D-4, as amended, provides that the commencement date of lease is to be the first day of the month to be determined by the Chairperson.

<sup>2</sup> The Lessee's "Request to Withdraw" references Paragraph 40 of the subject lease. Staff informed Lessee that paragraph 40 refers to the Lessor's right to withdraw the premises, or any portion of the lease for other purposes and is not intended to be a release clause for the Lessee to withdraw from the terms and conditions of the lease.

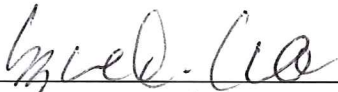
- B. The effective date of cancellation shall be December 31, 2016;
- C. Waive the Phase1 Environmental Site Assessment requirement (par.55);
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





# EXHIBIT A



EXHIBIT "B"

Scale: 1 inch = 2000 feet

C.S.F. NO. 25,045

PRELIM. APPR'D.  
Department of the  
Attorney General

GYH February 17, 2011

# EXHIBIT B

Hawaii Oceanic Technology, Inc.  
425 South St., #3102  
Honolulu, Hawaii 96813  
808-225-3579

**Sent via Certified Mail, Return Receipt Requested**

December 14, 2016

Suzanne Case, Chair  
Board of Land and Natural Resources  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street, Room 220  
Honolulu, HI 96813

**RE: Request to Withdraw - State of Hawaii Department of Land and Natural Resources  
General Lease No. S-6017 between State of Hawaii ("Lessor") and Hawaii Oceanic  
Technology, Incorporated, a Delaware corporation ("Lessee") covering aquaculture  
lease situated in the offshore waters of Puanui, Puaiki, Kiiokalani, and Kaihooa, North  
Kohala, Island of Hawaii, Hawaii containing and areas of 247.129 acres [TMK: (3) 5-8-  
001 and 5-9-003] (the "Premises")**

Dear Chair:

The Board of Directors of Hawaii Oceanic Technology, Inc. has consented to the dissolution of the Hawaii Oceanic Technology, Inc. effective December 31, 2016. Accordingly, the Lessee hereby exercises its right to withdraw from the premises effective December 31, 2016 pursuant to Paragraph 40 of the subject lease.

Please also be advised that Hawaii Oceanic Technology, Inc. never commenced commercial operations on the site nor did it at any time use or construct permanent or temporary improvements thereon. Therefor the Board of Directors also requests release of the \$7,000.00 "bond" being held in a joint savings account at the Main Branch of Central Pacific Bank, 220 South King Street, Honolulu, HI 96813-4503 in account number:

Lease rent of \$1,750.00 for the period 8/1/16-1/31/17 was prepaid 7/21/16. Please remit any refund for the prorated prepaid January 2017 rent to the address on this letterhead.

I request that this matter be taken up at the January Land Board meeting, if possible, so that any remittances can be authorized and made in a timely manner.

Sincerely,

/s/

William A. Spencer, CEO

cc: Samuel J. Lemmo, Michael Cain, Gordon Heit (via email)