

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

July 22, 2011

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

Hawaii

Forfeiture of General Lease No. S-5414, Mathew Hauanio, Sr., Lessee,
Kikala-Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-43:14

PURPOSE:

Forfeiture of General Lease No. S-5414, Mathew Hauanio, Sr., Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kikala and Keokea situated at Kikala-Keokea, Puna,
Hawaii, identified by Tax Map Key: (3) 1-2-43:14, as shown on the attached map labeled
Exhibit A.

AREA:

1.35 acres

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:

Solely for residential purposes as Lessee's principal domicile, provided that the following
additional uses shall be permitted:

1. Storage of boats, fish catch, fishing nets and other fishing related implements;
2. Raising and keeping of small livestock and poultry for subsistence purposes only, except that the raising of swine (also called hogs or pigs) on the leased premises shall be prohibited;
3. Cultivation of farm and agricultural crops for subsistence purposes only (or home consumption only and not for sale), including herbal plants.

TERM OF LEASE:

65 years, commencing on January 1, 1997 and expiring on December 31, 2061.

ANNUAL RENTAL:

\$132 due in semi-annual payments.

REMARKS:

The Kikala-Keokea subdivision is a leasehold residential subdivision planned and constructed by the State pursuant to Act 314, Session Laws of Hawaii 1991, as amended by Act 172, Session Laws of Hawaii 1993, and further amended by Act 81, Session Laws of Hawaii 1994. The legislation was intended to assist persons dispossessed or displaced as a result of the volcanic eruptions in the Kalapana region of Hawaii, which began on January 3, 1983. There are 67 residential lots in the subdivision.

Forty-eight leases in the subdivision were awarded by drawing held on November 18, 1995. At the drawing, Thelma L. Hauanio was awarded a lease for the subject parcel. The lease was executed on December 28, 1995, and has a commencement date of January 1, 1997 and a term of 65-years. For the first 25 years of the lease, the rent is fixed at \$132 per annum.

At its meeting of February 28, 1997, Item D-18, the Board approved the assignment of General Lease No. S-5414 from Thelma L. Hauanio to her brother, Mathew Hauanio, Sr. (Lessee).

At its meeting of November 20, 1998, Item D-6, the Board authorized Land Division to temporarily stop billing all the lessees in the subdivision for rent until construction of the infrastructure improvements for the subdivision was completed. Infrastructure improvements were completed in 2006. However, Lessee passed away in the interim on August 23, 2004.

At its meeting of September 8, 2006, Item D-5, the Board authorized the resumption of rental billings. Rent became payable from and after January 1, 2007. The Board further

authorized the amendment of the lease provisions relating to rent, liability insurance, mortgage and construction, and to change the requirements for the formation, purpose and responsibility of the Kikala-Keokea Residential Community Association. The Board authorized the waiver of the first ten years of rent under the lease.

With respect the liability insurance, the Board authorized the modification of the lease to allow lessees to submit: a) policies from an insurance company of their choosing and not just from those licensed to do business in the State of Hawaii, b) policies that did not name the State of Hawaii as an "additional insured", until such time those policies again become available, and c) homeowner's policies instead of the standard commercial general liability policy.

The Department of the Attorney General (DAG) prepared an amendment to the subject lease consistent with the Board action. One purpose of the lease amendment was to make liability insurance easier to obtain. For the lessees who signed and returned the amendment, the liability insurance requirement was for coverage in the amount of \$300,000 per occurrence and \$500,000 in the aggregate. But even coverage at this amount was costly for the lessees due to the subdivision's location in a high-hazard lava flow area (Lava Zones 1 and 2). As a result, at its meeting of April 11, 2008, Item D-2, as amended, the Board authorized a reduction of comprehensive general liability coverage to \$100,000 for each occurrence and \$100,000 in the aggregate. DAG prepared a second amendment to lease. Due to Lessee's passing on August 23, 2004, however, the amendments for the subject lease were not executed.

No improvements have been constructed on the lands under the subject lease. The lot is vacant.

The subject lease is currently in default in both rent and liability insurance. A notice of default for failure to post the required liability insurance policy was sent to Lessee's address on May 29, 2007 by certified mail, return receipt requested. The receipt was signed by an unknown person. The default was not cured.

On January 25, 2008, a notice of default for failure to maintain lease payments was sent to Lessee's address by certified mail, and was returned unclaimed. The default was nevertheless cured by an unknown person on February 15, 2008.

On January 30, 2009, a second notice of default for failure to keep lease rental payments current was sent to Lessee's address by certified mail, but was returned unclaimed. By letter dated February 15, 2009, Lessee's sister, Gladys W. Brigham, wrote to DLNR advising that her brother passed away on August 23, 2004, and requesting that all mail to Lessee's record address cease. She provided DLNR with a copy of Lessee's death certificate.

Staff checked the State Judiciary's website to determine if a probate proceeding was

opened for Lessee's estate. No probate was found. By letter dated February 27, 2009, staff wrote to Ms. Brigham explaining to her that when Lessee died, the lease became an asset of his probate estate. Staff further explained that Lessee's estate would need to be probated in order for the lease to be assigned to an heir or beneficiary of his estate. See Exhibit B attached. Ms. Brigham responded with a letter dated April 16, 2009 stating that she was not interested in the lease. See Exhibit C attached (enclosures to letter are omitted).

On June 4, 2009, staff wrote a letter to a surviving brother of Lessee in a final effort to determine whether any other family members would be interested in acquiring the lease. See Exhibit D attached. No response to the letter was received. Unfortunately, staff does not have the resources to determine all of the heirs of Lessee, locate contact information for them, and call or write them to inquire whether they are interested in acquiring the lease.

Without an address for additional notices of default, account statements or other correspondence to be sent, staff decided to stop the billing under the account in August 2009. At that time, Lessee owed \$182 in lease rent and \$450 in late fees.¹

Staff solicited comments on the proposed lease termination from the Office of Hawaiian Affairs, the legislators for the district where the property is located, and former Senator Russell Kokubun. Of those who responded, none had any objection or comment on the proposed action.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-5414 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5414 to be applied to any past due amounts for the lease;
3. Terminate General Lease No. S-5414 and all rights of the Lessee and all obligations of the lessor effective as of July 22, 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

¹ Staff notes that there are other Kikala-Keokea lessees who are delinquent in rent or not in compliance with insurance requirements. Staff will be taking action on the other leases in the near future.

Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-5414 and to pursue all other rights and remedies as appropriate.

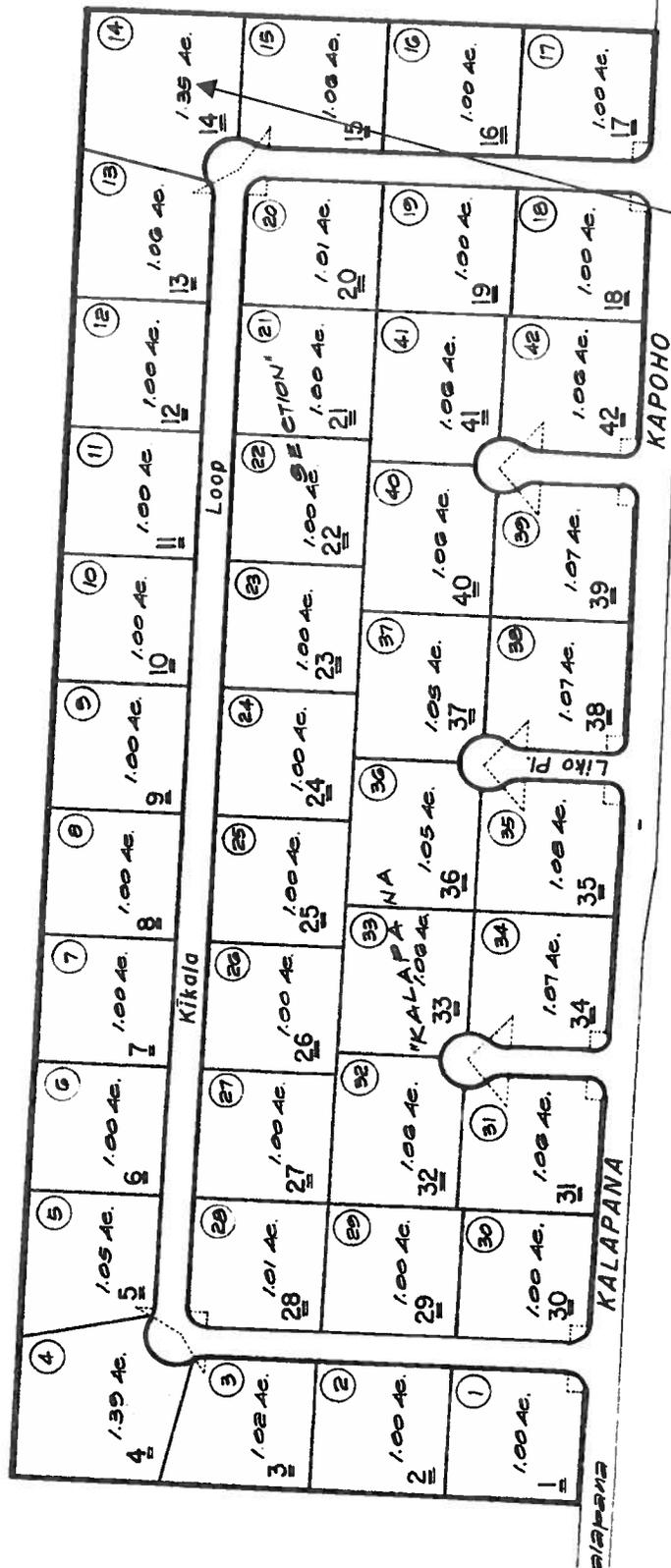
Respectfully Submitted,



 Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



Subject Parcel
TMK: (3) 1-2-43:14

EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



Laura H. Thielen
Chairperson
Board of Land and Natural Resources
Commission on Water Resource Management



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 974-6203
FAX: (808) 974-6222
February 27, 2009

Ms. Gladys W. Brigham

Keaau, HI 96749-9514

Dear Ms. Brigham:

Subject: General Lease No. S-5414 to Mathew Hauanio, Sr. Covering Government Lands at Kikala and Keokea, Puna, Hawaii, Tax Map Key 3rd/ 1-2-43:14

Your letter of February 12, 2009 has been forwarded to me for response. You have requested that we stop all correspondence to your deceased brother, Mathew Hauanio. Please understand that we have no intention of being insensitive in this matter. However, we need to communicate with someone regarding the lease.

When Thelma Hauanio assigned the lease to Mr. Hauanio in 1997, Mr. Hauanio took title by himself. When Mr. Hauanio passed away in 2004, the lease became an asset of his probate estate. In order for the lease to be assigned to an heir or beneficiary of Mr. Hauanio's estate, someone needs to file with the Third Circuit Court a petition for probate of his estate so the heirs/beneficiaries can be determined and the court can order the transfer of the lease to one or more of these heirs or beneficiaries. Additionally, the person taking over the lease would need to submit a request to our office for the Board of Land and Natural Resources to consent to the assignment. Until that happens, the lessee under the lease will continue to be the Estate of Mathew Hauanio, Sr.

As you are the only person who has contacted us about this lease since Mr. Hauanio's death, we would propose that we change our records and send all future correspondence to the Estate of Mathew Hauanio, Sr. care of your address above. If this is not acceptable to you, we ask that you please provide us with the name and address of an alternate contact.

Please note that the lease is currently in default for nonpayment of rent. Additionally, late charges have accrued on the default. If someone is interested in taking over this lease, that person should commence the probate case mentioned above and be prepared to pay the amount outstanding under the lease. We suggest that any interested person contact the Small Estates Administration of the Third Circuit Court at 961-7650 for more information. If no one is

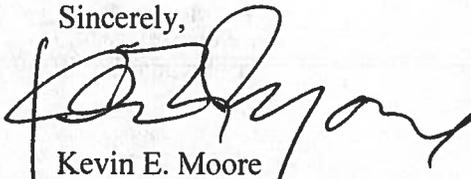
EXHIBIT B

Ms. Gladys W. Brigham
February 27, 2009
Page 2

interested in taking over the lease, then ultimately our office will recommend to the Board of Land and Natural Resources that the lease be forfeited.

If you have any questions, please feel free to call me at 974-6203. Thank you.

Sincerely,



Kevin E. Moore
Hawaii District Land Agent

c: Land Board Member
Central Files

April 16, 2009

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 20 AM 9:15

2009 APR 23 A 11:51

RECEIVED
LAND DIVISION
HONO, HAWAII

Keaau, Hawaii 96749-9514

Attn: Ken C. Kawahara
Department of Land and Natural Resources
P. O. Box 621
Honolulu, O'ahu 96809

Aloha Mr. Kawahara,

My brother MATHEW M. HAUANIO, passed away on August 23, 2004! DLNR was informed about his death along with a copy of his death certificate. Please find another copy of Mathew's death certificate attached!

I would appreciate NOT getting anymore letters to my mailing address! This is not my responsibility and I'm not interested in this leased land!

Mahalo,



Gladys W. Brigham

cc: File Copy

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2009 APR 21 P 1:40

RECEIVED
LAND DIVISION

EXHIBIT C

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 974-6203
FAX: (808) 974-6222
June 4, 2009

Clarence Hauanio

Pahoa, HI 96778

Dear Mr. Hauanio:

**Subject: General Lease No. S-5414 to Mathew Hauanio, Sr. Covering
Government Lands at Kikala and Keokea, Puna, Hawaii, Tax Map
Key 3rd/ 1-2-43:14**

As we discussed on June 3, 2009, enclosed please find two applications for consent to assignment of lease.

When Thelma Hauanio assigned her lease to your brother, Mathew Hauanio, in 1997, Mathew took title by himself. When Mathew passed away in 2004, the lease became an asset of his probate estate. In order for the lease to be assigned to an heir or beneficiary of Mathew's estate, someone needs to file with the Third Circuit Court a petition for probate of his estate so the heirs/beneficiaries can be determined and the court can order the transfer of the lease to one or more of these heirs or beneficiaries. Additionally, the person taking over the lease would need to submit a completed application requesting the Board of Land and Natural Resources' consent to the assignment. Until that happens, the lessee under the lease will continue to be the Estate of Mathew Hauanio, Sr.

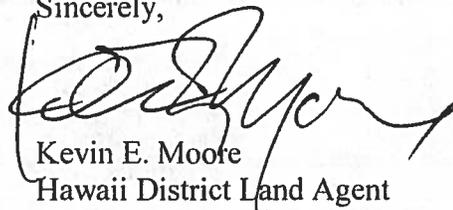
Please note that the lease is currently in default for nonpayment of rent. Additionally, late charges have accrued on the default. If someone is interested in taking over this lease, that person should commence the probate case mentioned above and be prepared to pay the amount outstanding under the lease. We suggest that any interested person contact the Small Estates Administration of the Third Circuit Court at 961-7650 for more information. If no one is interested in taking over the lease, then ultimately our office will recommend to the Board of Land and Natural Resources that the lease be forfeited.

EXHIBIT D

Clarence Hauanio
June 3, 2009
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If you have any questions, please feel free to call me at 974-6203. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin E. Moore". The signature is fluid and cursive, with a large initial "K" and "M".

Kevin E. Moore
Hawaii District Land Agent

c: Land Board Member
Central Files