



Natural Energy Laboratory of Hawaii Authority

Leasing and Rate Policy

Adopted by the NELHA Board of Directors

November 20, 2012



NELHA LEASING RATE POLICY

Approved by NELHA Board of Directors November 20, 2012

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NELHA LEASING RATE POLICY

1. PURPOSE OF DOCUMENT

The purpose of this document is to establish a leasing policy for NELHA lands and to provide a basis and method to calculate lease rates for NELHA ground leases. This policy takes precedence over the previous NELHA Board approved lease policy of 2006.

2. GENERAL

2.01 Land Uses

There are five types of land uses at NELHA: extractive, productive, energy, offshore and other. Land rates depend on the type of land use.

A. Energy Use

The intended use of the land is to produce energy or an energy related product. The intended use of the seawater delivered to an energy tenant could be to produce an energy product (such as biofuels), to provide low cost cooling (solar) or as an integral part of the energy production (OTEC). Examples of energy use: solar projects, OTEC, and biofuels.

B. Extractive Use

The intended use of the land and the seawater delivered to an extractive user is to extract either the water or some other marketable product contained in the water and export the water or product generated from the site. Examples of extractive use: deep sea water desalination and bottling, salt extraction, and nigari production.

C. Productive Use

The intended use of the land and the seawater delivered to a productive user is to produce a product using the seawater as a medium or low cost cooling alternative and to export the product from the site. Aquaculture tenants are productive tenants. Examples of productive use are: aquaculture including shrimp, shellfish and finfish production, cold water agriculture, microalgae and seaweed production.

D. Offshore Use

This category is for projects that take place in the NELHA offshore corridor. Examples of offshore use are: wind, wave and ocean current energy, compressed air energy storage and aquaculture.

E. Other

This category is for any use that does not fit into the other four categories (energy, extractive, productive and offshore). This may include education, outreach, research and retail projects or any other type of project that is considered appropriate for the mission of NELHA.

2.02 Project/Tenant Categorization

NELHA classifies projects into four categories: research, pre-commercial, commercial and other. The type of lease agreement used will depend on the type of project and its projected duration.

A. Basic Research

A basic research project is concerned with contributing to the knowledge base of science and technology. It may have no immediate commercial application. These are often University or Government Lab projects.

B. Pre-Commercial/Incubator

A pre-commercial or incubator project is transitioning or scaling-up to commercial categorization.

C. Commercial

A commercial project has immediate commercial goals. There are two types of commercial projects: 1) projects that rely on NELHA unique resources and 2) projects that are independent of NELHA resources such as retail or purely industrial support services.

D. Other

This category includes non-profit projects such as education, outreach, conservation which are considered appropriate for the mission of NELHA but do not fit in the other three categories.

2.03 Types of Land Use Agreements

There are three types of land use agreement: Memorandum of Understanding (MOU) for extremely short term research projects, Rental Agreements for short term research and pre-commercial projects and office space, and long term Subleases.

A. Memorandum of Understanding (MOU)

An MOU (Attachment 1) is used for short research projects with durations less than three months. The MOU contains the minimum State requirements with respect to Liability and Indemnification. An MOU is appropriate for researchers/students visiting from Universities and other research institutions

to carry out short term projects using NELHA's unique resources. For resident researchers, a rental agreement is more appropriate. An MOU may not be assigned or transferred to a third party. Board approval is not required for an MOU.

B. Rental Agreement (RA)

A Rental Agreement (Attachment 2) is used for research, pre-commercial and other projects. It can cover any type of space including office, open, lab, mixed, research campus, Gateway and technical park space. The term of a Rental Agreement does not exceed one year and is renewed on a yearly basis. A Rental Agreement may be assigned upon written approval of the NELHA Executive Director. Certain clauses may be struck out of a rental agreement depending on the project categorization. For example, the % rent clause is struck out of the agreement for all but pre-commercial projects. Board approval is not required for a Rental Agreement with a term of one year or less.

C. Sublease

A sublease (Attachment 3) document is used for long term projects regardless of categorization although most long term subleases are for commercial projects. The sublease term is subject to negotiation with the maximum allowable term being 30 years. The standard sublease contains provisions for standard terms including percentage rent, offsets and exclusions. A Sublease may be assigned upon NELHA Board approval. Board approval is required for a Sublease.

3. POLICY

3.01 Project Initiation

An application for tenancy at NELHA shall follow the guidelines outlined in the NELHA Project Initiation Packet (PIP, Attachment 4). This document is available to the public online at www.nelha.org. The general process starts with a consultation with NELHA staff. The project may or may not require Board approval depending on its nature, duration and desired location and desired facilities.

3.02 RAC Review Process

The Research Advisory Committee (RAC) is composed of experts from various technical fields including aquaculture, ocean science, geothermal, energy, environmental as well as business experts. Their role is to advise the Board on the merit, scientific interest, industrial importance and/or suitability of the proposed project to NELHA's mission, goals and resources. All sublease proposals will be reviewed by the RAC. The decision to submit proposals for short term projects with less than one year term resulting in an MOU or Rental Agreement to the RAC will

be made by the Executive Director. When in doubt, the Executive Director will submit short term proposals to the RAC.

For those projects that require Board review and approval, NELHA staff may send the proposals and staff recommendations to the RAC for an initial review well before the scheduled Board meeting. The RAC shall return its review and recommendation no later than fourteen (14) days after its receipt of the proposal. NELHA staff shall work with the prospective tenant on any issues that were raised during staff and/or RAC reviews.

3.03 Timing of Submission to the NELHA Board

The proposal can only be placed on the next available Board agenda after NELHA staff has completed due diligence, and the proposer has addressed all the issues raised by staff and RAC reviews of the project. NELHA staff will determine when a proposal is ready for presentation to the Board. Should there be significant modifications to the initial proposal reviewed by the RAC; the RAC may be asked for a second review. The second review (or the first review in the case that there was no initial review) shall be requested no later than fourteen (14) days before the scheduled Board meeting and the RAC shall prepare its recommendation and send it to NELHA staff no later than one day before the Board meeting.

Only proposals received no later than four weeks before close of business at 4:30PM prior to the scheduled Board meeting will be considered for the Board agenda. However, the proposal will only be presented to the Board if staff considers it to be in final form and ready for presentation. Meeting the 4 week timeline does not guarantee placement on the agenda.

3.04 Board Approval Process for Subleases

Projects requiring long term subleases shall first seek approval in concept from the NELHA Board. Final approval shall be sought as a second step by the submission of a final Business Plan and Sublease Term Sheet to be approved by the Board.

For approval in concept, staff shall distribute the proposal, the staff review/recommendation and the final RAC review/recommendation (if available) in the Board package for the meeting in which the proposal approval was placed on the agenda. The proposal shall comply with the Project Initiation Packet requirements.

If the final RAC review/recommendation is not available for distribution through the Board packet, it will be distributed at the Board meeting. A presentation by the applicant may or may not take place at the Board meeting. The Board members will have the opportunity to ask questions of the applicant if present and NELHA staff

as well as the opportunity to discuss the proposed project. The Board will make a motion regarding the proposal to approve, disapprove or conditionally approve applicant's request for approval in concept.

For final approval, submitter shall follow the guidelines described in the Project Initiation Packet. The process is similar to that described for approval in concept. The final proposal, the summary term sheet, the summary of any and all deviations from standard sublease or the complete draft sublease, the staff review/recommendation and the RAC final review/recommendation shall be included in the Board package for review and approval by the NELHA Board. The NELHA Board can vote to approve, disapprove or defer approval.

3.05 Authority of Executive Director

Unless directed otherwise by the Board, the NELHA Executive Director has the authority to execute MOUs and Rental Agreements with terms of 1 year or less without NELHA Board approval.

The Executive Director has authority to approve the assignment of a Rental Agreement.

The NELHA Executive Director has the authority to execute a sublease only after the NELHA Board has given "approval in concept" and final approval to the project after having obtained, at a minimum, the review and approval of the sublease term sheet and any and all deviations from the standard sublease. Sublease extensions may require Board approval as per section 3.08.

Consents to Mortgage and consents to Assignment shall be presented to the Board for approval. The Executive Director shall have authority to execute the consents after Board approval provided that there are no modifications to the standard form. Any modification to the standard consent forms shall be approved by the Board in the form of a term sheet or a draft consent before execution by the Executive Director.

The Executive Director shall report the execution of all new agreements to the Board at the meeting immediately following the date that the agreements were executed.

3.06 Sublease Execution Policy Schedule

Final approval for a sublease shall be sought by the applicant within 1 year of the approval in concept.

All subleases shall be executed within one year of final approval by the NELHA Board of Directors, unless specific approval for a longer time is given. The Board

approval may be revoked if a lease fails to be executed within the one year time period. After a revocation of approval, the potential tenant that desires to continue the process of entering into a lease with NELHA shall be required to re-submit the sublease proposal to obtain Board approval. If the sublease for the re-submitted sublease proposal is not executed with one year of Board approval, new submissions will not be considered.

In the process of executing a long term sublease, the tenant must remain in communication with NELHA by giving NELHA an update or otherwise communicate with NELHA. There shall be no more than two months lapse time between two consecutive written communications. The Board approval will lapse if these minimum written communication requirements are not met.

3.07 Termination for non-performance

Rental Agreements and Sublease agreements may be terminated by the NELHA Executive Director according to the Breach and Termination clauses which are part of each short term and long term agreement. The Executive Director shall report the termination to the NELHA Board.

3.08 Sublease extensions

Standard sublease extensions shall not require Board approval provided that lease terms match current standard terms (Attachment 3) with respect to rental rates, reopening, % rent, royalty, liability insurance, and assignments and that the ongoing operations at the time of the extension are in conformance with the Business Plan which is part of the Sublease. If the original sublease has nonstandard terms in those 6 areas, an extension request shall be made to the Board for its approval.

3.09 Standard Sublease Clauses

Refer to the boiler plate document in Attachment 3 for Sublease standard clauses and the boiler plate document in Attachment 2 for Rental Agreement standard terms.

3.10 Sublease Term Length

The term of any sublease shall not exceed the term length of NELHA's Master Lease S-5619 with DLNR. S-5619 lease term expires July 2nd, 2066. Sublease terms shall be negotiated based on a variety of considerations including but not limited to land use, project classification, project capital investment and expected return on the

capital investment. NELHA's Master Lease authorizes NELHA to execute subleases with terms of one year to 30 years.

3.11 Parcel Size

Minimum parcel size in the area of the park north of the Public Beach Park is 1 acre. Minimum parcel size in the area of the park south of the Public Beach Park is 3 acres. Parcel sizes covered by new subleases shall be limited to 20 acres. The NELHA Board of Directors may consider larger projects if, at a minimum, it can be demonstrated to the Board that it is within NELHA's mission to provide a larger parcel. Approval of larger parcel sizes is not guaranteed and shall be at the sole discretion of the BOD.

3.12 Changes in Business Plan

Tenant shall submit any changes to the Business Plan that is part of the sublease in writing and prior to desired implementation of the changes. Implementation shall occur after NELHA Board approval is obtained. Changes in business plan may require execution of a new lease with new lease terms reflecting changes in use of project classification.

4. RENTAL RATES

4.01 Establishing Rental Rates

Appraisals

Rental rates will be based on professional appraisals of NELHA lands. A comprehensive professional land appraisal will be contracted out every 10 years and will provide the basis for the establishment of land rates by the Board. Once the Board has approved a set of lease rates, these will be posted on the NELHA website and made generally available to the public. The Executive Director and NELHA leasing staff shall base all rent discussions and proposals on the established and published land rates unless arbitrated rates are established (refer to section 4.04).

Improved/Unimproved Lands

Rental rates for unimproved land, as well as Research Campus/Gateway space shall be published. Rates for improved properties shall be set on a case by case basis using an underlying unimproved land value plus additional lease rent based upon improvements including but not limited to grading, paving, sub-grade utilities, disposal trenching, fencing, buildings, and tanks.

Percentage Rental Rates

Percentage rental rates shall be established for all Pre-commercial and Commercial projects as well as for any other projects deemed appropriate under all land uses. The percentage rental rates shall be established based on land use and the type of product produced. The three types of products anticipated are energy, wholesale and retail products. Aquaculture and seawater products may be sold wholesale (ie sale of large quantities for grow out or to be sold to the consumer by a retailer) or retail (ie directly to the consumer). Percentage rental rates for wholesale shall be lower than for retail. Should a company engage in multiple property uses and/or sell several types of products, Sublessee shall be required to separate sales by land use and types of products and shall owe percent rent according to the type of product.

4.02 Minimum Rent

There is a minimum rental period of one month at a minimum rental fee for all types of land use agreements and regardless of tenant categorization (including non-profit education, outreach, and conservation tenants). This rate is included in Attachment 7.

4.03 Sublease Rent Reopenings and Rent Adjustments

NELHA long term subleases shall contain annual adjustments tied to CPI as well as reopening clauses. In the event that CPI declines, rent will remain the same and not increase until cumulative CPI (declines plus subsequent gains) become positive. The standard sublease reopening clause shall establish reopening periods every 10 years. The Executive Director and NELHA leasing staff shall offer the appropriate established rate (depending on land use and tenant categorization) to take effect at sublease reopening provided that this rate is higher than the current rate. If the established rate is less than the current rate, the current rental rate shall be proposed. Should there be disagreement, the standard reopening clause outlines the appraisal and arbitration process to follow to establish a final rate.

4.04 Use of Arbitrated Rates

Occasionally, published rates will be disputed and a full arbitration procedure involving three professional appraisers may take place to establish a binding and final rate. The Executive Director and NELHA leasing staff will use the most recent arbitrated value in lieu of the published rate for the appropriate land use and tenant categorization in reopenings as well as new lease negotiations because the arbitrated rate will reflect the most recent professionally appraised market value. The arbitrated rate shall be adjusted according to the size of the land under lease

using a Dilmore Table (Attachment 6). The most recent arbitrated rate shall be used until a new complete land appraisal at NELHA is carried out and new rates approved by the Board. Arbitrated rates may be used for any type of short or long term agreement provided it is for the appropriate land use and tenant categorization.

4.05 Short Term Agreement Extensions

Occasionally, short term rental agreements will need to be extended. The Executive Director and NELHA leasing staff shall offer the appropriate established rate (depending on land use and tenant categorization) to take effect at the expiration of the short term agreement provided that the increase in monthly rent be less than 5% or the rate equal to the 12-month change in the Honolulu consumer price index, whichever is greater.

If negotiations are not completed before the term of the agreement expires, the tenancy may be continued on a month to month basis. However, the total monthly rental rate may increase by 5% every month until an extension in the form of a supplemental agreement has been executed.

4.06 Existing Leases and Agreements

This section applies to leases and agreements which are in existence at the time this leasing policy comes into effect.

There will be a 6 month grace period for existing month to month tenants to agree and execute a new short term rental agreement or sublease if appropriate. The 6 month grace period will start on the date that this leasing policy is put into effect. After the 6 month grace period, total monthly rental rate shall increase by 5% every month until an extension in the form of a supplemental agreement has been executed.

The rental rates established in this policy shall apply to all existing subleases upon the sublease reopenings.

4.07 Rental Rate Adjustment for Size using Dilmore Table

The Dilmore Table (Attachment 6) is an accepted method for size adjustment to rental rates in Hawaii. The table is based on the Dilmore curve which allows for upwards adjustment of the rental rate for smaller properties and downwards adjustment of the rental rate for larger properties.

The formula to obtain the adjusted rate is:

$$R_{\text{subject}} = R_{\text{arbitrated}} * C$$

where:

- R_{subject} is the adjusted subject rate,
- $R_{\text{arbitrated}}$ is the arbitrated rate and
- C is the coefficient obtained from Attachment 6 corresponding to $A_{\text{arbitrated}}/A_{\text{subject}}$ and where $A_{\text{arbitrated}}$ is the arbitrated area and A_{subject} is the subject area.

A 90% Dillmore curve size adjustment shall be applied to rates, established or arbitrated to adjust for size.

4.08 Non Profit rates

Non-profit projects with special environmental or educational goals may be considered for a reduced rate over the established and published rate although a reduced rate may or may not be receive final approval from the Board. In order to qualify for consideration, the project and the tenant should be entirely non-profit and the reduced rate considered should not be less than 60% of the published rate for the corresponding land use and land size, nor should it be less than the minimum rent described in Section 4.02.

4.09 2012 Rental rates

2012 rental rates are included in Attachment 7. The NELHA Board approved these rates on November 20, 2012.

4.10 Administrative fees

Effective as of the date this policy is approved, there shall be no administrative leasing fees charged including fees for rental agreements, MOUs, subleases and agreement extensions and amendments.

4.11 Mixed Use Rent

Occasionally, mixed use projects may be submitted to NELHA. A mixed use project is defined as a project which may have components that qualify it for two or more of the five types of land uses described in Section 2.01. The amount of land required for each use (including administrative offices and parking) shall be determined and total rental rate shall be based on the rental rates (base rent and % rent) for each use and the amount of land reserved for each use. Changes in existing business plans, including changes in land use and products, require resubmission of a business plan and approval by the NELHA Board.

4.12 Incentives

The standard sublease allows for the value of permanent land improvements accumulated in the first 5 years of the lease to offset % rent for the first 10 years of the sublease.

4.13 Incubation rates in the Research Campus and Designated Small Business

Incubators

In order to incubate projects in the Research Campus and Designated Small Business Incubators, reduced rates may be approved for up to five years of project incubation provided that the rate is the lowest at the beginning of the first year and increases annually until it matches the normal established rate by the end of the last fifth year of incubation. The maximum length of project incubation is 5 years. After 5 years projects must transition to the technical park.

The Board may, at its own discretion, allow for the base rental fees of incubation projects transitioning from the research campus to the technical park, to be reduced or waived for a period not to exceed 18 months or commencement of construction, whichever occur first.

4.14 Rental Deferral Policy

In November 2010, the NELHA Board approved a rental deferral policy to address the needs of companies that find themselves in problematic fiscal situations. The policy is described in Attachment 8.

5. ATTACHMENTS

Attachment 1: Boiler plate MOU

Attachment 2: Boiler plate Rental Agreement

Attachment 3: Boiler plate Sublease

Attachment 4: NELHA Project Initiation Packet (PIP) – (*Forthcoming*)

Attachment 5: ACM Consultants 2010 Appraisal of NELHA lands

Attachment 6: Dilmore Size Adjustment Table

Attachment 7: Rental rates

Attachment 8: Rental Deferral Policy

ATTACHMENT 7

RENTAL RATES

Rates are based on the June 10, 2010 professional appraisal by ACM Consultants, Inc. and the rental arbitration for BIAC (June 2011). Rates are subject to change.

FIXED RENTAL RATES

Energy Use *	\$1,800.00/acre/month (or most recent arbitrated rate if different)
Extractive Use *	\$1,800.00/acre/month (or most recent arbitrated rate if different)
Productive Use *	\$342.75/acre/month for 10 acre parcel (or most recent arbitrated rate if different)
Office	\$1.75/SF/month
Research Campus/Gateway	
- Laboratory space	\$2.00/SF/month
- Covered space/tent areas	\$0.75/SF/month
- Open air wet lab	\$1.50/SF/month
- Improved land/open space	\$0.50/SF/month
Offshore Use	Case by Case
Other Use	Case by Case
Minimum Monthly Rental Rate	\$200.00/month

*Rates listed are for unimproved lands. Rates for improved properties shall be set on a case by case basis using an underlying unimproved land value plus additional lease rent based upon improvements including but not limited to grading, paving, sub-grade utilities, disposal trenching, fencing, buildings, and tanks.

PERCENT RENTAL RATES

Productive Wholesale Products	2% - 3%
Productive Retail Products	5% - 7%
Extractive Wholesale Products	5% - 7%
Extractive Retail Products	7% - 9%
Power Generation	10% - 12%