

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

August 13, 2021

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

Hawaii

Consent to Mortgage of Sublease K-36 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, MATS4 LLC (MATS4), Sublessee/Mortgagor, First Hawaiian Bank, Mortgagee, Ooma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:113.

APPLICANT AND REQUEST:

MATS4 LLC, requesting consent to mortgage of Sublease K-36 with Estoppel Certificate from First Hawaiian Bank, Mortgagee, in an amount not to exceed \$3,423,921.

LEGAL REFERENCE:

Section 171-22, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of NELHA HOST Park Subdivision, Lot 3, situated at Ooma 1st, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043:113, as shown on the attached map labeled Exhibit A.

AREA:

1.355 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

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 operate a convenience store and fuel dispensing station with a focus on sustainable building design, sustainable fuels and offering NELHA sustainable products.

TERM OF LEASE:

65 years, commencing on July 3, 2001 and expiring on July 2, 2066. Last rental reopening occurred on July 3, 2011. Next rental reopening is scheduled for July 3, 2021 and is currently in process.

TERM OF SUBLEASE:

30 years, commencing on August 1, 2019 and expiring on July 31, 2049.

ANNUAL RENTAL:

For the period July 3, 2011 to July 2, 2021, the annual rental rate was \$480 per annum plus fifty percent (50%) of the Net Operating Income (NOI)¹. A rental reopening is currently in progress.

SUBLEASE RENTAL:

Fixed Rental Fee:	\$2,439.00 per month. Rent is calculated at a rate of \$1,800.00 per acre per month. The monthly rental fee is adjusted annually according to the published Hawaii Consumer Price Index for the first 10 years of the sublease.
Percentage Rent:	5% of the sublessee's gross sales less the amount of the fixed rental fee above. Percentage rent is due quarterly.
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

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. It does not include federal funds or grants.

accumulated variable charges for services and utilities
which are based on actual or estimated usage by Sublessee.

USE OF LOAN PROCEEDS:

Total loan distribution of \$3,423,921.00 will be used for design and construction of a convenience store and fueling station.

REMARKS:

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 (Board) for consent to its subleases. However, approvals for assignment of sublease and consent to mortgage are still required by the Board.

In August 2019, NELHA entered into a 30-year sublease agreement with MATS4 for development of a convenience store and fueling station offering competitive fuel prices, food, drinks and showcasing NELHA produced products along with an on-site certified commercial kitchen providing a wide variety of prepared pre-packaged meal for purchase. The design work is complete, and the permitting process is close to finished.

MATS4 has executed a design/build contract with Tinguely Development Inc. in the amount of \$5,823,921.00 and has secured financing with First Hawaiian Bank in an amount of \$3,423,921.00. The sublease requires the posting of a surety for the construction cost amount. The surety bond names NELHA and the State of Hawaii as obligees on the bond.

At its meeting of March 16, 2021, agenda item 5c, the NELHA Board approved the consent to mortgage for Sublease K-36, MATS4 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.

RECOMMENDATION: That the Board:

- A. Consent to the mortgage of Sublease K-36 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, between MATS4 LLC, Sublessee/Mortgagor, and First Hawaiian Bank, 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;
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,

Candace Martin

KEM

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL: *JCH*

Suzanne D. Case

Suzanne D. Case, Chairperson

RT

EXHIBIT A

