

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

April 27, 2012

Ref. No.: GLS-5619

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

HAWAII

After-the-fact, Consent to Assignment of Sublease K-15 of General Lease No. S-5619, by Black Pearls, Incorporated, Assignor, to Kona Blue Water Farms, LLC, Assignee; located at Ooma 1<sup>st</sup>, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-3-43: 92 (formerly: TMK: 3<sup>rd</sup>/ 7-3-43: portion of 42).

Acknowledge the Conversion of Kona Blue Water Farms, LLC into Kona Blue Water Farms, Inc.

Consent to Assignment of Sublease K-15, under General Lease No. S-5619, by Kona Blue Water Farms, Inc., Assignor, to Keahole Point Hatcheries LLC, Assignee, Ooma 1<sup>st</sup>, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-3-43:92.

APPLICANT:

**Natural Energy Laboratory of Hawaii Authority (NELHA)**, a body corporate and politic and an instrumentality and agency of the State of Hawaii, as Lessee/Sublessor

**Black Pearls, Incorporated (BPI)**, a domestic profit corporation.

**Kona Blue Water Farms, LLC (KBWF, LLC)**, a domestic limited liability company.

**Kona Blue Water Farms, Inc. (KBWFI)**, a foreign profit corporation.

**Keahole Point Hatcheries, LLC (KPH LLC)**, a domestic limited liability company.

LEGAL REFERENCES:

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

Section 414-385, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the NELHA Small Business Compound, Lots C & D, situated at Ooma 1<sup>st</sup>, North Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 7-3-43:92 (formerly TMK: 3<sup>rd</sup>/ 7-3-43: 42 por.), as shown on the attached map labeled Exhibit A.

LEASED AREA:

869.34 acres, more or less

SUBLEASED AREA:

**3.43 ac (gross), 2.27 acres (net)**, which consists of Lots C and D of the NELHA Small Business Compound.

**Lot C:** 1.02 acres (net) The subject parcel consists of 2.18 acres (gross), less a required 125-foot conservation setback from the certified shoreline totaling 0.98 acre and an archaeological preserve totaling 0.18 acre.

**Lot D:** 1.25 acres

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES  NO

LEASE CHARACTER OF USE:

The Lessee shall use or allow the premises leased to be used solely to develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M, Hawaii Revised Statutes, and to allow ancillary and accessory uses that will assist the development to become self-sufficient.

SUBLEASE CHARACTER OF USE:

To establish a commercial pearl oyster and finfish hatchery for the **Hawaiian black-lip pearl oyster** (*Pinctada margaritifera galsoffi*), **mahimahi** (*Coryphaena hippurus*), **ehu** (*Etelis carbunculus*), **opakapaka** (*Pristipomoides filamentosus*), **onaga** (*E. coruscans*), **uku** (*Aprion virescens*), **hapu'upu'u** (*Ephinephelus quernus*), **flame angelfish** (*Centropyge loriculus*), **long-nosed hawkfish** (*Oxycirrhites typus*), **decorator shrimp** (*Lyasmataamboinensis*), and additional species: **hard clams** (*Mercenaria mercenaria*),

**giant clams** (*Tridacna crocea*, *T. derasa*, *T. gigas*, *T. maxima*, *T. squamosa*, *Hippopus hippopus*), **grouper** (*Epinephelus lanceolatus*), and **Taiwanese abalone** (*Haliotis diversicolor supertexta*).

TERM OF LEASE:

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

TERM OF SUBLEASE:

30 years, commencing on June 1, 2003 and expiring on May 31, 2033.

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.

SUBLEASE RENTAL:

Fixed Rental Fee: \$908.00 Rent is calculated at a rate of \$400.00 per acre per month, over 2.27 acres (net), based upon the following:

Lot C: Consisting of a net total of 1.02 acres of improved land, gross acreage of 2.18 acres less 0.98 acre of a required 125-foot setback from the certified shoreline and 0.18 acre of an archaeological preserve

Lot D: 1.25 acres

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

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 accumulated variable charges for services

and utilities which are based on actual or estimated usage by Sublessee.

CONSIDERATION:

\$400,000.00, for assets related to sublease site.

RECOMMENDED PREMIUM TO LESSOR:

None.

RECOMMENDED PREMIUM TO SUBLESSOR:

None

DCCA VERIFICATION:

**Black Pearls, Incorporated:**

No Standing – Entity Dissolved.  
Articles of Dissolution filed - April 26, 2010

**Kona Blue Water Farms, LLC:**

No Standing – Entity Converted.  
On September 1, 2009, company was converted into Kona Blue Water Farms, Inc.

**Kona Blue Water Farms, Inc.:**

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

**Keahole Point Hatcheries LLC:**

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:

By letter dated February 2, 2011, Laurence Sombardier, Interim Executive Director, NELHA, requested Land Board approval for its consent to assignment of Sublease (K-15) of General Lease No. S-5619, BPI, a wholly owned subsidiary of KBWFI, Assignor, to KPH LLC, Assignee.

The assignment of Sublease K-15 is necessitated by the dissolution<sup>1</sup> of BPI and the sale of KBWFI's finfish hatchery assets at the NELHA property subleased under K-15 to the Assignee, KPH LLC. KPH LLC is a sister company to Keahole Point Fish LLC which operates an open ocean cage culture operation located directly offshore of the NELHA properties under a separate DLNR mariculture lease (GL S-5721). Juvenile finfish from the KBWFI hatchery are transferred to the floating cages offshore for grow-out to market size.

As required by NELHA master lease GL S-5619, consent to assignment of Sublease K-15 from KBWFI to KPH LLC was approved by the NELHA Board at its meeting on November 16, 2010. NELHA calculations on depreciated costs of lease improvements determined no assignment premium was due. Land Board approval to the consent to assignment is required and is being requested at this time.

**TENANT HISTORY:** It is staff's understanding that BPI, a privately owned Hawaii corporation, first utilized Lot C of the NELHA Small Business Compound from 2002 to 2003 under a short term Facilities Rental Agreement (FRA), operating a commercial pearl oyster and finfish hatchery. At the time, BPI reported four primary goals: 1) to develop an oyster hatchery to supply spat (juvenile pearl oysters) to BPI's operations and to the developing Hawaiian pearl culture industry, 2) develop a finfish hatchery to supply fry to BPI's affiliated fish farm venture (now Keahole Point Fish LLC) and to current and future marine fish farmers in Hawaii, 3) develop a hatchery and grow-out facility for high-value aquarium fish, and 4) develop a research facility to continue BPI's biotech advances in aquaculture.

In May 2011, Sublessee disclosed a 100% transfer of ownership of BPI stock to KBWF LLC had occurred in October 2004, making BPI a wholly owned subsidiary of KBWF LLC. Sublease K-15 had been specifically excluded from this 2004 ownership transfer, so no sublease assignment was made at the time, although an assignment premium evaluation would have been appropriate pursuant to Paragraph 28 of Sublease K-15.

A chronology of events showing the relationships between BPI, KBWF LLC, KBWFI, KPH LLC (Assignee), and affiliated business entities:

DATE:	EVENT/ ACTION:
6/09/1992	BPI filed Articles of Incorporation with DCCA.
8/28/2002	BPI registered the trade name "Kona Blue Water Farms" (KBWF) at DCCA.
3/03/2003	BPI renewed its registration for the trade name KBWF LLC.
6/27/2003	BPI entered into a long-term (30-year) lease with NELHA under Sublease K-15 on Lot C of the Small Business Compound to continue the activities it

<sup>1</sup> Pursuant to Section 414-385, HRS, a dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs; and dissolution of a corporation does not transfer title to a corporation's property.

	had begun under the Facility Rental Agreement (FRA) described above.
11/05/2003	BLNR Item D-3, approved of mariculture lease to KBWF LLC.
3/09/2004	BPI cancelled its registration of the KBWF trade name, and on the same date, KBWF LLC filed for its Articles of Organization with DCCA.
9/01/2004	Supplemental Agreement No. 1 amended Sublease K-15 to add Lot D to BPI operations on Lot C.
10/21/2004	KBWF LLC purchased 100% of issued and outstanding BPI stocks; however, Sublease K-15 retained by BPI (listed as "BPI hatchery lease" in a Schedule of Exceptions to the Investment Agreement detailing the transfer of ownership).
10/19/2005	KBWF LLC entered into DLNR mariculture lease No. S-5721 for use of submerged lands, the water column and surface waters located in State waters offshore of NELHA properties.
9/01/2009	Conversion of KBWF LLC to KBWFI filed with DCCA on 9/1/2009.
1/08/2010	BLNR Item D-25, approved of Assignment of mariculture lease No. S-5721 from KBWFI to Keahole Point Fish LLC.
3/24/2010	Consent to Assignment by Land Board of GLS-5721 from KBWFI, acknowledged as formerly known as KBWF LLC, to Keahole Point Fish LLC.
	Assignment and Assumption of Mariculture Lease No. GLS-5721 from KBWFI, acknowledged as formerly known as KBWF LLC, to Keahole Point Fish LLC.
4/26/2010	BPI Articles of Dissolution filed at DCCA.
11/10/2010	KPH LLC filed Articles of Organization at DCCA, citing Keahole Point Fish LLC as its agent.
8/19/2011	KBWF, Inc. was dissolved.

Pursuant to Section 171-36(a)(5), HRS, Land Board approval of the following consents to assignment, including after-the-fact approvals, is requested:

- 1) After-the-fact, consent to assignment of Sublease K-15 from BPI to KBWF LLC;
- 2) Consent to assignment of Sublease K-15, from KBWFI to KPH LLC.

BPI, KBWFI and KPH LLC have 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.

There are no outstanding rent or rental reopening issues associated with Sublease K-15.

Pursuant to paragraph 51 of Sublease K-15, the Sublessee/Assignor shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources.

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 grant approval of the following items:

1. After-the-fact, Consent to the Assignment of Sublease K-15, under General Lease No. S-5619, from BPI as Sublessee/ Assignor, to KBWF LLC, as Assignee, subject to the following:
  - A. The standard terms and conditions of the most current consent to assignment of sublease form, as may be amended from time to time;
  - B. Acquisition of prior approval from the NELHA Board to the consent to assignment of Sublease K-15 from BPI to KBWF LLC;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Acknowledge the conversion of KBWF LLC into KBWFI.
3. Consent to the Assignment of Sublease K-15, under General Lease No. S-5619 from KBWFI as Sublessee/ Assignor, to KPH LLC, as Assignee, subject to the following:
  - A. The standard terms and conditions of the most current consent to assignment of sublease form, as may be amended from time to time;
  - B. Completion by Sublessee/Assignor of a Level One (1) Hazardous Waste Evaluation and, if necessary, a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources
  - C. Acquisition of prior approval from the NELHA Board to the consent to assignment of Sublease K-15 from KBWFI to KPH LLC;
  - D. Review and approval by the Department of the Attorney General; and


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- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

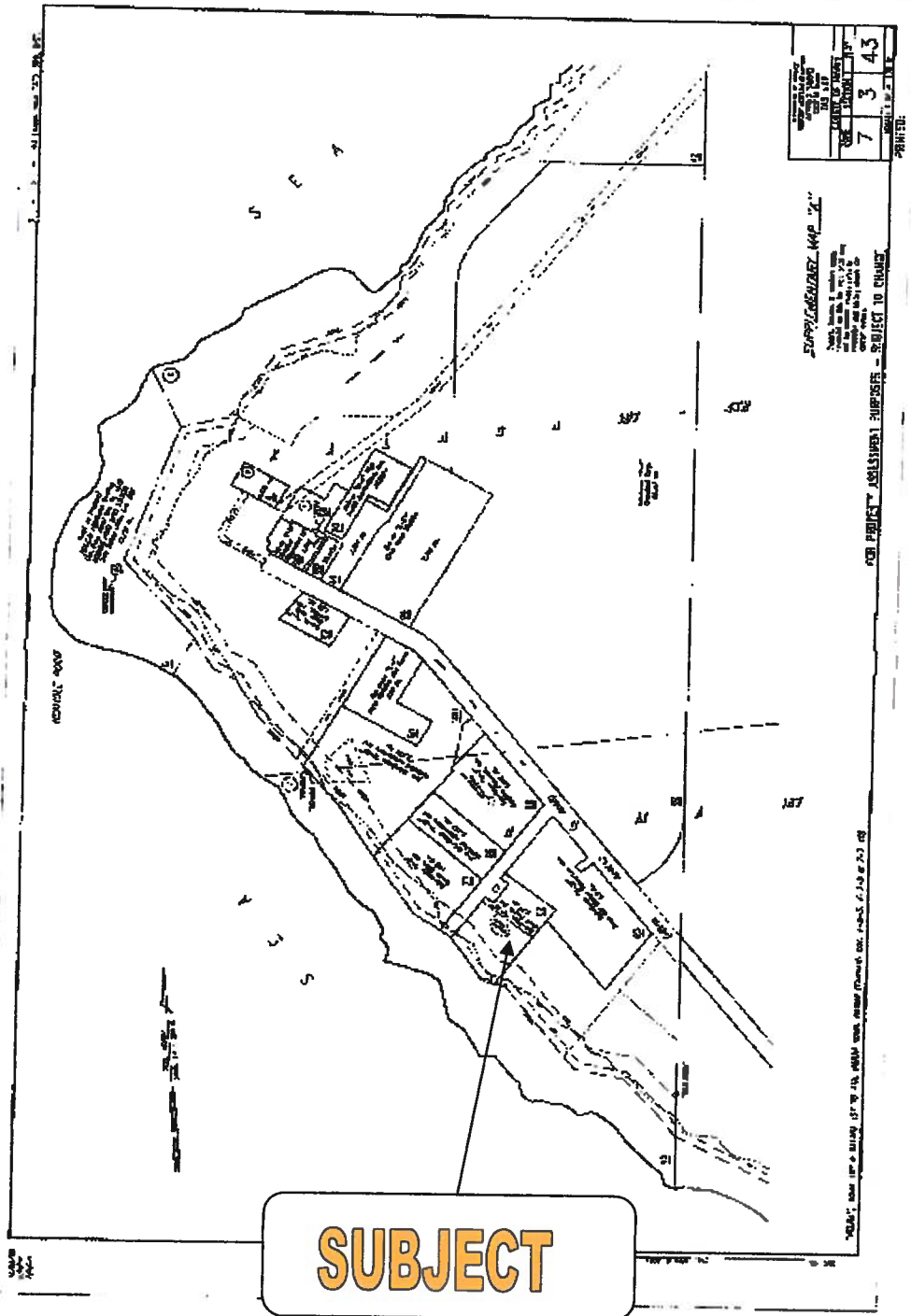
Respectfully Submitted,

  
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Wesley T. Matsunaga  
Land Agent

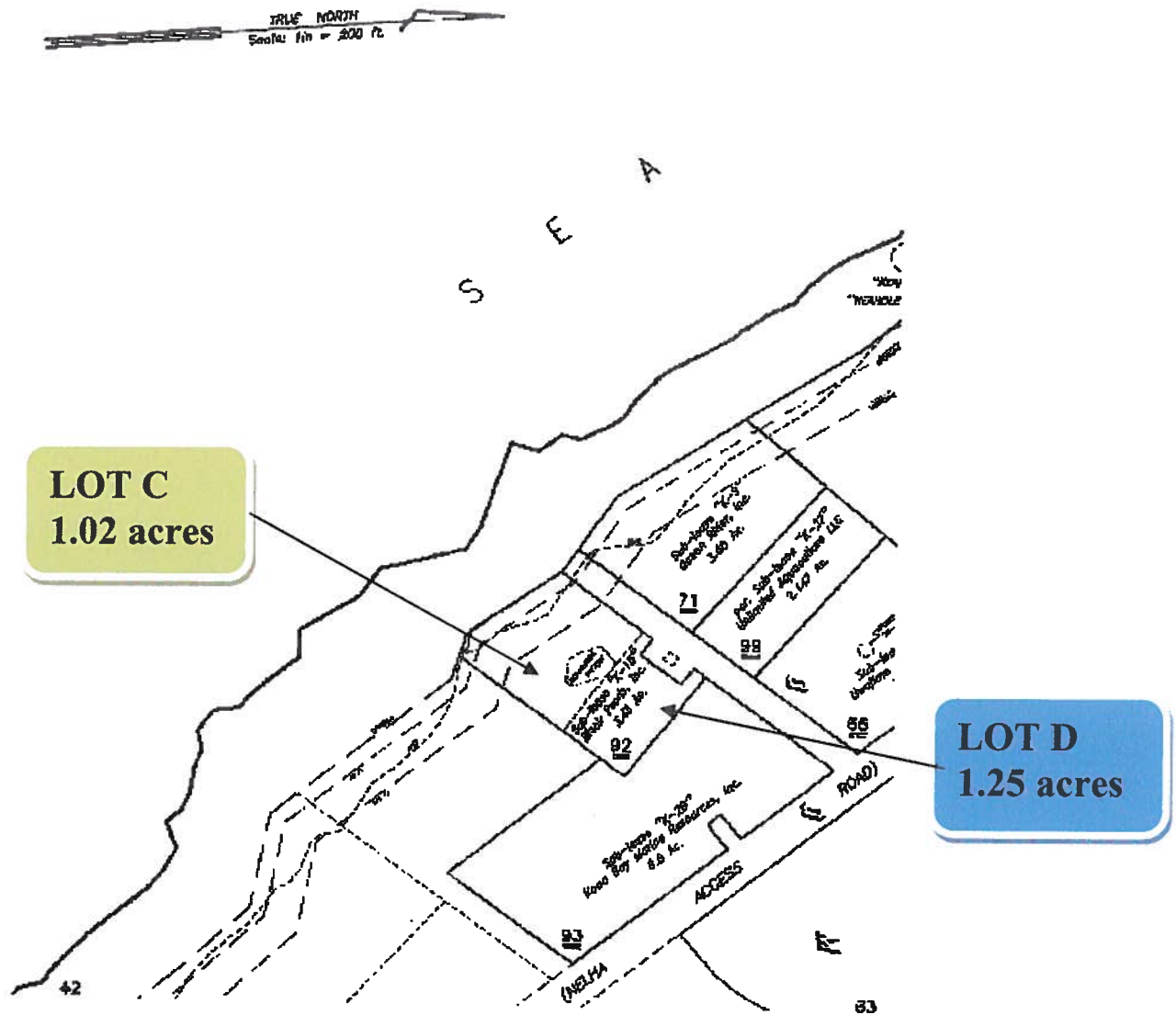
APPROVED FOR SUBMITTAL:

  
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William J. Aila, Jr., Chairperson





# EXHIBIT A



# EXHIBIT A