

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

October 12, 2012

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

Ref.No: GLS-4312

HAWAII

Rescind Prior Board Action of August 24, 2012, Item D-4, Forfeiture of General Lease No. S-4312, Gary J. Rubio and Karen L. Rubio, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:026.

BACKGROUND:

At its meeting of August 24, 2012, Item D-4, the Board of Land and Natural Resources approved the forfeiture of General Lease No. S-4312, due to default in providing the required performance bond, and failure to keep rental payments current. (Exhibit A)

REMARKS:

On August 30, 2012, Mr. Rubio received notification via certified mail of the Land Board Meeting results to cancel the subject lease. Mr. Rubio in response wrote a letter to the Chairperson of the Board of Land and Natural Resources, claiming that he did not receive proper notification via certified mail of the upcoming August 24th Land Board Meeting. As a result, he was not provided an opportunity to attend the Board meeting to plead his case with the Land Board to explain the unfortunate circumstances that transpired through the past year.

On September 4, 2012, Mr. Rubio was in the Hawaii District Land Office to bring the rent current. Mr. Rubio further promised to be back by the end of September to make the next rental payment, which is due on September 30th.

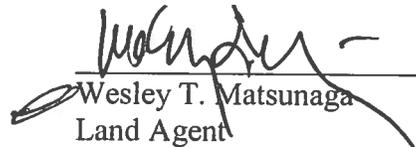
On September 10, 2012, Mr. Rubio came in the Hawaii District Land Office with an Onomea Credit Union Check in the amount of \$28,600 for deposit with Budget and Finance, for satisfying the bond requirement.

The subject lease is now in full compliance and staff is recommending that the Board rescind its prior actions to cancel the lease. Mr. Rubio fully understands the seriousness of the situation and promises to never again allow the account to be in default.

RECOMMENDATION: That the Board:

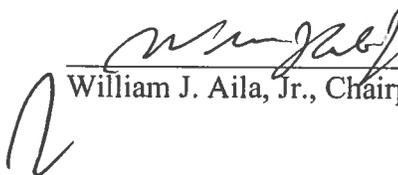
1. Rescind the prior Board action of August 24, 2012, under agenda item *D-4*.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

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

HAWAII

Forfeiture of General Lease No. S-4312, Gary J. Rubio and Karen L. Rubio,
Lessee, Waikeke, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:026.

PURPOSE:

Forfeiture of General Lease No. S-4312, Gary J. Rubio and Karen L. Rubio, Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waikeke, South Hilo, Hawaii, identified by Tax
Map Key: (3) 2-2-058:026, as shown on the attached map labeled Exhibit A.

AREA:

.4386 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

CHARACTER OF USE:

General industrial purposes.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
ON _____
D ON _____
August of 2012

D-4

EXHIBIT A

BLNR - Forfeiture
of GL No. S 4312

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TERM OF LEASE:

Original term of 40-years, commencing on June 30, 1970 and expiring on June 29, 2010.

At its meeting of August 26, 2005, the Land Board approved a 15-year lease term extension, commencing on June 30, 2010 and expiring on June 30, 2025. An immediate rental reopening occurred on September 9, 2005, with the next rental reopening scheduled for June 30, 2015.

ANNUAL RENTAL:

\$14,300.00 Payable in quarterly installments of \$3,575.00, due on the 30th day of March, June, September, and December of each and every year.

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-4312, Gary J. Rubio and Karen L. Rubio, Lessee, was served a Notice of Default by certified mail dated October 3, 2011 for:

- 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 October 6, 2011, offered the Lessee a sixty (60) day cure period to correct the default. This cure period expired on December 6, 2011. As of August 1, 2012, this breach has not been cured. Lessee was consulted on numerous occasions.

Lessee was also served a Notice of Default by certified mail dated July 18, 2012 for:

- 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

EXHIBIT A

BLNR - Forfeiture
of GL No. S-4312

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— Other:

Said notice, accepted by the Lessee on July 19, 2012, offered the Lessee a thirty (30) day cure period to correct the default. This cure period is scheduled to expire on August 18, 2012. As of August 1, 2012, this breach has not yet been cured.

As of August 1, 2012, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$3,575.00 for the time period from June 30, 2012 to September 29, 2012.

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

PERFORMANCE BOND: The Lessee has *not* posted the required performance bond. This bond is in the form of a Surety Bond, which expired on July 2011.

On July 17, 2012, Lessee in HDLO to make rental payment on its March 2012 billing statement. Staff inquired and Lessee replied that the June rent would be made by the end of July. No additional payments have been received since, and the account is now due for its June quarterly installment.

On July 17, 2012, staff discussed the deficiency balance of the performance bond with Lessee. Mr. Rubio claimed that he is continuing to work with his bank to obtain a replacement bond, however, should things not work out as planned, he intends to replenish the bond with proceeds from his wife's retirement fund, which is expected in a couple weeks. To date the bond requirement has not been satisfied.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-4312 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-4312 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 August 24, 2012, 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

EXHIBIT A

BLNR - Forfeiture
of CL No. S-4312

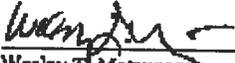
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allowed by law; and

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-4312 and to pursue all other rights and remedies as appropriate

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

EXHIBIT A

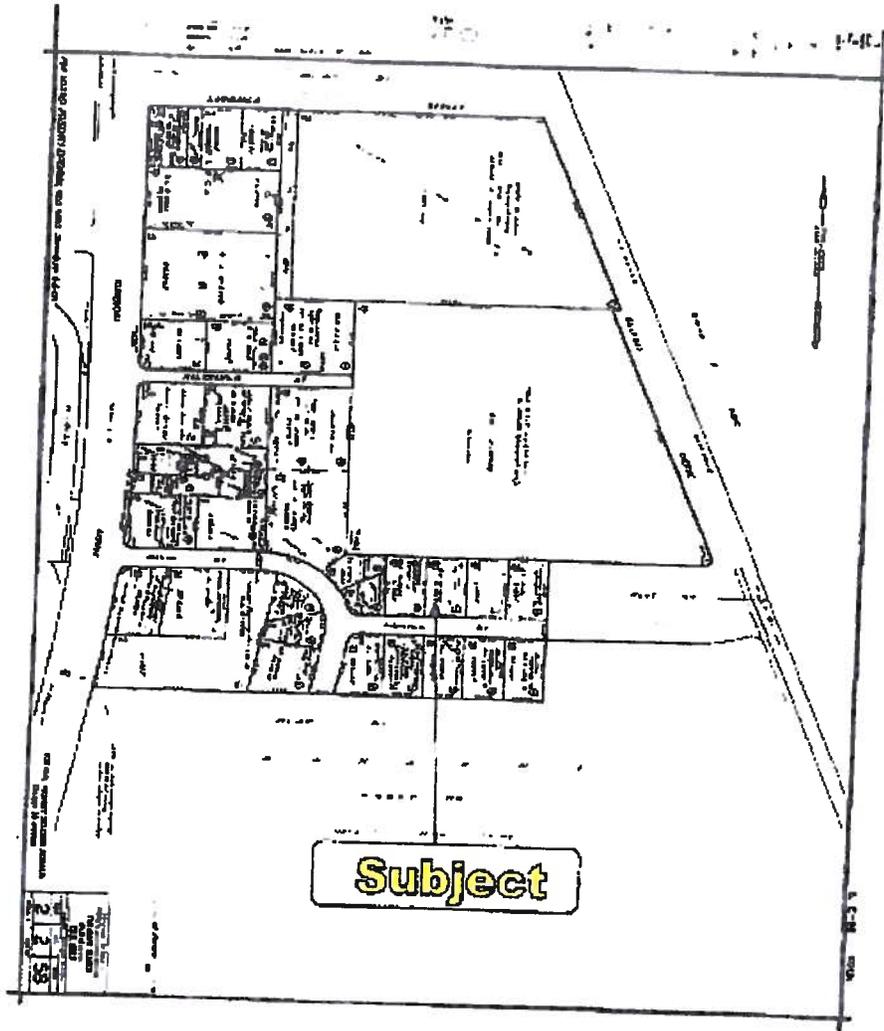


EXHIBIT A

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