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

June 23, 2011

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

Hawai'i

Forfeiture of General Lease No. S-5357, Richard Leopoldino, Lessee, Waiakea, South Hilo, Tax Map Key:3rd/2-4-07:36.

PURPOSE:

Forfeiture of General Lease No. S-5357, Richard Leopoldino, Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waiakea Homesteads 2nd Series situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-4-07:36, as shown on the attached map labeled Exhibit A.

AREA:

1.12 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:

Pasture purposes.

TERM OF LEASE:

35 years, commencing on 4/01/1994 and expiring on 3/30/2029.

ANNUAL RENTAL:

$156.00 due in semi-annual payments.

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-5357, Richard Leopoldino, Lessee, was served a Notice of Default by certified mail dated April 29, 2011 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

___ Other: _____

Said notice, accepted by the Lessee on May 2, 2011, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on June 2, 2011. As of June 6, 2011, this breach has not been cured.

As of June 6, 2011, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of $128.00 for the time period from April 1, 2011 to September 30, 2011.

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

PERFORMANCE BOND:
The Lessee has posted the required performance bond. This bond is in the form of cash.

CONSERVATION PLAN:

The Lessee has submitted a conservation plan and has shown no effort in working with NRCS to complete a conservation plan.

BACKGROUND:

The subject property was previously encumbered under Revocable Permit No. S-5218 to Richard Leopoldino. Under Act 237 SLH 88 which authorized the Department of Land and Natural Resources to negotiate long-term leases under specific terms, conditions, and restrictions with certain qualified permittees of agricultural or residential/home gardening lands, the Permittee qualified for a 35-year direct lease. At its meeting of June 28, 1991 under agenda item F-8, the Land Board approved the issuance of a direct lease for pasture purposes.

GL S-5357 was issued to Richard Leopoldino, a married man, as his separate property. Mr. Leopoldino passed away on August 3, 2009. It is believed that members of his family have been fulfilling the obligations of the lease terms until recently. A letter from the Hawaii District Land Office (HDLO) was sent to the estate of Mr. Leopoldino advising them the lease was issued in his individual capacity and by operation of law had become an asset of his probate estate.

Being there is no automatic assignment of the lease to the surviving heirs, an application signed by the duly appointed personal representative of the estate would have to be submitted and presented to the Land Board for consent to assignment of lease. An application was sent with the above-mentioned letter. However, no such application has been received by the HDLO.

One notice of default was issued to GL S-5357 on October 4, 2010 for expired liability insurance. This default was cured on November 29, 2010. There have been no other defaults issued in the past 3 years.

Staff is recommending the Board authorize the cancellation of General Lease No. S-5357.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-5357 in the manner specified by law;

2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5357 to be applied to any past due amounts;

3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of June 23, 2011, 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-5357 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,

Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

GL S-5357

EXHIBIT A

0 155 310 620 930 1,240

Feet

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W E
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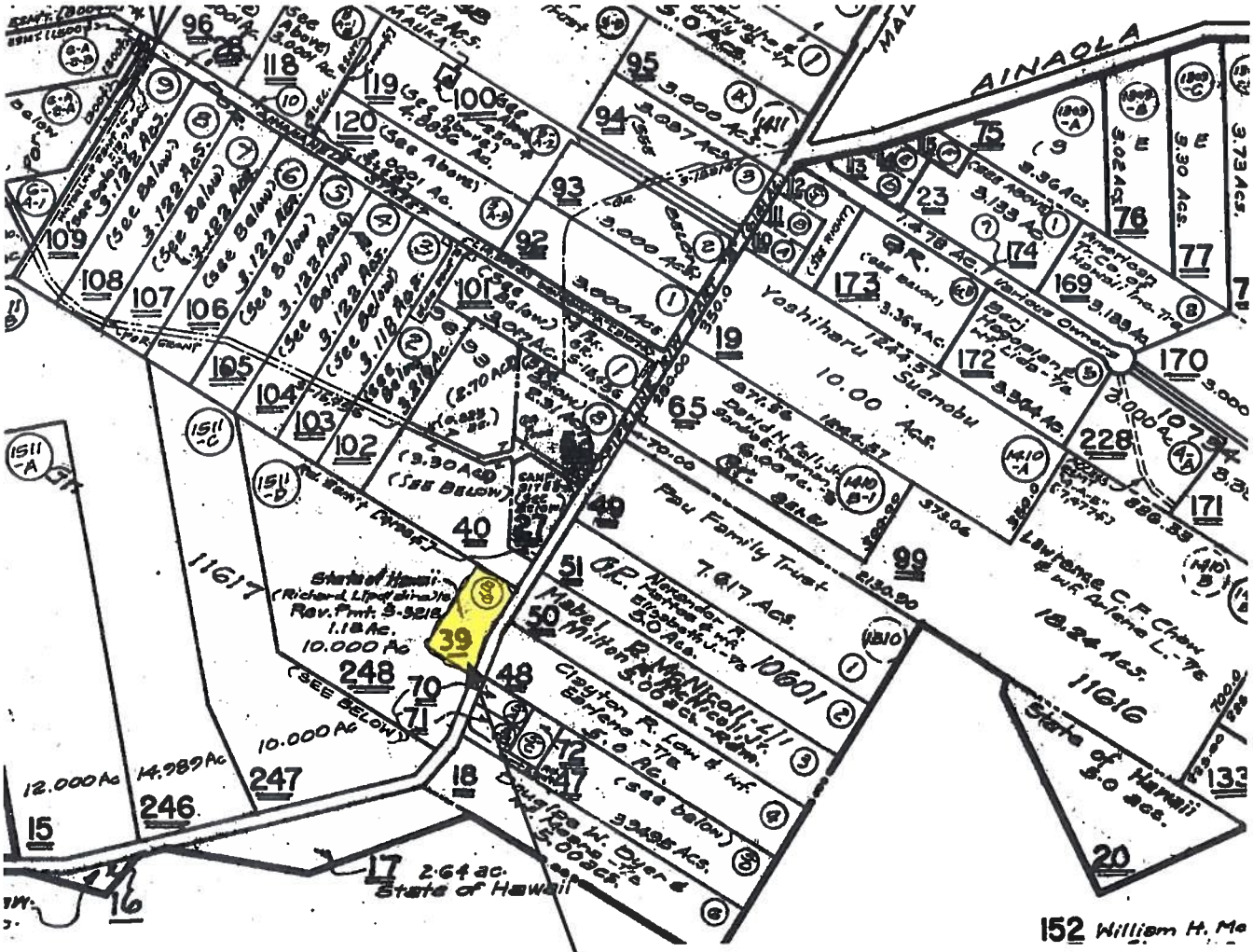
EXHIBIT A

TMK: 3RD/2-4-07:39



GL S-5357 RICHARD LEOPOLDINO