

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

February 22, 2008

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

Ref.: GL S-5619

HAWAII

Consent to Assign Sublease K-20 under General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, by Sunrise Capital, Inc., Sublessee/Assignor, to Pacific Aquaculture and Biotechnology, LLC, Assignee, Kailua-Kona, County and Island of Hawaii, Tax Map Key: (3) 7-3-43:portion 42

APPLICANT:

Lessee Natural Energy Laboratory of Hawaii Authority, on behalf of Sublessee Sunrise Capital, Inc., as Assignor, and Pacific Aquaculture and Biotechnology, LLC, a domestic limited liability company (LLC) whose business and mailing address is 91-329 Kauhi Street, Unit B-2, Kapolei, Hawaii 96707, as Assignee

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of the Natural Energy Laboratory of Hawaii Authority (NELHA) situate at Keahole Point, Kailua-Kona, County of Hawaii, Island of Hawaii, identified by Tax Map Key: (3) 7-3-43:portion 42, as shown on the attached map labeled Exhibit A.

AREA:

6.5 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

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LEASE CHARACTER OF USE:

To develop, maintain, and operate an ocean-related high technology industrial park in accordance with chapter 206M and/or chapter 227D, Hawaii Revised Statutes, and to allow for ancillary and accessory uses that will assist the development to become self-sufficient.

SUBLEASE CHARACTER OF USE:

Commercial aquaculture of oysters, clams and shrimp.

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:

20 years, commencing on April 1, 2005, and expiring on March 31, 2025. First rental reopening is scheduled for March 31, 2010.

ANNUAL LEASE 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 RENT. For the first five years of the sublease term until March 31, 2010, base rent is fixed to a series of five step up rates. Current annual rental rate is \$40,000.00/year for the year of the sublease term from April 1, 2007 to and including March 31, 2008.

PERCENTAGE RENT. 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.

RENTAL REOPENINGS. The minimum monthly rental fees and the percentage rental reserved shall be reopened and redetermined as of the day following the expiration of the FIFTH (5<sup>TH</sup>) year on March 31, 2010, and EVERY FIFTH (5<sup>TH</sup>) YEAR THEREAFTER of the sublease term. Next rental reopening is scheduled for April 1, 2010.

CONSIDERATION:

\$ 1,225,000.00 to Assignor.

RECOMMENDED PREMIUM TO LESSOR:

None is due.

RECOMMENDED PREMIUM TO SUBLESSOR:

Analysis and premium calculation completed per Exhibit E of the Sublease K-20 showed no premium is due to Sublessor/Assignor Sunrise Capital, Inc.

DCCA VERIFICATION:

ASSIGNOR:

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

ASSIGNEE:

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

REMARKS:

HISTORY. The Natural Energy Laboratory of Hawaii Authority (NELHA) is a state agency administratively attached to the Department of Business, Economic Development & Tourism (DBEDT). Under General Lease S-5619, NELHA operates an 870-acre ocean science and technology park at Keahole Point in Kailua-Kona, Hawaii. In 2005, NELHA issued Sublease K-20 to Kona Bay Marine Resources, Inc. (KBMR) for a 20-year term commencing April 1, 2005 for the operation of a land-based aquaculture facility on 6.5 acres. Prior to 2005, KBMR had developed proprietary techniques to optimize the production of SPF (Specific Pathogen-Free) and SPR (Specific Pathogen Resistant) shrimp brood stock and disease-free bivalve seed. The company actively marketed high quality shrimp brood stock to markets in Asia, the US Mainland and Hawai'i and certified disease-free clam seed to the US mainland, Europe and Mexico, earning a Governor's Exporter of the Year Award by 2004.

PREVIOUS SUBLEASE ASSIGNMENT. In 2006, KBMR merged with Sunrise Capital, Inc. ("Sunrise"), folding 50% stock interest (i.e., ownership) into Sunrise in lieu of a cash consideration. Ownership would be held 50-50 by the shareholders of each company, and, following the merger, KBMR would cease to exist and Sunrise would be the surviving entity. As explained in the BLNR submittal of June 23, 2006, DLNR staff review of the assignment requirements of GL S-5619 and Sublease K-20 determined that, following the merger, any premium due would be to NELHA, since it had issued the sublease, and none would be due to DLNR. Premium calculations showed no premium was due.

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NELHA APPROVAL OF CURRENT REQUEST. At its meeting of January 15, 2008, the NELHA Board of Directors approved the request by Sunrise to assign (Sub)lease K-20 to PAB LLC and accepted the recommendation of its Finance Committee that no premium would be due, pursuant to analysis conducted according to requirements of Exhibit E ("Assignment of Lease Evaluation Policy") of the Sublease K-20.

REASON FOR ASSIGNMENT. Sunrise was organized in 2005 to acquire the aquaculture facilities and operations of Ceatech USA, Inc., and its subsidiaries in Kekaha, Hawaii, on the Island of Kauai. Its purpose was "to conduct, either directly or through one or more other controlled subsidiary entities, all operations incident and/or ancillary to the acquisition, ownership, development, operation, and management of aquaculture and mariculture businesses in the State of Hawaii and the Pacific region." Sunrise is currently in the process of centralizing its operations on Kauai where it has more extensive facilities and a greater opportunity for future growth than it has on the Island of Hawaii.

Since the operations at its NELHA facilities duplicate those on Kauai, Sunrise seeks to eliminate these extra costs by assigning Sublease K-20 to PAB LLC and also selling them the equipment, trade fixtures, and livestock.

NELHA staff report the Sublessee Sunrise Capital, Inc. is in compliance with all lease terms and conditions of Sublease K-20, and is current on its annual rent payments.

QUALIFICATIONS OF ASSIGNEE. PAB LLC was recently approved by the NELHA Board as a qualified prospective tenant. On December 11, 2007, the company was granted approval-in-concept for a proposal to (sub)lease land to develop an on-going selective breeding aquaculture program for several lines of SPF and SPR monodon shrimp. The NELHA Board determined that PAB LLC appeared to have the expertise, financial backing and combined experience to be an acceptable commercial tenant.

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.

At this time there are no outstanding rental reopening issues related to Sublease K-20 by the Assignor.

No external agency or community reviews were applicable to this assignment of sublease.

RECOMMENDATION:

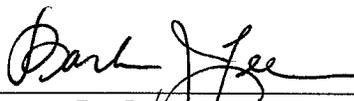
That the Board consent to the assignment of Sublease K-20 from

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Sunrise Capital, Inc., as Assignor, to Pacific Aquaculture and Biotechnology 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.

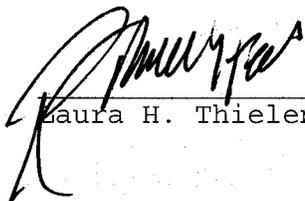
Respectfully Submitted,



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Barbara J. Lee  
Project Development Specialist

APPROVED FOR SUBMITTAL:



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Laura H. Thielen, Chairperson