

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

December 14, 2012

Ref. No.: GLS-5619

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

HAWAII

Consent to Assign Portion of Sublease K-27 of General Lease No. S-5619, Troutlodge Marine Farms Kona, LLC, Assignor, to Shrimp Improvement Systems Hawaii LLC, Assignee, Kalaoa 1st-4th, Ooma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:099 & 100.

APPLICANT:

Troutlodge Marine Farms Kona, LLC (TMFK, LLC), as Assignor, Shrimp Improvement Systems Hawaii LLC (SISH LLC), as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of NELHA Site situated at Kalaoa 1st-4th, Ooma 1st, North Kona, Hawaii, identified by Tax Map Key: (3) 7-3-043:099 & 100, as shown on the attached map labeled Exhibit A.

SUBLEASE AREA:

TMK: (3) 7-3-043: 099
2.147 acres, more or less.

TMK: (3) 7-3-043:100
1.068 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

ENCUMBRANCE:

Encumbered under General Lease No. S-5619, to the Natural Energy Laboratory of Hawaii Authority (NELHA)

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

TERM OF LEASE:

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

TERM OF SUBLEASE:

30 years, commencing on July 1, 2007 and expiring on May 31, 2037. Last rental reopening occurred on July 1, 2012; next rental reopening is scheduled for July 1, 2017.

ANNUAL RENT:

\$480 per annum, plus fifty percent (50%) of the net operating income (NOI¹).

ANNUAL SUBLEASE RENTAL:

Fixed Rental Fee:
\$1,607.50

Based on a rate of 500.00 per acre per month, payable in advance, on the First day of each and every month. Sublease area consists of 3.215 acres, with rent based on the net acreage of 3.215 acres.

Percentage Rent:

If two percent (2%) of 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

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.

equal to two (2%) of Sublessee's gross sales less the amount of the fixed rental fees already received by Sublessor for said calendar year.

CONSIDERATION:

\$325,000.00.

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

BACKGROUND:

NELHA manages the Natural Energy Laboratory of Hawaii in North Kona, Hawaii pursuant to General Lease No. S-5619 with a commencement date of July 3, 2001 and expiration date of July 2, 2066.² The leased lands encompass approximately 870 acres of fastlands, together with an easement over approximately 3,000 acres of submerged lands. Roughly 240 acres of fastlands have been subleased for natural energy uses. Another 170 acres are used for roadways or reserved for setbacks and preserves. The balance of approximately 460 acres of leasable lands remains in an unimproved state.

The NELHA and HOST park facilities were originally intended to provide for the research and development, prototype incubation facilities utilizing the unique deep, cold-water technology at the facility. The ultimate goal of this effort was to develop commercially viable companies in the field of marine and ocean sciences. As the technology was perfected, the forecast was that rents would increase based on the fixed reopening dates in the leases.

General Lease S-5619 includes a requirement that NELHA submit an annual report of its

² Prior to the issuance of General Lease No. S-5619, NELHA operated on the premises pursuant to General Lease Nos. S-4717 and 5157, and Executive Order No. 3282.

revenues and expenses with its net operating income (NOI) calculations with a comparison against projections and a 5-year projection.

At its meeting of June 23, 2006, under agenda Item D-18, the Board of Land and Natural Resources approved to amend the provision of General Lease No. S-5619 relating to consents to sublease. At its meeting of October 27, 2006, under agenda Item D-3, the Board approved to amend its June 23, 2006 approval relating to consents to sublease. The amendment of General Lease No. S-5619 was executed on December 11, 2006. Under the amended lease, the Board has waived the requirement of its prior written consent to NELHA issuing subleases; however, there was no waiver of consents to assignments of subleases. Accordingly, staff brings the present request for consent to assignment of sublease to the Board.

REMARKS:

On June 29, 2007, the Natural Energy Laboratory of Hawaii Authority issued Sublease K-27 of General Lease No. S-5619 to Unlimited Aquaculture LLC.

On November 7, 2008, the Board of Directors of the Natural Energy Laboratory of Hawaii Authority, approved Supplemental Agreement No. 1, to modify Sublease No. K-27 by changing the Sublessee name from Unlimited Aquaculture LLC to Troutlodge Marine Farms Kona, LLC.

On July 28, 2009, the Board of Directors of the Natural Energy Laboratory of Hawaii Authority, approved Supplemental Agreement No. 2, which decreased Sublease K-27 sublease area from 12.746 acres to 3.215 acres.

By letter dated November 11, 2012, the Hawaii District Land Office received a request from the Natural Energy Laboratory of Hawaii Authority, for consent to assignment of a portion of Sublease K-27 from Troutlodge Marine Farms Kona, LLC, to Shrimp Improvement Systems Hawaii LLC. The subject sublease area, identified as Parcel 99, consisting of 2.147 acres, is currently not being utilized by TMFK, LLC. As a result, TMFK, LLC agreed to assign to SISH LLC use of the subject parcel for SISH LLC's proposed plans for expansion.

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 purpose in acquiring HHA Inc was 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. With its plans for expansion, it was necessary to acquire additional lands for increasing its facility.

The improvements on the subject sublease area consist of extensive earthworks, which include fill and infrastructure, along with six metal buildings and three fiberglass tanks. Value of improvements is estimated to be \$423,770.

Review of the lease file indicates that Lessee is in compliance with all terms and conditions of the lease.

The proposed Assignee 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.

There are no outstanding rental reopening issues related to Sublease K-27 by the Assignor.

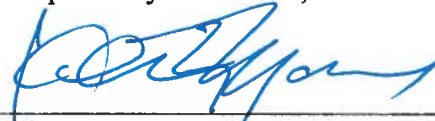
No agency or community comments were solicited as there will be no new disposition of change in land use in the assignment of the sublease.

RECOMMENDATION:

That the Board consent to the assignment of Sublease K-27 of General Lease No. S-5619 from Troutlodge Marine Farms Kona, LLC, as Assignor, to Shrimp Improvement Systems LLC, as Assignee, subject to the following:

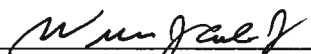
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



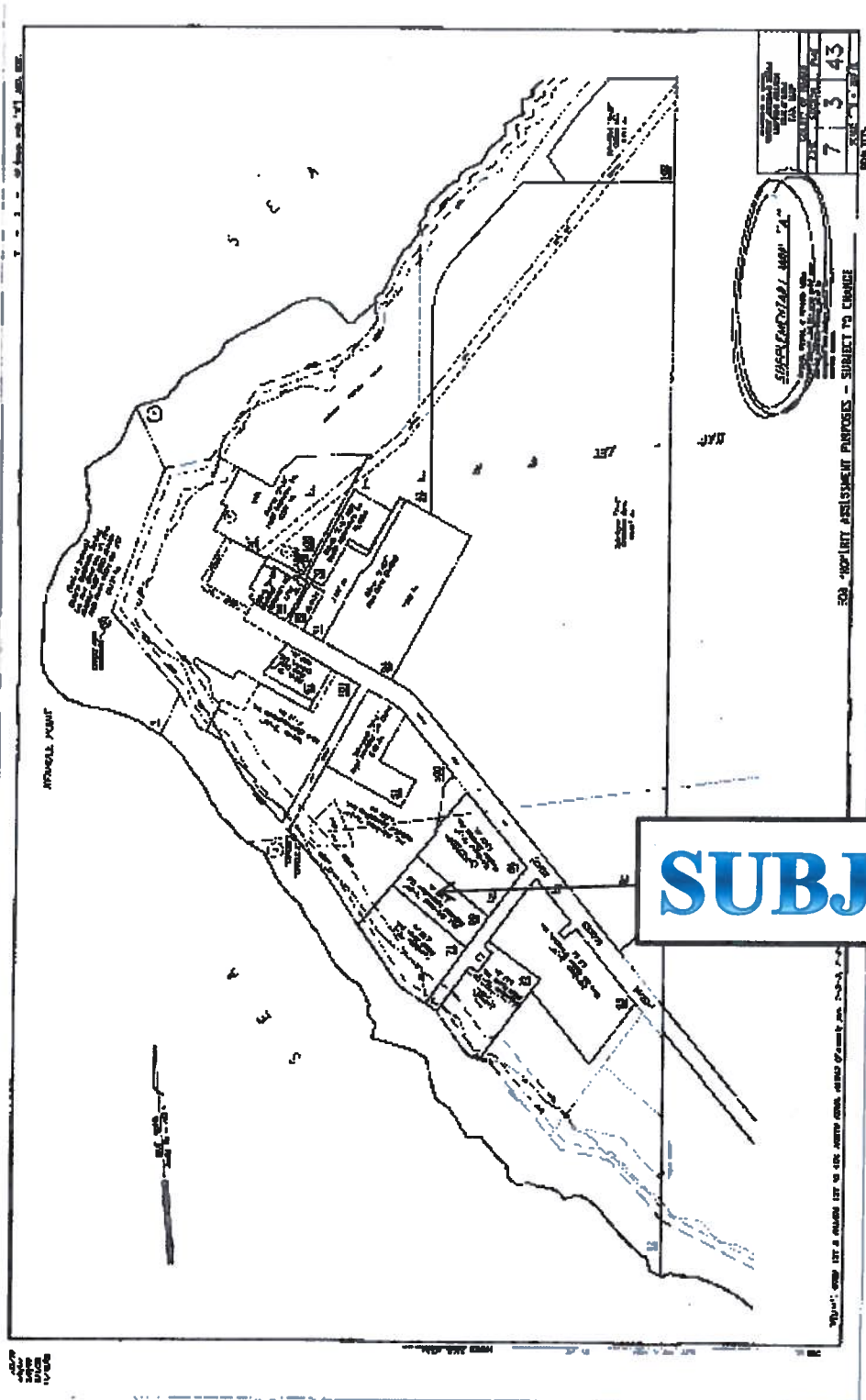


EXHIBIT A