

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

March 14, 2014

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

Hawai'i

**Forfeiture of General Lease No. S-5372, Hawaii Outdoor Tours, Inc., Lessee,  
Kapapala, Ka'u, Hawaii, Tax Map Key: (3) 9-8-01:02.**

PURPOSE:

Forfeiture of General Lease No. S-5372, Hawaii Outdoor Tours, Inc., Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kapapala, Ka'u, Hawaii, identified by Tax Map Key: (3) 9-8-01:02, as shown on the attached map labeled Exhibit A.

AREA:

5,820.96 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 purposes.

TERM OF LEASE:

35 years, commencing on 11/01/1994 and expiring on 10/31/2029.

ANNUAL RENTAL:

\$4,930.00 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-5372, Hawaii Outdoor Tours, Inc., Lessee, was served a Notice of Default by certified mail dated January 3, 2014 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 January 10, 2014, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on February 14, 2014. As of February 12, 2014, this breach has not been cured.

As of February 14, 2014, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$5,680.00 (rent plus late fees) for the time period from November 1, 2012 to April 30, 2014.

INSURANCE: The Lessee has not posted the required liability insurance policy.

**PERFORMANCE BOND:**

The Lessee has posted the required performance bond. This bond is in the form of a time deposit account in the amount of \$9,860.00.

**CONSERVATION PLAN:**

The Lessee has not submitted a conservation plan and has not made any recent effort in working with NRCS to complete a conservation plan.

**BACKGROUND:**

The subject property was previously encumbered under Revocable Permit No. S-5294 to Roger James, Jr. and Nora Sakaino James. 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 agriculture purposes. As a result of this action, General Lease No. S-5372 was issued to Roger James, Jr. and Nora Sakaino James, husband and wife as tenants by the entirety.

At its meeting of June 14, 1996, under agenda item D-6, the Board consented to the assignment of lease from Roger James, Jr. and Nora Sakaino James, husband and wife, as Assignors to Nora Sakaino James, unmarried, as Assignee. Further, at its meeting of March 12, 1999, under agenda item D-24, the Board consented to the assignment of lease from Nora Sakaino James, as Assignor to Hawaii Outdoor Tours, Inc. as Assignee.

Although the Lessee, Hawaii Outdoor Tours, Inc. recently declared bankruptcy, a motion was granted by the courts to reject this lease from the bankruptcy proceedings. However, the Lessee has made no attempt to cure the current rental default.

The Lessee has been issued the following notices of default during the past five years.

<b>DATE</b>	<b>DEFAULT</b>	<b>RESULT</b>
5/31/11	Rent	7/6/11 cured
8/09/11	Liability Insurance	Not cured
11/29/11	Rent	12/30/11 cured
5/31/12	Rent	6/25/12 cured

As a result of the current default in the lease rent, staff is recommending the Board authorize the cancellation of General Lease No. S-5372.

**RECOMMENDATION:** That the Board:

1. Authorize the cancellation of General Lease No. S-5372 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5372 to be applied to any past due amounts;

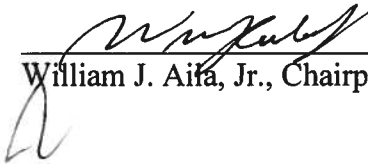
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of March 14, 2014, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination 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-5372 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



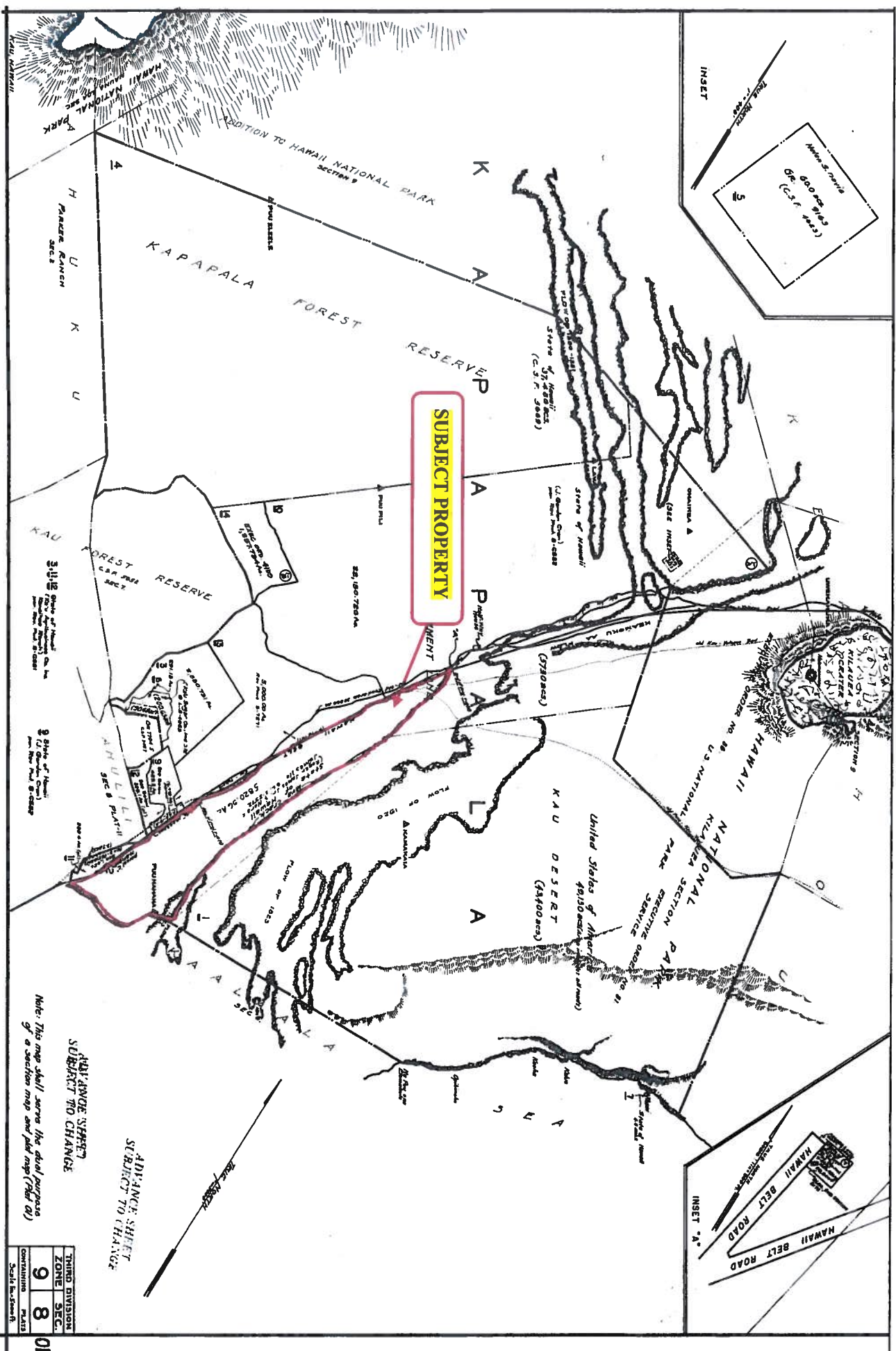
Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aifa, Jr., Chairperson



Note: This map shall serve the dual purpose of a section map and plat map (Part 01)

THIRD DIVISION	9	8	01
CONTAINING PLATS			
Scale 1/2"=100'			



