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

August 8, 2008

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

Re-Submittal
Forfeiture of General Lease No. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-4-49:25.

PURPOSE:

Forfeiture of General Lease No. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Panaewa Farm Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-4-49:25, as shown on the attached map labeled Exhibit A.

AREA:

10.008 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: NO

CHARACTER OF USE:

Agriculture/residential purposes.

TERM OF LEASE:

55 years, commencing on 1/12/1968 and expiring on 1/11/2023.

ANNUAL RENTAL:

$4,500.00 due in quarterly payments of $1,125.00.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, was served a Notice of Default by certified mail dated April 25, 2008 for:

X Failure to keep lease rental payments current

___ Failure to post required performance bond

___ Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on April 26, 2008, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on June 26, 2008. As of June 27, 2008, this breach has not been cured.

Lessee was also served a Notice of Default by certified mail dated April 25, 2008 for:

___ Failure to keep lease rental payments current

X Failure to post required performance bond
(Insufficient amount – Obtained $7,000.00 Required $9,000.00)

___ Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on April 26, 2008, offered the Lessee a sixty-day cure period to correct the default. This cure period expires on June 26, 2008. As of June 27, 2008, this breach has not been cured.

As of June 27, 2008, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of $1,125.00 for the time period from 01/12/08 to 04/11/08.

The Lessee also has a rental delinquency of $1,125.00 for the time period from 4/12/08 to 7/11/08

The Lessee has a further rental delinquency of $1,125.00 for the time period from 7/12/08 to 10/11/08

INSURANCE: The Lessee has posted the required liability insurance policy.

PERFORMANCE BOND:
The Lessee ***has not*** posted the required performance bond.
Current bond is in the amount of $7,000.00. Rent increase on 1/12/08 adjusted the bond amount to $9,000.00.

CONSERVATION PLAN:
The Lessee ***has not*** submitted a current conservation plan but is working with NRCS to complete an updated conservation plan.

The Lessee has been served notice of defaults on three (3) previous occasions. On May 22, 2003 a notice of default was sent certified mail for failure to keep rental payments current, post the required liability insurance and failure to provide the performance bond. This default was cured within the sixty-day cure period. The Lessee was again served notice of default on August 8, 2005 for failure to keep rental payments current and also provide a current liability insurance policy. These delinquencies were cured within the sixty-day cure period.

At its meeting of February 10, 2006, under agenda item D-6, the Board of Land and Natural Resources approved as amended, the forfeiture of GL S-4138. The amendment allowed the Lessee thirty (30) days to cure the deficiencies. At the meeting, the Lessee indicated that a certified check was mailed and that they were working on getting their liability insurance. Both defaults were cured by March 3, 2006 and the forfeiture was rescinded.

An inspection of the property in June 2004, revealed little development of the property. No improvements have been made to any of the existing structures. A house on the property had burned down and no effort was made to rebuild it. There was no property insurance for the house as it was of substandard construction and built without the necessary county building permits.

There appears to be a makeshift living area in the former packing shed. Blue tarps separate storage from living areas. The only indication of agricultural activity is a small vegetable garden behind the packing shed.

This matter was previously on the Board agenda for its July 11, 2008 meeting (Item D-2). However, a few days before the meeting, Mr. Keaulana-Dyball called Land Division staff and advised staff that Mr. Keaulana-Dyball was on the mainland and would not be back in Hawaii by the July 11, 2008 meeting. This matter was therefore deferred for later disposition.

On July 14, 2008, staff sent the Keaulana-Dyballs a certified letter advising them of the deferral of their matter until August 8, 2008. The letter was received and signed for at Lessee's address on July 15, 2008.

As of July 28, 2008, none of the outstanding defaults specified above have been cured. As a result of a lack of agricultural activity in addition to the defaults for rent and performance bond, staff is recommending that the Board cancel General Lease No. S-4138.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-4138 in the manner specified by law;

2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-4138 as liquidated damages;

3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of July 11, 2008, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and

4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-4138 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,

for Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:

for Laura H. Thielen, Chairperson