

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

June 8, 2012

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

PSF. No.: 12HD-063  
Ref. No.: GLS-5619

**HAWAII**

Consent to Assignment of Sublease K-8 of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, High Health Aquaculture, Inc., Sublessee/Assignor, to Shrimp Improvement Systems Hawaii LLC, Assignee, Kalaoa 1<sup>st</sup>-4<sup>th</sup>, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:068, 069 & 070 (formerly 7-3-043: portion of 041 & 042).

**APPLICANT:**

High Health Aquaculture, Inc. (HHA Inc), as Sublessee/Assignor, to Shrimp Improvement Systems Hawaii LLC (SISH LLC), a Hawaii Limited Liability Company, as Assignee.

**LEGAL REFERENCE:**

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands of the NELHA Facility situated at Kalaoa 1<sup>st</sup>-4<sup>th</sup>, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043:068, 069 & 070 (formerly 7-3-043: portion of 041 & 042), as shown on the attached map labeled Exhibit A.

**AREA:**

TMK: (3) 7-3-043:068 (Parcel A-1):	.462 acres (20,143 s.f.)
TMK: (3) 7-3-043:069 (Parcel A-2):	.043 acres (1,865 s.f.)
TMK: (3) 7-3-043:070 (Parcel A-3):	<u>1.765 acres (76,869 s.f.)</u>
	2.270 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:

YES \_\_\_ NO x

SUBLEASE CHARACTER OF USE:

To develop commercial production of Specific Pathogen Free (SPF) Marine Shrimp (*Penaeus sp*) broodstock.

TERM OF LEASE:

45 years, commencing on July 3, 2001 and expiring on July 2, 2046. First rental reopening was scheduled for July 3, 2011.

TERM OF SUBLEASE:

30 years, commencing on April 1, 2001 and expiring on January 31, 2031. First rental reopening was scheduled for April 1, 2011. Due to extended negotiations, the reopening was not resolved until January 2012.

The HHA Inc. rental reopening was delayed as a result of the extended negotiations of the NELHA "Master Lease"(GLS-5619) rental reopening. HHA Inc. agreed to a rental-reopening rate of \$431.87 per acre per month. Supplemental Agreement No. 1 of Sublease K-8 has been executed and is awaiting final signature at the NELHA Attorney General Office.

Note: The commencement date for Sublease K-8 predates the commencement date of General Lease No. S-5619 as Sublease K-8 was originally issued under General Lease No. S-4717. At its meeting of November 19, 1999, Item D-20, GLS-4717, GLS-5157 and Governor's Executive Order No. 3282 was cancelled, then reissued under General Lease No. S-5619, which commenced on April 1, 2001.

ANNUAL RENTAL:

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

ANNUAL SUBLEASE RENTAL:

Fixed Rental Fee (Current)

**\$892.00** - for the improved land area occupied, excluding areas lying within the utility corridor, at \$400.00 per acre per month for 2.23 acres.

Fixed Rental Fee (Pending)

**\$963.07** – for the improved land area occupied, excluding areas lying within the utility corridor, at \$431.78 per acre per month for 2.23 acres.

Percentage Rent

If two percent (2%) of the Sublessee's gross sales for any calendar year exceeds the amount of fixed rental fees already paid by Sublessee for such period, then Sublessee shall pay percentage rent equal to two percent (2%) of Sublessee's gross sales less the amount of fixed rental fees already received by Sublessor for said calendar year.

CONSIDERATION:

\$ 2,200,000.00.

Breakdown of improvements and trade fixtures are as follows:

Cost of improvements	\$ 1,541,000.00
Value of inventory	\$ 1,600,000.00
Trade Fixtures	<u>\$ 285,000.00</u>
	\$ 3,426,000.00

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>x</u>	NO
Registered business name confirmed:	YES <u>x</u>	NO
Good standing confirmed:	YES <u>x</u>	NO

ASSIGNEE:

Place of business registration confirmed:	YES <u>x</u>	NO
Registered business name confirmed:	YES <u>x</u>	NO
Good standing confirmed:	YES <u>x</u>	NO

REMARKS:

High Health Aquaculture, Inc., has been a NELHA tenant since January 1, 1999, under a short-term (1-year) lease by way of a Facility Rental Agreement, which was originally encumbered under General Lease No. S-4717. It was renewed once for periods covering January 1, 2000 to December 31, 2000.

On April 1, 2001, the Land Board approved Consent to Sublease K-8 of General Lease No. S-5619, which converted the 1-year Facility Use Agreement into a longer-termed (30-year) sublease. Sublease K-8 commenced on 4/1/2001 and will expire on 3/31/2031.

On September 13, 2002, the Chairperson of the Board of Land and Natural Resources approved Consent to Mortgage of Sublease K-8, to the United States Department of Agriculture (USDA) for \$234,000. Proceeds of the loan were for Operating expenses (\$41,000) and Capital Improvements (\$193,000).

By letter dated April 11, 2012, Laurence Sombardier, NELHA Contracting and Leasing Specialist, requested BLNR's consent for assignment of Sublease K-8, HHA Inc, Assignor, to SISH LLC, Assignee. Purpose of the assignment is due to principal's plan for retirement from the business.

In 2008, SISH LLC, previously known as Pacific Aquaculture and Biotechnology LLC, acquired Kona Bay Marine Resources, Inc./ Sunrise Capital, Inc., which was assigned NELHA Sublease K-20. SISH LLC started commercial sales of *vannamei* broodstock on the NELHA property in 2009.

SISH LLC's acquisition of HHA Inc is threefold: 1) to allow continuing efforts in broadening the company's gene pool, 2) to provide immediate additional production area, and 3) to provide a geographically separated facility to serve as a nucleus breeding center for additional shrimp species.

High Health Aquaculture, Inc. 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.

Shrimp Improvement Systems Hawaii LLC 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.

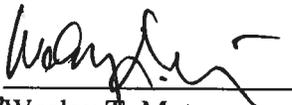
The first rental reopening was scheduled for July 3, 2011. Next scheduled rental reopening is on July 3, 2021. There are no outstanding rental reopening issues.

No governmental agency or interest groups were solicited for comments, as there will be no new disposition or change in land use.

RECOMMENDATION: That the Board:

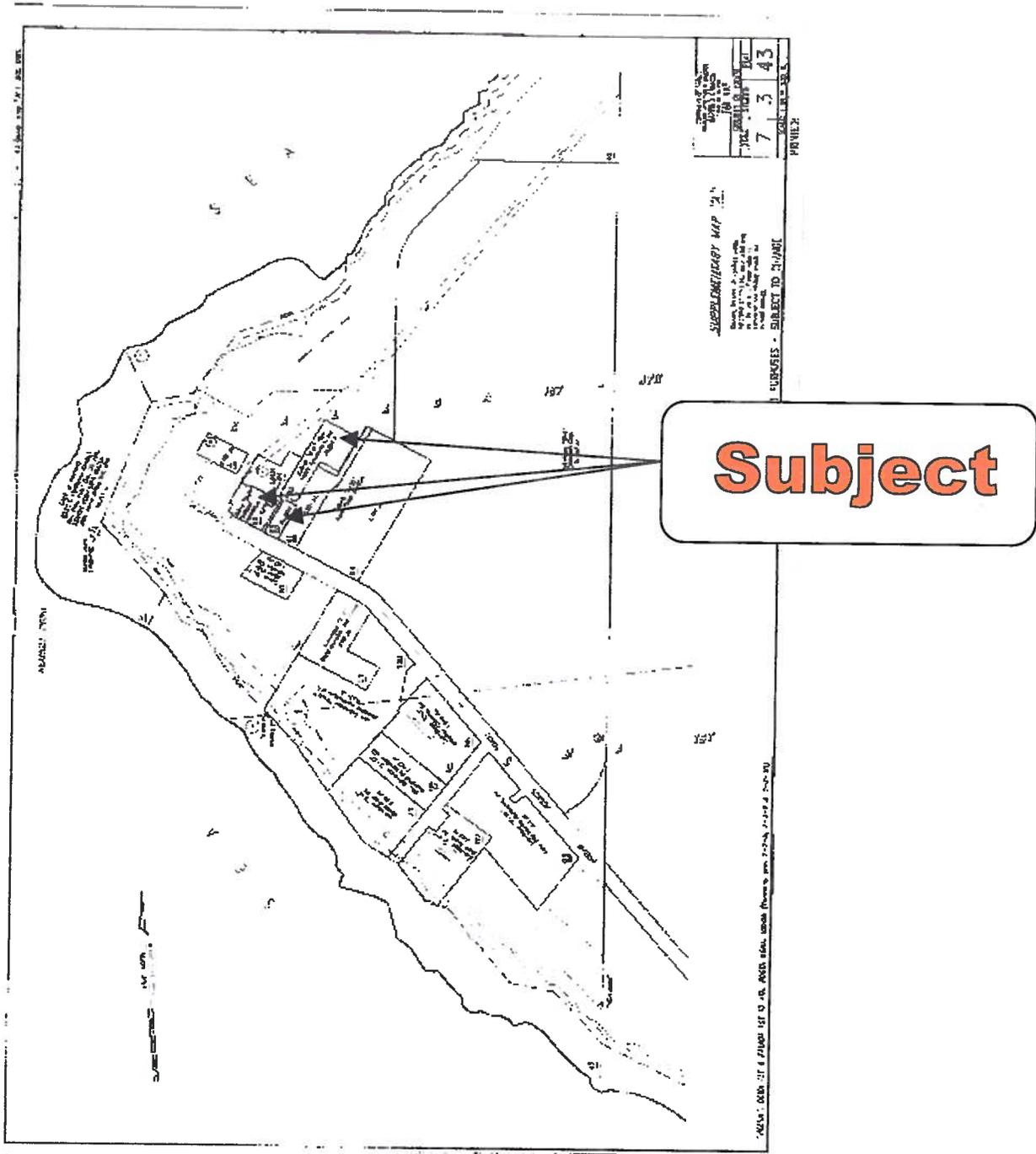
- A. Consent to the Assignment of Sublease K-8 of General Lease No. S-5619, NELHA, Lessee, from High Health Aquaculture, Inc., as Sublessee/Assignor, to Shrimp Improvement Systems Hawaii LLC, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to sublease assignment 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,

  
\_\_\_\_\_  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
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William J. Aila, Jr., Chairperson



**EXHIBIT A**

