

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

May 27, 2016

Ref. No.: 16HD-022
GLS-5721

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

HAWAII

Consent to Mortgage of General Lease No. S-5721 with Estoppel Certificate, Keahole Point Fish LLC, Lessee/Mortgagor, Ulupono Holdings LLC, Mortgagee, Kalaoa 1st-4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:Seaward of Kalaoa.

APPLICANT AND REQUEST:

Keahole Point Fish LLC, requesting consent to mortgage of General Lease No. S-5721 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:

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

SUBLEASE AREA:

90.00 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:

Mariculture purposes.

TERM OF LEASE:

20 years, commencing on November 1, 2004 and expiring on October 31, 2024. The last rental reopening was on November 1, 2014.

ANNUAL RENTAL:

\$20,000/semi-annual or 1% percentage of gross revenue per annum, whichever is greater.

USE OF LOAN PROCEEDS:

Total loan distribution will be for working capital purposes related to the expansion of the mariculture operations on the lease premises.

REMARKS:

General Lease No. 5721 was issued to Kona Blue Water Farms, LLC (KBWF LLC) by direct negotiation on October 19, 2005, pursuant to Hawaii Revised Statutes Chapters 171 and 190D. In the years since, KBWF LLC and its successors-in-interest have operated an offshore aquaculture facility on the lease premises subject to the conditions set forth in Conservation District Use Permit Nos. HA-3118B and HA-3497. Under CDUP No. HA-3497, KBWF LLC is permitted to operate up to five pens in production, none larger than 7,000 cubic meters and together totaling no greater than 24,000 cubic meters.

On September 1, 2009, KBWF LLC converted from a Delaware limited liability company to a Delaware corporation called Kona Blue Water Farms, Inc. (KBWFI).

On December 10, 2009, the Board of Land and Natural Resources consented to the assignment of GLS-5721 from KBWFI, as assignor, and Keahole Point Fish LLC (KPF) as assignee.

In 2014, Blue Ocean Mariculture, LLC (parent company of KPF) was issued CDUP No. HA-3720 for capacity increase of the mariculture operation upon the lease premises.

By letter dated January 29, 2016, Mr. Eaton O'Neill of Cades Schutte, LLLP, on behalf of KPF, requested consent to mortgage of General Lease No. S-5721, KPF, Lessee/ Mortgagee, in favor of Ulupono Holdings LLC, as Mortgagee. The mortgage in the amount of \$3,000,000 is for working capital, to expand mariculture operations on the lease premises.

Staff reviewed the file and can report that for the past two (2) years, a notice of default was sent on 12/3/15 for delinquent rent. The delinquent rent was cured soon after. Liability insurance is current with an expiration of 2/10/17. The Lessee has never been cited for any illegal or unlawful activity on the State property. An Irrevocable Letter of Credit from Wells Fargo Bank, in the amount of \$30,000 is on file, with automatic extension till 10/31/24.

KPF 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 last rental reopening occurred on November 1, 2014. There are no outstanding rental reopening issues.

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

RECOMMENDATION: That the Chairperson:

- A. Consent to the mortgage between Keahole Point Fish LLC, Lessee/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;
 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:



Suzanne D. Case, Chairperson

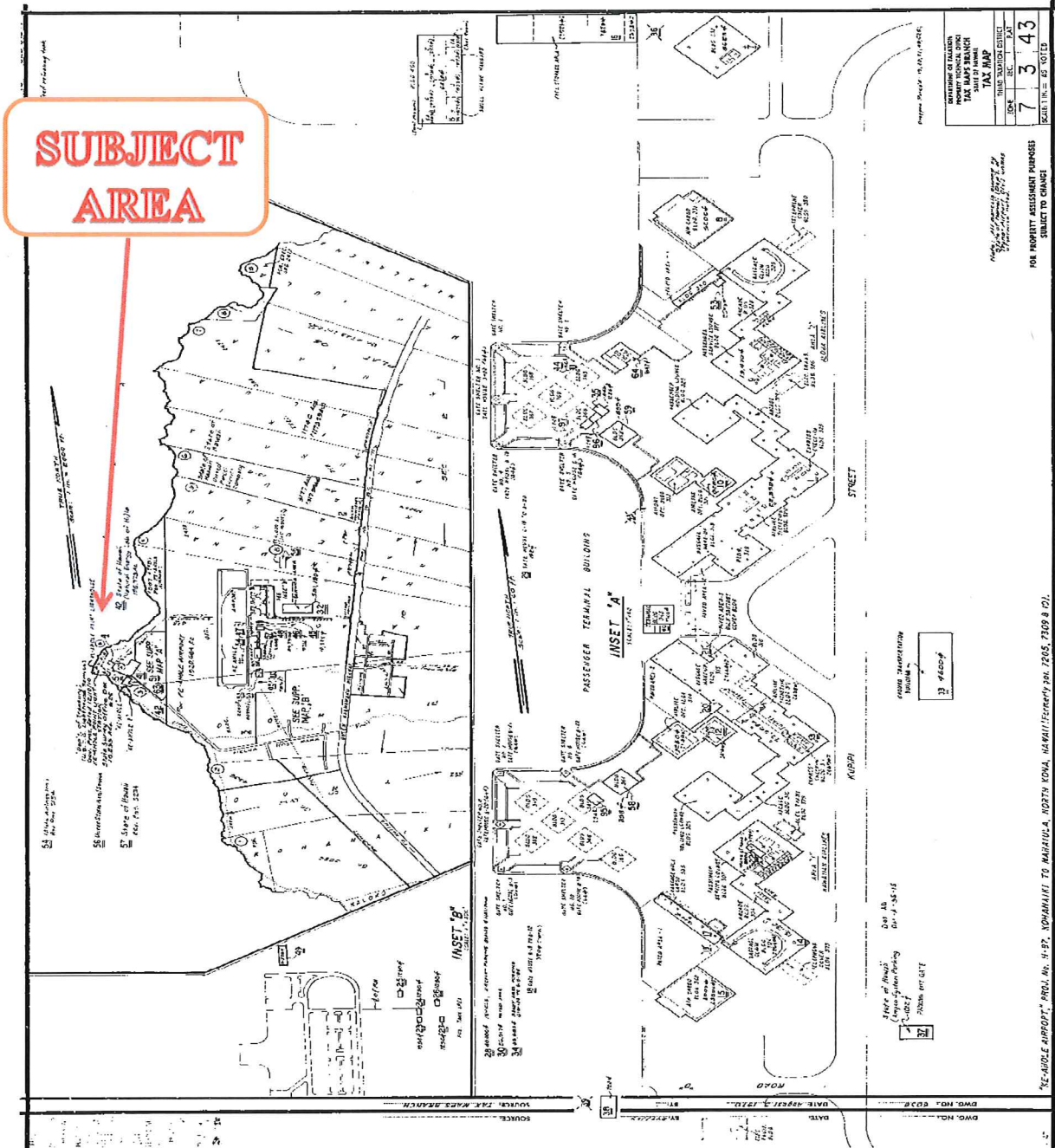


EXHIBIT A

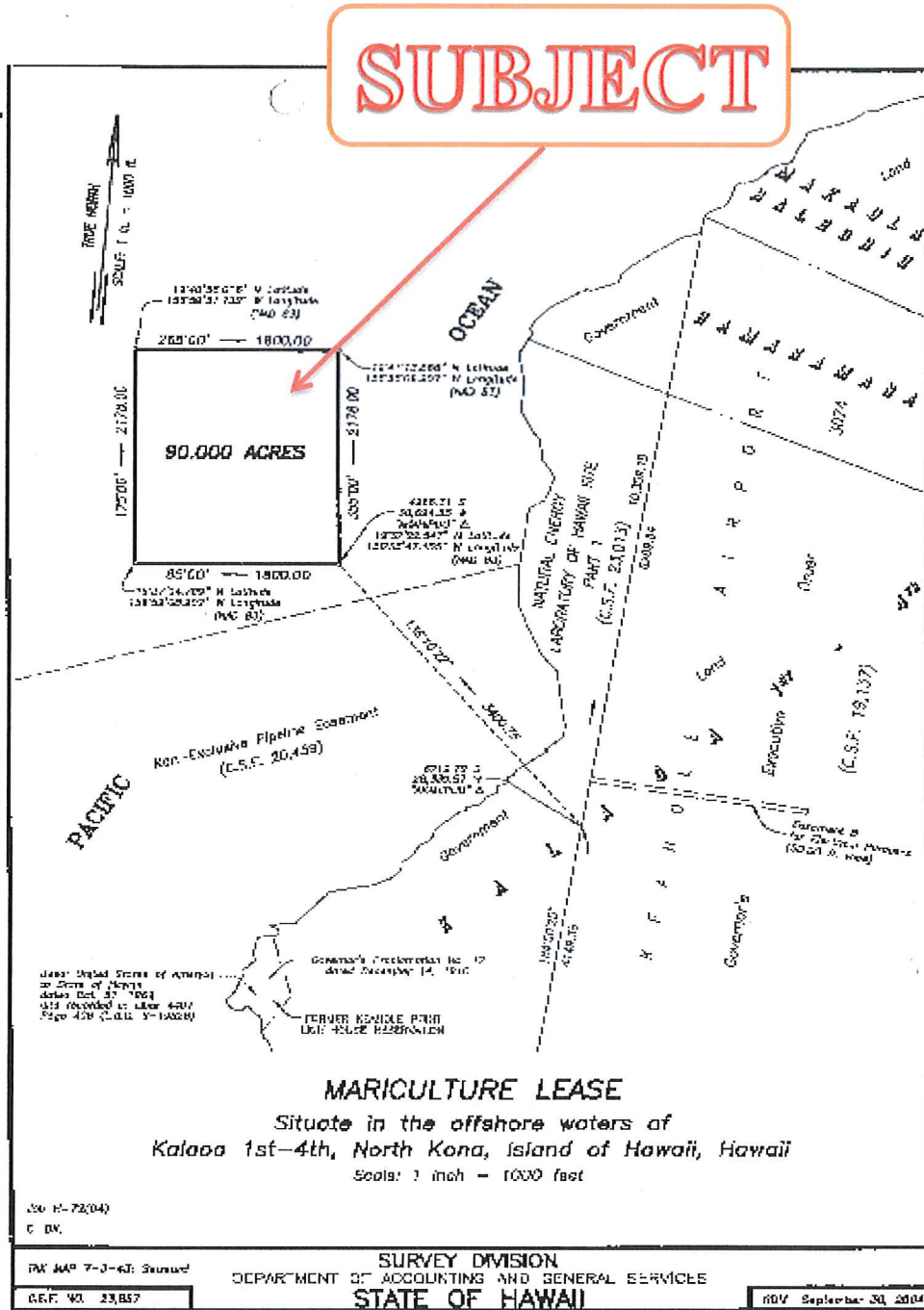


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