

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

August 9, 2013

Ref. No.: GLS-5619

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

HAWAII

Consent to Mortgage of Sublease K-30 with Estoppel Certificate, General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, The Exploration Foundation and West Hawaii Explorations Academy (WHEA), Co-Sublessees/Mortgagor, United States Department of Agriculture, Rural Housing Service, Mortgagee, Kalaoa 1st-4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: 083.

APPLICANT AND REQUEST:

The Exploration Foundation a Hawaii non-profit corporation, together with West Hawaii Explorations Academy (WHEA), a State of Hawaii public charter school, as Co-Sublessees, requesting Consent to Mortgage of Sublease K-30 with Estoppel Certificate from the United States Department of Agriculture, Rural Housing Service, Mortgagee, in an amount not to exceed \$ 5,500,000.00.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kalaoa 1st-4th, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043: 083 as shown on the attached map labeled Exhibit A.

SUBLEASE AREA:

5.0837 acres gross (4.705 acres net), 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:

For public, charitable, or educational purposes.

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.

There is currently a pending submittal to request Amendment of General lease No. S-5619. One of the amendments requested is to extend the lease for another 20-years, which would commence on July 3, 2046. If approved, the total term would then be for 65 years, with an expiration of July 2, 2066.

SUBLEASE TERM:

30-years, commencing on April 15, 2011 and expiring on April 14, 2041.

SUBLEASE RENTAL REOPENING:

The monthly fixed rental fees shall be reopened and redetermined as of the day following the expiration of the fifth (5th) year and every fifth (5th) year thereafter of the sublease term.

ANNUAL RENTAL:

\$480 per annum, plus fifty percent (50%) of the net operating income (NOI)¹, commencing for period from July 3, 2011 to July 2, 2021

SUBLEASE RENTAL:

\$941.00 per month

For the first eighteen (18) months of this Sublease, or until commencement of construction of improvements on the subleased premises, whichever shall first occur, Sublessee shall not be required to pay a rental fee.

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.

Thereafter, Sublessee shall pay a rental fee, calculated at a rate of \$200.00 per acre, per month, for unimproved lands, payable in advance, without notice or demand, on the first day of each and every month. The fixed rental fee shall be based on the entire area of the parcel, containing a net acreage of 4.705 acres, for a total of \$941.00 per month.

USE OF LOAN PROCEEDS:

An itemized breakdown of the loan proceeds will be disbursed as follows:

\$ 500,000	A&E/ indirect costs
\$ 1,750,000	Site improvements/ utilities
\$ 2,650,000	Classroom buildings, campus relocation costs & direct costs.
\$ 200,000	Furniture, fixtures & equipment
<u>\$ 400,000</u>	<u>Financing and project contingency</u>
\$ 5,500,000	Total loan distribution

REMARKS:

At its meeting of November 19, 1999, the Board of Land and Natural Resources, under Agenda Item D-20, approved as amended, the cancellation of General Lease No. S-4717 and S-5157; Cancellation of Governor's Executive Order No. 3282; and Direct Issuance of a New Lease (GLS-5619) to the NELHA.

At its meeting of June 23, 2006, Agenda Item D-1, the Board approved the amendment of General Lease No. S-5619, to waive the lease requirements for NELHA to obtain prior approvals from the Board of Land and Natural Resources for consent to its subleases. The purpose of amending the lease was to enable NELHA to process its subleases without prior consents from the Land Board, in an attempt to expedite and streamline NELHA's operations and eliminate redundant review by the Land Board.

At its meeting of March 19, 2013 the NELHA Board approved the issuance of Sublease K-30, a 30-year sublease to the West Hawaii Explorations Academy, for public, charitable and educational purposes.

The NELHA Board further approved Supplemental Agreement No. 1 of Sublease K-30, dated April 29, 2013, which modified the Primary Agreement by adding The Exploration Foundation as a Co-Sublessee under said Sublease.

By letter dated April 9, 2013, Laurence Sombardier, NELHA Contracts and Leasing Specialist, requested that the Land Board approve consent to mortgage of Sublease K-30, General Lease No. S-5619, by The Exploration Foundation and West Hawaii Explorations Academy, Co-Sublessees/mortgagor, in favor of USDA-Rural Housing Service, mortgagee.

Mortgagor/mortgagee have provided staff with draft copies of various documents entitled (i) Master Lessor's Consent to Assignment and Mortgage of Sublease, (ii) Estoppel Certificate, (iii) Memorandum of Sublease No. K-30, (iv) United States Department of Agriculture Rural Development Consent to Assign and Mortgage Sublease, and (v) Mortgage for Hawaii, the first two of which include the State as a party-signatory. Although presently there are no requests for assignments before the Board, the assignment language contained in these documents appears to refer to future potential of assignments of the sublease in the event of default under the mortgage. It is possible that the Department of the Attorney General (AG) will require revisions to some of the documents before approving for signature by the Chairperson. Staff is therefore recommending approval of the request for consent to mortgage of Sublease K-30 with estoppel certificate, subject to AG review.

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 first rental reopening is scheduled for November 11, 2013.

Staff has no objections to the request.

No government agencies 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 Mortgage of Sublease K-30 of General Lease No. S-5619, NELHA, Lessee, between The Exploration Foundation and West Hawaii Explorations Academy, Co-Sublessee/Mortgagor, and United States Department of Agriculture, Rural Housing Service, 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 interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



Subject

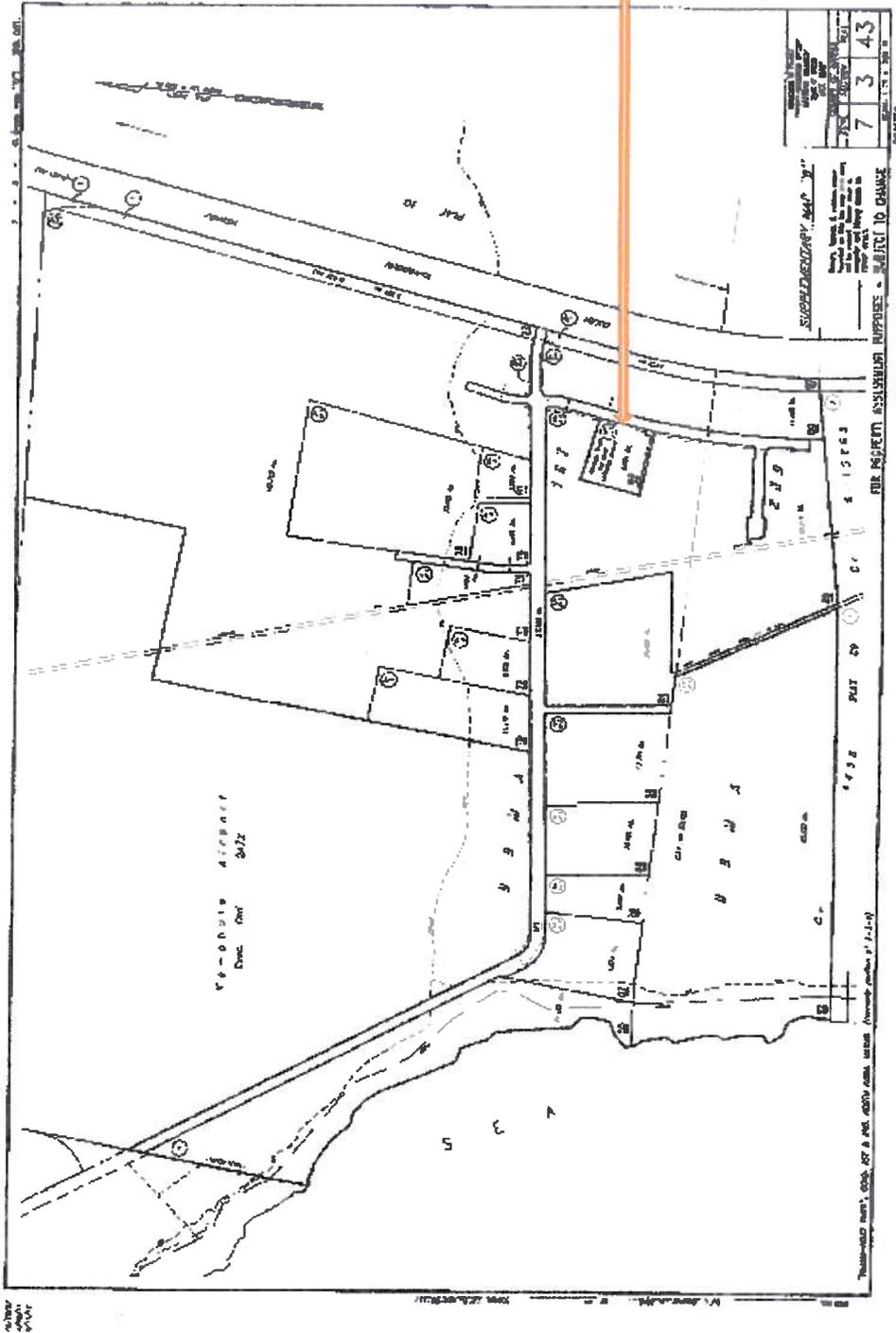


EXHIBIT A