Watanabe Ing LLP

A Limited Liability Law Partnership

August 6, 2012

VIA HAND DELIVERY

Ref. No.: GL 5708

William J. Aila, Jr.
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

RECEIVED
LAND DIVISION
2012 AUG -7 A 7:33
DEPT. OF LAND AND
NATURAL RESOURCES
STATE OF HAWAII

Re: July 13, 2012 Agenda Item D-13
Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016

Chairperson William J. Aila, Jr.:

Thank you for the opportunity to submit this position statement on behalf of LandScape Hawaii, Inc. ("LHI"), the lessee of General Lease No. S-5708, relating to that certain State property identified as Lot 33, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016; Area 19.61 acres, more or less (hereinafter referred to as "**the Subject Property**").

This matter was listed as Item D-13 on the BLNR July 13, 2012 Agenda and was considered at the July 13, 2012 Board Meeting. At the end of the presentation, questions remained and this matter was deferred. In his July 16, 2012 letter, Barry Cheung, District Land Agent, informed Kyle Ushijima, President and CEO of LandScape Hawaii, Inc. that the matter was deferred and he will write again at a later date regarding the review of the case by the Department of the Attorney General. See attached **Exhibit A-1**.

Most of the information being provided in this position statement were previously submitted to the DLNR and were attached to Item D-13 to the BLNR July 13, 2012 Agenda as Exhibit B [February 21, 2007 to Peter T. Young and exhibits] and Exhibit C [January 11, 2008 letter to Charlene Enoki and exhibits]. Additional back up documents include notes prepared by Cindy Comer and Kyle Ushijima when the events occurred and letters and memos prepared by third parties when the documents are dated.

I. Background

A. Prior Tenant: Ms. Candy Lake and her daughter, Ms. Tiffany Fortin.

As background, in relevant part, the Subject Property was previously leased to Ms. Candy Lake and her daughter, Ms. Tiffany Fortin. Ms. Candy Lake resided on the Subject Property and her daughter, Ms. Fortin lived on the mainland. The lease term was to expire on August 9, 2004 and in a June 2, 2003 letter to Barry Cheung, Ms. Candy Lake requested a new lease to be issued to her organization, the Sylvester Foundation for animal shelter purposes. See attached **Exhibit 1**, which is the August 8, 2003 DLNR Staff Recommendation to the Board to deny Ms. Candy Lake's request and approve the public auction of the Subject Property for agricultural purposes. The following entry appears under Property Characteristics – "Utilities – Yes". **Exhibit 1 at 2**.

B. Bid Auction June 30, 2004 and General Lease No. S-5708

1. On April 16, 2004, Chairperson Peter T. Young signed the Notice of Sale [**Exhibit 2**] and Public Auction Bid Packet [**Exhibit 3**] for four (4) properties, including the Subject Property.

2. The Notice of Sale set the upset minimum annual lease rental at $4,764.00 per annum. See Item III. of **Exhibit 2.**

3. Cindy Comer recalls she had 3 walkthroughs of the Subject Property, May 24, 2004, May 28, 2004 and June 25, 2004.

4. Kyle Ushijima recalls he was on the latter two walkthroughs on May 28, 2004 and June 25, 2004.

5. During the walkthroughs, there were three (3) dwellings, the A-frame[1] on the top level that was occupied by Ms. Candy Lake, the Clubhouse[2] on the middle level which was used as an animal shelter, and a house on the first level that was rented to a tenant.

6. During the walkthroughs, both Ms. Comer and Mr. Ushijima recall seeing electric wires, telephone lines and water being provided to the house on the first level.

* 7. **Only the house on the first level is involved with the claim of the missing meter box and lack of electricity**.

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[1] It is believed that the A-Frame house was moved onto the Subject property by Ronald Rewald, and his parents lived in the dwelling, at a time when Nolan George was the lessee.

[2] It is believed that the Clubhouse was built by Ronald Rewald, who also built a polo field on the middle level of the Subject Property.

8. LHI timely hand delivered and filed its Application.

9. At the auction held on June 30, 2004. LHI submitted an annual bid of $36,500.00, payable in semi-annual installments of $18,250.00, was the winning bidder and paid the amount of $4,764.00 per annum. See ¶ 10. 3. at page 6 of **Exhibit 3**.

10. On July 1, 2004, LHI complied with the terms of payment and paid the balance of the semi-annual payment of $18,750.00. See ¶ 10. 4. at page 6 of **Exhibit 3**.

* 11. LHI understood the Subject Property was to be leased "AS IS" and understood that to mean as observed during the walk through inspections on the Subject Property before the public auction held on June 30, 2004. See ¶ 5 at page 5 and ¶ 13 at page 7 of **Exhibit 3**.

* 12. LHI understood "AS IS" to mean the three (3) dwellings in habitable condition, meter box with electricity, telephone line and water provided to the house on the first level, vegetation reasonably maintained, all light fixtures and off-on switches and outlets intact, plumbing and plumbing fixtures intact.

* 13. The commencement date for General Lease No. S-5708 for the Subject Property was to be sixty (60) days after the date of the sale on June 30, 2004, which was September 1, 2004, with the proviso that the Chairperson may amend the commencement date for good cause. See ¶ 11 at page 7 of **Exhibit 3**.

* 14. In a letter dated August 27, 2004, LHI submitted General Lease No. S-5708 to the DLNR. See attached **Exhibit 4** Transmittal Letter.

* 15. General Lease No. S-5708 contains the signatures of Kyle K. Ushijima signed on August 24, 2004 on behalf of LHI, Chairperson Peter T. Young on behalf of BLNR and Approval As To Form signed by a Deputy Attorney General on July 30, 2004. See attached **Exhibit 4** which are the relevant pages of General Lease No. S-5708.

* 16. Although General Lease No. S-5708 was signed in August 2004, the start date, term of the lease and the dates payment were due on page 1 were not filled in and it is assumed that was because Ms. Candy Lake was still in possession of the property. See attached **Exhibit 4** which are the relevant pages showing the filled in dates in 2006.[3]

II. General Lease No. S-5708 and Efforts to Gain Possession

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[3] The start date, term of the lease and the dates payment were due was subsequently filled in on or about March 23, 2006 and LHI was provided a copy of General Lease No. S-5708 filled in with the handwritten terms.

A. Ms. Candy Lake and the Sylvester Foundation Remained a Hold over Tenant Until Being Evicted on March 3, 2005.

1. LHI communicated the urgency of taking possession of the Subject Property [See attached **Exhibit 4** Transmittal Letter], however, due to the holdover by Ms. Candy Lake and the Sylvester Foundation and communications from her influential supporters, DLNR did not allow LHI to move onto the Subject Property on September 1, 2004.

2. In his October 12, 2004 letter, Mr. Ushijima asked Governor Linda Lingle for assistance to enable LHI to move onto the Subject Property and pointing out that in June 2004, the Board told Ms. Candy Lake she would have to leave the property when her lease expired in August 2004. See attached **Exhibit 5**.

3. On November 5, 2004, Governor Linda Lingle responded to LHI advising that her staff are working with the Sylvester Foundation to vacate the Subject Property. See attached **Exhibit 6**.

4. On or about February 24, 2005, former Representative Eve Anderson, a member of the Waimanalo Agricultural Association sent an email to Sally Harper of Governor Lingle's staff explaining that she had been referred to Ms. Harper by Ms. Linda Smith also of Governor Lingle's staff and Ms. Anderson explained the situation involving Mr. Ushijima and his business, Mr. Ushijima and the DLNR, and problems caused by Ms. Candy Lake's holdover tenant status.

5. On March 3, 2005, about 30 DLNR personnel, police and others evicted Ms. Candy Lake and the Sylvester from the Subject Property, which was reported in the March 4, 2005 Honolulu Advertiser. See attached **Exhibit 7**.

* 6. At this point on March 4, 2005, after the eviction:

a. the Subject Property was not what Mr. Ushijima bid on and what he understood he was going to get "AS IS".

b. The three (3) dwellings were vandalized, trashed and not in habitable condition, the meter box may have been removed, there was no electricity, telephone line or water provided to the house on the first level, vegetation was overgrown and not reasonably maintained.

c. There were large amounts of trash, construction material, stockpiles of debris, tires, barbed wire, corrugated metal, a Matson container that was too rusty to be moved and created a hazard, broken bottles from drinking, missing windows, screens and damage to walls caused by vandalism, condoms, needles and syringes from drug activity on the Subject Property.

* 7. As a result, Charlene Enoki, DLNR Land Manger said the DLNR would clean up the Subject Property before it was turned over to LHI and LHI could move onto the Subject Property.

*** 8. According to Allison at HECO [548-7311], regarding the house on the first level, the electricity was turned off in July 2004 by Ms. Candy Lake's tenant and HECO removed the electric lines in December 2004.

B. After Eviction on March 3, 2005 Until February 2007 DLNR Did Not Clean Up, Remove and Renovate as Promised.

1 During the remainder of 2005, DLNR spent time getting bids for roofing, house renovation, cleaning up, doors, windows, ceilings walls and installing fencing based on discussions with Cecil Santos and Charlene Enoki as detailed in notes prepared by Cindy Comer between June 18, 2004 to June 19, 2006. See attached **Exhibit 8**.

2. Sometime in late 2005, the Clubhouse on the middle level, one of the three (3) dwellings observed during the earlier walk throughs was demolished and removed. The clubhouse was a large [30' X 60' ?]building with a large observation deck overlooking the polo fields and constructed with Koa posts and cabinets.

* 3. Clean up and fix up was slow and on March 10, 2006 Chairperson Peter T. Young sent LHI a Right-of-Entry Permit for Maintenance of State Land for a term of March 10, 2006 to September 10, 2006 and waived the rent for the term. See attached **Exhibit 9** at ¶ 1 and ¶ 14.

4. The Maintenance Right of Entry was intended to prevent further damage from vandalism. See attached **Exhibit 9** first paragraph.

5. LHI was not able to use the Subject Property during the term of the Right-of-Entry Permit for its business due to the were large amounts of trash, construction material, stockpiles of debris, barbed wire, corrugated metal, a Matson container that was too rusty to be moved and created a hazard, broken bottles from drinking, vandalism resulting in missing windows, screens, damage to walls and could not store its equipment or personal property at the Subject Property. See **Exhibit 9** at ¶ 10.

* 6. Clean up and the installation of fencing continued between October 1 2006 to February 17, 2007 and DLNR was contacted several times as noted in a log prepared by Cindy Comer. See attached **Exhibit 10.**

* 7. On October 13, 2006 Mr. Ushijima sent a facsimile memo to Charlene Enoki discussing the DLNR billing for the period Oct 1, 2006 to March 31, 2007. While the lease was to start on September 1, 2006, while LHI was continuing clean up, LHI discovered that the State failed to clean up and remove the stockpiles of debris, barbed wire, corrugated metal, tires, corrugated metal, etc, and LHI asked Charlene Enoki and the DLNR for assistance in the clean up and removal of the above. See attached **Exhibit 11**.

* 8. On February 2, 2007, LHI made its second payment of $18,250.00 with the expectation that the DLNR would expedite its clean up and give its attention LHI's situation. See attached **Exhibit 12**.

C. February 2007 to December 2007 Assistance From Chairperson Peter T. Young and Representative Ken Ito

* 1. On February 21, 2007, Mr. Ushijima sent a letter to Chairperson Peter T. Young summarizing the situation from May/June 2004 to February 2007, which provides more detail than this position statement. See attached **Exhibit 13**.

2. In the December 2006 entry of **Exhibit 13** at page 6, Mr. Ushijima noted that, Charlene Enoki told Mr. Ushijima not to pay the lease rent until she straightens the matter with the AG's office and again in January 2007, Ms. Enoki advises not to pay the rent.

3. At page 7 of **Exhibit 13**, Mr. Ushijima notes the stolen meter box and notes "** what we have today is not what we were led to believe we would assume two years ago, i.e. condition of property and size of property.".

4. Between February 22, 2007 and May 9, 2007, four meetings are held with DLNR, Representative Ken Ito's office and Mr. Ushijima and Cindy Comer to discuss the problems. See attached **Exhibit 14**.

5. On March 27, 2007, a meeting was held with Chairperson Peter T. Young, Representative Ken Ito and George Okuda and **Chairperson Peter T. Young states he is surprised by the problems as he has not received any information with regards to the Subject Property**. See attached **Exhibit 14**.

** 6. **Chairperson Peter T. Young and Charlene Enoki advise Mr. Ushijima not to pay until the issues are resolved**. See attached **Exhibit 14 and 15**.

7. Even after the March 27, 2007 meeting and being advised by Ms. Enoki and Chairperson Peter T. Young not to pay, on April 20, 2007, a Notice of Default is sent to LHI. See attached **Exhibit 15**.

8. On May 1, 2007, Chairperson Peter T. Young is replaced by Interim Director Allan Smith and on July 25, 2007, Mr. Smith is replaced by Laura Thielen as the interim Chairperson.

9. In June and July 2007, State workers demolished and removed abandoned sheds and construction material from the property. See **Exhibit 17** at page 2.

10. On December 18, 2007 Mr. Ushijima and Charlene Enoki discuss the status and Charlene Enoki advises Mr. Ushijima no further payments need to be made until a list of items are completed by the DLNR.

11. Charlene Enoki agreed to call back in 2 weeks to report on progress [See attached **Exhibit 16**], but no call back was received.

D. January 2008 to December 2008 Communications with DLNR

1. On January 11, 2008 Mr. Ushijima sent a letter to Charlene Enoki summarizing the history of the Subject Property, the status and, among other things, requests that the meter box and electricity be restored. See **Exhibit 17**.

a. "At this time, the immediate concerns are: the Lease rent amounts do not correspond to the Lease payment schedule and therefore generate unwarranted delinquency notices, the matter of a missing meter box, and the incorrect fencing of the property."

b. After the eviction, the State virtually abandoned the property for over a year and did nothing to facilitate the transfer of the property to Landscape Hawaii.

c. Instead, the State issued a Right-of-Entry permit in March 2006: the Right-of-Entry permit not issued for the sake of Landscape Hawaii but in response to the vandalism and further damage to the property and buildings while the State remained in control of the property.

d. The property was finally transferred to Landscape Hawaii in September 2006.

e. **The removal of the meter box that occurred again while the State was in control of the property and Candy Lake was still there is another major obstacle for Landscape Hawaii's business operation**.

f. The domicile on the first level had the meter box and electricity – this was noted during walkthroughs prior to the auction.

g. Also noted during the walkthroughs was the fact that there was a family living in the domicile, indicating that the building was in a livable condition in 2004.

h. **When Landscape Hawaii was finally given access to the property in 2006, the condition of the buildings was no longer what was viewed during the walkthroughs and not what we were led to believe we were bidding on at auction**.

i. Through no fault of Landscape Hawaii, the domicile now sits in an abandoned condition, i.e. without a meter box and electricity, vandalized, missing windows and screens, and needing major renovation.

j. The State must act responsibly and fairly and return the property to the condition observed during the walkthroughs.

k. **Without a meter box and electricity, an effective business operation cannot proceed.**

2. This January 11, 2008 letter was sent Certified Mail, Return Receipt Requested to Charlene Enoki, Laura Thielen, DLNR Chairperson, Governor Linda Lingle, Lt. Governor Duke Aiona, Senator Fred Hemmings, Representative Ken Ito, Representative Tommy Waters and the Waimanalo Ag Association. See Certified Mail, Return Receipt with **Exhibit 17**.

3. On February 6, 2008, Mr. Ushijima spoke with Charlene Enoki on the phone regarding the electric meter, return fence and container removal to get the lease going and until this happens, the lease will not start as noted in Mr. Ushijima's notes. See attached **Exhibit 18**.

4. On June 18, 2008, Barry Cheung called and advised the January 11, 2008 letter was lost, requested it be re-sent and it was re-sent on June 23, 2008 and DLNR confirmed the letter was logged as received on June 24, 2008. See Cindy Comer handwritten notes with **Exhibit 17**.

5. In July 2008, the DLNR completed 50 feet of chain link fence, removed piles of debris, demolished and removed a Matson container. See Cindy Comer notes attached as **Exhibit 14**.

6. During October 2008, Mr. Ushijima called and left messages for Charlene Enoki to schedule another meeting, but did not receive any call back or letters form the DLNR.

7. In November 2008, the DLNR secures and finalizes the perimeter fence that LHI had been waiting since November 2005 to be completed. See Cindy Comer notes attached as **Exhibit 14 and Exhibit 22**.

8. On Monday, November 3, 2008, Barry Cheung called and said the file was lost again and requested another copy. See Cindy Comer handwritten notes with **Exhibit 17**.

9. On Friday, November 7, 2008, Barry Cheung went to the Subject Property and Cindy Comer hand delivered a copy of the January 11, 2008 letter to Mr. Cheung who was accompanied by Steven Lau of the DLNR. See Cindy Comer handwritten notes with **Exhibit 17**.

10. On Monday, November 10, 2008, Barry Cheung sent an email to Cindy Comer, caretaker at LHI, in which he acknowledges reading the January 11, 2008 and noting that page 2 of the February 21, 2007 letter to Peter Young was missing [Barry Cheung November 10, 2008 email is attached as **Exhibit 18**], which was subsequently re-sent to him by Cindy Comer.

E. January 2009 to January 2010 Assistance from Representative Gene Ward

1. On February 19, 2009, Representative Gene Ward sends a letter to Charlene Enoki asking abut the Subject Property and asking for her urgent assistance. See attached **Exhibit 20**.

2. DLNR did not respond and in June 2009, Representative Gene Ward calls and Charlene Enoki returns his call to discuss issues regarding the Subject Property. See Cindy Comer notes attached as **Exhibit 21**.

3. Cindy Comer prepares notes for meeting with Representative Gene Ward. See Cindy Comer notes attached as **Exhibit 22**.

4. On August 29, 2009, Representative Gene Ward sends letter to Charlene Enoki regarding the missing meter box and resulting lack of electricity and asks Ms. Enoki to respond by September 18, 2009. See Representative Gene Ward letter attached as **Exhibit 23**.

4. DLNR did not respond and on October 22, 2009, Mr. Ushijima sends a letter to Charlene Enoki to follow up with Representative Gene Ward August 29, 2009 letter. See LHI letter attached as **Exhibit 24**.

5. DLNR did not respond and on January 28, 2010, Representative Gene Ward sends a letter to Charlene Enoki to follow up with his August 29, 2009 letter. See Representative Gene Ward letter attached as **Exhibit 25**.

6. DLNR did not respond and there are no communications between January 28, 2010 and May 2011.

F. January 2010 to August 2012 As of the Present Time

1. After January 28, 2010, there are no communications between LHI and DLNR until May 2011 when Cindy Comer met with William Tam, Deputy Director, DLNR, at a Waimanalo Agricultural Association meeting and advised Ms. Comer to call Charlene Enoki. See LHI June 16, 2011, letter attached as **Exhibit 26**.

2. On June 16, 2011, Mr. Ushijima sent a letter to William Tam, Deputy Director, which among other things, stated the following:

a. "You advised her to have Landscape Hawaii give Charlene Enoki a call. I have done that and requested an update for the property in question. I placed the call

weeks ago, and to date, have received no response. Moving forward, I am asking for someone at the DLNR to again review the situation and provide some remedy - we need our electricity.

b. "I am sending you a packet (under separate cover) with a history of the property, which at the time of the walkthroughs and after the auction date in 2004, had the available utilities of water, electricity, and telephone. Presently, the nursery and office domicile have no electricity as the meter box was stolen almost 7 years ago during the period that the State was in possession of the property and before transfer to us, the new Lessee. Since then, we have sat in discussion with former Director Peter Young, Charlene Enoki, and others, and been assured that the State would resolve the problem and give us our electricity. We are still waiting."

c. "At one time, we were willing to install the electricity ourselves with the understanding that the DLNR would give us credit against future lease fees. We awaited confirmation from the DLNR to begin the work, requesting in writing numerous times with specific start dates. So far there has been no response from the State or acknowledgment of our request. Much time has passed and we, like the State, have limited resources and monies. Our offer was time sensitive as we are treading water and - surviving and not thriving in this economy."

[Emphasis supplied.]

See LHI June 16, 2011, letter attached as **Exhibit 26**.

3. On July 4, 2011, Cindy Comer sent a packet of documents to William Tam, Deputy Director which consisted of the same 27 pages submitted with the January 11, 2008 letter to Charlene Enoki. See Cindy Comer letter attached as **Exhibit 27** and **Exhibit 17**.

4. In early August, 2011, Barry Cheung called and scheduled a meeting with Kyle Ushijima and Cindy Comer that was held at the Subject Property on August 11, 2011. See Cindy Comer notes attached as **Exhibit 28**.

4. Barry Cheung and Bob Medeiros attended the meeting on behalf of the DLNR and discussed the issues, primarily the problems due to the lack of electricity and Kyle Ushijima asked about renegotiating the lese rent. See Cindy Comer notes attached as **Exhibit 28**.

5. At the end of the meting, Barry Cheung said he would email or communicate with LHI in about two weeks. See Cindy Comer notes attached as **Exhibit 28**.

6. There was no response and the next contact from DLNR was the June 1, 2012 letter from Russell Tsuji with a draft submittal of the BLNR July 13, 2012 Agenda. See attached **Exhibit A-2**.

7. On July 6, 2012, Barry Cheung sent a letter to Kyle Ushijima enclosing the July 13, 2012 Agenda Item D-13 with the following Reference:

> Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016
> See attached **Exhibit A-3**.

8. Barry Cheung's July 6, 2012 letter, attached as **Exhibit A-3** and the draft and final of the July 13, 2012 Agenda for Item D-13 was the first time DLNR had noted a "denial of rent reduction" and " Consider Request for Mutual Cancellation of General Lease No. 5708."

9. Up until Barry Cheung's July 6, 2012 letter, Kyle Ushijima had been told and relied on statements by Charlene Enoki and former Chairperson Peter T. Young that LHI did not have to pay lease rent until the DLNR completed what it said it would do and provide electricity to the dwelling on level one of the Subject Property.

10. In reliance that the DLNR would honor General Lease No. 5708, LHI has invested $317,000.00 as follows:

a. $167,000.00 for clearing one level, prepping the ground and installing a one (1) acre Shade House with concrete block, weed cloth, gravel entire level, and nursery plant benches.

b. $150,000.00 in the Care Takers domicile to help monitor and have a presence on the property to deter vandalism and theft.

c. Kyle Ushijima and Cindy Comer have spent countless hours meeting with DLNR at their office, meeting with legislators at the Capitol Building, numerous phone calls, and writing letters to get the electricity installed and dealing with the lease payment billings that I was told not to pay until electricity is put back to the domicile/office property by DLNR. The hours of frustration and stress could have been put to better use towards running Landscape Hawaii, Inc.

11. The following are additional amounts to renovate the level one dwelling to a comparable "AS IS" condition that was observed during the May-June 2004 walkthroughs.

a. Undetermined amounts for termite damage to floors, walls, beams, etc. Damage could have been minimized if LHI had electricity to fix the domicile/office in 2004.

b. According to Allison at HECO installation Dept. (548-7311 the following has to be done to re-hook the electricity up to the dwelling on level 1.

a). Hire an Electrician who gets the a Permit for the electricity from the City & County.

b). The Electrician is to call HECO for a request for permanent service.
c). HECO will do a field check and answer any questions from Electrician and parties to the property.

d). A new pole is required due to newest code, cannot be more than a 90' feet run from pole to structure. HECO could not give us a cost until they go out to the property.

e). The Electrician will need to rewire domicile/office up to code.

f). The Electrician is to call HECO and City & County for inspection.

g). Once everything is done, HECO will need another 3 weeks to schedule and turn on electricity.

h). **Allison from HECO could not give us a time estimate to beginning to end for the whole thing nor a dollar estimate to install new line and pole.**

i). The cost for the Electrician to install a new meter box(stolen), electrical breaker box(stolen), outlets(stolen) and wires were cut too short(need to cut wall), GFI(stolen), light switches(stolen), light fixtures(stolen). The Electrical Contractor estimate to rewire and install all of the above except HECO's work is $ 9,550.00 plus tax (J.A. ELECTRIC SERVICE, INC.

j). Plumbing work to connect to the water meter and though out the house where copper pipes and a basin fixture were removed.

12. The removal of the electricity has prevented Landscape Hawaii, Inc. from taking advantage of opportunities and therefore losing money - these cannot be recovered after 8 years.

13. The following are the reasons what electricity has prevented Landscape Hawaii, Inc. to develop this property what it was meant to do.

a). Develop an Office to run the Nursery effectively and efficiently.

b). Security cameras and sensor lights for the property. Our nursery and others have been vandalized and burglarized as other nurseries in Waimanalo.

c). Build a warehouse for equipment and material.

d). Build a Covered soil mixing area.

e). Two (2) Greenhouses with Grow Lights to grow our plants from cuttings and seeds so we won't need to buy most of our plant material at other nursery's price.

f). Six (6) Heated Benches with four (4) Water Heaters to decrease the rooting time by 60% on our cutting and geminating our seeds faster by 70%. This will Save 50% of plant cost compared to purchasing plant material for projects, wholesale, and retail.

g). Install an Automatic irrigation Controller to control all watering and build a Misting system for larger and other type of plant material to grow from cuttings.

h). Two Water catchments (a 75,000 and a 50,000 gallon). Save on cost of potable water.

i). Develop a Tissue Culture Lab to grow plants from plant tissue.

j). Landscape Hawaii, Inc. has been operating the nursery at 25% effective and efficiency rate.

k). Landscape Hawaii's Business Plan has been literally thrown out the window as it shows LHI would have turned a profit on the nursery in year four (4) and would have generated at least $2M (2) million in 2012.

l). Plants is the main commodity of Landscape Hawaii, Inc. or any other company in the landscape business. Our cost on plants would have been reduced by 60% ($104,400 per year).

m). Cost of plants from year 2008 to 2011 = $696,000.00.

$696,000.00/4 years = $ 174,000.00*.60=$104,000.00.

This does not include this year 2012.

n). Landscape Hawaii, Inc. has and still adding wasted cost to trim the trees and keep the weeds down on the undeveloped area where we would have built all of the above.

o). Another plan for the nursery was to make another company doing landscape/irrigation installation and the nursery providing the plants and housing our equipment. The Landscape Company would be operating from the nursery and office. This Company would be generating $2M - $3M ($2-3 million) a year. Without a fully operating nursery a Landscape/irrigation installation company cannot be competitive in bidding projects.

III. Conclusion

Color photos of the Subject property will be available at our August 8, 2012 meeting.

The foregoing represents a brief summary of LHI's experience with the Subject Property since it was the successful bidder at the June 30, 2004 auction.

LHI respectfully submits that the terms of General Lease No. S-5708 needs to be revised to take into account the fact that LHI did not get the property it expected to get in the "AS IS" condition that it observed during the walkthroughs in May-June 2004.

LHI respectfully submits that the revisions must take into account the following:

1. LHI's lost opportunities and prejudice caused by the failure to provide the Subject Property as agreed on September 1, 2004 with electricity.

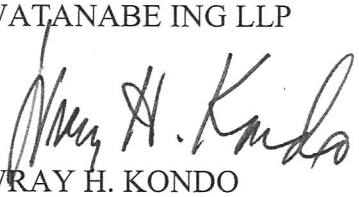
2. LHI's attorneys' fees and costs which are estimated to total about $10,000.00 to $15,000.00 date.

3. Waiver of lease rent until the DLNR pays for and installs an electric meter and connects the electricity through HECO and for electrical work, currently estimated to cost $9,550.00 plus tax (J.A. ELECTRIC SERVICE, INC.).

4. DLNR pays for and installs plumbing for the dwelling on level one.

Very truly yours,

WATANABE ING LLP



WRAY H. KONDO

C: Russell Tsuji
Barry Cheung
Deputy Attorney General

458523

LHI POSITION STATEMENT
AUGUST 6, 2012

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NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 16, 2012

Ref. No.: GL 5708

Mr. Kyle Ushijima
President & CEO
Landscape Hawaii. Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016

We write to inform you that at its meeting of July 13, 2012, under agenda item D-13, the Board of Land and Natural Resources deferred the above-referenced request.

We will write to you again at a later date regarding the review of the case by Department of the Attorney General.

If you have any questions, please feel free to contact us at 587-0430. Thank you.

Sincerely,

Barry Cheung
District Land Agent

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 1, 2012

Ref: GL 5708

Mr. Kyle Ushijima
President & CEO
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: General Lease No. 5708, Waimanalo, Koolaupoko, Oahu; TMK (1) 4-1-027:016

We write to update you on the status regarding the outstanding rent owed by you under the above-referenced lease.

We have reviewed your letters and our records. We cannot agree to the allegations in your letters pertaining to the State's delay in handing over the property.

At the staff level, we do not have any authority to accommodate your request for rent reduction due to the alleged delay. Therefore, we will go to the Board requesting guidance and instruction. Attached is the draft Board submittal that we intend to submit to the next available Board meeting in Honolulu. We will write to you again when the agenda is fixed. In the meantime, please let us know if you have any comments on the draft submittal.

If you have any questions, you can contact me at 587-0422 or my staff Barry Cheung at 587-0430. Thank you.

Very truly yours,

Russell Y. Tsuji
Administrator

Enclosure

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

Board Date

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

OAHU

Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016

APPLICANT:

Landscape Hawaii, Inc., a domestic corporation.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-027:016 as shown on the map attached as **Exhibit A**.

AREA:

19.961 acres, more or less.

ZONING:

State Land Use District:	Agricultural
City & County of Honolulu LUO:	A-1

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:

Intensive Agriculture or Pasture Purposes.

LEASE TERM:

Thirty (30) year lease commencing from April 1, 2006.

DCCA VERIFICATION:

Place of business registration confirmed:	YES X	NO __
Registered business name confirmed:	YES X	NO __
Applicant in good standing confirmed:	YES X	NO __

REMARKS:

The subject parcel was previously leased to Christian Meunier and Candy Lake under GL 3861 until the lease expired on August 9, 2004. Ms. Lake operated an animal shelter under the name of Sylvester Foundation on the parcel until she was evicted from the parcel on March 3, 2005.

Prior to the above-referenced eviction, the Department solicited application for a 30-year lease in June 2004. Due to reluctance of Ms. Lake allowing prospective bidders to inspect the parcel, the Department decided to conduct a guided site inspection for the prospective applicants. The inspection party included the current lessee, Landscape Hawaii, Inc. ("LHI") and staff from the division.

Staff understands that after the eviction, the Department agreed to demolish some structures, remove the debris left by the former lessee, hire a professional cleaner to clean the remaining dwelling, and install fencing around the property fence before handing over the property to LHI.

On March 10, 2006, the Chairperson issued a right of entry after learning about the vandalism on the parcel[1]. The Chairperson waived the rent for the right-of-entry period, which covered from March 10, 2006 to September 10, 2006, or at an earlier date upon the sole discretion of the Chairperson."

The lease was eventually signed on March 23, 2006 commencing from April 1, 2006. The first 6-month rent ($18,250), document and map fees ($55), and advertising costs ($544.28) were paid by LHI on June 30, 2004, i.e. the date of auction.

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[1] Opening paragraph of the right-of-entry as in Exhibit B states, "[i]n order to prevent [vandalism] from happening again, we are issuing this maintenance right-of-entry."

The Department received another payment of 6-month rent ($18,250) around February 2007. At the same time, LHI submitted a letter dated February 21, 2007 to the Chairperson (**Exhibit B**) seeking resolution of the billings and requesting the State to honor its agreement to clean up the parcel for LHI's operation. In addition, LHI requested a 20% rent reduction retroactive to the beginning of the lease until the matter is resolved.

By its letter dated January 11, 2008 (**Exhibit C**), LHI reiterated its immediate concerns "are: lease rent amounts do not correspond to the Lease payment schedule and therefore generate unwarranted delinquency notices, the matter of a missing meter box, and the incorrect fencing of the property."

On June 1, 2009, Land Division informed Fiscal Office to change the billing date to April 1, 2008 because "billing date should be April 1, 2008 when State completed moving the location of fence line in the back of the property, installed fencing along ditch, and removed abandoned container/trash from property".

Since the last payment received in February 2007, the Department did not receive any rent payment from LHI.

Due to the staff turn-over, LHI's request for a Board hearing was not processed until today. The current amount owed is $127,750, equivalent to 3.5 years rent payable.

STAFF RESPONSES:

For discussion purposes, staff summarizes LHI's request as "the State has not fulfilled its obligation in delivering the property to LHI on time. Such delay and other incident caused unnecessary delays and jeopardized the plan by LHI to utilize the parcel." Staff will respond (in *italics*) to the allegations by LHI separately in the following paragraphs:

1. LHI alleged that the condition of the parcel at the time of the pre-auction site inspection provided a condition of the parcel, which was different from the actual condition when the parcel was delivered to LHI two years later.

   Staff notes that the 2004 public auction bid packet for the parcel, under paragraph 13, Condition of the Property states, "... all parcels shall be leased in an "AS IS" condition..." The condition on the parcel is better than that in the pre-auction site inspection because the Department had taken extra steps by installing fence, cleaning the former dwelling, and removing trash from the parcel. Staff is not aware of any similar cleanup efforts for other auction parcel on Oahu.

2. LHI complained that the Department failed to fence a portion of the parcel with an area of about four (4) acres, which meant that LHI could not use the said area.

Staff notes the bid packet did not provide any provision regarding fencing off the parcel, including this four-acre portion. In addition, staff understands this four-acre parcel was not used by anyone since eviction in 2005. Therefore, staff cannot agree that the lack of fencing jeopardized the plan of LHI.

3. LHI complained that DLNR should have processed the demolition permit earlier so the City and County of Honolulu would be able to remove two dwellings from the assessment. In short, LHI was paying real property taxes based on three dwellings instead of only one on the ground.

   Staff notes that the issue of dwellings relating to real property tax assessment falls under the jurisdiction of the City and County of Honolulu. LHI should approach the City for any appropriate adjustment.

4. LHI complained about the missing meter box previously seen in the pre-auction site inspection. The lack of meter box requires LHI to install a new one subject to the current requirement of the utility company. It involves extra cost and makes the LHI's plan of utilizing the dwelling not feasible.

   Staff has checked with the department maintenance crew and note that there is no record of any electric box being removed from the parcel. Both the staff and the crew understand that the meter box is the property of the utility company. It is the lessee's responsibility to secure the utility services. Staff cannot agree that the State is responsible for providing a replacement meter.

CURRENT SITUATION:

At the time of writing this submittal, the amount owed is $127,750. Staff believes that the previous administration had done everything possible in utmost good faith trying to help a successful bidder establish a new operation. The condition of the parcel and the vandalism that happened on the property are something beyond the department's control. However, the State should by no means be held responsible for those incidents and/or replacement works. Upon review the situation, staff maintains that LHI does have a valid obligation to pay the outstanding rent.

Another option is both the Board and LHI agree is to mutually terminate lease, provided that LHI removes all the improvements installed by LHI during its occupancy, and the State keeps the rental payment and other fees and costs paid to date.

RECOMMENDATION: That the Board:

1. Deny the request for 20% rent reduction retroactive to the commencement date of General Lease No. 5708; and choose either option 2 or 3 provided below:

2. Agree with the staff position as mentioned above and require Landscape Hawaii,

Inc. pay all the delinquent rent within 30 days of the Board date.

OR

3. Authorize the mutual cancellation of General Lease No. 5708 covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current mutual cancellation document form, as may be amended from time to time;

   B. Landscape Hawaii, Inc. shall remove all improvements installed during its occupancy of the subject parcel;

   C. Review and approval by the Department of the Attorney General; and

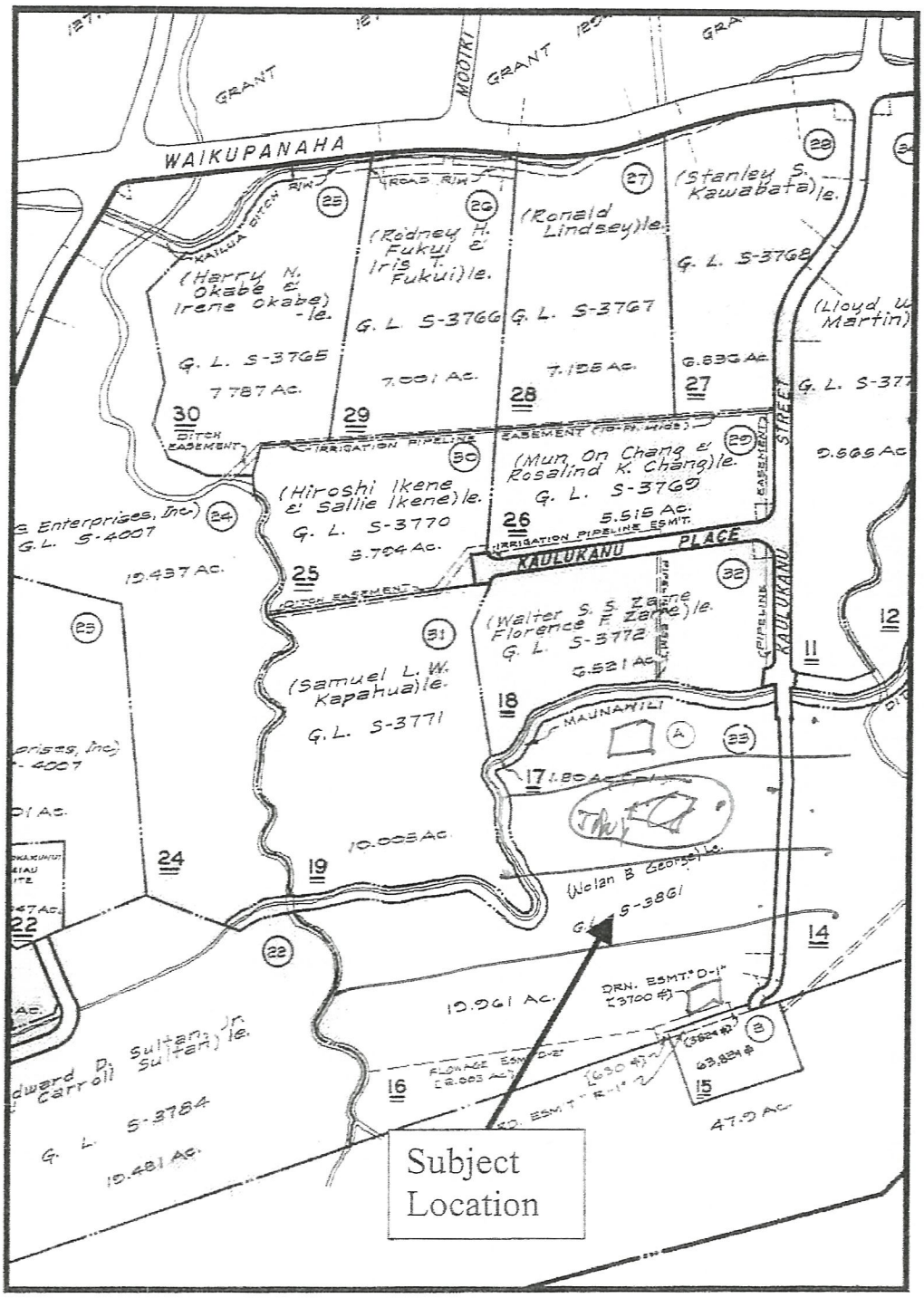
   D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

_____
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

_____
William J. Aila, Jr., Chairperson



TMK (1) 4-1-027:016

EXHIBIT A

February 21, 2007

Mr. Peter T. Young
Chairperson,
State of Hawaii
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hi 96809

Dear Mr. Young,

Subject: Lease payment and issues remaining per State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

I have made payment to the Fiscal Office, payment date 2/16/07, for the above leased land for period, 10/01/06 thru 3/31/07. There still remains confusion with regards to the billing period for which this applies and I would like to clear up this matter. While I was at the District Office advising Cecile Santos of the payment, I was told that I am to be notified by Charlene Enoki as to when to make payments and that the District Office was not aware that I had been sent a Notice of Default.
I received a Right-of-Entry Permit commencing on March 10, 2006 and ending on September 10, 2006, with a waiver of rent authorized by you pursuant to the Land Board's delegation of authority to issue Rights-of-Entry. I complied with all applicable laws, statutes and government regulations subject to the terms and conditions stated in the permit. Somehow, the Attorney's General office was not advised of the agreed upon waiver of rent as stated in Section 14 of the permit and has since flagged me as a delinquent lessee. I trust that this confusion can be cleared up once the proper documents are available to all parties?

If I may briefly review the history of this property with you and outstanding issues with regards to parties concerned:

May /June 2004	Preliminary walkthroughs of property with Charlene Enoki and other DLNR representatives. Walkthroughs include individuals interested in bidding on the property. During walkthroughs, discussion includes cleanup and restoration of property to acceptable condition to future lessee.
June 18, 2004	The Sylvester Foundation is denied a Request for Waiver at a DLNR Board meeting.

EXHIBIT "B"

illegally return to the A-frame property during the day/evening to feed animals.
The office domicile is vandalized resulting in the removal of the entrance porch, screens, windows, and doors. The wind, rain, and animals can now enter the domicile as the windows and screens are gone. The weather degrades the interior and exterior of the domicile beyond the normal wear and tear and the floor, carpet, walls, and ceiling are damaged.

June 2005

All necessary bids are in for the agreed upon provisions offered by the State to transfer the property to Landscape Hawaii in a clean and orderly condition, pay for the costs and expenses for disposal, removal, or storage of the personal property of the prior lessee.

Provisions:

Demolish and dispose of Club House, designated facilities and stockpiles.
Clean and renovate A-frame
Clean and renovate Office area
Clean up possible dumped toxic materials
Remove Matson container

Choice Fencing is assigned Chain-link front fence area and Sun Systems is contracted for the balance of the perimeter fence area.

July 2005

Per Charlene Enoki: No renovation on A-frame.
A Contractor has been hired by the State to demolish the Club House which is the third domicile noted on the lease. Contractor is also to demolish and remove two horse stall areas, miscellaneous debris, and remove the Matson container.

August 2005

State workers trim and clear the front of the property in anticipation of Choice Fencing putting up Chain-link fence. Work to begin the last week of October 2005.

November 2005

State workers again trim and clear the front of the property in anticipation of the Chain-link fence being installed as work was not done in October.

December 2005

Chain-link fence fronting the property is finalized.
The day after the fence is in and gates installed, the gate fronting the A-frame is rammed and the concrete plug holding the gatepost upright is dislodged. Choice Fencing is immediately called in to replace the gatepost. Two days later it happens again and vandals enter the property, paint the inside of the garage walls with red paint and leave disparaging remarks re: the DLNR and fencing

property. This time the gatepost is not repaired but heavy chains and combination locks hold the fence gates closed.

End of 2005: Still lacking the balance of the fencing (perimeter) that was to have been completed in 2005.
Clean up of property still incomplete.
Transfer of property is incomplete and lease still not signed.

February 2006 Perimeter fence is partially completed.

March 2006 Right-of-Entry Permit is issued to Landscape Hawaii, Inc. for maintenance of State land to decrease the amount of vandalism on the property. Effective date: March 10, 2006 and ending September 10, 2006. (See Attachment, Right-of-Entry Permit) However, walkthroughs by Landscape Hawaii representatives reflect that the fencing is not according to the area designated in the lease as the boundary of the property. Calls made to the office of the DLNR requests correction to the fencing error. Also, the work order was to also include approximately 50' of chain link fence abutting the property's entrance gatepost and front chain link fence thereby providing security at the gate area fronting Kaulukanu Street.

General Lease no. S-5708 signed, dated: March 23, 2006 with effective dates: April 1, 2006 and terminating March 31, 2036. Please note that the lot is now not as described in General Lease no. S-5708 and the DAGS survey of the property with regards to Section 11 and its relationship to "Lot 22 of Waimanalo Agricultural Subdivision, the direct azimuth and distance being..." being approximately 648.50 feet and subsequently, sections 12, 13, and 14 of the survey "..to the point of beginning and containing an area of 19.961 Acres, More Or Less."... as the fencing has removed 4 (four) acres, MOL, from use by Landscape Hawaii.

June 2006 This is the third and final walkthrough with DLNR personnel since April of 2006, to clarify the situation regarding the mistake in fencing the perimeter of the property. In attendance: Bob Medeiros, Cecile Santos, 2 reps from Sun Systems and three reps from Landscape Hawaii.
The Sun Systems rep., Gary Bianco, site supervisor of the crew that installed the perimeter fence was asked why they did not follow the marked, tagged, and cleared perimeter area for the fence. His response was that Cecile Santos had told them to move the fence back and away from the marked property boundary. Cecile Santos was there and acknowledged that yes he had told

them to move the fence line. The group walked the area and there was consensus that the area in question was incorrectly fenced. Cecile measured the area fenced off from Landscape Hawaii and established that approximately 4 (four) useable acres were not included within the property line.
Sun Systems recommends enclosing the additional 4 (four) acres along side the already established fence line, rather than removing the already installed fence line, and joining the two areas with a livestock gate. The area in question requires approximately 190 T-posts with a 10-foot run, corner posts every 100 feet, and four-strand wire. At this time, no gate is available along this fence line area thereby disallowing Landscape Hawaii's use and/or access to the 4 (four) acres. The Sun Systems' engineer there that day estimated that approximately 6 weeks would be needed to have manpower and materials available to complete the job. In addition, the extra 50' of chain link fence abutting the front gate area is included in the work order.

Several calls have been made to the DLNR office to find out about the status of the pending work. No answers are available.

A question remains that if the RFP was for the correct linear run of fencing as stated by the State from both surveys and walking the area, what happened to the balance of materials that should have gone up on the property when the work order was changed to less than requested? Did the State pay for and not receive the amount of fencing contracted for?
Another question: If the contract was not executed properly, why is the lessee being penalized? In other words, why is the present lease rent for the entire 19.961 acres when it was demonstrated that since February 2006, 4 (four) useable acres were removed from use to Landscape Hawaii (approximately 20%). And when will the balance of the land be returned as is stated in the TMK and be able to be utilized fully by Landscape Hawaii, the lessee to the land?

June 14, 2006 — Landscape Hawaii, Inc. signs a Cooperative Agreement with the Windward Oahu Soil and Water Conservation District.

September 2006 — Right-of-Entry Permit expires. General Lease No. S-5708 to commence effective immediately as Right of Entry Permit expires.

State already holds payment for lease as Landscape Hawaii had paid for the first 6 (six) months of the lease on the day following the auction date, July 1, 2004. Payment was to have been applied for period July 1, 2004 through December 31, 2004, but transfer of

property did not occur as contracted in original agreement. (See Attachment 2, Facsimile Transmittal)

Landscape Hawaii begins work on the property to clean up A-Frame and establish a nursery, plant areas.

October 2006

The City assesses property taxes for three domiciles for the property when in actuality there are only two – the Club House was torn down by the State in 2005 although it is still reflected in City records. When will the State notify the City of the change?

December 2006

The AG's office sends out a delinquency notice for period 10/01/06 through 3/31/07.
Kyle Ushijima calls Charlene Enoki and is told not to pay the lease rent until she straightens out the matter with the AG's office.

End of 2006

Fencing is still not completed (perimeter and front gate areas).
Matson container still on property.
Stockpiles of dumped material of prior lessee still on the property.

January 2007

Kyle Ushijima receives another notice and a letter stating that he is delinquent with regards to paying the lease rent.
Charlene Enoki specifically tells Kyle Ushijima not to pay until the lease dates are clarified and on file correctly.

February 2007

This month Landscape Hawaii is faced with A Notice of Default. (See Attachment, Notice of Default)
Also, Cecile Santos submits Demolition Plan to Planning and Permitting Dept. that should have been processed in 2005. Is the City assessment correct now for property taxes? Two and not three domiciles? Cecile also advises Kyle Ushijima that the property perimeter fence is to remain as is and will not be corrected by the State. An error by the State?

Current Status:

*the AG's office shows Landscape Hawaii in arrears for 6 months lease rent
*City still seeking taxes for 3 (three) rather than 2 (two) domiciles
*Landscape Hawaii is in the process of cleaning the areas that the State said it would clean, i.e. the stockpile areas, removing the Matson container, etc. and starting up the nursery business on property which has 'gone to weed' for two years

*fencing is still not done according to the perimeter boundary as designated by the State Survey and front gate area is still unsecured
*unfenced area and unmarked area of this TMK is open to squatters and parties entering the area from the Mahailua Street side – patrolling and restricting access is difficult without proper boundary lines as reflected in a fence line
*lease amount reflects the lease fee on 19.961 Acres, MOL and does not take into account the unavailable 4 (four)acres incorrectly fenced off by the State in February 2006
*unanticipated expenses and work involved with cleaning and renovating domiciles that have been abandoned and vandalized for almost two years (from eviction date of Candy Lake)
*the delay in transferring the property (approx. 2 years) to Landscape Hawaii allowed the property to deteriorate; not securing the property and domiciles allowed vandalism, break-ins, stealing the meter box, stealing the roofing, breaking windows, removing doors and porches, etc. to go unchecked. The result is that now more serious renovations are needed which require authorization from the Building and Permit Dept.

**what we have today is not what we were led to believe we would assume two years ago, i.e. condition of property and size of property.

Mr. Young, as you can see by the above, it has been a frustrating and epic journey for all parties. You were in the private sector and understand that time represents both money and opportunity; I felt that I have lost both with regards to this situation. Working with the State has been frustrating, to say the least.
I have discussed the above problems with Charlene Enoki and Cecile Santos only to find that their hands are either tied or their time is unavailable to work out these problems. Often it seems that the authority does not go with the responsibility to get things done.

Clarification of the lease rent billing periods and amount due are priorities at this time as I am not a delinquent lessee. Also, I would hope that the State sees the inequity of charging me for the entire parcel when I cannot access all the land nor secure the land from outsiders. I would ask for a lease reduction of 20% retroactive to the beginning of my lease until the matter is reconciled.

As the fencing matter impacts us both, I would ask that the State work with Sun Systems and complete the perimeter and front gate areas. I would also ask the State to honor its agreement to clear the land of the stockpiles that pose a hazard to my employees and areas for nursery and pasture use and to also remove the Matson container.

If it is beyond your delegation of authority to authorize the above, I would request that I be placed on the agenda for a DLNR meeting to discuss the issues. It would serve both

our interest to have all of this behind us.

If you would like further insight into these matters, please feel free to call me at 836-5332 ext. 24 or my cell,

Sincerely,

Kyle Ushijima,
President
Landscape Hawaii Inc.

cc: Charlene Enoki
Mark Bennett
Cecile Santos

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MAR 10 2006

Mr. Kyle Ushijima, President
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: Right-of-Entry Permit to Landscape Hawaii, Inc. for Maintenance of State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

We have completed the installation of the fencing along the front of the leasehold and are processing the final execution of the lease for the site. We have been informed that after the installation of the front fencing, the lot has been vandalized. In order to prevent this from happening again, we are issuing this maintenance right-of-entry.

We are processing the execution of the lease (General Lease No. S-5708). This right-of-entry will enable you to maintain the site until the lease is fully executed.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of September 28, 2001, (Item D-4), Landscape Hawaii, Inc. is hereby granted a maintenance right-of-entry permit to occupy, secure, and maintain the premises shown on the attached map in an orderly manner in compliance with all applicable laws, statutes and government regulations and subject to the following terms and conditions:

1. The permit shall commence on March 10, 2006, and end on September 10, 2006, or at an earlier date upon the sole discretion of the Chairperson of the Board of Land and Natural Resources.

2. Landscape Hawaii, Inc. shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department ($300,000 per incident/$500,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage;

that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of Landscape Hawaii, Inc. Landscape Hawaii, Inc. shall furnish the Department with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the Department of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve Landscape Hawaii, Inc. of its responsibility under this right-of-entry as set forth herein or limit the amount of its liability under this right-of-entry.

3. Landscape Hawaii, Inc. shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the permit.

4. Landscape Hawaii, Inc. shall comply with all laws, statutes, ordinances, rules and regulations of the Federal, State, and County governments relative to the use of the subject area including those relating to public health.

5. Landscape Hawaii, Inc. shall indemnify, defend and hold harmless the State of Hawaii, Department of Land and Natural Resources from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of Landscape Hawaii, Inc. under this approval or relating to or connected with the granting of this approval.

6. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Landscape Hawaii, Inc. and his consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of the maintenance.

7. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf is/are in possession or elsewhere if caused by Landscape Hawaii, Inc., its consultants, contractors and/or persons acting for or on its behalf. Thes covenants shall survive the expiration or earlier termination of this right-of-entry.

8. For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.

10. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings at the subject property during the effective period of this right-of-entry.

11. All costs associated with the maintenance within the right-of-entry area shall be the sole responsibility of Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf.

12. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.

13. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

14. Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry for any government-related project. As your project meets this requirement, I hereby waive rent.

Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit the following to the Land Division no later than March 10, 2006:

1. Copy of signed concurrence;

2. Copy of your liability insurance policy.

Should you have any questions, please contact Cecil Santos at our Land Division Office, at (808) 587-0433 or fax at (808) 587-0455.

Sincerely,

Peter T. Young
Chairperson

I CONCUR:

Landscape Hawaii, Inc., a Hawaii corporation

By _____ March 16, , 2006
Kyle K. Ushijima

Its: President

c: Land Board Member
OCCL
Central Files
District Files

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 6, 2012

Ref. No.: GL 5708

Mr. Kyle Ushijima, President
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016

The Board of Land and Natural Resources will consider the above referenced request at its meeting on July 13, 2012. Enclosed is a copy of the subject Board submittal, agenda item D-13, relating to this request. The meeting commences at 9:00 a.m. in the DLNR Boardroom located in the makai wing, first floor (Room 132), Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii.

Although your presence is not required, applicants are encouraged to attend the meeting to provide any comments you may have and to answer questions the Land Board members may ask. Should you decide to attend, please sign in on the "move-up agenda" list to let the Board secretary know of your presence.

If you have any questions, please feel free to contact us at 587-0430. Thank you.

Sincerely,

Barry Cheung

Barry Cheung
District Land Agent

Enclosure

Received
7/9/12
Suzuki

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

August 8, 2003

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

PSF No.: 03OD-224

OAHU

Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-27:16.

REQUEST:

Sale of lease at public auction for intensive agriculture purposes

LEGAL REFERENCE:

Sections 171-13, -14, -14.5, -16, -17 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-027:016, as shown on the attached map labeled Exhibit A.

AREA:

19.961 acres, more or less, subject to determination by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Agricultural
City & County of Honolulu CZO: AG-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO __X__

CURRENT USE STATUS:

Encumbered by General Lease No. S-3861, Candy Lake & Tiffany

APPROVED as amended BY THE BOARD OF
LAND AND NATURAL RESOURCES

ITEM D-13

Fortin, Lessees, for intensive agriculture or special livestock use purposes. Lease to expire on August 9, 2004.

CHARACTER OF USE:

Intensive Agriculture or Pasture Purposes

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

The date of sale if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities - Yes
Slope - The property appeared to have been graded in the past as inspections show several terraces
Elevation - 240 feet to 320 feet
Rainfall - 64 inches
SCS Soil Series - Pohakupu Silty Clay Loam
Land Study Bureau - C56 or B56i & B43 with vegetable crops b & c and orchard crops a & b
Legal access to property - Staff has verified that there is legal access to the property off of Kaulukanu Street.

Subdivision - Staff has verified that the subject property to be auctioned is a legally subdivided lot.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

REMARKS:

The subject property was sold by public auction in 1964 for a term of 20 years. In 1977, the Board approved the extension of the lease up to 8/9/2004. In 1999, Christian and Candy Meunier acquired the leasehold pursuant to a foreclosure proceeding. Later, in accordance with the divorce settlement, the lessees became Ms. Candy Lake & Ms. Tiffany Fortin.

Ms. Lake is now residing at the subject property and operates a sanctuary for homeless animals. Her daughter, Ms. Fortin is living on the Mainland.

There is strong demand for agricultural leases in Waimanalo. The department had an auction for two intensive agriculture leases in Waimanalo last August. One of the leases with four bidders was sold at over three times the upset rent. Regularly, staff receives inquiries as to the availability of the next public auction. There have been phone inquiries about this particular property. Staff understands that an inquiry does not necessarily mean that the person eventually will bid at the public auction. However, it does show that there are parties who are interested in leasing State lands for agricultural purposes.

The Department has inspected the property during the past few years. Some portions of the property are relatively steep which make them impractical to perform any cultivation. Yet there are portions of the property that contain soils and have a topography that would enable the cultivation of crops. Therefore, staff believes that leasing for intensive agriculture or pasture purposes which is consistent with the county zoning are the highest and best uses of the property.

Currently, there are three dwelling structures on the property. Staff recommends that only one be allowed in the new lease. This provision, which the Department has been inserting in new leases as a matter of practice, is intended to discourage use of the lands more for residential than true agricultural use.

Staff did not solicit comments from other agencies as the proposed use is not different from the existing use.

By a letter dated June 2, 2003, Sylvester Foundation, operated by Ms. Lake requested a new lease be issued to the organization for animal shelter purposes. For the Board's information, there is a restriction in the current lease extension document prohibiting any extension beyond 2004. Regardless, Ms. Lake is not interested in pursuing a lease extension.

According to Ms. Lake, they provide shelter for homeless animals. They help placing animals when their owners need help. They have an educational program performed off site with school children and pet owners, teaching them proper and responsible animal ownership. The Humane Society refers 10-20 calls to them each month regarding adopting the animals. The organization was featured in local and national media. The applicant also provided letters/email from a State legislator, a Council Member and the Governor's Office in support of her application. Together with her request, these letters are attached as Exhibit B.

Due to the high demand for Waimanalo leases and the potential generation of revenues for public land trust purposes, staff believes a new lease should be auctioned to the highest qualified bidder.

In the past, staff requested the Board approve the forfeiture of Ms. Lake's lease due to non-compliance of terms and conditions of the lease. A copy of the submittal approved as amended by the Board on July 27, 2001 is attached as Exhibit C. According to website of Sylvester Foundation, the shelter is supported by private donations. Staff has reservations on whether the State should lease to an entity which does not have a convincing track record and has to rely on donations to pay the bills.

In view of the above reasons, the staff recommends the Board deny the request from Sylvester Foundation and approve the public auction of the subject property.

RECOMMENDATION: That the Board:

1. Deny the request from Sylvester Foundation to lease the subject lands for animal shelter purposes.

2. Find the area to be an economic unit in terms of the intended use.

3. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.

4. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

5. Authorize the sale of a lease at public auction covering the subject area for intensive agriculture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   a. The standard terms and conditions of the most current intensive agriculture general lease form, as may be amended from time to time;

   b. Within the first three years of the lease term, the land under lease shall be utilized for the purposes for which the lease is sold, all in accordance with a conservation plan approved by the Chairperson;

   c. The lessee is prohibited from using the property as his/her primary residence;

   d. The Lessee shall not place or construct any dwelling unit in excess of one employee dwelling unit on the premises; provided, further that the employee dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson;

   e. Review and approval by the Department of the Attorney General; and

   f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
Acting Supervising Land Agent

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson

August 8, 2003 – Item D-13:

13. Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-27:16.

Approved as amended. The Board amended the Recommendation Section by amending paragraph 5 to read as follows:

"5. Authorize the sale of a lease at public auction covering the subject area for intensive agriculture and pasture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

a. The standard terms and conditions of the most current intensive agriculture and pasture general lease form, as may be amended from time to time;

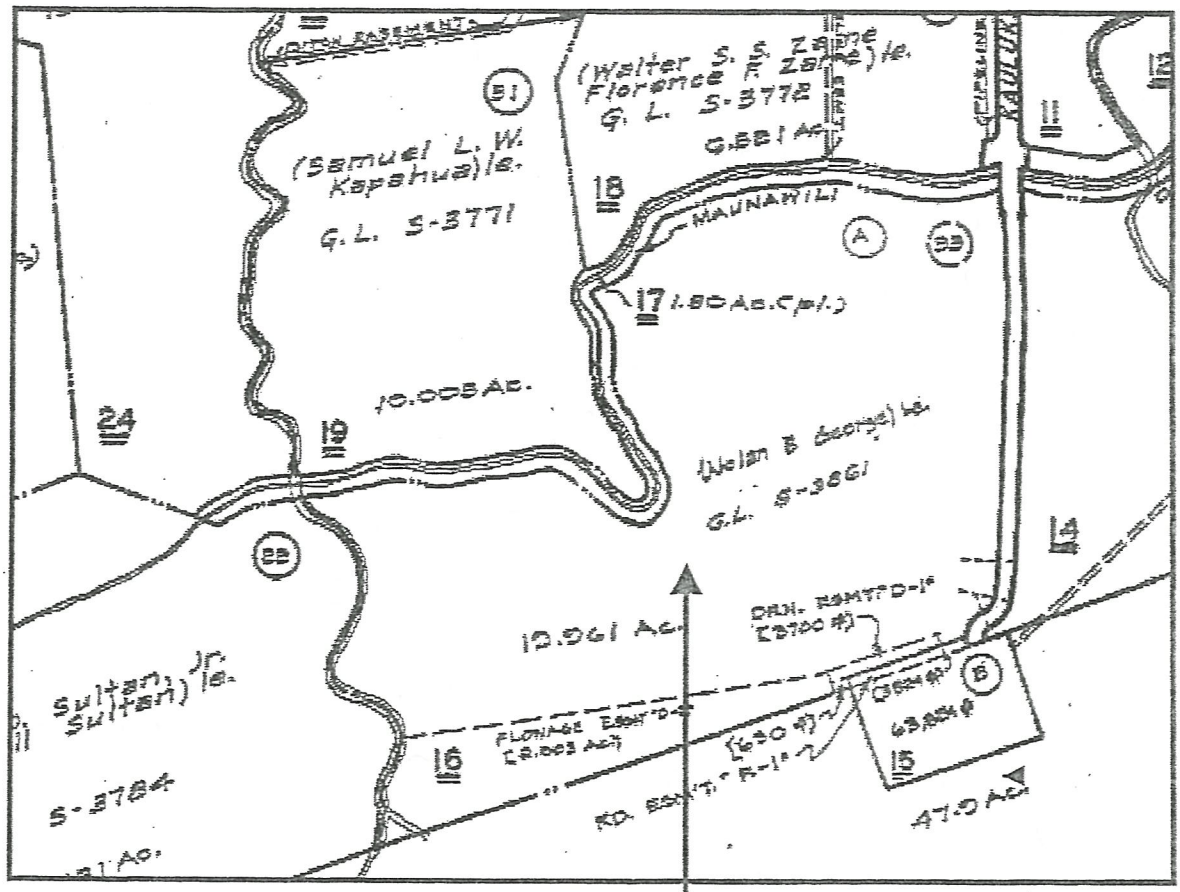
b. Within the first three years of the lease term, the land under lease shall be utilized for the purposes for which the lease is sold, all in accordance with a conservation plan approved by the Chairperson;

c. The lessee is prohibited from using the property as his/her primary residence;

d. The Lessee shall not place or construct any dwelling unit in excess of one employee dwelling unit on the premises; provided, further that the employee dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson;

e. Review and approval by the Department of the Attorney General; and

f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."



TMK (1) 4-1-027:016

EXHIBIT A

Candy Lake

Waimanalo, HI. 96795

June 2, 2003

Mr. Barry Cheung
Department of Land & Natural Resources
Land Division

Re: New Lease Request for Sylvester Foundation Animal Rescue
General Lease: 3861 - Candy Lake - Waimanalo

Dear Mr. Cheung:

Although Mr. Young, during our meeting on June 9th suggested a 15 year extension to the current lease which ends August 2004, I would like to request a new lease of 15 years instead and see how that might work. It would be much easier to accomplish, saving time and paperwork. A copy of this letter was submitted to Marcia Klompus at the Governor's office for review and approval.

The goal is to have the new lease be in the name of The Sylvester Foundation, a non-profit 501(c)3 animal rescue. In a letter dated February 24, 2003 to Governor Lingle, Senator Hemming's stated what he would recommend and hoped could be accomplished for our foundation with regards to the lease. A copy of that letter is enclosed for your info.

I feel as the Senator does that The Sylvester Foundation is providing a wonderful service to the people of Hawaii and one that can save the state a great deal of money in the long run.

The Foundation is a Hawaii corporation, governed by people of Hawaiian ancestry who love and respect this land. The Foundation has been non-profit for 11 years.

The Sylvester Foundation takes in homeless, abandoned, or abused animals, they are treated medically, spayed or neutered if needed and placed into responsible, loving homes. There is no time limit on an animal's stay, if not adopted they spend their lives at the ranch. Much of the work involves rehabilitation of the animals, horses, dogs, cats, etc. The foundation's work is funded solely by private donations and grants.

Our ranch is pasture and we use all of the determined 7-8 usable acres. We have many horses,

some are boarded, some come & go, some our there for special therapy, training, behavior modification and just grazing. The range of animal care is vast and so is the scope of animals at the ranch. Cats, dogs, horses, chickens, peacocks, pheasant, ducks, etc. etc.

While we perform a valuable service to the homeless animals of Hawaii, we also have a strong community service that we tend to with regards to spay/neuters, and helping place animals when their owners need help. We have an educational program performed off site with school children and for pet owners as well, teaching them proper and responsible animal ownership.

We know that we are very well thought of in the community and depended on for many animal related projects. The Humane Society refers 10-20 calls to us each month. We were named Volunteer of the month by Shari Shima. We have been featured in all the local newspapers and on the local news, and featured in the national Cat Fancy Magazine.

Here is what we would like to accomplish with the lease:

A new lease of 15 years to be issued in the name of the Sylvester Foundation beginning once the old lease is expired. Also that the lease payments (if possible) more closely reflect what is outlined in the recommendations made by the private appraiser. The reason behind asking for 15 years is because that is what was agreed to on the extension proposed by Mr. Young and we thought that might be agreeable for a new lease.

The Honorable Governor Lingle and Senator Fred Hemmings are both favorable to the Sylvester Foundation achieving this new lease and enabling us to continue our service to the animals and the community. Also Councilwoman, Ann Kobayashi would like us to remain on this property for future plans in the works. A letter from the councilwoman is enclosed for your info. Also enclosed are emails from the Governor's office, Marcia Klompus.

We hope the Land Board will feel positively towards the new lease. Please call me with any questions that you may have. Thank you for this consideration.

Sincerely,

Candy Lake, Lessee

cc: Peter Young, Senator Hemmings, Marcia Klompus, Ann Kobayashi,

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813-3065 / TELEPHONE 547-7000

ANN H. KOBAYASHI
Budget Chair
Councilmember, District V
(Manoa/McCully-Moiliili/Ala Moana
St. Louis Heights/Palolo/Kapahulu)
Ph:547-7005 Fx:523-4220
akobayashi@co.honolulu.hi.us

June 30, 2003

Mr. Barry Cheung
Department of Land and Natural Resources
Land Division

Dear Mr. Cheung:

I write in support of the issuance of a new fifteen (15) year lease to the Sylvester Foundation whose current lease expires in August 2004.

The City Council, in its attempt to diminish some of the City's fiscal woes, did not allocate monies to renew its contract with the Humane Society. As a result, we have been seeking other alternatives for tasks previously performed by the Humane Society. The Sylvester Foundation, a non-profit organization, has been instrumental in assisting with some of these tasks such as taking in homeless, abandoned animals and medically treating them and if necessary, providing spay or neuter services well as providing a loving home until such time of adoption. As Chair of the City Council Budget Committee, I feel that the Sylvester Foundation has been providing an outstanding service which would otherwise cost the citizens of the City and County of Honolulu a great deal of money and would like to see them continue in their current location.

I would like to request your favorable consideration for approval of the Sylvester Foundation's request for a new 15 year lease.

Thank you for your time and consideration.

Sincerely,

Ann H. Kobayashi

ANN H. KOBAYASHI, Chair

ROBERT BUNDA
PRESIDENT

DONNA MERCADO KIM
VICE PRESIDENT

COLLEEN HANABUSA
MAJORITY LEADER

CAL KAWAMOTO
MAJORITY FLOOR LEADER

SHAN S. TSUTSUI
MAJORITY CAUCUS LEADER

FRED HEMMINGS
MINORITY LEADER

BOB HOGUE
MINORITY FLOOR LEADER

PAUL WHALEN
MINORITY POLICY LEADER

FIRST DISTRICT
LORRAINE R. INOUYE

SECOND DISTRICT
RUSSELL S. KOKUBUN

THIRD DISTRICT
PAUL WHALEN

FOURTH DISTRICT
SHAN S. TSUTSUI

FIFTH DISTRICT
ROSALYN H. BAKER

SIXTH DISTRICT
J. KALANI ENGLISH

SEVENTH DISTRICT
GARY L. HOOSER

EIGHTH DISTRICT
SAM SLOM

NINTH DISTRICT
LES IHARA, JR.

TENTH DISTRICT
BRIAN T. TANIGUCHI

ELEVENTH DISTRICT
CAROL FUKUNAGA

TWELFTH DISTRICT
GORDON TRIMBLE

THIRTEENTH DISTRICT
SUZANNE CHUN OAKLAND

FOURTEENTH DISTRICT
DONNA MERCADO KIM

FIFTEENTH DISTRICT
NORMAN SAKAMOTO

SIXTEENTH DISTRICT
DAVID Y. IGE

SEVENTEENTH DISTRICT
RON MENOR

EIGHTEENTH DISTRICT
CAL KAWAMOTO

NINETEENTH DISTRICT
BRIAN KANNO

TWENTIETH DISTRICT
WILLIE C. ESPERO

TWENTY-FIRST DISTRICT
COLLEEN HANABUSA

TWENTY-SECOND DISTRICT
ROBERT BUNDA

TWENTY-THIRD DISTRICT
MELODIE WILLIAMS ADUJA

TWENTY-FOURTH DISTRICT
BOB HOGUE

TWENTY-FIFTH DISTRICT
FRED HEMMINGS

CHIEF CLERK
PAUL T. KAWAGUCHI

The Senate

The Twenty-Second Legislature

of the

State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813

February 24, 2003

Honorable Linda Lingle
Governor
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Governor Lingle:

I have received a letter and other information from Ms. Candy Lake regarding difficulties that she has had and is currently having with her lease on behalf of the Sylvester Foundation. I understand that Ms. Lake is the primary operator of this non-profit foundation for the protection and rehabilitation of stray animals. As an animal lover myself I feel that the Sylvester Foundation is providing a wonderful service to the people of Hawaii and one that can save the state a great deal of money in the long run.

I have reviewed the information that Ms. Lake has submitted to me, copies of which are enclosed. Based largely on this information and a few conversations I have had with her I feel it would be best for you or your Attorney General to review her case once again. Upon further review you will notice that the Department of Land and Natural Resources grossly mismanaged this case. Please also note the narrow way in which Ms. Lake's land has been defined. This one of the main sticking points in the renewal of her lease.

Furthermore, I also recommend that a new forty-year lease be issued in the name of the Sylvester Foundation beginning once the old lease has expired. I also feel that the lease payments ought to more closely reflect what is outlined in the recommendations made by the private appraiser. I believe that re-examining this case in light of these suggestions will lead to a more fair and accurate settlement to this difficult situation.

FRED HEMMINGS, MINORITY LEADER

Thank you for your interest and consideration of this matter. If you need further assistance please do not hesitate to contact my Chief Legislative Aide, Brysen Poulton at 587-7237.

Sincerely,

Fred Hemmings

Senator Fred Hemmings
District 25
Kailua, Waimanalo, Hawaii Kai

CC: Marcia Klompus
Candy Lake
Mark Bennet

Subj: **Re: (no subject)**
Date: 6/23/2003 10:13:56 AM Hawaiian Standard Time
From: *Marcia.Klompus@hawaii.gov*
To:

Aloha Candy:

I would move forward with what Peter recommends.

The important element is to get the new lease. Once that is done this can be revisited for an extension.

I would feel more comfortable if the Board approved this new lease on its merits.

Keep us posted...great news on the Quarantine...yes? Lots of excitement

Marcia

Marcia J. Klompus
Director of Scheduling
Office of the Governor

(808) 586-0010 Phone
(808) 586-3953 Fax

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

July 27, 2001

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

OAHU

Forfeiture of General Lease No. S-3861, Candy Meunier and Tiffany Fortin, Lessees, Waimanalo, Oahu, Tax Map Key: (1) 4-1-027:016.

PURPOSE:

Forfeiture of General Lease No. S-3861, Candy Meunier and Tiffany Fortin, Lessees.

LEGAL AUTHORITY:

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

LOCATION AND AREA:

Portion of Government lands situated at Waimanalo, Oahu, identified by Tax Map Key: (1) 4-1-027:016, consisting of approximately 20.56 acres, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO __x__

CHARACTER OF USE:

Intensive agricultural or special livestock use purposes.

TERM OF LEASE:

Forty years, commencing on 8/10/1964 and expiring on 8/9/2004. Pursuant to Extension of Term of General Lease No. S-3861 dated March 8, 1977, no further extensions shall be granted.

ANNUAL RENTAL:

$3,000 due in semi-annual payments from 08/09/1984 to 08/08/1994

As Amended

APPROVED BY THE BOARD OF

ITEM D-10

$7,660 due in semi-annual payments from 08/09/1994 to 08/09/2004

REMARKS:

The subject lease was sold by public auction on 8/10/64 for a term of 20 years to John T. Mackillop & Charline P. Mackillop. On December 13, 1968, the Board consented to the assignment from John T. Mackillop & Charline P. Mackillop to Barbara Malouff & Norm Taliaferro. On March 9, 1973, the Board consented to the assigment from Malouff and Taliaferro to Nolan George. On January 14, 1977, the Board approved the lease extension up to August 9, 2004.

During his tenancy, Mr. Nolan George failed to keep the rental payment and real property taxes current, failed to post liability insurance, and violated the character of use. According to the Department of Land Utilization of the City & County, the commercial activities conducted by Mr. George were prohibited on the subject property.

On September 24, 1993, under agenda Item F-7, the Board approved and amended staff's recommendation to cancel GL3861 (Nolan George, lessee) for failure to pay rent, to pay amounts owing under Department's Installment Account, to pay real property taxes, for violation of the character of use provision, and for sub-renting to a tour company. Because there was a mortgage on the property, the Board gave the mortgagee 60 days to file a complaint for foreclosure in which they would assume the lease and pay all outstanding delinquencies owing.

A commissioner was subsequently appointed to take over the lease. An auction was held on July 17, 1995 and re-opened on August 17, 1995 at which time Christian and Candy Meunier were the highest bidders at $137,550. An assignment between the commissioner appointed under the foreclosure proceeding and Christian and Candy Meunier was executed on November 8, 1995. Staff did not bring the assignment to the Board for consent until 1999 due to different understandings of what transactions should be brought to the Board for consent.

On September 24, 1999, under agenda Item D-10, the Board consented to the assignment from the Commissioner to Christian and Candy Meunier (due to foreclosure) and from Christian and Candy Meunier to Candy Meunier and Tiffany Fortin (due to divorce).

Ms. Candy Meunier is using the premises as her primary residence while the other tenant, Tiffany Fortin, Ms. Meunier's daughter, is currently living in Texas. Based on staff's annual inspection on February 8, 2001 and on correspondence from the lessee, Ms. Meunier is using the premises for a sanctuary for homeless

animals with cats, dogs, chickens, birds, and horses on the subject premises.

This submittal is triggered by a Notice of Default issued for delinquent rent for the past two years. Staff notes that a rental reopening for the period 8/9/94 - 8/10/04 has drawn out over the last six years and complicates the matter of delinquent rent. Chronological lists of events are attached as Exhibits B (for rental reopening) & C (for Notices of Default).

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-3861, Candy Meunier, Lessee, was served a Notice of Default (NOD) for:

__X__ Failure to keep lease rental payments current ($6,000 for the time period August 10, 1999 to August 9, 2001)

Said notice, posted to the property on March 29, 2001, offered the Lessee a ninety-day cure period to correct the default. This cure period expired on July 29, 2001. As of July 13, 2001, this breach has not been cured.

Staff notes that this delinquent rent of $6,000 was for the old rent amount of $3,000 per year. Pursuant to the Lease Extension document (attached as Exhibit D), the lessee was responsible for paying the current rent during the reopening process. Due to staff oversight, an NOD was not issued for nearly two years on this delinquency which started on August 10, 1999.

As of July 18, 2001, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of $32,810.96 for the time period from 11/8/95 to 8/9/01. An NOD was issued on March 29, 2001 for $6,000 in old rent for the period 8/10/99 to 8/9/01. Another NOD was issued on May 9, 2001 for $26,810.96 in retroactive rent for the period 11/8/95 to 8/9/01 (cure period to expire August 9, 2001).

INSURANCE: The Lessee's liability and fire insurance policy expired on 7/15/01. Renewal certificates have not been received as of 7/18/01.

PERFORMANCE BOND: The Lessee has posted only $3,000 of the $15,320 performance bond by an unsecured personal surety. An NOD has not yet been sent out for the additional performance bond amount.

OTHER: During a recent inspection, staff discovered that a squatter was living on the premises. NOD was posted on the premises on 7/12/01. Ms. Candy Meunier wrote a letter on 7/13/01 stating that the squatter was gone and she would remove the structure. Staff will arrange a site inspection to verify the compliance by the lessee.

Staff notes that Ms. Candy Meunier has requested an extension to cure this delinquent rent default.

As evidenced by the rental reopening chronology, the reopening process has been a long, drawn-out affair. Staff can think of no other lease that has had a reopening as involved with so many exchanges of correspondence and delays. While there are various issues surrounding the reopening, we emphasize that this forfeiture is for the delinquency of the old rent for which there is no question the lessee was legally bound to pay throughout the reopening process. While staff has presented the reopening issues in this submittal for the Board's information, discussion should focus on the non-payment of the old rent. The cure period for the NOD on the retroactive rent delinquency will expire on August 9, 2001 and this matter will be brought to the Board at that time if the default for the old rent has been cured and if full payment for the retro rent is not received. At that time, staff will address the reopening issues and Ms. Meunier's allegations.

Recently, Ms. Meunier claimed that her friend had made a payment of $3,000 sometime in 2000 and that her friend may have mistakenly written GL 3681 on the check instead of 3861. Staff verified with the Fiscal Office that there is no such account as GL3681 and that payment was never made. The lessee was asked to submit proof of a canceled check, but none was ever provided.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-3861 in the manner specified by law;

2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3861 as liquidated damages;

3. Terminate all rights and obligations of the Lessee effective as of July 27, 2001, provided that any and all obligations of the Lessee which have accrued up to said effective date shall endure past such termination date until duly fulfilled; 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-3861.

Respectfully Submitted,

Barry Cheung

Barry Cheung
Project Development Specialist

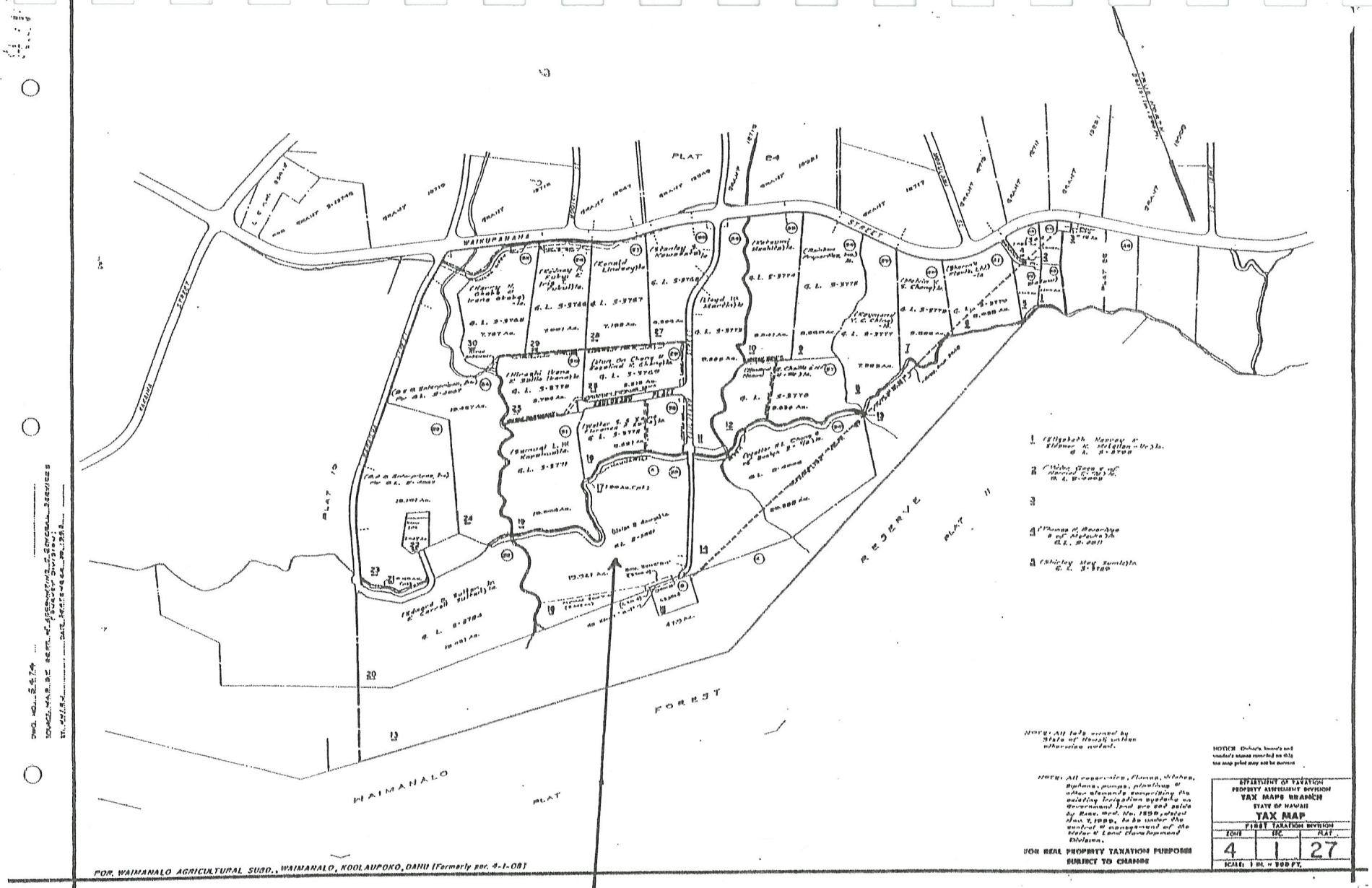
APPROVED FOR SUBMITTAL:

GILBERT S. COLOMA-AGARAN, Chairperson

APPROVED AS AMENDED. The Board approved the forfeiture of General Lease No. 3861 amending staff's recommendation by adding an extension to August 31, 2001 for the Lessee to:

1) Pay the old back rent of $6,000
2) Pay the annual rent due on 8/10/2001 ($3,000)
3) Provide a satisfactory performance bond in the amount of $6,000 in cash or equivalent
4) Pay the Lessee's half of Sanford Goto's arbitration fee of $1,750 and agree to Sanford Goto as arbitrator
5) Ensure that the insurance policy (with $300,000 coverage and State additionally insured) is paid for.

If any one of these items are not received by August 31, 2001, the forfeiture is approved.



POR. WAIMANALO AGRICULTURAL SUBD., WAIMANALO, KOOLAUPOKO, OAHU (Formerly por. 4-1-08)

EXHIBIT B

Chronological Events of Rental Reopening (GL 3861)

08/10/94 Rental reopening for the period from 8/10/1994 to 8/9/2001 due. At this time, lease was still under Nolan George. In letter dated November 17, 1995, staff informed Title Guaranty (lease was being sold through foreclosure action) that reopening was not initiated in 1994 due to action to cancel lease due to default and expected litigation and that reopening would commence once new lessee assumes control of leasehold.

11/20/95 Rental reopening appraisal first initiated; request for appraisal proposals sent out.

12/06/95 Chairperson approves selection of Christopher Graff to determine annual rent for reopening period.

12/21/95 Notification received from Title Guaranty that lease assignment from Commissioner to Christian and Candy Meunier had been executed and recorded. Assignment of lease dated November 8, 1995.

01/08/96 Agreement for appraisal services executed with Christopher Graff; contract sent to AG for review and approval.

02/12/96 Notice to Proceed issued to Christopher Graff.

09/04/96 Christopher Graff's contract canceled due to non-delivery.

09/17/96 Chairperson approves selection of Audrey Abe to determine annual rent for reopening period.

11/12/96 Agreement for appraisal services executed with Audrey Abe; Notice to Proceed issued.

01/20/97 Appraisal report submitted by Audrey Abe determining the annual rent to be $7,660 as of 8/10/94.

01/29/97 Certified letter sent to lessees informing them of new rent; letter sent to old address and returned.

02/24/97 Certified letter resent informing lessees of new rent ($7,660) for the period from 8/10/94 to 8/9/2004; acceptance or rejection of rent requested by 3/28/1997.

08/09/97 Due to non-response by lessees, staff sent Fiscal Memo to increase the rent to $7,660.

11/19/98 Letter from staff to Ms. Meunier clarifying the amount of

retroactive rent owed by the Meuniers (from 11/8/95, the date the assignment from the Commissioner to the Meuniers was executed).

11/27/98 Letter from Ms. Meunier to staff challenging appraisal report and claiming that the appraisal was done improperly (inaccurate number of usable acres, improvements should not be used in appraisal).

02/01/99 Letter from staff notifying the lessee of the reopening procedures as defined in the lease calling for the lessee to obtain their own appraisal if they dispute the State's appraisal; lessee given until 3/5/99 to appoint appraiser and until 3/20/99 to submit report; lessee asked to pay current rent ($3,000) amount.

02/24/99 Certified letter from staff to Ms. Meunier extending the deadline for the lessee to appoint their own appraiser to 4/1/99 and to submit appraisal report to 4/30/99.

03/01/99 Letter from Ms. Meunier to staff stating letter of 2/24/99 was "quite sassy and conveyed a demanding and threatening manner" and that "everything that is going on now is the fault of DLNR" reciting reasons why.

03/13/99 Letter from Ms. Meunier to Chair Timothy Johns, who she had met at a Department of Agriculture meeting, asking for help on her situation.

03/23/99 Letter from Timothy Johns to Ms. Meunier addressing her two points of contention. Regarding "untimely actions by the Department," we extended deadlines for her to obtain her own appraisal based on her request and concurrence. Regarding the disagreement over the State's appraisal, the appraisal process was clarified for her (when lessees dispute how fair market rental was determined, we enter into arbitration stage as dictated by lease provisions; this provides a mechanism to resolve differences).

03/29/99 Letter from Ms. Meunier to Timothy Johns stating that because she has not received a response, she assumes the deadline of 4/1/99 to notify us of her appraiser's name is delayed. (She had not yet received the 3/23 response.)

04/01/99 Letter from staff to Ms. Meunier extending deadline for the lessee to appoint their own appraiser to 4/16/99 and to submit appraisal report to 5/14/99.

05/14/99 Staff receives two letters from Christopher Graff of the City and County Real Property Assessment Division. (Ms. Meunier attempted to use Mr. Graff, the State's former

appraiser on this job who was terminated due to non-performance, to provide her appraisal report). The 5/8/99 letter states "The City and County of Honolulu's Real Property Assessment Division currently utilizes Agriculture/Pasture rates of between $258 and $15 per acre for ad valorem tax purposes. We feel this range represents the most reasonable reliable market based indices of value." The 3/8/99 letter states "After inspection of your Waimanalo property and cursory overview of the enclosed topographical maps detailing the physical characteristics of your land, it is my opinion that the usable area is circa 50 to 60 percent of the total area. Our records indicate your parcel contains a total land area of 19.961 acres. Applying the percentage of usable area to this total results in a usable area of 9.98 to 11.97 acres."

05/25/99 Certified letter from staff to Ms. Meunier stating the materials submitted by Christopher Graff do not meet the minimum standards for an appraisal report which must conform to the Uniform Standards of Professional Appraisal Practice; extended deadline to submit appraisal report to 7/31/99.

07/12/99 Letter from Ms. Meunier to staff stating that Larry Medeiros, who was supposed to do appraisal, is ill and requesting extension of deadline to 9/1/99 to submit report.

07/15/99 Certified letter from staff to Ms. Meunier extending the deadline to submit appraisal report to 9/1/99.

08/12/99 Certified letter from staff to Ms. Meunier explaining letter of 7/15/99 was returned unclaimed; reiterated 9/1/99 due date.

08/30/99 Lessee delivers appraisal report by Ray Benedicktus, Jr., Certified Residential Appraiser, who determines the annual lease rental to be $1,600.

09/28/99 Letter from staff offering settlement of $3,725 per annum for the period from 8/11/95 (the date that the Commissioner assigned the lease to the Meuniers) to 8/9/2004, otherwise continue with arbitration process (steps explained); response requested by 10/29/99.

10/01/99 Received signed response from Ms. Meunier indicating she does not accept the rental settlement of $3,725 stating she "was not happy that the two appraisers did not meet and arbitrate as per the lease terms in order to determine a new rental amount for me" and that she would like this meeting to occur.

10/25/99 Letter from Ray Benedicktus stating that on 10/13/99, he met

with Audrey Abe and that his opinion is that the State intended to lease the parcel for "pasture use."

11/05/99 Certified letter from staff to Benedicktus clarifying that the character of use, pursuant to the lease extension, is "intensive agricultural or special livestock use."

11/19/99 Letter from Audrey Abe to staff stating her unsuccessful attempts to meet with Benedicktus, including unreturned phone calls.

11/29/99 Certified letter from staff to Benedicktus instructing him to contact Audrey Abe to appoint a third appraiser.

02/23/00 Letter from Ms. Meunier to Fiscal Office stating the billing has never been correct since she got the lease; claims that if the appraisal by Benedicktus is used, the State owes her a credit of $3,766.

02/28/00 Letter signed by Audrey Abe, Ray Benedictus and Sanford Goto appointing Sandford Goto as the third appraiser/arbitrator.

03/01/00 Letter from Ms. Meunier stating that she spoke with Sandford Goto and is providing information on the areas of her concern.

04/06/00 Letter from Sanford Goto to State and lessee asking for signatures on executed arbitration submission agreement.

04/27/00 State signs the submission agreement and processes purchase order to pay its share of the arbitrator's fee.

04/29/00 Letter from Sanford Goto to Ms. Meunier responding to her letter of 4/25/00 and explaining that his fee is set at $3,500 and is based on hourly rate of $250 multiplied by estimated hours; also explains function of the third appraiser and that the panel will consider all documents in an attempt to arrive at a decision.

05/03/00 Letter from Ms. Meunier to Sanford Goto stating that she has requested her appraiser to look for another third appraiser and stating she was concerned that his fee has no limit. As she stated, "I do not have unlimited funds to spend on this. Also I was not happy with your answers to my concerns."

05/04/00 Letter from Sanford Goto to Ms. Meunier responding to her letter of 5/4/00 and explaining that panel was formed when Audrey Abe and Ray Benedicktus signed the agreement, that panel is obligated to complete proceeding unless both Lessor and Lessee instruct otherwise and that his fee is set at $3,500.

11/17/00 Letter from Audrey Abe to staff informing that Ms. Meunier has filed a complaint against her with the Regulated Industries Complaints Office (RICO). Abe responds to RICO that Ms. Meunier was not her client and that she categorically denies all allegations.

02/15/01 Certified letter from staff to Ms. Meunier informing her that the arbitration is canceled since she has not paid her half of the arbitrator's fees and that the new rent ($7,660) shall be applied. Letter was returned unclaimed and then posted on the property.

03/14/01 Letter from Ms. Meunier to Chair Gilbert Coloma-Agaran responding to 2/15/01 letter stating that she is waiting to hear the new third appraiser's name, that she opposed Sanford Goto's fee because it "was not a set amount" but was open ended. According to Ms. Meunier, "Mr. Goto made me feel very uncomfortable with his attitude, in not answering my questions with, 'it's a conflict of interest'. To me, if I am paying half of his fee, he had better answer my questions." She also stated that Audrey Abe's appraisal is at the Regulatory Agency and "they have found so many violations in the appraisal, that I have a letter from them advising me to get an attorney."

04/04/01 Letter from staff to Ms. Meunier making a final offer to continue with arbitration process if the lessee signs the submission agreement with Sanford Goto and pays her share of the third appraiser fee no later than 4/12/01.

04/06/01 Phone call from staff to Ms. Meunier to make sure she got the 4/4/01 letter. She acknowledged receiving the letter and did not indicate whether she would accept the offer. She did state she had a problem with Sanford Goto and felt that he was biased in favor of the State.

04/10/01 Letter from Benedicktus to staff requesting a new third appraiser be appointed because Mr. Goto's fees are "unaffordable" to his client and his client has not been satisfied with the level of communication from Mr. Goto.

04/19/01 Letter from staff to Benedicktus stating his request to appoint a new third appraiser is inappropriate and does not conform to the terms of the lease and may violate Section 658-4, HRS.

05/04/01 Letter from Ms. Meunier to staff disputing our letter of 4/19/01 and offering to accept the original settlement offer of $3,725.

BLNR - Forfeiture
of GL No. S-3861

July 27, 2001

06/27/01 Letter from staff to Ms. Meunier responding to 5/4/01 letter stating that we will not continue with the arbitration process or consider any previous settlement offer and that she remains in default of her lease.

BLNR - Forfeiture
of GL No. S-3861

July 27, 2001

EXHIBIT C

Chronological Events Regarding Notices of Default

01/27/97 Notice of Default (NOD) was issued for the old rent ($3,000) covering the period from 8/10/96 to 8/9/97. 90 days curing period. The rent was settled on 6/12/97.

12/01/98 NOD for current rent ($7,660) for 8/10/98 to 8/9/99 was received by the tenant on 12/1/98.

02/16/99 Tenant paid $3,000. However, since the retro rent amount is still delinquent, the $3,000 paid by the tenant was credited to the retro rent.

04/12/99 NOD was issued for lack of performance bond, fire and liability insurance. Tenant cured the default for liability & fire insurance on 7/12/99.

08/16/00 NOD was issued for lack of performance bond, fire and liability insurance policy. Staff received the surety bond ($3,000) on 8/21/00 and insurance policies on 8/22/00.

10/14/00 Tenant received another NOD regarding the outstanding real property taxes ($12,873.39 for 1998 to 2001). Staff later learned from the City that the tenant had paid $7,000 and agreed to pay the balance before the end of 2000. Current position of the real property taxes is the tenant is in delinquent for the real property taxes for the year 2000-2001 in the amount of $3,032.90.

02/15/01 NOD for delinquent rent ($32,810.96 both old and retro rent) was issued. (Letter canceling arbitration and setting new rent at $7,660 also sent.)

03/29/01 Letter sent to lessee to rescind 2/15/01 NOD. Pursuant to the lease terms, the lessee has 30 days after the new rental has been established to pay retroactive rent. An NOD for $6,000 for the delinquent old rent for the period from 8/10/99 to 8/9/2001 was hand delivered to the tenant on 3/29/2001.

05/09/01 NOD for retroactive rent issued.

06/29/01 NOD of 3/29/01 expired. No rental payment received.

7/12/01 NOD posted on the property for allowing the squatter living in the property.

7/13/01 Tenant informed the staff that the squatter was gone. Staff will conduct a site inspection to verify the compliance by the lessee.

EXTENSION OF TERM
OF
GENERAL LEASE NO. S-3861

WHEREAS, General Lease No. S-3861, covering LOT 33, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Hawaii, was purchased at public auction by JOHN T. MACKILLOP and CHARLINE P. MACKILLOP, as Tenants by the Entirety, and ultimately assigned to NOLAN BEIRNE GEORGE, husband of Nohea B. George, whose residence and post office address is 41-919 Kaulukanu Street, Waimanalo, Oahu, Hawaii 96793; and

WHEREAS, the lease covers a term of twenty (20) years, commencing August 10, 1964 and terminating on August 9, 1984; and

WHEREAS, pursuant to Act 196, Session Laws of Hawaii 1976, the Board of Land and Natural Resources may extend the term of the lease upon certain conditions,

NOW, THEREFORE, pursuant to Section 171-36, Hawaii Revised Statutes (as amended by Act 196, Session Laws of Hawaii 1976), and the Lessee having met all the requirements pursuant thereto, the STATE OF HAWAII by its Board of Land and Natural Resources at its meeting held on January 14, 1977, does hereby extend the term of General Lease No. S-3861, covering Lot 33, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, Hawaii, for an additional twenty (20) years from the original expiration date of August 9, 1984 to August 9, 2004.

FURTHER, this extension of lease term is on the following terms and conditions:

1. That the Lessee shall use the premises for intensive agricultural or special livestock use.

2. That the rental terms shall be reopened and renegotiated upon the expiration of the original lease term, to wit: August 9, 1984 and August 9, 1994, provided, however, that the rental for the extension period, shall be the rental for the immediately preceding period or the fair market rental for the leasehold premises, exclusive of any improvements constructed by the Lessee at his expense, at the time of the reopening, whichever is higher. At the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by Lessor; provided, that should Lessee fail to agree upon the fair market rental, Lessee may appoint his own appraiser who shall prepare an appraisal report and the two appraisers shall then exchange their appraisal reports for review. The two appraisers shall make every effort to resolve whatever differences they may have. However, should differences still exist fourteen days after the exchange, the two appraisers shall then appoint a third appraiser who shall also prepare an appraisal report and furnish copies thereof to the first two appraisers. After review, all three shall meet to determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be binding upon both the Lessor and Lessee.

Lessee shall pay for his own appraiser and the cost of the third appraiser shall be borne equally.

If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, Lessee shall continue to pay the rent at the rate effective for the previous rental period, but Lessee shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

3. That no assignment of the lease shall be permitted except for the physical or mental disability of the Lessee, for a period of five (5) years from the effective date of any mortgage resulting from the granted extension.

4. That no further extensions of General Lease No. S-3861 shall be granted.

IN WITNESS WHEREOF, the parties hereto have executed this extension of lease term and have agreed to the provisions herein, on this 8th day of March, 1977.

STATE OF HAWAII

By C Cobb
Chairman and Member
Board of Land and
Natural Resources

APPROVED BY THE
BOARD OF LAND AND
NATURAL RESOURCES
AT ITS MEETING HELD ON

JAN 14 1977

And By Shinichi Nakagawa
Member, Board of Land and
Natural Resources

Nolan B. George
NOLAN BEIRNE GEORGE

APPROVED AS TO FORM:

Susan Y. Chee
Deputy Attorney General

NOTICE OF SALE

PUBLIC AUCTION SALE OF STATE OF HAWAII LEASES ON THE ISLAND OF OAHU

The Department of Land and Natural Resources (DLNR), Land Division will be conducting public auction sales of leases for State land at the following dates and locations:

ISLAND OF OAHU

DATE & TIME: Wednesday, June 30, 2004; 10:00 a.m.

PLACE: Kalanimoku Building, 1151 Punchbowl Street, First floor breezeway outside Room 131, Honolulu, Oahu, 96813.

Parcels intended to be auctioned on the above date include:

ITEM I:

LOCATION: Lot 6, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, and further identified by TAX MAP KEY: (1) 4-1-10:26; AREA: 11.745 acres, more or less; SPECIFIC USE: Intensive Agriculture; TERM: 30 years; UPSET MINIMUM ANNUAL LEASE RENTAL: $3,961.00 per annum, payable semi-annually in advance; RENTAL REOPENING: At the end of the 10th and 20th years of the lease term.

ITEM II:

LOCATION: Lot 34, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, and further identified by TAX MAP KEY: (1) 4-1-10:48; AREA: 5.256 acres, more or less; SPECIFIC USE: Intensive Agriculture; TERM: 30 years; UPSET MINIMUM ANNUAL LEASE RENTAL: $2,666.00 per annum, payable semi-annually in advance; RENTAL REOPENING: At the end of the 10th and 20th years of the lease term.

ITEM III:

LOCATION: Lot 33, Waimanalo Agricultural Subdivision, Waimanalo, Koolaupoko, Oahu, and further identified by TAX MAP KEY: (1) 4-1-27:16; AREA: 19.961 acres, more or less; SPECIFIC USE: Intensive Agriculture or Pasture; TERM: 30 years; UPSET MINIMUM ANNUAL LEASE RENTAL: $4,764.00 per

ll Charlene 587-0426 o meet by appt

Hawaii District Land Office **Tel. 974-6203**
State Office Building
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Kauai District Land Office **Tel. 274-3491**
State Office Building
3060 Eiwa Street, Room 306
Lihue, Kauai 96766

You may also visit our website to review the general pre-qualifying and qualifying criteria and to download the Public Auction Bid Packet at:

www.hawaii.gov/dlnr/lmd

Prospective bidders are responsible to thoroughly read and understand the covenants, terms, reservations and conditions contained in the Public Auction Bid Packet and draft lease document. Furthermore, prospective bidders are responsible to inspect premises of items to be bid on.

All bidders or authorized representatives must be present in person at the auction. The DLNR reserves the right to cancel or postpone the public auction, to reject any and all Applications and to waive any defects when, in the opinion of the Chairperson of the Board of Land and Natural Resources, such action will be in the best interest of the State.

Any person requiring special accommodation (i.e. large print materials, sign language interpreters) is asked to contact the Oahu District Land Office at (808) 587-0433 by June 28, 2004.

DONE at the office of the Department of Land and Natural Resources, State of Hawaii this 16th day of April, 2004.

BOARD OF LAND AND NATURAL RESOURCES

By: _____

Peter T. Young, Chairperson

Statewide coverage
APR 22, 2004

PUBLIC AUCTION BID PACKET

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

PUBLIC AUCTION BID PACKET

FOR

STATE LAND LEASE AUCTIONS

AUCTION DATE: Wednesday, June 30, 2004

ISLAND OF OAHU

PUBLIC AUCTION BID PACKET

FOR

STATE LAND LEASE AUCTIONS

ISLAND OF OAHU

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INSTRUCTIONS TO BIDDERS

1. PURPOSE

This Public Auction Bid Packet provides information, instructions, documents and forms related to the sale of State of Hawaii land leases scheduled for public auction on Wednesday, June 30, 2004 at 10:00 a.m. or as soon thereafter as practicable, at the Kalanimoku Building, 1151 Punchbowl Street, First floor breezeway outside Room 131, Honolulu, Oahu 96813 for the items as listed in the Notice of Sale. This auction may be cancelled, postponed or continued by order of the Chairperson of the Board of Land and Natural Resources.

2. SIGNIFICANT DATES

Advertisement of Auction and Application Pick-up	Thursday, April 22, 2004
Applications Due; 4:30 p.m.	**Tuesday, June 1, 2004**
Compliance Review of Applications*	Wednesday, June 2, 2004
Substantive Review and Qualification of Applications*	June 3 to 4, 2004
Notice of Auction Qualification/ Disqualification*	June 4 to 7, 2004
Public Auction Held	**Wednesday, June 30, 2004**
All Required Auction Documents Signed	Thursday, July 1, 2004

*Estimated dates

3. GENERAL QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS

Any person shall be entitled to bid and purchase a lease at this auction, except a person who:

a. Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;

b. Is a minor;

c. Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;

d. Fails to show upon demand of the Chairperson of the Board of Land and Natural Resources or his agent at the public auction, in cash, certified, or cashier's check, the following:

ITEM I.	$3,961.00
ITEM II.	$2,666.00
ITEM III.	$4,764.00
ITEM IV.	$1,756.00

e. Fails to meet the pre-qualifying criteria as outlined in section 4; or

f. For applicants qualifying to bid on agricultural or pasture leases only:

Fails to meet any one of the bona fide farmer criteria pursuant to §171-14.5, HRS:

(1) Has spent not less than two years, full-time, in farming operations;

(2) Is an owner-operator of an established farm conducting a substantial farming operation;

(3) For a substantial period of the individual's adult life resided on a farm and depended on farm income for a livelihood;

(4) Is an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations;

(5) Is an individual with a college degree in agriculture;

(6) Is an individual who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm;

(7) Has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm;

(8) Is an individual who is displaced from employment in an agricultural production enterprise;

(9) Is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects;

(10) Possesses the qualifications under the new farmer program pursuant to §155-1(3), HRS:

"New farmer program" means a new farm enterprise for qualified new farmers, including persons who are displaced from employment in an agricultural production enterprise, college graduates in agriculture, community college graduates in agriculture, and members of the Hawaii Young Farmer Association and Future Farmer of America graduates with farming projects, persons who have not less than two years' experience as part-time farmers, persons who have been farm tenants or farm laborers, or other individuals who have for the two years last preceding their application obtained the major portion of their income from farming operations, and persons who by reason of ability, experience, and training as vocational trainees are likely to successfully operate a farm. . .; or

(11) Possesses such other qualifications as the Board of Land and Natural Resources may prescribe pursuant to §171-6, HRS;

4. PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS FOR STATE OF HAWAII LAND LEASES

In addition to meeting the general qualifying criteria in section 3, any person wishing to bid and purchase a State lease described in the Notice of Sale must first qualify to bid according to the following evaluation criteria:

a. For applicants qualifying to bid on agricultural or pasture leases:

i. QUALIFICATIONS AND EXPERIENCE

* Education in agriculture

* Type and duration of agricultural experiences

* Expertise in particular field of agriculture

* Expertise in management, financial and marketing matters

ii. BUSINESS PLAN AND DEVELOPMENT PLAN

* Soundness/feasibility of development

components

* Soundness/feasibility of marketing components

* Soundness/feasibility of financial components

iii. FINANCIAL CAPACITY TO FUND OPERATIONS

* Ability to fund operations

iv. CONVICTIONS FOR VIOLATION OF LAW

b. For applicants qualifying to bid on agricultural/pasture or business/commercial/industrial/resort leases, if at least one of the following criteria is met, the applicant shall be deemed to have met the pre-qualifying criteria of this section (applicants for agricultural/pasture leases are still required to meet at least one of the bona fide farmer criteria pursuant to §171-14.5, HRS):

* Is registered with the U.S. Securities and Exchange Commission and has been publicly traded for the last three years.

* Has received a business loan within the last two years from an institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii and such loan was made for the same type of business as the applicant is proposing to use the State land for.

5. APPLICATION PROCEDURES

Eligibility to bid on a State lease shall be determined by the information supplied by prospective bidders in the Application and Qualification Questionnaire form ("Application"), Appendices A and B. Any person who has not completed and submitted an Application by the date and time indicated below will not be allowed to bid for any State leases at the public auction.

One (1) original and five (5) copies of the completed Application with all required attachments must be received no later than **4:30 p.m., Tuesday, June 1, 2004** by the Department of Land and Natural Resources at any one of the District Offices listed in section 14. Facsimile copies shall not be accepted. The official time shall be that recorded on the receiving District Office's time stamp clock. These conditions apply regardless of whether an Application is mailed or hand-delivered. The State assumes no responsibility for lateness due to mail or other delivery

service.

A prospective bidder, at the time an Application is submitted, must be capable of performing all of the terms and conditions of the Lease which may be awarded.

A prospective bidder, at the time an Application is submitted, shall have inspected the subject parcels to be leased and understands the parcels shall be leased in an "AS IS" condition, without any representations or warranties made by the State of the Department of Land and Natural Resources as to the condition of the land or suitability of the land for the use permitted in the applicable leases.

Each applicant shall be informed in writing in advance of the date of the auction as to his/her eligibility or non-eligibility to bid at the public auction.

All information provided in the Application and Qualification Questionnaire shall remain confidential until the conclusion of the public auction. Thereafter, any information which is protected under Chapter 92F, Hawaii Revised Statutes, including an individual's financial information, will continue to be held confidential.

6. REVIEW OF APPLICATIONS

All Applications will be reviewed by a screening committee. The screening committee will be guided by the general qualifying and pre-qualifying criteria in sections 3 and 4.

An Application may be rejected for any of the following reasons:

(a) If the Application is late, conditional, incomplete or does not adhere to the format and instructions;

(b) If it is shown that inaccurate statements are made in the Application;

(c) If the Application fails to meet any of the general qualifying or pre-qualifying criteria in sections 3 and 4; or

(d) If it is in the best interests of the State.

7. MODIFICATION OF THE APPLICATION

Modifications to a submitted Application may be made prior to the Application due date. One (1) original and five (5) copies of the modified sheets or replacement Application shall be submitted by the Application due date.

8. RECONSIDERATION OF DISQUALIFICATION

An applicant may request a reconsideration of his/her disqualification. Any such request shall be in writing and received by the Department of Land and Natural Resources, 1151 Punchbowl Street, Room 220, Honolulu, Hawaii, 96813, within seven (7) calendar days from the day the Department mailed the notice of disqualification to the applicant. The applicant shall state the reasons why he/she believes the disqualification was improper and refer to evidence in his/her application to support such reasons. The Chairperson's decision on any reconsideration shall be final.

9. AUCTION PROCEDURE:

a. All prospective bidders shall be qualified pursuant to sections 3 and 4.

b. All qualified bidders or authorized corporate representatives must be present in person at the auction.

c. All qualified bidders must bring a picture ID and funds pursuant to section 3.d. above.

d. Bidding shall commence at the upset minimum annual rental as stated in the Notice of Sale document and the qualified bidder making the highest bid at the fall of the hammer shall be the successful buyer of the lease.

10. DUTIES OF SUCCESSFUL BIDDER:

The successful bidder shall, upon the fall of the hammer:

1. Execute a Memorandum of Lease for his/her purchase;

2. Execute an Affidavit of Non-Arrears stating that he or she is not in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or any of its political subdivisions;

3. Pay in cash, certified, or cashier's check, the amount set forth in section 3.d. above; and

4. Within one (1) working day from the date of sale:

a. Pay all charges required by law, including the cost of survey maps and descriptions, documents, conveyance tax and advertising costs related to the Notice of Sale document.

b. Pay the difference between the minimum amount required to be paid at the fall of the hammer and fifty per cent (50%) of the annual rent bid.

Failure to execute the Memorandum of Lease, Affidavit of Non-Arrears, and make such payments within the stated time periods shall, at the option of the State of Hawaii, terminate any and all rights which such defaulting bidder may have been acquired at said public auction sale, and the State of Hawaii may, at its option, cancel the sale and retain as damages, the sums, or any portions thereof, previously paid by the successful bidder.

11. COMMENCEMENT DATE FOR ALL LEASES:

For Item I: The date of sale at public auction if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

For Item II: The date of sale at public auction if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

For Item III: The date of sale at public auction if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

For Item IV: The first day of the following month ninety (90) days after the sale of the lease or upon the determination of the Chairperson.

12. EFFECTIVE RENTAL:

For all Items, the amount bid at public auction.

13. CONDITION OF THE PROPERTY:

All parcels shall be leased in an "AS IS" condition, without any representations or warranties made by the State or the

Department of Land and Natural Resources as to the condition of the land or suitability of land for the use permitted in the applicable leases.

14. LEASE DOCUMENTS

Proposed drafts of the lease documents setting forth fully the terms and conditions to be observed and performed by the lessee together with survey maps and descriptions of the lands to be leased may be examined at the following offices:

Oahu District Land Office **Tel. 587-0433**
Kalanimoku Building
1151 Punchbowl Street, Room 220
Honolulu, Oahu 96813

Maui District Land Office **Tel. 984-8103**
State Office Building
54 South High Street
Wailuku, Maui 96793

Hawaii District Land Office **Tel. 974-6203**
State Office Building
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Kauai District Land Office **Tel. 274-3491**
State Office Building
3060 Eiwa Street, Room 306
Lihue, Kauai 96766

15. ADDITIONAL REQUIREMENTS:

Refer to the drafts of the lease documents for bond requirements, rental reopenings, fencing requirements, insurance requirements, land development and utilization plan requirements, utilizations and clearing requirements, improvement requirements, assignment of lease evaluation policy, reservations and other terms and conditions.

Each prospective bidder shall carefully examine all documents. Failure on the part of any prospective bidder to make such an examination shall not be grounds for any claim that the prospective bidder did not understand the conditions of the lease or auction. Each prospective bidder shall notify the Administrator, in writing, of any ambiguity, inconsistency or conflict in the documents.

16. EFFECT OF SALE:

Following the public auction sale, a lease document in conformance with the purchase shall be sent to the successful bidder for execution. In the event that the successful bidder shall fail to execute said lease document

within thirty (30) calendar days after receipt, the State of Hawaii may, at its option, cancel the sale and retain the sums or any portion or portions thereof, previously paid by the successful bidder as liquidated damages. The retention of said sums shall be in addition to any other rights or remedies to which the State of Hawaii may be entitled.

DONE at the Office of the Department of Land and Natural Resources, State of Hawaii this 16th day of April, 2004.

BOARD OF LAND AND NATURAL RESOURCES

By: /s/

Peter T. Young, Chairperson

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

August 27, 2004

STATE OF HAWAII
Department of Land and Natural Resources
Land Division
P. O. Box 621
Honolulu, Hawaii 96809

Subject: General Lease No. S-5708
Tax Map Key: (1) 4-1-27:16

Dear DNLR:

Enclosed are the signed Lease Documents for the above subject.

I am prepared to occupy the property as of September 1, 2004.

My Staff, equipment, materials, structures and Bank Loans are in process and if we are not able to occupy the property by September 1, 2004, it will be jeopardizing our plans to execute the future of our intended use of the property.

At present, we are already obligated for the payment of the Loan for the property of which we are not utilizing. In addition, we will need to acquire permits and without being able to occupy the property, all of these issues are at a stand still.

If we will not be able to occupy the property on September 1, 2004, please inform me as soon as possible. We are very anxious in going forward with this project.

Sincerely,
LANDSCAPE HAWAII, INC.

Kyle Ushijima
President

KU:et

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

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Sincerely,
LANDSCAPE HAWAII, INC.

Kyle Ushijima
President

KU:et

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Tax Map Key No. (1)4-1-027:016

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5708

between

STATE OF HAWAII

and

LANDSCAPE HAWAII, INC., a Hawaii corporation,
whose address is 2621 Waiwai Loop, Honolulu, Hawaii 96819

covering

land situate at Waimanalo, Koolaupoko, Oahu, Hawaii
Lot A, Waimanalo Agricultural Subdivision
containing an area of 19.961 acres, more or less
for Intensive Agriculture or Pasture Purposes

PRELIM. APPR'D.
Department of the
Attorney General

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

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LAND DIVISION
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HONOLULU, HAWAII 96809

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APPROVED
Department of the Attorney General

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5708

THIS LEASE, made this 23rd day of March, 20 06, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and LANDSCAPE HAWAII, INC., a Hawaii corporation, whose address is 2621 Waiwai Loop, Honolulu, Hawaii 96819, hereinafter referred to as the "Lessee";

WITNESSETH:

The Lessor, pursuant to Section 171-35, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Waimanalo, Koolaupoko, Oahu, Hawaii, and identified as "Waimanalo Agricultural Subdivision," containing an area of 19.961 acres, more or less, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of thirty (30) years, commencing on the 1st day of April, 20 06, up to and including the 31st day of March, 2036, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal semi-annual installments on April 1st and October 1st of each and every year during the term as follows:

A. For the first ten (10) years, the sum of THIRTY SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($36,500.00) per annum.

B. The annual rental reserved shall be reopened and redetermined on the tenth (10th) and twentieth (20th) years.

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Department of the
Attorney General

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on August 8, 2003.

By _____
Chairperson
Board of Land and Natural Resources

LESSOR

LANDSCAPE HAWAII, INC., a Hawaii corporation

By _____
Its KYLE K. USHIJIMA PRES.

And By _____
Its _____

LESSEE

APPROVED AS TO FORM:

_____
Deputy Attorney General

Dated: 7/30/04

PRELIM. APPR'D.
Department of the Attorney General

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STATE OF HAWAII)
) SS.
City and COUNTY Honolulu)

On this 24 day of August, 2004, before me appeared Kyle Ushijima and N/A, to me personally known, who, being by me duly sworn, did say that they are the President and N/A, respectively of LANDSCAPE HAWAII, INC., a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said President and N/A acknowledged said instrument to be the free act and deed of said corporation.

Ann M. Ellis
Notary Public, State of Hawaii

ANN M. ELLIS

My commission expires: 4-22-2007

V.S.

PRELIM. APPR'D.
Department of the
Attorney General

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5708

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TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of thirty (30) years, commencing on the 1st day of April, 20 06, up to and including the 31st day of March, 2036, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal semi-annual installments on April 1st and October 1st of each and every year during the term as follows:

A. For the first ten (10) years, the sum of THIRTY SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($36,500.00) per annum.

B. The annual rental reserved shall be reopened and redetermined on the tenth (10th) and twentieth (20th) years.

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C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraiser or independent appraiser, as allowed by law, whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-9 and 658-10, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new

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Department of the Attorney General

appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) a month for each delinquent payment.

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Department of the Attorney General

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

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Department of the
Attorney General

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

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Department of the
Attorney General

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for intensive agricultural or pasture purposes.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer

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Department of the
Attorney General

of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "C." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "C."

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee

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relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, or its equivalent, in an amount of at least $500,000.00 for each occurrence and $1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

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The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the

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Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this

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failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default and use its best efforts to redispose of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Lessor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a

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remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redisposition shall be applied, first, to reimburse the Lessor for costs and expenses in connection with the redisposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redisposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

24. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

25. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter

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upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

26. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

27. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the

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Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

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32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall

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in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

40. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.

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SPECIAL CONDITIONS

41. Full utilization of the land. The Lessee shall, within the first three (3) years of the lease term, utilize the land under lease for the purposes for which this lease is sold, all in accordance with a conservation plan pursuant to paragraph 42, Good husbandry and conservation program of this lease.

42. Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within one (1) year following lease commencement. The conservation plan shall include, but not be limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson.

43. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire outside perimeter of the land under lease where the fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of Chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of the costs by adjacent landowners or Lessees for the purpose of confining animals of each adjacent owner or Lessee unless the adjacent land is owned and not leased by the government.

44. Exclusion of animals from forest lands. The Lessee shall at all times during the lease term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the premises and shall take all reasonable precautions to prevent forest fires, and in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

45. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land harvested, unless the Board pays to the Lessee the value of those crops.

46. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

47. Restriction on primary residential use by Lessee. The premises, or any portion, shall not be utilized for primary residential purposes by the Lessee. The construction or placement of any structure on the premises for primary residential purposes by the Lessee is strictly prohibited.

48. Hunting. No hunting shall be allowed on the premises during the term of this lease.

49. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books,

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accounts, records and receipts of the Lessee concerning its operations under this lease.

50. Commercial operations. The Lessee, its employees, customers, guests, agents or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. Except as otherwise provided in this lease, no commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

51. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

52. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

53. Dwelling restriction. The Lessee shall not place or construct any dwelling unit in excess of one employee dwelling unit on the premises; provided, further, that this employee dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson of the Board of Land and Natural Resources.

54. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any

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mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

55. Removal of trash. The Lessee shall be responsible for the removal of all trash upon the premises, whether or not placed on the premises by Lessee or with or without Lessee's consent, and whether or not placed on the premises prior to the term of this lease.

56. Phase I environmental site assessment. Prior to the termination of this lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this lease.

57. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

58. Irrigation system, protection of. The Lessee shall use due care to protect the ditches, flumes, pipelines, gates, valves, and all other property and appurtenances of the Waimanalo Irrigation System and shall not cause or suffer any damage or destruction thereof.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.

(g) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

(h) "Pasture" means the conduct of livestock operation consisting of keeping cattle, primarily, and others, in a minor role, such as horses and sheep where animals graze the land for feed produced thereon. Compatible uses as woodland management, wildlife management and the cultivation of feed crops to be used

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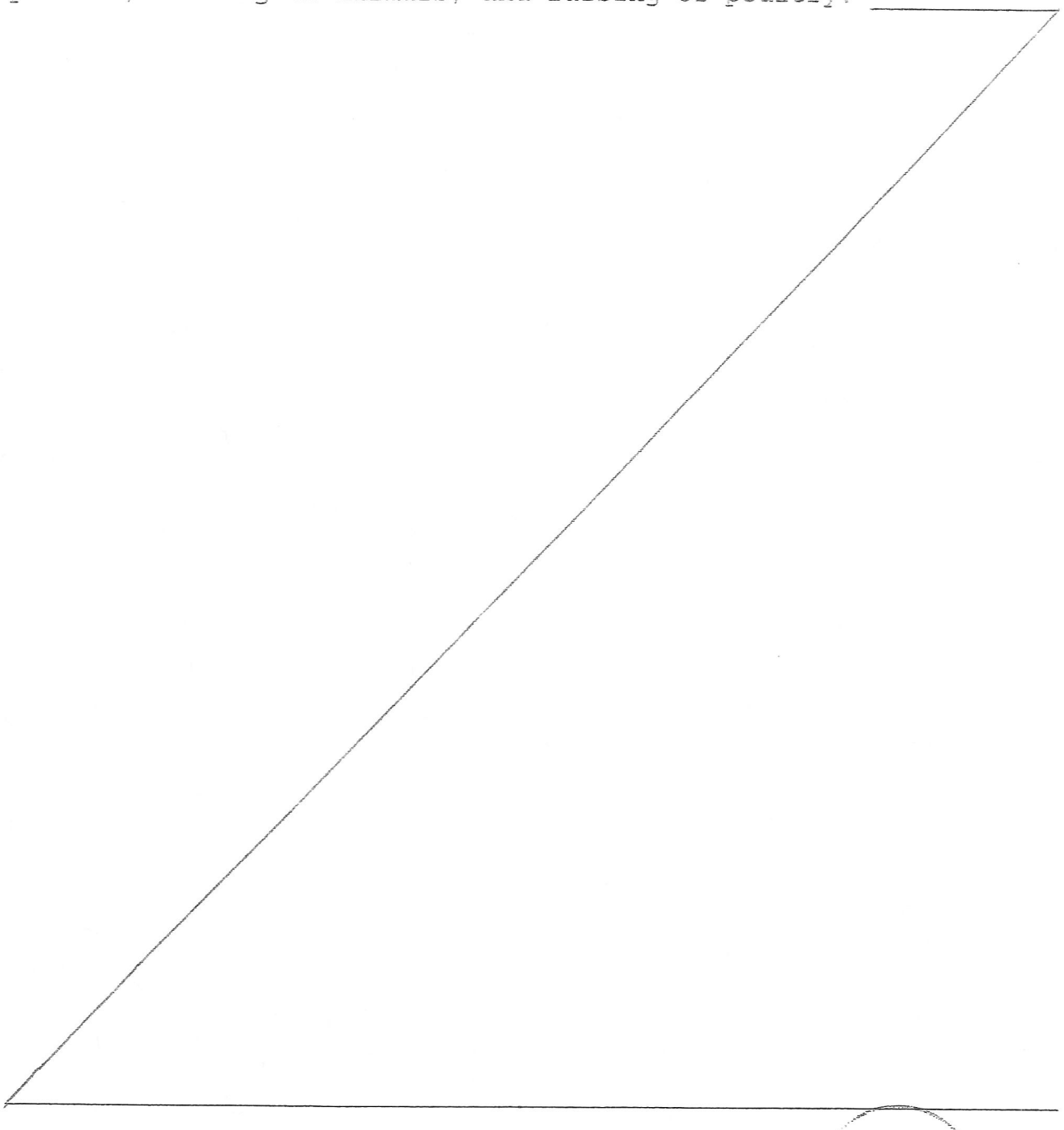
strictly within the premises is permitted. The operation of commercial activities such as feedlots (excepting a private feedlot designed to feed the Lessee's own cattle), dairy milking parlors, or boarding of horses is not permitted.

(i) "Intensive agriculture" means the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals, and raising of poultry.



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IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on August 8, 2003.

By _____
Chairperson
Board of Land and Natural Resources

LESSOR

LANDSCAPE HAWAII, INC., a Hawaii corporation

By _____
Its KYLE K. USHIJIMA PRESIDENT

And By _____
Its _____

LESSEE

APPROVED AS TO FORM:

_____
Deputy Attorney General
Dated: 7/30/04

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STATE OF HAWAII)
) SS.
City and COUNTY Honolulu)

On this 24 day of August, 2004, before me appeared Kyle Ushijima and N/A, to me personally known, who, being by me duly sworn, did say that they are the PRESIDENT and N/A, respectively of LANDSCAPE HAWAII, INC., a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said PRESIDENT and N/A acknowledged said instrument to be the free act and deed of said corporation.

Ann M. Ellis
Notary Public, State of Hawaii

ANN M. ELLIS

My commission expires: 4-22-2007

L.S.

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STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 23,697

February 26, 2004

WAIMANALO AGRICULTURAL SUBDIVISION

LOT A

Waimanalo, Koolaupoko, Oahu, Hawaii

Being a portion of the Government (Crown) Land of Waimanalo.

Beginning at the northeast corner of this parcel of land and on the west side of Kaulukanu Street Extension, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAIMANALO RIDGE" being 8004.91 feet South and 1551.05 feet East, thence running by azimuths measured clockwise from True South:-

1.	18° 00'	44.00 feet along the west side of Kaulukanu Street Extension;
2.	288° 00'	7.00 feet along a jog on the west side of Kaulukanu Street Extension;
3.	18° 00'	166.37 feet along the west side of Kaulukanu Street Extension, Governor's Executive Order 2642;

EXHIBIT "A"

4. 22° 37' 467.40 feet along the west side of Kaulukanu Street Extension, Governor's Executive Order 2642;

5. Thence along the west side of Kaulukanu Street Extension, Governor's Executive Order 2642 on a curve to the right with a radius of 385.00 feet, the chord azimuth and distance being:
27° 30' 45" 65.72 feet;

6. Thence along the west side of Kaulukanu Street Extension, Governor's Executive Order 2642 on a curve to the right with a radius of 35.00 feet, the chord azimuth and distance being:
61° 47' 15" 34.34 feet;

7. Thence along the west side of Kaulukanu Street Extension, Governor's Executive Order 2642 on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being:
56° 43' 56.57 feet;

8. 91° 10' 214.70 feet along Lot B of Waimanalo Agricultural Subdivision;

9. 1° 10' 18.00 feet along Lot B of Waimanalo Agricultural Subdivision;

10. 91° 10' 893.54 feet along Lot C of Waimanalo Agricultural Subdivision;

11. Thence along middle of stream along Lot 22 of Waimanalo Agricultural Subdivision, the direct azimuth and distance being:
187° 05' 648.50 feet;

Thence along the south or mauka side of Maunawili Ditch, parallel to and 25.00 feet from the centerline of said Maunawili Ditch for the next three (3) courses, the direct azimuths and distances being:

12.	295° 15'	626.58 feet;
13.	203° 19'	564.57 feet;
14.	285° 19'	605.77 feet to the point of beginning and containing an AREA OF 19.961 ACRES, MORE OR LESS.

Subject, however, to the following as shown on plan attached hereto and made a part hereof:

1. Non-Exclusive Road Easement in favor of the State of Hawaii.
2. Building set-back line 20 feet from and parallel to centerline of stream.
3. Easement D-1 (20-feet wide) for Drainage Purposes.
4. Easement R-1 (18-feet wide) for Road Access Purposes.
5. Easement D-2 for Flowage Purposes.

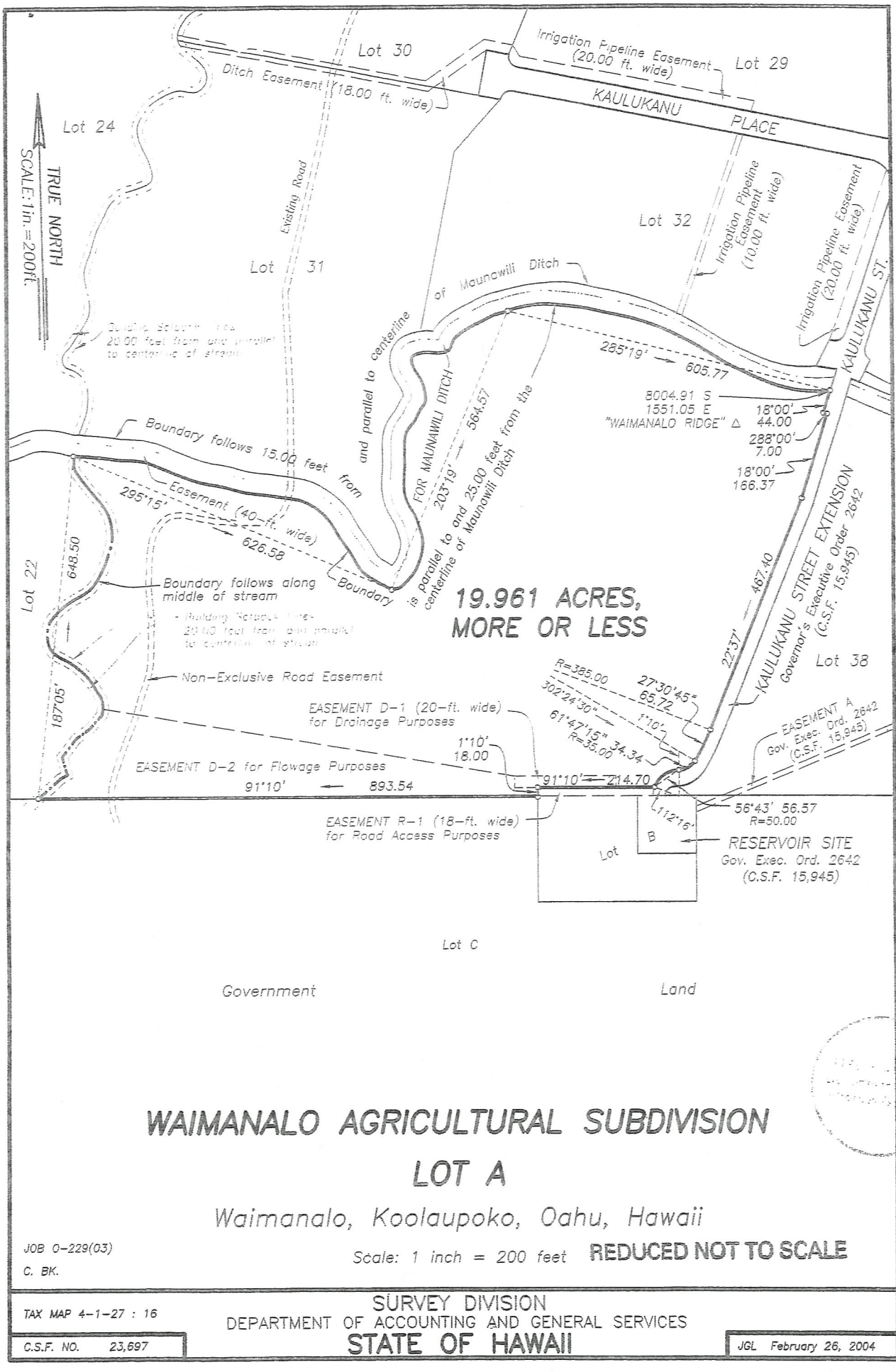
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: _____
Reid K. Siarot
Land Surveyor

gm

Compiled from map furn. by Park Engineering. Said map has been examined and checked as to form and mathematical correctness but not on the ground by the Survey Division.

PRELIM. APPR'D. Department of the Attorney General



WAIMANALO AGRICULTURAL SUBDIVISION

LOT A

Waimanalo, Koolaupoko, Oahu, Hawaii

JOB O-229(03)

C. BK.

Scale: 1 inch = 200 feet **REDUCED NOT TO SCALE**

TAX MAP 4-1-27 : 16

C.S.F. NO. 23,697

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

JGL February 26, 2004

EXHIBIT "B"

ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

   Act 104, effective May 24, 1989, amended Chapter 171-36(a)(5) to read in part:

   "... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

   This policy shall be applicable to the subject lease.

3. Prior Approval.

   Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

   Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a)(5), HRS.

4. Qualifications of Assignee.

   If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "C"

PREPARED IN THE OFFICE OF THE ATTORNEY GENERAL

5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be

APPROVED
Department of the
Attorney General

from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are <u>not</u> deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date

PREVIM. APPR'D.
Department of the Attorney General

the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

Actual cost:	$500,000
CCI (most recent):	121.1
CCI (base year):	102.3
Expired term:	57 mos.
Whole term:	408 mos.

1. Adjusted Cost of Improvements or Renovations

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$591,887 - $82,690 = $509,197

18196_1

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of labor Statistics

Example

	Refrigerator
Actual cost:	$1,510
CPI (most recent):	118.1
CPI (base year):	104.6
Expired term:	57 mos.
Whole term: (Anticipated life)	96 mos.

1. Adjusted Cost of Trade Fixture

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1,510 \times \frac{118.1}{104.6} + \$1,705$$

2. Depreciation

$$\$1.705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$\$1,705 - \$1,012 = \$ 693$

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SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

Years	Percentage
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621

SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.

2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).

3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).

4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.

5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of $600,000.

The initial cost of the improvements was $500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was $1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:			$600,000
2.	Adj Cost Imp/Ren:	$591,887		
	Depreciation:	- 82,690		
	Adj Dep Cost Imp/Ren:			-509,197
3.	Adj Cost Trade Fixtures:	1,705		
	Depreciation:	- 1,012		
	Adj Dep Cost Trade Fixtures:			- 693
4.	Excess:			$ 90,110
5.	Premium:	Percentage:	50%	$ 45,055

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621

SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.

2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.

3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).

4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.

5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is $1,000,000.

The consideration paid by the assignor was $600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.

DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621

No inventory was included in either consideration. However, a premium of $45,055 was paid to the state by the previous occupant from the $600,000 consideration.

1. Net Consideration Received: $1,000,000

2. Consideration Paid: $600,000
   Premium: - 45,055
   Net Consideration Paid: $554,945

3. Adj Value Consideration (improvements):
   $554,945 X 156.4 / 121.1 = $716,708

   Depreciation:
   $716,708 X 107 mos. / 408 mos. = -187,960

   Adj Dep Value Consideration: - 528,748

4. Excess: $ 471,252

5. Premium: Percentage: 45% $ 212,063

18196_1

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

October 12, 2004

Governor Linda Lingle
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Governor Lingle:

I am a business person who owns and manages Landscape Hawaii, Inc., a full service landscape company with clients such as the Halekulani Hotel, Kahala Mandarin Oriental Hawaii, Hawaii Prince Hotel, Kakaako Waterfront Parks, Department of Transportation, Turtle Bay Resort, etc. I employ 135 people on Maui and Oahu and generate over $6,000,000 in revenues.

On June 30, 2004, the Department of Land and Natural Resources conducted an auction for a State lease in Waimanalo at 41-919 Kaulukanu Street. The starting bid for the property was $4,764. The competition was intense and I ended up making the highest bid at $36,500 per year (nearly eight times the upset price). I intend to use the property to expand my business by building a nursery (outdoor plants), shade houses (indoor plants) and field stock trees. I expect to hire 7 more people.

The problem is that I was supposed to occupy the property on September 1, 2004 as was stated in the auction bid packet. It is my understanding that the DLNR allowed the existing lessee (Sylvester Foundation) to stay beyond the day the lease was to expire. It has been over a month now and I have not been given any date as to when I can occupy the property.

Because of this delay, Landscape Hawaii ,Inc. has and will continue to suffer losses. I have already discarded over $10,000.00 in plant material which would normally be nursed back into usable condition if I had occupancy of the property, not to mention the time spent in communicating with DLNR.

I am hoping that you will intervene on the basis of fairness. The DLNR held a public auction that was open to everyone. While I followed the process, bid the highest at the auction and made all necessary payments (including one-half year's rent) totaling $19,351.68 on June 29, 2004, the DLNR has not followed its own timeframe. Instead, the Sylvester Foundation has been allowed to continue occupying the property. I was at the Land Board meeting in June 2004 when

Board members told Ms. Candy Lake of the Sylvester Foundation that she needs to start looking for another place because she would have to leave the property when her lease expired. She has had four months to relocate.

At that meeting, the Board had denied Ms. Lake's request for a new lease for this property. Board members said it was because she had a bad track record as a lessee. DLNR staff talked about how Ms. Lake did not follow her lease conditions. I do not understand why a lessee with a bad track record is given preferential treatment and I am hoping that you will bring some sense of fairness to this situation.

If there are questions, you or your staff may reach me at 330-2697. Thank you.

Sincerely,

Kyle Ushijima, President & C.E.O
Landscape Hawaii, Inc.

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

November 5, 2004

Mr. Kyle Ushijima
President and Chief Executive Officer
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Thank you for your letter dated October 12, 2004 regarding your concerns that you have not been able to occupy the property you are to lease from the Department of Land and Natural Resources (Department).

My office and Department staff are diligently working with the Sylvester Foundation to vacate the property. I understand an alternative site has been found for the Foundation and efforts are underway to relocate the animals in an expeditious manner.

Thank you for sharing your concerns with me and for your understanding of this situation.

Sincerely,

LINDA LINGLE

A 62-year-old man pleaded guilty yesterday to a federal charge of possession of child pornography he obtained through the Internet.

James C. Richardson, a copy editor at The Advertiser, admitted that he purchased the pornography from 2001 to 2003 and stored more than 600 child pornography images on his home computer equipment.

Richardson was permitted to remain free on a $25,000 unsecured bond. His sentencing is scheduled for Dec. 5 before U.S. District Judge David Ezra.

The charge carries a maximum sentence of 10 years in prison and a $250,000 fine. But

The Coast Guard yesterday airlifted an ailing 63-year-old man from the cruise ship Norwegian Wind and flew the man to Honolulu for treatment.

The master of the Norwegian Wind called the Coast Guard at about 4:45 a.m. to request medical assistance for a passenger. An HH-65 helicopter from Barbers Point was sent to the ship, which was about 50 miles south of O'ahu.

The man was hoisted aboard the helicopter and flown to O'ahu, where he was taken to St. Francis Medical Center for further treatment, the Coast Guard said. His condition was not available yesterday.

— Advertiser staff

BY VICKI VIOTTI
Advertiser Staff Writer

A federal panel will take up conflicts over Native Hawaiian artifacts from a burial cave at Kawaihae, as well as other disputes over the handling of cultural objects, in a three-day public hearing set to convene March 13 at the East-West Center.

The Native American Graves Protection and Repatriation Review Committee will meet from 1 to 5 p.m. on March 13 and 8:30 a.m. to 5 p.m. on March 14 and 15 in the center's Keoni Auditorium.

The first day will involve presentations of evidence by the principal parties in each dispute, with public comment on the second day and committee members deciding on their recommendations before adjourning.

The agenda is available at www.cr.nps.gov/nagpra/.

The March 13 session will involve three newer complaints filed by the nonprofit organization Hui Mālama I Nā Kūpuna O Hawai'i Nei, which seeks the return to Hawaiian ownership of:

- Three funerary objects from Moloka'i now in the Bishop Museum collection — a rock oyster pendant, a wood image and a cowrie shell.
- Sandstone slabs known as the Kalaina Wawae, still owned by the museum but installed for public viewing at a Moloka'i site.
- Five objects — a female ki'i (figure), a cutting tool, a rock oyster pendant, a konane game board and a gourd — originally from Kawaihae Cave but now in the collection of Hawaii Volcanoes National Park.

The larger Kawaihae case, in which the hui reburied in the cave 83 objects formerly in the museum collection, will be discussed March 14. One of the competing claimants, the Royal Hawaiian Academy of Traditional Arts, brought its complaint about the incident before the committee in September.

Anyone wishing to schedule a presentation before the committee must submit a written request with an abstract of the presentation and contact information. Individuals also may submit written statements for consideration by the Review Committee during the meeting.

Requests and statements may be mailed to: Designated Federal Officer, NAGPRA Review Committee, National Park Service, 1849 C St. NW (2253), Washington, DC 20240. Because increased security in the Washington area may delay mail delivery, copies also should be faxed to (202) 371-5197.

Reach Vicki Viotti at vviotti @honoluluadvertiser.com or 525-8053.

Officials remove animal-shelter foundation from state property

BY ELOISE AGUIAR
Advertiser Windward O'ahu Writer

WAIMĀNALO — After months of delay and several extensions, the state Department of Land and Natural Resources has forced the Sylvester Foundation off 20 acres the organization leased for its no-kill animal shelter.

The lease on the property had expired Aug. 9, but the agency had given the group until Dec. 17 to vacate the property and find a new home for its 300 animals, according to DLNR. Subsequent requests to stay were granted for Jan. 7, Jan. 22 and Feb. 28, DLNR said.

Eventually the agency sent a Notice to Vacate, stating that "any and all persons remaining on the property after 6:30 a.m. March 1 shall be subject to arrest and prosecution for trespassing and subject to a fine of up to $500 a day," said Deborah Ward, DLNR spokeswoman.

Candy Lake, foundation operator, said about 30 DLNR personnel, police and others descended on the Waimānalo property yesterday at about 9:30 a.m. demanding that she get off the land in 10 minutes.

"They wouldn't let me go back and get my cats," Lake said. "And they dumped my mongoose because I didn't have my permit in hand."

Lake said she was able to remove all the dogs but about 25 cats remained. Although she was not allowed on the property, she was able to send a friend in to try to capture the cats, she said, adding that the Hawaiian Humane Society also offered to return to the property to trap cats.

Lake said that she had agreed several times to move and she was making progress, but a series of problems plagued her: a promised new home for some of the animals and herself fell through; a contractor failed to show up after being paid; and rain delayed repairs to a Quonset hut she planned to use for indoor cats.

Nine dogs were placed in kennels, chickens were moved to another ranch and the cats will stay at a ranch in Waimānalo, she said.

The DLNR had worked with the foundation to find it a new home and offered it an 11.9-acre parcel next to Weinberg Village in Waimānalo, but the foundation had determined that the property was unsuitable and too expensive to develop.

"The whole point is they're saying we took too long; we've had enough time, but so what," Lake said. "Who was it going to hurt to let us finish? All we're trying to do is help the animals."

DLNR Director Peter Young said the state has an obligation to turn over the property to the new tenant. "The new tenant has been waiting for six months to get onto the land to begin productive use of it and start to pay rent," he said.

The process to release the land began in August 2003 when the Board of Land and Natural Resources voted to allow public auction for a new lease term, Young said.

"Ms. Lake has known for a year and a half that she would need to leave the property," he said. "We have been extremely patient in cooperating with her. We have granted her multiple requests for time extensions and even assisted in locating an alternative property."

The DLNR had leased the former foundation land to Landscape Hawai'i in an auction last June for $36,500 a month.

Reach Eloise Aguiar at eaguiar@honoluluadvertiser .com or 234-5266.

Leeward O'ahu/N. Shore Will Hoover 525-8038 whoover@HonoluluAdvertiser.com

Urban Honolulu James Gonser 535-2431 jgonser@HonoluluAdvertiser.com

Central O'ahu Rod Ohira 535-8181 rohira@HonoluluAdvertiser.com

Windward O'ahu Eloise Aguiar 234-5266 eaguiar@HonoluluAdvertiser.com

East Honolulu Suzanne Roig 395-8831 sroig@HonoluluAdvertiser.com

Big Island Kevin Dayton 935-3916 kdayton@HonoluluAdvertiser.com

Kaua'i Jan TenBruggencate 245-3074 jant@HonoluluAdvertiser.com

Maui Timothy Hurley 244-4880 thurley@HonoluluAdvertiser.com

Maui Christie Wilson 244-4880 cwilson@HonoluluAdvertiser.com

(1)

June 18, 2004 — Sylvester Foundation denied Request for Waiver @ DLNR Board Mtng

Ned. June 30, 2004 — Auction date for property. TMK: 141-27-16, 41-919 Kaulukanu St

July 1, 2004 — All required documents signed & given to State

see Dec. 16, 2004 — RFP for Contracting for Demolition of Existing structures + loading, hauling & disposal of debris

see proposal specs. 1-7 (incl. load, haul + dispose 20' Matson Container @ HMR metal recycling

March 2005 — Candy Lake & Foundation evicted (after 9 extensions and the Governor's office intervention)

(See letter to Sally Harper fr. Eve Anderson)

April 2005 — Contact contractors for bids on roof, house renovation

Ed Kim, Derek Koki, Salcedo Roofing

April 18, 2005 — Cecile told me that he had sent the cleaners names to Charlene to choose

4/27 → Cecile called to ask range for bids as Charlene needed info. for awning

April 2005 — per Cecile - send 2 bids to DLNR not bids ourselves

Tues May 17, 2005 — Spoke to Cecile & will give 2 roofing bids to Charlene today (gave her info verbally 4/27/05)
also told Cecile that in an earlier discussion w/ Charlene that she told me to go ahead & have Kim Construction give an estimate on doors/windows, ceilings/walls - Cecile said to call when I needed to walk-through house so he or Bob could be there
also Cecile told me that 4 fencing Co. went up to see the prop & submit bids for job

May 31, 2005 — Bob & Russell came to board up house and Humane Society put out cages for dogs

Tues June 7, 2005 — I called Cecile re: decision on roofing, etc was told Cecile was w/ Charlene and would find out status on bids as all bids are in

Fri June 17, 2005 — per Cecile: due to expenses - State has decided to tear down A-frame & haul away - as to bleach floor & clean ground under neath would exceed $30,000.
State will start getting bids to tear down

Mon June 20, 2005 — per Kyle: fence bid is held up (tried to parcel it out)
roofing bid is pending
doors/window bids pending
* should get an answer this week

July 22, 2005 — I spoke to Charlene: fence cost runs from $120,000 – $146,000. – she thought the fencing had begun already and she would √ on status of fence
* no law suit from Kyle so 'no promises kept' as Aki, Pua Malia (Morris) want the same thing as Kyle so St just doing fence

Fri. July 22, 2005 — per Charlene – $140,000 for Chainlink and animal fencing (10' w T-post w 4-strand wire

no windows / no doors

Tues. Aug. 16, 2005 — St. workers trimming street sides @ 2-story house level : said for fencing (Choice Fencing is vendor)

Kyle adv. that fence should begin 10/17/05 @ approx $140,000. $225,000 owed Kyle
[illegible] @ end of Dec. 2005

property walkthrough(s)

February 2006 ~~Perimeter fence~~ Front is up.

1:00p May 13, 2006 Sat. Walkthrough w/ Raymond + Kyle to see area cut off by fence

1:30p June 3, 2006 ~~Sat~~ Walkthrough w/ Raymond, Bert Cecile, Eng. sick

1:00p June 19, 2006 Mon Walkthrough w/ Bob, Cecile, 2 reps from Sun Systems, Raymond, Bert, DLNR Eng. did not make it (not informed) disc ± 4 acres fenced off.

no change since then -

March 10- 2006 → Sept. 10, 2006 Temp right of entry perm ~~way/Us~~

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MAR 10 2006

Mr. Kyle Ushijima, President
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: Right-of-Entry Permit to Landscape Hawaii, Inc. for Maintenance of State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

We have completed the installation of the fencing along the front of the leasehold and are processing the final execution of the lease for the site. We have been informed that after the installation of the front fencing, the lot has been vandalized. In order to prevent this from happening again, we are issuing this maintenance right-of-entry.

We are processing the execution of the lease (General Lease No. S-5708). This right-of-entry will enable you to maintain the site until the lease is fully executed.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of September 28, 2001, (Item D-4), Landscape Hawaii, Inc. is hereby granted a maintenance right-of-entry permit to occupy, secure, and maintain the premises shown on the attached map in an orderly manner in compliance with all applicable laws, statutes and government regulations and subject to the following terms and conditions:

1. The permit shall commence on March 10, 2006, and end on September 10, 2006, or at an earlier date upon the sole discretion of the Chairperson of the Board of Land and Natural Resources.

2. Landscape Hawaii, Inc. shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department ($300,000 per incident/$500,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage;

that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of Landscape Hawaii, Inc. Landscape Hawaii, Inc. shall furnish the Department with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the Department of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve Landscape Hawaii, Inc. of its responsibility under this right-of-entry as set forth herein or limit the amount of its liability under this right-of-entry.

3. Landscape Hawaii, Inc. shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the permit.

4. Landscape Hawaii, Inc. shall comply with all laws, statutes, ordinances, rules and regulations of the Federal, State, and County governments relative to the use of the subject area including those relating to public health.

5. Landscape Hawaii, Inc. shall indemnify, defend and hold harmless the State of Hawaii, Department of Land and Natural Resources from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of Landscape Hawaii, Inc. under this approval or relating to or connected with the granting of this approval.

6. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Landscape Hawaii, Inc. and his consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of the maintenance.

7. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf is/are in possession or elsewhere if caused by Landscape Hawaii, Inc., its consultants, contractors and/or persons acting for or on its behalf. Thes covenants shall survive the expiration or earlier termination of this right-of-entry.

8. For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.

10. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings at the subject property during the effective period of this right-of-entry.

11. All costs associated with the maintenance within the right-of-entry area shall be the sole responsibility of Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf.

12. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.

13. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

14. Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry for any government-related project. As your project meets this requirement, I hereby waive rent.

Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit the following to the Land Division no later than March 10, 2006:

1. Copy of signed concurrence;

2. Copy of your liability insurance policy.

Should you have any questions, please contact Cecil Santos at our Land Division Office, at (808) 587-0433 or fax at (808) 587-0455.

Sincerely,

Peter T. Young
Chairperson

I CONCUR:

Landscape Hawaii, Inc., a Hawaii corporation

By _____ March 16, _____, 2006
Kyle K. Ushijima

Its: President

c: Land Board Member
OCCL
Central Files
District Files

DLNR Log

Charlene
Cecile
Ophelia
Tommy

10/01/06	Called every week at least once and left several messages, no cb
1/23/07	8:07am Called Charlene, lm and no cb; talked to Cecile re: fence 4 acres, 3 structures, return fence and more rubbish
1/27/07	9:25am Called Charlene and lm to cb
2/2/07	8:00am Called Charlene but line busy; called Tommy to tell Charlene to cb 8:40am Called again but no ans from Charlene; talked to Cecile and will tell Charlene to call me; write list of things still to be done
2/16/07	Cecile called re: submitting to City, after the fact, the Demolition request for third domicile on property and to tell Kyle that Charlene said to stop working on fence and property to go mo-to-mo, then to auction. Cecile said that Charlene said that to him two weeks ago but Cecile wanted to talk to Kyle the same time that he was processing the Demolition Permit.
2/17/07	9:40am Called Charlene to please call me back to discuss a couple of concerns 11:30am Called again to say how surprised I am by what she said to Cecile two weeks ago re: stop everything on property, esp. fence and to go month-to-month and then property back to auction; please call me as I'm not sure what's going on but would like to speak to her

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

FACSIMILE TRANSMITTAL

Date : October 13, 2006
To : Charlene DNLR

From : Kyle Ushijima

Phone Number :
Fax Number : 587-0455
Project :
Subject : Payments

Number Of Pages Including This Sheet : 3

Message : Please refer to the attached billing which indicates payment being due for the period of 10/01/06 -- 03/31/07. Per our agreement, the lease was supposed to start on September 1, 2006. Our right of way was the only request we had initially to get on to the property. We are still in the process of cleaning the area in which we have discovered debris, such as, barbed wire, tires, corrugated metal, etc. The State was supposed to have removed all of the debris mentioned above. We are trying to keep a good relationship with the State as being our Landlord but they are not keeping up with the agreement. Evidently, the various departments are not communicating with each other. I have already lost a big sum of money without any profits. Any assistance you can give us will be greatly appreciated. I have been excessively patient in this matter. Please respond to this problem and have it addressed by October 19, 2006. We are looking forward to your continued support in our efforts to remedy this situation so we can go on with our efforts to excel in our Nursery business.

Aloha, Kyle Ushijima

DEPARTMENT OF LAND AND NATURAL RESOURCES

FISCAL OFFICE
P.O. BOX 621
HONOLULU, HAWAII 96809-0621
(808) 587-0353
02/11/07

DOCUMENT NUMBER
gl5708

COST CENTER: 0520
SOURCE: 1720

LANDSCAPE HAWAII INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819

TOTAL DUE: $18,250.00

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

AMOUNT PAID: _____

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
10/01/2006	C-107683	Balance Due	10/01/2006 - 03/31/2007	RENTALS, LEASED LANDS (10/2006)	18,250.00

2/1/07

Please Make Check Payable To: "Land & Natural Resources"
PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE
THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	[illegible]	[illegible]	[illegible]	TOTAL DUE
0.00	0.00	0.00	18,250.00	$ 18,250.00

DOCUMENT NUMBER

gl5708

LANDSCAPE HAWAII, INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819
836-5332

NO. 353

59-101
1213

Date. FEB 2 2007

Pay To The Order of STATE OF HAWAII $ 18,250.00

The sum of 18,250dols00cts Dollars

First Hawaiian Bank
MAIN BANKING REGION
HONOLULU, HAWAII

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

February 21, 2007

Mr. Peter T. Young
Chairperson,
State of Hawaii
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hi 96809

Dear Mr. Young,

Subject: Lease payment and issues remaining per State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

I have made payment to the Fiscal Office, payment date 2/16/07, for the above leased land for period, 10/01/06 thru 3/31/07. There still remains confusion with regards to the billing period for which this applies and I would like to clear up this matter. While I was at the District Office advising Cecile Santos of the payment, I was told that I am to be notified by Charlene Enoki as to when to make payments and that the District Office was not aware that I had been sent a Notice of Default.
I received a Right-of-Entry Permit commencing on March 10, 2006 and ending on September 10, 2006, with a waiver of rent authorized by you pursuant to the Land Board's delegation of authority to issue Rights-of-Entry. I complied with all applicable laws, statutes and government regulations subject to the terms and conditions stated in the permit. Somehow, the Attorney's General office was not advised of the agreed upon waiver of rent as stated in Section 14 of the permit and has since flagged me as a delinquent lessee. I trust that this confusion can be cleared up once the proper documents are available to all parties?

If I may briefly review the history of this property with you and outstanding issues with regards to parties concerned:

May /June 2004	Preliminary walkthroughs of property with Charlene Enoki and other DLNR representatives. Walkthroughs include individuals interested in bidding on the property. During walkthroughs, discussion includes cleanup and restoration of property to acceptable condition to future lessee.
June 18, 2004	The Sylvester Foundation is denied a Request for Waiver at a DLNR Board meeting.

June 30, 2004	Auction date for property, TMK: 141-27-16. Landscape Hawaii is the highest bidder, signs documents and makes partial payment post bidding.
July 01, 2004	Kyle Ushijima, President of Landscape Hawaii, makes balance of required payment to the Staté, effective date July 1, 2004 thru December 31, 2004.

Deadline passes for transfer of the land to Landscape Hawaii. Candy Lake and Sylvester Foundation still on the property. Landscape Hawaii has paid for the use of the land, effective date July 1, 2004 thru December 31, 2004 and has not yet been able to assume the property.

End of 2004	Still awaiting eviction of Candy Lake and clean up and transfer of property to Landscape Hawaii.
March 2005	Candy Lake and the Sylvester Foundation physically evicted from the property (after 9 extensions).
April 2005	Cecile Santos of the DLNR requests contracts for bids on A-frame roof from Landscape Hawaii. Bids fax'd to the DLNR office. Cecile also mentions that he has bids to clean the A-frame - the names and bid amounts are to be made available to Charlene Enoki to discuss at meetings.
May 2005	Cecile Santos mentions availability of himself or Bob Medeiros to open the A-frame for walkthrough for parties interested in repairing the ceilings, walls, and interior of the house. Cecile also mentions that four fencing companies are to see the property for bids on fencing the front and perimeter of the property. The A-frame is continuously vandalized and broken into. Jalousies in the A-frame have been broken and/or removed to allow individuals to enter the house. Parties have taken cabinets, millwork, and pipes from the interior of the A-frame plus plumbing fixtures from the inside and under the house. Dogs and cats are being fed and boarded inside the A-frame which further degrades the interior of the house and flooring. Bob Medeiros boards up the A-frame to curb the break-ins and keep the animals out of the house. The garage area is vandalized and the corrugated roof is taken. The Humane Society is called in to put out cages to remove the dogs and cats that roam the area; chickens (approx. 30) are captured and removed. During this time, Candy Lake continues to

	illegally return to the A-frame property during the day/evening to feed animals. The office domicile is vandalized resulting in the removal of the entrance porch, screens, windows, and doors. The wind, rain, and animals can now enter the domicile as the windows and screens are gone. The weather degrades the interior and exterior of the domicile beyond the normal wear and tear and the floor, carpet, walls, and ceiling are damaged.
June 2005	All necessary bids are in for the agreed upon provisions offered by the State to transfer the property to Landscape Hawaii in a clean and orderly condition, pay for the costs and expenses for disposal, removal, or storage of the personal property of the prior lessee.
Provisions:	Demolish and dispose of Club House, designated facilities and stockpiles. Clean and renovate A-frame Clean and renovate Office area Clean up possible dumped toxic materials Remove Matson container Choice Fencing is assigned Chain-link front fence area and Sun Systems is contracted for the balance of the perimeter fence area.
July 2005	Per Charlene Enoki: No renovation on A-frame. A Contractor has been hired by the State to demolish the Club House which is the third domicile noted on the lease. Contractor is also to demolish and remove two horse stall areas, miscellaneous debris, and remove the Matson container.
August 2005	State workers trim and clear the front of the property in anticipation of Choice Fencing putting up Chain-link fence. Work to begin the last week of October 2005.
November 2005	State workers again trim and clear the front of the property in anticipation of the Chain-link fence being installed as work was not done in October.
December 2005	Chain-link fence fronting the property is finalized. The day after the fence is in and gates installed, the gate fronting the A-frame is rammed and the concrete plug holding the gatepost upright is dislodged. Choice Fencing is immediately called in to replace the gatepost. Two days later it happens again and vandals enter the property, paint the inside of the garage walls with red paint and leave disparaging remarks re: the DLNR and fencing

property. This time the gatepost is not repaired but heavy chains and combination locks hold the fence gates closed.

End of 2005: Still lacking the balance of the fencing (perimeter) that was to have been completed in 2005.
Clean up of property still incomplete.
Transfer of property is incomplete and lease still not signed.

February 2006 Perimeter fence is partially completed.

March 2006 Right-of-Entry Permit is issued to Landscape Hawaii, Inc. for maintenance of State land to decrease the amount of vandalism on the property. Effective date: March 10, 2006 and ending September 10, 2006. (See Attachment, Right-of-Entry Permit) However, walkthroughs by Landscape Hawaii representatives reflect that the fencing is not according to the area designated in the lease as the boundary of the property. Calls made to the office of the DLNR requests correction to the fencing error. Also, the work order was to also include approximately 50' of chain link fence abutting the property's entrance gatepost and front chain link fence thereby providing security at the gate area fronting Kaulukanu Street.

General Lease no. S-5708 signed, dated: March 23, 2006 with effective dates: April 1, 2006 and terminating March 31, 2036. Please note that the lot is now not as described in General Lease no. S-5708 and the DAGS survey of the property with regards to Section 11 and its relationship to "Lot 22 of Waimanalo Agricultural Subdivision, the direct azimuth and distance being..." being approximately 648.50 feet and subsequently, sections 12, 13, and 14 of the survey "..to the point of beginning and containing an area of 19.961 Acres, More Or Less."... as the fencing has removed 4 (four) acres, MOL, from use by Landscape Hawaii.

June 2006 This is the third and final walkthrough with DLNR personnel since April of 2006, to clarify the situation regarding the mistake in fencing the perimeter of the property. In attendance: Bob Medeiros, Cecile Santos, 2 reps from Sun Systems and three reps from Landscape Hawaii.
The Sun Systems rep., Gary Bianco, site supervisor of the crew that installed the perimeter fence was asked why they did not follow the marked, tagged, and cleared perimeter area for the fence. His response was that Cecile Santos had told them to move the fence back and away from the marked property boundary. Cecile Santos was there and acknowledged that yes he had told

them to move the fence line. The group walked the area and there was consensus that the area in question was incorrectly fenced. Cecile measured the area fenced off from Landscape Hawaii and established that approximately 4 (four) useable acres were not included within the property line.
Sun Systems recommends enclosing the additional 4 (four) acres along side the already established fence line, rather than removing the already installed fence line, and joining the two areas with a livestock gate. The area in question requires approximately 190 T-posts with a 10-foot run, corner posts every 100 feet, and four-strand wire. At this time, no gate is available along this fence line area thereby disallowing Landscape Hawaii's use and/or access to the 4 (four) acres. The Sun Systems' engineer there that day estimated that approximately 6 weeks would be needed to have manpower and materials available to complete the job. In addition, the extra 50' of chain link fence abutting the front gate area is included in the work order.

Several calls have been made to the DLNR office to find out about the status of the pending work. No answers are available.

A question remains that if the RFP was for the correct linear run of fencing as stated by the State from both surveys and walking the area, what happened to the balance of materials that should have gone up on the property when the work order was changed to less than requested? Did the State pay for and not receive the amount of fencing contracted for?
Another question: If the contract was not executed properly, why is the lessee being penalized? In other words, why is the present lease rent for the entire 19.961 acres when it was demonstrated that since February 2006, 4 (four) useable acres were removed from use to Landscape Hawaii (approximately 20%). And when will the balance of the land be returned as is stated in the TMK and be able to be utilized fully by Landscape Hawaii, the lessee to the land?

June 14, 2006 — Landscape Hawaii, Inc. signs a Cooperative Agreement with the Windward Oahu Soil and Water Conservation District.

September 2006 — Right-of-Entry Permit expires. General Lease No. S-5708 to commence effective immediately as Right of Entry Permit expires.

State already holds payment for lease as Landscape Hawaii had paid for the first 6 (six) months of the lease on the day following the auction date, July 1, 2004. Payment was to have been applied for period July 1, 2004 through December 31, 2004, but transfer of

property did not occur as contracted in original agreement. (See Attachment 2, Facsimile Transmittal)

Landscape Hawaii begins work on the property to clean up A-Frame and establish a nursery, plant areas.

October 2006

The City assesses property taxes for three domiciles for the property when in actuality there are only two – the Club House was torn down by the State in 2005 although it is still reflected in City records. When will the State notify the City of the change?

December 2006

The AG's office sends out a delinquency notice for period 10/01/06 through 3/31/07.
Kyle Ushijima calls Charlene Enoki and is told not to pay the lease rent until she straightens out the matter with the AG's office.

End of 2006

Fencing is still not completed (perimeter and front gate areas).
Matson container still on property.
Stockpiles of dumped material of prior lessee still on the property.

January 2007

Kyle Ushijima receives another notice and a letter stating that he is delinquent with regards to paying the lease rent.
Charlene Enoki specifically tells Kyle Ushijima not to pay until the lease dates are clarified and on file correctly.

February 2007

This month Landscape Hawaii is faced with A Notice of Default. (See Attachment, Notice of Default)
Also, Cecile Santos submits Demolition Plan to Planning and Permitting Dept. that should have been processed in 2005. Is the City assessment correct now for property taxes? Two and not three domiciles? Cecile also advises Kyle Ushijima that the property perimeter fence is to remain as is and will not be corrected by the State. An error by the State?

Current Status:

*the AG's office shows Landscape Hawaii in arrears for 6 months lease rent
*City still seeking taxes for 3 (three) rather than 2 (two) domiciles
*Landscape Hawaii is in the process of cleaning the areas that the State said it would clean, i.e. the stockpile areas, removing the Matson container, etc. and starting up the nursery business on property which has 'gone to weed' for two years

*fencing is still not done according to the perimeter boundary as designated by the State Survey and front gate area is still unsecured
*unfenced area and unmarked area of this TMK is open to squatters and parties entering the area from the Mahailua Street side – patrolling and restricting access is difficult without proper boundary lines as reflected in a fence line
*lease amount reflects the lease fee on 19.961 Acres, MOL and does not take into account the unavailable 4 (four)acres incorrectly fenced off by the State in February 2006
*unanticipated expenses and work involved with cleaning and renovating domiciles that have been abandoned and vandalized for almost two years (from eviction date of Candy Lake)
*the delay in transferring the property (approx. 2 years) to Landscape Hawaii allowed the property to deteriorate; not securing the property and domiciles allowed vandalism, break-ins, stealing the meter box, stealing the roofing, breaking windows, removing doors and porches, etc. to go unchecked. The result is that now more serious renovations are needed which require authorization from the Building and Permit Dept.

**what we have today is not what we were led to believe we would assume two years ago, i.e. condition of property and size of property.

Mr. Young, as you can see by the above, it has been a frustrating and epic journey for all parties. You were in the private sector and understand that time represents both money and opportunity; I felt that I have lost both with regards to this situation. Working with the State has been frustrating, to say the least.
I have discussed the above problems with Charlene Enoki and Cecile Santos only to find that their hands are either tied or their time is unavailable to work out these problems. Often it seems that the authority does not go with the responsibility to get things done.

Clarification of the lease rent billing periods and amount due are priorities at this time as I am not a delinquent lessee. Also, I would hope that the State sees the inequity of charging me for the entire parcel when I cannot access all the land nor secure the land from outsiders. I would ask for a lease reduction of 20% retroactive to the beginning of my lease until the matter is reconciled.

As the fencing matter impacts us both, I would ask that the State work with Sun Systems and complete the perimeter and front gate areas. I would also ask the State to honor its agreement to clear the land of the stockpiles that pose a hazard to my employees and areas for nursery and pasture use and to also remove the Matson container.

If it is beyond your delegation of authority to authorize the above, I would request that I be placed on the agenda for a DLNR meeting to discuss the issues. It would serve both

our interest to have all of this behind us.

If you would like further insight into these matters, please feel free to call me at 836-5332 ext. 24 or my cell,

Sincerely,

Kyle Ushijima,
President
Landscape Hawaii Inc.

ASSISTANCE FROM REP. KEN ITO

Begins February 2007:

Information is gathered and shared at meetings held at Rep. Ken Ito's office at the State Capitol.

Feb. 22, 2007: Meeting with Rep. Ito, Mike Nii, Kyle Ushijima of Landscape Hawaii, and Cindy Comer to discuss problems with the lease/property and DLNR.

Mar. 27, 2007: Meeting with Rep. Ito, DLNR Dir. Peter Young, Mike Nii, Kyle Ushijima, and Cindy Comer.
Follow up meeting this time with the DLNR Director to discuss issues relative to the property. DLNR Director, Peter Young is surprised by the problems as he has not received any information with regards to the property although information packets have been sent to numerous members of his staff via Certified/Registered mail.

April 26, 2007: Meeting with Rep. Ito's Chief of Staff, George Okuda, Mike Nii, Kyle Ushijima, and Cindy Comer to review actions of the DLNR since last meeting.

May 9, 2007: Meeting with Rep. Ito, DLNR Land Agent Charlene Enoki, George Okuda, Mike Nii, Kyle Ushijima, and Cindy Comer.
Charlene Enoki represents the DLNR at this meeting as a new Director is being chosen for the DLNR. She discusses the problems and says the DLNR will work to eliminate the problems that have obstructed the business operations of Landscape Hawaii at the property in Waimanalo.

RESULTS OF MEETINGS

After the last meeting of May, 2007 the DLNR called to say that they would be on the property the next few months doing work.

In July/08: The DLNR completed 50' of chain-link fence, removed piles of debris, demolished and removed a Matson container which was too rusty to remove in one piece and was deemed a hazard.

In Nov/08: The perimeter fence was secured and finalized. Landscape Hawaii has been waiting since November 2005 for the completion.

Kyle Ushijima has requested another meeting with Charlene Enoki and called/left messages since October '08 with the results of no call back or correspondence from the DLNR.

LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 20, 2007

CREMOVE NOTICE OF THE NOTICE OF DEFAULT IS PREVENTING LANDSCAPE HAWAII, INC. OF LEASING SPACE FROM THE STATE HARBORS DIVISION.
① CHARLENE TOLD ME DO NOT PAY UNTIL ADVISED. No RESPONSE.
② PETER YOUNG TOLD ME DO NOT PAY UNTIL ALL THINGS ARE RESOLVED. HOT 3/27/07.

Ref.:OD-GL5708

Certified Mail: 7373 8099

LANDSCAPE HAWAII INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819

Dear Lessee:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease S-5708 you are hereby served a Notice of Default on said lease for failure to do the following:

X	**Keep lease rental payments current**
_____	Post required Performance Bond
_____	Post required Fire Insurance Policy
_____	Post required Liability Insurance Policy
_____	Other:

Our Fiscal Office informs us that you are in arrears in lease rental in the amount of $18,250.00 covering the period April 1, 2007 to September 30, 2007.

You are hereby given thirty (30) days from the date of receipt of this letter to cure the above-described breach.

12/18/07 DLNR

8:50 AM Talked to Charlene Enoki about the list of items DLNR needs to do before lease rent to starts.

Charlene to notify DLNR Fiscal office to remove all billings until list of items are completed.

Rep. Ken Ito, Peter Young, Charlene Enoki has a copy of the items that must be completed, what we bidded on was not what we got - 18+ months delay. Vandalism, theft, trespassing occured, See list of items

Agreed no further payments to be made until list is completed and no back charges are to be billed to Lanoseape Hawaii, Inc.

Charlene said she will notify Fiscal office and work on the list of items to be completed. What we bidded on is not what we received

Charlene to call Kyle back within 2 weeks for progress.

* Will Mair or Hallo deliver list to Charlene, Rep. Tommy Waters, Sen. Fred Hemmings, Tom Stanton

HONOLULU, Hawaii
968209713
1424030012 -0097
01/12/2008 (808)423-3930 10:35:53 AM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
WAIMANALO HI 96795			$1.65
Zone-1 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850825			
Issue PVI:			$6.45
HONOLULU HI 96813			$1.65
Zone-0 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850818			
Issue PVI:			$6.45
HONOLULU HI 96813			$1.65
Zone-0 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850801			
Issue PVI:			$6.45
HONOLULU HI 96813			$1.65
Zone-0 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850795			
Issue PVI:			$6.45
HONOLULU HI 96809			$1.48
Zone-0 First-Class			
Large Env			
5.00 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850788			
Issue PVI:			$6.28
HONOLULU HI 96813			$1.65
Zone-0 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850771			
Issue PVI:			$6.45
HONOLULU HI 96813			$1.65
Zone-0 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850764			
Issue PVI:			$6.45
HONOLULU HI 96809			$1.65
Zone-0 First-Class			
Large Env			
5.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #: 70072560000104850757			
Issue PVI:			$6.45
Total:			$51.43

Paid by: $51.43
AMEX
Account #: XXXXXXXXXXXX1000
Approval #: 569198
Transaction #: 302
23 903130029 5514703065

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Bill#: 1000302392971
Clerk: 11

All sales final on stamps and postage.
Refunds for guaranteed services only.

27 pp packet sent to parties 1/12/08

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rep Tommy Waters
#302
Hi St. Capitol
Hon Hi 96813

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addre

B. Received by (Printed Name) WAYNE BANG | C. Date of Deli 1/15/0

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchan
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service labe 7007 2560 0001 0485 0818

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M

SEND[illegible]OMPLETE THIS SECTION

- C[illegible]ms 1, 2, and 3. Also complete item [illegible]tricted Delivery is desired.
- Print you[illegible]name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Charlene Enoki
DLNR
P O Box 621
Hon Hi 96809

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addres

B. Received by (Printed Name) AILEEN MORITA | C. Date of Deliv

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchan
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0001 0485 0757

PS Form 3811, February 2004 Domestic Return Receipt [illegible]95-02-M-

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Laura Thielen
DLNR
P O Box 621
Hon Hi 96809

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addres

B. Received by (Printed Name) AILEEN MORITA | C. Date of Deli 1 2

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☑ Registered ☐ Return Receipt for Merchan
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0001 0485 0788

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Waimanalo Ag Assoc
P O Box 42
Waimanalo Hi
96795

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) Annette Lee | C. Date of Deliv 1/15/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchan
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0001 0485 0825

[illegible]95-02-M

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gov. Linda Lingle
Exec. Chambers
Hi State Capitol
Hon Hi 96813

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) WAYNE BANG C. Date of Delivery 1/14/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0001 0485 0764

PS Form 3811, February 2004 Domestic Return Receipt 02-M-1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lt. Gov. Duke Aiona
Exec. Chambers
Hi St. Capitol
Hon Hi 96813

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) WAYNE BANG C. Date of Delivery 1/14/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchand
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0001 0485 0771

PS Form 3811, February 2004 Domestic Return Receipt

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rep Ken Ito
#420
Hi St. Capitol
Hon Hi 96813

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) WAYNE BANG C. Date of Delivery 1/14/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchan
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 2560 0001 0485 0795

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sen Fred Hemmings
#221
Hi St. Capitol
Hon Hi 96813

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Address

B. Received by (Printed Name) WAYNE BANG C. Date of Delivery 1/14/08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchand
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number 7007 2560 0001 0485 0801

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Total Postage & Fees	$6.45

Postmark Here: HONOLULU HI MAIN OFFICE 96820 JAN 12 2008 01/12/2008 USPS

7007 2560 0001 0485 0757

Sent To: Ms. Charlene Enoki, DLNR
Street, Apt. No.; or PO Box No.: P O Box 621
City, State, ZIP+4: Hon Hi 96809

PS Form 3800, August 2006 — See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	$0.00
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Postmark Here: HONOLULU HI MAIN OFFICE 96820 JAN 12 2008 01/12/2008 USPS

7007 2560 0001 0485 0764

Sent To: Gov Linda Lingle, Exec. Chamb
Street, Apt. No.; or PO Box No.: Hi St. Capitol
City, State, ZIP+4: Hon Hi 96813

PS Form 3800, August 2006 — See Reverse for Instructio

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Postmark Here: HONOLULU HI MAIN OFFICE 96820 JAN 12 2008 01/12/2008 USPS

7007 2560 0001 0485 0801

Sen Fred Hemmings, # 221
Hi State Capitol
Hon Hi 96813

PS Form 3800, August 2006 — See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$6.45

Postmark Here: HONOLULU HI MAIN OFFICE 96820 JAN 12 2008 01/12/2008 USPS

7007 2560 0001 0485 0795

Rep Kent Ito, Room 420
Hi St. Capitol
Hon Hi 96813

PS Form 3800, August 2006 — See Reverse for Instruction

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Postmark Here: HONOLULU HI MAIN OFFICE 96820 JAN 12 2008 01/12/2008 USPS

7007 2560 0001 0485 0771

Lt Gov Duke Aiona, Exec. Chambers
Hi State Capitol
Hon Hi 96813

PS Form 3800, August 2006 — See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$6.45

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7007 2560 0001 0485 0825

Waimanalo Ag Assoc
PO Box 042
Waimanalo Hi 96795

PS Form 3800, August 2006 — See Reverse for Instruction

7007 2560 0001 0485 0788

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Postage	$1.48
Certified Fee	$2.65
Return Receipt Fee (Endorsement Required)	$2.15
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $6.28

0012

HONOLULU HI MAIN OFFICE 96820
JAN 12 2008
Postmark
USPS

01/12/2008

Sent To: Laura Thielen, DLNR
Street, Apt. No.; or PO Box No.: P O Box 621
City, State, ZIP+4: Hon Hi 96809

PS Form 3800, August 2006 — See Reverse for Instructions

7007 2560 0001 0485 0818

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OFFICIAL USE

Postage	$1.65
Certified Fee	$2.65
Return Receipt Fee (Endorsement Required)	$2.15
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $6.45

0012

HONOLULU HI MAIN OFFICE 96820
JAN 12 2008
Postmark
USPS

01/12/2008

Sent To: Rep Tommy Waters, #302
Street, Apt. No.; or PO Box No.: Hi State Capitol
City, State, ZIP+4: Hon Hi 96813

PS Form 3800, August 2006 — See Reverse for Instructions

These 27 pp were mailed certified/return receipt mail on 1/12/08 and showed receipt 1/14/08 w/ name stamp of Aileen Ahanta.

File lost. 6/10/08 Barry Cheung rqst file again

Resent June 23, 2008 and logged into office as rec'd 6/24/08

File lost again. Barry rqst file again on 11/3/08

Personal hand del. on 11/7/2008.

witness to del:
Steven Lau of DLNR

LANDSCAPE HAWAII IN
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332

These 27 pp were mailed cert fied/return receipt mail on 1/12/ and showed receipt 1/14/08 w/ nam stamp of Aileen Morita? sp

File lost. 6/18/08 Barry Cheung rqst file again

Resent June 23, 2008 and logged in office as rec'd 6/24/08

File lost again. Barry rqst file again on 11/3/08

Personal hand del. on 11/7/2008

January 11, 2008

Ms. Charlene Enoki
Dept. of Land and Natural Resources
Post Office Box 621
Honolulu, Hi 96809

Dear Charlene,

Subject: Lease payment and issues remaining per State Land, Waimanalo, Oahu, Tax Map Key 4-1-27-016.

After our discussion on Tuesday, December 18, 2007, I thought it would be best if I summarized our predicament regarding Landscape Hawaii's Lease land in Waimanalo.

At this time, the immediate concerns are: the Lease rent amounts do not correspond to the Lease payment schedule and therefore generate unwarranted delinquency notices, the matter of a missing meter box, and the incorrect fencing of the property.

The State's billing and scheduled payments are incorrect with regards to one another and the actual date that we assumed the property. Charlene, as you know, I signed the Lease at your request and urging with an incorrect commencement date, with the understanding that a correction would be forthcoming with both sides performing as requested in the Lease agreement. Please advise the Fiscal Office of the correct dates and amounts as Landscape Hawaii continues to receive unwarranted delinquency notices that have impacted Landscape Hawaii's credibility with its Bond and insurance companies.

The State voluntarily allowed Candy Lake and the Sylvester Foundation to remain on the property unsupervised six months beyond her given eviction date of June 2004. A raid ultimately removed her in March 2005. At the time of the auction and eviction action, Landscape Hawaii received numerous phone calls and threats regarding the impropriety of removing the animal sanctuary. I took many of the calls myself and explained the reality of the situation at the sanctuary with regards to drugs being sold there, discovering drug paraphernalia in the domiciles, and finding fighting chickens 'housed' there for a fee. In fact today we are still plagued by individuals who either try to buy or sell drugs in what they believe is a safe haven for drug business, the former animal sanctuary.

After the eviction, the State virtually abandoned the property for over a year and did nothing to facilitate the transfer of the property to Landscape Hawaii. Instead, the State

(over)

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

January 11, 2008

Ms. Charlene Enoki
Dept. of Land and Natural Resources
Post Office Box 621
Honolulu, Hi 96809

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After the eviction, the State virtually abandoned the property for over a year and did nothing to facilitate the transfer of the property to Landscape Hawaii. Instead, the State

issued a Right-of-Entry permit in March 2006: the Right-of-Entry permit not issued for the sake of Landscape Hawaii but in response to the vandalism and further damage to the property and buildings while the State remained in control of the property. The property was finally transferred to Landscape Hawaii in September 2006. Why the original transfer did not occur two years earlier in September 2004 is still unclear and the question still remains unanswered. Nevertheless, due to the fault of the State in not upholding the conditions of the auction agreement and Lease agreement and not transferring the property in 2004, Landscape Hawaii has now incurred additional and unexpected expenses along with lost revenues of approximately $420,000 for the last three years. In the meantime, in good faith from Landscape Hawaii, the State has received a payment for deposit (6 months lease rent in 2004) as well as an additional 6 months of Lease rent (February 2007) for an approximate total of $36,500.00. Along with those payments, Landscape Hawaii paid fees for the cost of documents, the conveyance tax, and advertising costs related to the Notice of Sale document. Landscape Hawaii continues to hold a Bond on the property, pay for insurance, and also pays City taxes for the domiciles on the property.

The removal of the meter box that occurred again while the State was in control of the property and Candy Lake was still there is another major obstacle for Landscape Hawaii's business operation. The domicile on the first level had the meter box and electricity – this was noted during walkthroughs prior to the auction. Also noted during the walkthroughs was the fact that there was a family living in the domicile, indicating that the building was in a livable condition in 2004. When Landscape Hawaii was finally given access to the property in 2006, the condition of the buildings was no longer what was viewed during the walkthroughs and not what we were led to believe we were bidding on at auction. Through no fault of Landscape Hawaii, the domicile now sits in an abandoned condition, i.e. without a meter box and electricity, vandalized, missing windows and screens, and needing major renovation. The State must act responsibly and fairly and return the property to the condition observed during the walkthroughs. Without a meter box and electricity, an effective business operation cannot proceed.

The incorrectly installed perimeter fence that virtually obstructs access to four useable acres has still not been addressed. At a meeting at Rep. Ito's office on May 9, 2007, you suggested that we correct the fence issue ourselves. We would agree to that, however, before work begins, we would like to receive a written agreement that stipulates that Landscape Hawaii will be compensated by way of lease credit for the material and work expenses. Also, there should be credit given for the portion and time that the area (approximately 20%) remains unavailable to Landscape Hawaii due to the incorrect fencing of February 2006.

Also, in addition to the incorrect fencing of the four acres, there is the issue of the missing 50' chain-link return fence abutting the lower gate. We would prefer that the State remedy that portion of the fence as soon as possible.

There was some State activity on the property in June and July 2007, as State workers demolished and removed abandoned sheds and construction material from the property.

We look forward to more activity from the State in 2008. Aside from that, little else was done to correct the remaining problems. Along with the immediate concerns already mentioned, the Matson container is still parked on the first level awaiting removal and other additional junk is scattered throughout the property.

Charlene, before we went to auction, I was advised by an agent of the State that to get action on the property after the auction, it would be necessary to sue the State. I decided not to proceed via a lawsuit but instead I gave the State the benefit of the doubt and assumed that the State would live up to its obligations and promises. I have been patient but financial losses are prompting me to reconsider. The corrected billing amount and scheduling to the Fiscal Department should also take into consideration the added expenses incurred by Landscape Hawaii to get the property up and running while we address these issues with the State.

I thank you for your attention and help in these matters and I await hearing from you. Please feel free to e-mail me at kyle@landscapehi.com or cell or office 836-5332 ext-24.

Kyle Ushijima, President
Landscape Hawaii, Inc.

cc: Gov. Linda Lingle
Lt. Gov. Duke Aiona
Laura Thielen, Chairperson
Rep. Ken Ito
Sen. Fred Hemmings
Rep. Tommy Waters
Waimanalo Ag. Association

"Enclosures"

See Kyle Ushijima July 9, 2012 email.

WHAT THE STATE AGREED TO DO

- Tear down one domicile that was beyond repair or renovation
- Tear down barn/stall structure deemed dangerous and unstable
- Fence property perimeter; in addition, install 6' high, 50' chain-link return fence on the first level. The original fencing was removed to allow State contractors access to the property.
- Clean up and make available two buildings on the property for assumption by Landscape Hawaii (these two buildings were lived in at the time of the initial walkthroughs and after the auction was finalized)
- Remove stockpiles (2) of dumped items from prior lessees
- Remove Matson container
- Clean up and remove debris in areas and remove junk, i.e. barbed wire, 50-gal. drums, old tires, discarded lumber and telephone poles from the four levels of the property

WHAT THE STATE HAS DONE

- Tear down one domicile that was beyond repair or renovation
- Tear down barn/stall structure deemed dangerous and unstable
- Incorrectly fence a portion of the property disallowing access to approximately 4 (four) acres of useable area; ignored chain-link return fencing on first level.
- Abdicate responsibility for the two remaining buildings on the property
- Ignore the stockpiles and allow grass and shrubbery to grow over the stockpiles making it more difficult to identify and remove the rubble
- Ignore the Matson container on the property
- Ignore the junk that still remains scattered throughout property

WHAT LANDSCAPE HAWAII HAS DONE

- Pay the entire Lease rent amount for the use of the property despite not having access to the entire parcel (less 4 useable acres)
- Pay Lease rent amounts that do not correspond to the Lease payment schedule
- Receive multiple Delinquency notices without reason.
- Waited almost two years and then assumed unexpected expenses and downtime to get the property up and running due to the fact that the property had "gone to weed" from the more than two years that it was neglected by the State.
- Assume the A-frame structure and reconstruct the domicile to make it livable, i.e., new roof, clean and gutting the inside to remove the mold, flooring, and walls that had deteriorated due to abandonment, neglect, and constant vandalism.

WHAT NEEDS TO BE DONE

- Renovate and repair the two-story building i.e., replacing the broken windows, stolen screens, missing doors and deal with the malicious vandalism and general deterioration of the building. Also deal with the meter box issue – a meter was seen and was in working order during the walkthroughs and up to and after the bidding was conducted and finalized. The family living in the two-story house vacated at the end of August 2004, at which time the meter was still in the building. The meter box disappeared while the former Lessee was allowed to remain on the property during the 9 extensions given to her (evicted late March 2005). The meter box is a major obstacle for Landscape Hawaii as HECO considers the property abandoned and does not 'grandfather' the structure for electricity. The result is that now authorization may be required from the Building and Permitting Dept. to bring the building to Code as a functional facility office for Landscape Hawaii.
- Correct the fencing and include the surveyed area to make the entire property accessible to Landscape Hawaii. As suggested by Sun Systems representative - add an additional enclosed area to the already established fence line rather than removing the existing fence line. Join the two areas with a livestock gate.
- Add the agreed upon 50'chain-link return fence abutting the lower gate area. Repair the A-Frame chain-link fence front gate post
- Straighten out the agreed upon date for Lease commencement taking into consideration the Right-of-Entry permit dates and lease payment exemption for said period.
- **Immediately remove Delinquency notices on file for Landscape Hawaii.**
- **Within two working days, send a letter to Landscape Hawaii stating that the Delinquency notices were incorrectly sent; Landscape Hawaii can then forward this letter to necessary parties.**
- Advise the City of the fact that there are two domiciles on the property rather than three as Landscape Hawaii is still being taxed for three.
- Remove the Matson container.
- Remove the stockpiles and additional junk/rubble scattered on the property.

ADDITIONAL INFORMATION

- During the initial walkthroughs, those interested in bidding on the property were not allowed to walkthrough the A-frame or view the entire upper level as the Lessee would not agree to a walkthrough. Viewers were prohibited from viewing the perimeter of the property. An abandoned shed not viewed at the time now remains on the property.
- What Landscape Hawaii ultimately received in 2006 is not what was seen during the initial walkthroughs of 2004.
- Although without merit and good reason, Default Notices were sent out by the State to Landscape Hawaii. These Default Notices, now on record for Landscape Hawaii have affected the credit history and worthiness of Landscape Hawaii; this

has negatively impacted the ability of Landscape Hawaii to lease State property at Kapalama Military Reservation, State Harbors Division. The Default Notices have also jeopardized the credibility of Landscape Hawaii with its Bond Company, First Insurance.

February 21, 2007

Mr. Peter T. Young
Chairperson,
State of Hawaii
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hi 96809

Dear Mr. Young,

Subject: Lease payment and issues remaining per State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

I have made payment to the Fiscal Office, payment date 2/16/07, for the above leased land for period, 10/01/06 thru 3/31/07. There still remains confusion with regards to the billing period for which this applies and I would like to clear up this matter. While I was at the District Office advising Cecile Santos of the payment, I was told that I am to be notified by Charlene Enoki as to when to make payments and that the District Office was not aware that I had been sent a Notice of Default.
I received a Right-of-Entry Permit commencing on March 10, 2006 and ending on September 10, 2006, with a waiver of rent authorized by you pursuant to the Land Board's delegation of authority to issue Rights-of-Entry. I complied with all applicable laws, statutes and government regulations subject to the terms and conditions stated in the permit. Somehow, the Attorney's General office was not advised of the agreed upon waiver of rent as stated in Section 14 of the permit and has since flagged me as a delinquent lessee. I trust that this confusion can be cleared up once the proper documents are available to all parties?

If I may briefly review the history of this property with you and outstanding issues with regards to parties concerned:

May /June 2004	Preliminary walkthroughs of property with Charlene Enoki and other DLNR representatives. Walkthroughs include individuals interested in bidding on the property. During walkthroughs, discussion includes cleanup and restoration of property to acceptable condition to future lessee.
June 18, 2004	The Sylvester Foundation is denied a Request for Waiver at a DLNR Board meeting.

June 30, 2004 — Auction date for property, TMK: 141-27-16. Landscape Hawaii is the highest bidder, signs documents and makes partial payment post bidding.

July 01, 2004 — Kyle Ushijima, President of Landscape Hawaii, makes balance of required payment to the State, effective date July 1, 2004 thru December 31, 2004.

Deadline passes for transfer of the land to Landscape Hawaii. Candy Lake and Sylvester Foundation still on the property. Landscape Hawaii has paid for the use of the land, effective date July 1, 2004 thru December 31, 2004 and has not yet been able to assume the property.

End of 2004 — Still awaiting eviction of Candy Lake and clean up and transfer of property to Landscape Hawaii.

March 2005 — Candy Lake and the Sylvester Foundation physically evicted from the property (after 9 extensions).

April 2005 — Cecile Santos of the DLNR requests contracts for bids on A-frame roof from Landscape Hawaii. Bids fax'd to the DLNR office. Cecile also mentions that he has bids to clean the A-frame - the names and bid amounts are to be made available to Charlene Enoki to discuss at meetings.

May 2005 — Cecile Santos mentions availability of himself or Bob Medeiros to open the A-frame for walkthrough for parties interested in repairing the ceilings, walls, and interior of the house. Cecile also mentions that four fencing companies are to see the property for bids on fencing the front and perimeter of the property.

The A-frame is continuously vandalized and broken into. Jalousies in the A-frame have been broken and/or removed to allow individuals to enter the house. Parties have taken cabinets, millwork, and pipes from the interior of the A-frame plus plumbing fixtures from the inside and under the house. Dogs and cats are being fed and boarded inside the A-frame which further degrades the interior of the house and flooring. Bob Medeiros boards up the A-frame to curb the break-ins and keep the animals out of the house.
The garage area is vandalized and the corrugated roof is taken. The Humane Society is called in to put out cages to remove the dogs and cats that roam the area; chickens (approx. 30) are captured and removed. During this time, Candy Lake continues to

	illegally return to the A-frame property during the day/evening to feed animals. The office domicile is vandalized resulting in the removal of the entrance porch, screens, windows, and doors. The wind, rain, and animals can now enter the domicile as the windows and screens are gone. The weather degrades the interior and exterior of the domicile beyond the normal wear and tear and the floor, carpet, walls, and ceiling are damaged.
June 2005	All necessary bids are in for the agreed upon provisions offered by the State to transfer the property to Landscape Hawaii in a clean and orderly condition, pay for the costs and expenses for disposal, removal, or storage of the personal property of the prior lessee.
Provisions:	Demolish and dispose of Club House, designated facilities and stockpiles. Clean and renovate A-frame Clean and renovate Office area Clean up possible dumped toxic materials Remove Matson container Choice Fencing is assigned Chain-link front fence area and Sun Systems is contracted for the balance of the perimeter fence area.
July 2005	Per Charlene Enoki: No renovation on A-frame. A Contractor has been hired by the State to demolish the Club House which is the third domicile noted on the lease. Contractor is also to demolish and remove two horse stall areas, miscellaneous debris, and remove the Matson container.
August 2005	State workers trim and clear the front of the property in anticipation of Choice Fencing putting up Chain-link fence. Work to begin the last week of October 2005.
November 2005	State workers again trim and clear the front of the property in anticipation of the Chain-link fence being installed as work was not done in October.
December 2005	Chain-link fence fronting the property is finalized. The day after the fence is in and gates installed, the gate fronting the A-frame is rammed and the concrete plug holding the gatepost upright is dislodged. Choice Fencing is immediately called in to replace the gatepost. Two days later it happens again and vandals enter the property, paint the inside of the garage walls with red paint and leave disparaging remarks re: the DLNR and fencing

property. This time the gatepost is not repaired but heavy chains and combination locks hold the fence gates closed.

End of 2005: Still lacking the balance of the fencing (perimeter) that was to have been completed in 2005.
Clean up of property still incomplete.
Transfer of property is incomplete and lease still not signed.

February 2006 Perimeter fence is partially completed.

March 2006 Right-of-Entry Permit is issued to Landscape Hawaii, Inc. for maintenance of State land to decrease the amount of vandalism on the property. Effective date: March 10, 2006 and ending September 10, 2006. (See Attachment, Right-of-Entry Permit) However, walkthroughs by Landscape Hawaii representatives reflect that the fencing is not according to the area designated in the lease as the boundary of the property. Calls made to the office of the DLNR requests correction to the fencing error. Also, the work order was to also include approximately 50' of chain link fence abutting the property's entrance gatepost and front chain link fence thereby providing security at the gate area fronting Kaulukanu Street.

General Lease no. S-5708 signed, dated: March 23, 2006 with effective dates: April 1, 2006 and terminating March 31, 2036. Please note that the lot is now not as described in General Lease no. S-5708 and the DAGS survey of the property with regards to Section 11 and its relationship to "Lot 22 of Waimanalo Agricultural Subdivision, the direct azimuth and distance being..." being approximately 648.50 feet and subsequently, sections 12, 13, and 14 of the survey "..to the point of beginning and containing an area of 19.961 Acres, More Or Less."... as the fencing has removed 4 (four) acres, MOL, from use by Landscape Hawaii.

June 2006 This is the third and final walkthrough with DLNR personnel since April of 2006, to clarify the situation regarding the mistake in fencing the perimeter of the property. In attendance: Bob Medeiros, Cecile Santos, 2 reps from Sun Systems and three reps from Landscape Hawaii.
The Sun Systems rep., Gary Bianco, site supervisor of the crew that installed the perimeter fence was asked why they did not follow the marked, tagged, and cleared perimeter area for the fence. His response was that Cecile Santos had told them to move the fence back and away from the marked property boundary. Cecile Santos was there and acknowledged that yes he had told

them to move the fence line. The group walked the area and there was consensus that the area in question was incorrectly fenced. Cecile measured the area fenced off from Landscape Hawaii and established that approximately 4 (four) useable acres were not included within the property line.
Sun Systems recommends enclosing the additional 4 (four) acres along side the already established fence line, rather than removing the already installed fence line, and joining the two areas with a livestock gate. The area in question requires approximately 190 T-posts with a 10-foot run, corner posts every 100 feet, and four-strand wire. At this time, no gate is available along this fence line area thereby disallowing Landscape Hawaii's use and/or access to the 4 (four) acres. The Sun Systems' engineer there that day estimated that approximately 6 weeks would be needed to have manpower and materials available to complete the job. In addition, the extra 50' of chain link fence abutting the front gate area is included in the work order.

Several calls have been made to the DLNR office to find out about the status of the pending work. No answers are available.

A question remains that if the RFP was for the correct linear run of fencing as stated by the State from both surveys and walking the area, what happened to the balance of materials that should have gone up on the property when the work order was changed to less than requested? Did the State pay for and not receive the amount of fencing contracted for?
Another question: If the contract was not executed properly, why is the lessee being penalized? In other words, why is the present lease rent for the entire 19.961 acres when it was demonstrated that since February 2006, 4 (four) useable acres were removed from use to Landscape Hawaii (approximately 20%). And when will the balance of the land be returned as is stated in the TMK and be able to be utilized fully by Landscape Hawaii, the lessee to the land?

June 14, 2006 — Landscape Hawaii, Inc. signs a Cooperative Agreement with the Windward Oahu Soil and Water Conservation District.

September 2006 — Right-of-Entry Permit expires. General Lease No. S-5708 to commence effective immediately as Right of Entry Permit expires.

State already holds payment for lease as Landscape Hawaii had paid for the first 6 (six) months of the lease on the day following the auction date, July 1, 2004. Payment was to have been applied for period July 1, 2004 through December 31, 2004, but transfer of

property did not occur as contracted in original agreement. (See Attachment 2, Facsimile Transmittal)

Landscape Hawaii begins work on the property to clean up A-Frame and establish a nursery, plant areas.

October 2006

The City assesses property taxes for three domiciles for the property when in actuality there are only two – the Club House was torn down by the State in 2005 although it is still reflected in City records. When will the State notify the City of the change?

December 2006

The AG's office sends out a delinquency notice for period 10/01/06 through 3/31/07.
Kyle Ushijima calls Charlene Enoki and is told not to pay the lease rent until she straightens out the matter with the AG's office.

End of 2006

Fencing is still not completed (perimeter and front gate areas).
Matson container still on property.
Stockpiles of dumped material of prior lessee still on the property.

January 2007

Kyle Ushijima receives another notice and a letter stating that he is delinquent with regards to paying the lease rent.
Charlene Enoki specifically tells Kyle Ushijima not to pay until the lease dates are clarified and on file correctly.

February 2007

This month Landscape Hawaii is faced with A Notice of Default. (See Attachment, Notice of Default)
Also, Cecile Santos submits Demolition Plan to Planning and Permitting Dept. that should have been processed in 2005. Is the City assessment correct now for property taxes? Two and not three domiciles? Cecile also advises Kyle Ushijima that the property perimeter fence is to remain as is and will not be corrected by the State. An error by the State?

Current Status:

*the AG's office shows Landscape Hawaii in arrears for 6 months lease rent
*City still seeking taxes for 3 (three) rather than 2 (two) domiciles
*Landscape Hawaii is in the process of cleaning the areas that the State said it would clean, i.e. the stockpile areas, removing the Matson container, etc. and starting up the nursery business on property which has 'gone to weed' for two years

*fencing is still not done according to the perimeter boundary as designated by the State Survey and front gate area is still unsecured
*unfenced area and unmarked area of this TMK is open to squatters and parties entering the area from the Mahailua Street side – patrolling and restricting access is difficult without proper boundary lines as reflected in a fence line
*lease amount reflects the lease fee on 19.961 Acres, MOL and does not take into account the unavailable 4 (four)acres incorrectly fenced off by the State in February 2006
*unanticipated expenses and work involved with cleaning and renovating domiciles that have been abandoned and vandalized for almost two years (from eviction date of Candy Lake)
*the delay in transferring the property (approx. 2 years) to Landscape Hawaii allowed the property to deteriorate; not securing the property and domiciles allowed vandalism, break-ins, stealing the meter box, stealing the roofing, breaking windows, removing doors and porches, etc. to go unchecked. The result is that now more serious renovations are needed which require authorization from the Building and Permit Dept.

**what we have today is not what we were led to believe we would assume two years ago, i.e. condition of property and size of property.

Mr. Young, as you can see by the above, it has been a frustrating and epic journey for all parties. You were in the private sector and understand that time represents both money and opportunity; I felt that I have lost both with regards to this situation. Working with the State has been frustrating, to say the least.
I have discussed the above problems with Charlene Enoki and Cecile Santos only to find that their hands are either tied or their time is unavailable to work out these problems. Often it seems that the authority does not go with the responsibility to get things done.

Clarification of the lease rent billing periods and amount due are priorities at this time as I am not a delinquent lessee. Also, I would hope that the State sees the inequity of charging me for the entire parcel when I cannot access all the land nor secure the land from outsiders. I would ask for a lease reduction of 20% retroactive to the beginning of my lease until the matter is reconciled.

As the fencing matter impacts us both, I would ask that the State work with Sun Systems and complete the perimeter and front gate areas. I would also ask the State to honor its agreement to clear the land of the stockpiles that pose a hazard to my employees and areas for nursery and pasture use and to also remove the Matson container.

If it is beyond your delegation of authority to authorize the above, I would request that I be placed on the agenda for a DLNR meeting to discuss the issues. It would serve both

our interest to have all of this behind us.

If you would like further insight into these matters, please feel free to call me at 836-5332 ext. 24 or my cell,

Sincerely,

Kyle Ushijima,
President
Landscape Hawaii Inc.

cc: Charlene Enoki
Mark Bennett
Cecile Santos

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MAR 10 2006

Mr. Kyle Ushijima, President
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Subject: Right-of-Entry Permit to Landscape Hawaii, Inc. for Maintenance of State land, Waimanalo, Oahu, Tax Map Key 4-1-27:016.

We have completed the installation of the fencing along the front of the leasehold and are processing the final execution of the lease for the site. We have been informed that after the installation of the front fencing, the lot has been vandalized. In order to prevent this from happening again, we are issuing this maintenance right-of-entry.

We are processing the execution of the lease (General Lease No. S-5708). This right-of-entry will enable you to maintain the site until the lease is fully executed.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of September 28, 2001, (Item D-4), Landscape Hawaii, Inc. is hereby granted a maintenance right-of-entry permit to occupy, secure, and maintain the premises shown on the attached map in an orderly manner in compliance with all applicable laws, statutes and government regulations and subject to the following terms and conditions:

1. The permit shall commence on March 10, 2006, and end on September 10, 2006, or at an earlier date upon the sole discretion of the Chairperson of the Board of Land and Natural Resources.

2. Landscape Hawaii, Inc. shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount acceptable to the Department ($300,000 per incident/$500,000 aggregate) insuring the State of Hawaii against all claims for personal injury, death, and property damage;

that said policy shall cover the entire right-of-entry area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area in the control or use of Landscape Hawaii, Inc. Landscape Hawaii, Inc. shall furnish the Department with a Certificate showing the policy to be initially in force and shall furnish a like Certificate upon each renewal of the policy, each Certificate to contain or be accompanied by an assurance of the insurer to notify the Department of any intention to cancel any policy sixty (60) calendar days prior to actual cancellation. The procuring of this policy shall not release or relieve Landscape Hawaii, Inc. of its responsibility under this right-of-entry as set forth herein or limit the amount of its liability under this right-of-entry.

3. Landscape Hawaii, Inc. shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the permit.

4. Landscape Hawaii, Inc. shall comply with all laws, statutes, ordinances, rules and regulations of the Federal, State, and County governments relative to the use of the subject area including those relating to public health.

5. Landscape Hawaii, Inc. shall indemnify, defend and hold harmless the State of Hawaii, Department of Land and Natural Resources from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of Landscape Hawaii, Inc. under this approval or relating to or connected with the granting of this approval.

6. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Landscape Hawaii, Inc. and his consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of the maintenance.

7. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area occurring while Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf is/are in possession or elsewhere if caused by Landscape Hawaii, Inc., its consultants, contractors and/or persons acting for or on its behalf. Thes covenants shall survive the expiration or earlier termination of this right-of-entry.

8. For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.

10. Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings at the subject property during the effective period of this right-of-entry.

11. All costs associated with the maintenance within the right-of-entry area shall be the sole responsibility of Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf.

12. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, Landscape Hawaii, Inc. and its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.

13. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

14. Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry for any government-related project. As your project meets this requirement, I hereby waive rent.

Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit the following to the Land Division no later than March 10, 2006:

1. Copy of signed concurrence;

2. Copy of your liability insurance policy.

Should you have any questions, please contact Cecil Santos at our Land Division Office, at (808) 587-0433 or fax at (808) 587-0455.

Sincerely,

Peter T. Young
Chairperson

I CONCUR:

Landscape Hawaii, Inc., a Hawaii corporation

By _____ March 16, , 2006
Kyle K. Ushijima

Its: President

c: Land Board Member
OCCL
Central Files
District Files

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

FACSIMILE TRANSMITTAL

Date : October 13, 2006
To : Charlene DNLR
From : Kyle Ushijima
Phone Number :
Fax Number : 587-0455
Project :
Subject : Payments

Number Of Pages Including This Sheet : 3

Message : Please refer to the attached billing which indicates payment being due for the period of 10/01/06 -- 03/31/07. Per our agreement, the lease was supposed to start on September 1, 2006. Our right of way was the only request we had initially to get on to the property. We are still in the process of cleaning the area in which we have discovered debris, such as, barbed wire, tires, corrugated metal, etc. The State was supposed to have removed all of the debris mentioned above. We are trying to keep a good relationship with the State as being our Landlord but they are not keeping up with the agreement. Evidently, the various departments are not communicating with each other. I have already lost a big sum of money without any profits. Any assistance you can give us will be greatly appreciated. I have been excessively patient in this matter. Please respond to this problem and have it addressed by October 19, 2006. We are looking forward to your continued support in our efforts to remedy this situation so we can go on with our efforts to excel in our Nursery business.

Aloha, Kyle U[illegible]

DEPARTMENT OF LAND AND NATURAL RESOURCES

FISCAL OFFICE
P.O. BOX 621
HONOLULU, HAWAII 96809-0621
(808) 587-0353
10/10/06

DOCUMENT NUMBER
gl5708

COST CENTER: 0520

SOURCE: 1720

TOTAL DUE: $18,250.00

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

LANDSCAPE HAWAII INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819

AMOUNT PAID: _____

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
10/01/2006	C-107683	Balance Due	10/01/2006 - 03/31/2007	RENTALS, LEASED LANDS (10/2006)	18,250.00

Please Make Check Payable To: "Land & Natural Resources"
PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE
THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	1-30	[illegible]	[illegible]	TOTAL DUE
0.00	18,250.00	0.00	0.00	$ 18,250.00

DOCUMENT NUMBER

gl5708

LINDA LINGLE
GOVERNOR

PETER T. YOU
CHAIRPERSON
BOARD OF LAND AND NATU
COMMISSION ON WATER RESOURCE

ROBERT K. MASU
DEPUTY DIRECTO

DEAN NAKANO
ACTING DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECRE
BUREAU OF CONVEYANC
COMMISSION ON WATER RESOURCE
CONSERVATION AND COASTAL
CONSERVATION AND RESOURCES EN
ENGINEERING
FORESTRY AND WILDLIF
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE CO
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P.O. Box 621
HONOLULU, HAWAII 96809

January 26, 2007

Ref.:OD-GL5708

Certified Mail: 1682 8091

LANDSCAPE HAWAII INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819

Received
1/31/07

Dear Lessee:

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease S-5708 are hereby served a Notice of Default on said lease for failure to do the following:

X **Keep lease rental payments current**

____ Post required Performance Bond

____ Post required Fire Insurance Policy

____ Post required Liability Insurance Policy

____ Other:

Our Fiscal Office informs us that you are in arrears in lease rental payments in the amount of $ 18,250.00 covering the period October 01, 2006 to March 31, 2007.

You are hereby given thirty (30) days from the date of receipt of this letter to cure the above-described breach.

PM 2/23

Your failure to act on the above matter will result in the following:

1. Cancellation of General Lease S-5708.

2. Retention of all sums heretofore paid under General Lease S-5708 as liquidated damages.

3. Termination of all your rights and obligations under General Lease No. S-5708.

4. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under General Lease S-5708.

5. Forfeiture of your lease performance bond.

We therefore urge your fullest cooperation. Should you have any questions, please contact our Oahu District Land Branch at (808) 587-0433.

Very truly yours,

PETER T. YOUNG
Chairperson

cc: Land Board Member
Central Office
Fiscal Office
Bond Holder (First Insurance Co. of Hawaii)
District Office

DEPARTMENT OF LAND AND NATURAL RESOURCES

FISCAL OFFICE
P.O. BOX 621
HONOLULU, HAWAII 96809-0621
(808) 587-0353
02/11/07

DOCUMENT NUMBER
gl5708

COST CENTER: 0520

SOURCE: 1720

LANDSCAPE HAWAII INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819

TOTAL DUE: $18,250.00

PLEASE DISREGARD THIS BILL IF PAYMENT HAS BEEN MADE

AMOUNT PAID: _____

PLEASE DETACH AND RETURN ABOVE PORTION WITH YOUR PAYMENT FOR PROPER CREDIT

REFERENCE		APPTO	BILLING PERIOD	DESCRIPTION	AMOUNT
DATE	NUMBER				
10/01/2006	C-107683	Balance Due	10/01/2006 - 03/31/2007	RENTALS, LEASED LANDS (10/2006)	18,250.00

Please Make Check Payable To: "Land & Natural Resources"
PAST DUE AMOUNTS MAY BE SUBJECT TO A 1% PER MONTH FINANCE CHARGE AND A LATE FEE
THE STATUS OF YOUR ACCOUNT IS AS FOLLOWS:

CURRENT	[redacted]			TOTAL DUE
0.00	0.00	0.00	18,250.00	$ 18,250.00

DOCUMENT NUMBER

gl5708

LANDSCAPE HAWAII, INC.
2621 WAIWAI LOOP
HONOLULU, HI 96819
836-5332

NO. 353

59-101
1213

Date. FEB 2 2007

Pay To The Order of STATE OF HAWAII

The sum of 18,250dls00cts $ 18,250.00 Dollars

First Hawaiian Bank
MAIN BANKING REGION
HONOLULU, HAWAII

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

August 27, 2004

STATE OF HAWAII
Department of Land and Natural Resources
Land Division
P. O. Box 621
Honolulu, Hawaii 96809

Subject: General Lease No. S-5708
Tax Map Key: (1) 4-1-27:16

Dear DNLR:

Enclosed are the signed Lease Documents for the above subject.

I am prepared to occupy the property as of September 1, 2004.

My Staff, equipment, materials, structures and Bank Loans are in process and if we are not able to occupy the property by September 1, 2004, it will be jeopardizing our plans to execute the future of our intended use of the property.

At present, we are already obligated for the payment of the Loan for the property of which we are not utilizing. In addition, we will need to acquire permits and without being able to occupy the property, all of these issues are at a stand still.

If we will not be able to occupy the property on September 1, 2004, please inform me as soon as possible. We are very anxious in going forward with this project.

Sincerely,
LANDSCAPE HAWAII, INC.

Kyle Ushijima
President

KU:et

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

October 12, 2004

Governor Linda Lingle
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Governor Lingle:

I am a business person who owns and manages Landscape Hawaii, Inc., a full service landscape company with clients such as the Halekulani Hotel, Kahala Mandarin Oriental Hawaii, Hawaii Prince Hotel, Kakaako Waterfront Parks, Department of Transportation, Turtle Bay Resort, etc. I employ 135 people on Maui and Oahu and generate over $6,000,000 in revenues.

On June 30, 2004, the Department of Land and Natural Resources conducted an auction for a State lease in Waimanalo at 41-919 Kaulukanu Street. The starting bid for the property was $4,764. The competition was intense and I ended up making the highest bid at $36,500 per year (nearly eight times the upset price). I intend to use the property to expand my business by building a nursery (outdoor plants), shade houses (indoor plants) and field stock trees. I expect to hire 7 more people.

The problem is that I was supposed to occupy the property on September 1, 2004 as was stated in the auction bid packet. It is my understanding that the DLNR allowed the existing lessee (Sylvester Foundation) to stay beyond the day the lease was to expire. It has been over a month now and I have not been given any date as to when I can occupy the property.

Because of this delay, Landscape Hawaii ,Inc. has and will continue to suffer losses. I have already discarded over $10,000.00 in plant material which would normally be nursed back into usable condition if I had occupancy of the property, not to mention the time spent in communicating with DLNR.

I am hoping that you will intervene on the basis of fairness. The DLNR held a public auction that was open to everyone. While I followed the process, bid the highest at the auction and made all necessary payments (including one-half year's rent) totaling $19,351.68 on June 29, 2004, the DLNR has not followed its own timeframe. Instead, the Sylvester Foundation has been allowed to continue occupying the property. I was at the Land Board meeting in June 2004 when

Board members told Ms. Candy Lake of the Sylvester Foundation that she needs to start looking for another place because she would have to leave the property when her lease expired. She has had four months to relocate.

At that meeting, the Board had denied Ms. Lake's request for a new lease for this property. Board members said it was because she had a bad track record as a lessee. DLNR staff talked about how Ms. Lake did not follow her lease conditions. I do not understand why a lessee with a bad track record is given preferential treatment and I am hoping that you will bring some sense of fairness to this situation.

If there are questions, you or your staff may reach me at . Thank you.

Sincerely,

Kyle Ushijima, President & C.E.O
Landscape Hawaii, Inc.

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

November 5, 2004

Mr. Kyle Ushijima
President and Chief Executive Officer
Landscape Hawaii, Inc.
2621 Waiwai Loop
Honolulu, Hawaii 96819

Dear Mr. Ushijima:

Thank you for your letter dated October 12, 2004 regarding your concerns that you have not been able to occupy the property you are to lease from the Department of Land and Natural Resources (Department).

My office and Department staff are diligently working with the Sylvester Foundation to vacate the property. I understand an alternative site has been found for the Foundation and efforts are underway to relocate the animals in an expeditious manner.

Thank you for sharing your concerns with me and for your understanding of this situation.

Sincerely,

LINDA LINGLE

Gmail

C.G. Comer

Board submittal

2 messages

Barry.W.Cheung@hawaii.gov <Barry.W.Cheung@hawaii.gov> **Mon, Nov 10, 2008 at 8:36 AM**

To:

Morning, Cindy
Attached is the Board submittal for this coming Friday (November 14) Land Board meeting for the road. Same copy is being sent to Kyle @ Waiwai Loop address.

By the way, I am reading the papers that you gave me last week. On the letter dated February 21, 2007 from Kyle to Peter Young, page 1 of my copy ends as "June 18, 2004 The Sylvester Foundation is denied a Request for Waiver at a DLNR Board meeting". However, next page starts as "illegally return to the A-frame property during the day/evening to feed animals." Would you agree that there is something missing between these two pages? I don't think it is really significant. If you have time, can you give the missing page(s) to me? Mail, email or fax (587-0455) is fine. Thanks.

Barry Cheung
Land Division
Department of Land and Natural Resources
1151 Punchbowl Street, Suite 220
Honolulu, Hawaii 96813
Tel: (808) 587-0430
Fax: (808) 587-0455

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329K

C.G. Comer **Thu, Nov 13, 2008 at 1:32 PM**
To: "Barry.W.Cheung@hawaii.gov" <Barry.W.Cheung@hawaii.gov>,

Barry,
Am I wrong to assume that discussions and verbal agreements/solutions hold no weight with regards to the situation of said properties? I have the names of the parties that were spoken to and Kyle spoke directly to Charlene several times re: the chain and the placement as she agreed with the placement saying that -yes- years ago there was a gate there. Are you implying that further discussions and agreements should only be acted upon when written notification is received? Documentation with names/ dates/details discussed is not enough? Charlene even went on to say that the chain provided security for both lessees and that the DLNR was concerned about them (Chongs) as well as the added security for the BWS and HECO. You do reallize that HomeLand Security works with BWS in securing the potable water?
Let me know how we should further proceed. I think that written correspondence would be best and not necessarily e-mail as I am not WiFi connected.
Again, I am deeply disappointed in that after our several discussions and your staff visits to the gate area, including picture taking, you concluded that LandScape Hawaii unilaterally put up a chain across the road. I told you time and time again that the Chongs supported the chain and that Mrs. Chong even told me where to put the chain.....hanging it on the existing eye-hook on their side of the road. She told me that Nolan George

used to have a gate their for years and the opened/closed it when they went through it.
They had their own purchased lock and combination controlling the access for her boarders and users of her property. We never assigned a combination as your background to the DLNR agenda item says as the combination of the lock is her son's birthdate.....October 25. How's that for ownership of the chain by them? Furthermore, she informed me with a handwritten note that another boarder read to me since it was posted in the Chong's barn that she wanted to open the chain every morning at 8:00am and lock up the chain every evening at 5:00pm. Why??? Haven't the slightest idea but I believe it was to show that they had 'business' hours as they were going through the discussions with the DLNR re: the renegotiation of their lease? By the way....you mentioned that the Board was considering the termination of their lease as they were not willing to pay the amount after arbitration? Is that more misinformation?
How is it that the BWS and HECO locks are attached to the chain? How could we influence them (with their Land Division office controlling the road). I would say that the locks went up support of security for the road which leads to the Water tank, well, and pumping station? Have we all forgotten that we need security for the water and transmission wires of HECO?
Don't know what else to say .....
Cindy C.

[Quoted text hidden]

* Call Sill) Water Conservation about Shade Hut

5:10 pm 2/6/08

Talked To Charlene Enoki on the phone

She said To Call Back Next Week - For the Electric Meter

- Return Fence
- Container Removal

To Get the Lease Going - until this Happens the Lease will not start - State is in Breach of Lease

HOUSE OF REPRESENTATIVES
STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

February 19, 2009

Ms. Charlene Enoki
Dept. of Land and Natural Resources
Post Office Box 621
Honolulu, HI 96809

Dear Ms. Enoki,

RE: General Lease #S-5708

On behalf of a constituent I am inquiring about the status of lease-agreement # S-5708. Mr. Kyle Ushijima of Landscape Hawaii Inc. signed the agreement on April of 2006. Because of certain delays in evicting the previous tenant and delays in agreed-upon improvements that were to be made by the State of Hawaii, Mr. Ushijima was issued a waver of rent for a number of months.

There, however, continues to be confusion on this matter as to how much rent is owed and Mr. Ushijima's designation as a delinquent lessee.

To help clarify this as well as receive an update on the situation I have the following questions:

1. Does the Office of the Attorney General still consider Landscape Hawaii a delinquent lessee? If so, how much is owed?

2. Has the City been notified that there are two buildings rather than three on the property?

3. Has the fencing issue around the perimeter boundary as designated by the State Survey and the front gate lock been resolved?

Representative Gene Ward, Ph.D. 17th Legislative District Hawaii Kai—Kalama Valley
Hawaii State Capitol, 415 South Beretania Street Room 318 Honolulu, Hawaii 96813
Phone: 808-586-6420; Fax: 808-586-6421
Email: repward@capitol.hawaii.gov

4. Is the unfenced and unmarked area of the property been properly marked and in accordance with the TMK?

5. Is Landscape Hawaii being charged full lease rent based on 19.61 acres even though there are 4 acres that were incorrectly fenced off by the State in February 2006?

6. Has the Dept. of Land and Natural Resources considered a compensation plan for Mr. Ushijima given deterioration of the property as a result of the delay in its transferring of the lease?

I would appreciate your urgent assistance on this matter. Mr. Ushijima is anxious to resolve these matters despite the fact that his business has been negatively impacted and his numerous past inquiries seem to have gotten lost in the system.

Please contact my office at 586-6420 if you require further information. I look forward to hearing from you.

Sincerely,

Representative Gene Ward
District 17, Hawaii Kai – Kalama Valley

GW:rf
Cc: Mr. Kyle Ushijima

I, ELECTRICITY FOR OFFICE LOCATED IN FIRST DATE WAS STOLEN DURING THE DELAY OF OCCUPANCY FOR A MINIMUM OF (18) EIGHTEEN MONTHS
a), NO ELECTRICITY
b). MOTTEN BOX

Representative Gene Ward, Ph.D. 17th Legislative District Hawaii Kai—Kalama Valley
Hawaii State Capitol, 415 South Beretania Street Room 318 Honolulu, Hawaii 96813
Phone: 808-586-6420; Fax: 808-586-6421
Email: repward@capitol.hawaii.gov

ASSISTANCE FROM REP. WARD

Begins June 2009:

Information is gathered and sent to Rep. Ward's office re: lease/property problems.

Rep. Ward's office staff phones the DLNR requesting information and there is no response. Rep. Ward phones the DLNR himself and after a few days, Charlene Enoki returns his call to discuss issues regarding the property.

Initial meeting of July 14, 2009 cancelled due to schedule conflicts with parties attending, ie Rep. Ward and Kyle Ushijima of Landscape Hawaii.
Meeting rescheduled for Aug. 4, 2009. In attendance are: Rep. Gene Ward, Wayne Kaneshiro, Kyle Ushijima, and Cindy Comer.

Follow-up by Rep. Gene Ward's office are letters sent to the DLNR dated August 29, 2009 and January 28, 2010. No response from the DLNR to the letters. Follow up phone calls result in no response.

Rep. Ward calls Kyle Ushijima in May, 2009 to follow up on activity on the property and the DLNR actions in response to letters and calls. No information from the DLNR received by either party.

August, 2009, Kyle Ushijima e-mails update status to Rep. Ward's office again listing items the State has not performed.

****Landscape Hawaii was to assume property on September 1, 2004****
****Property released to Landscape Hawaii in September, 2006****

Important Dates:

May/June 2004	Preliminary walkthrough of property with Charlene Enoki and DLNR reps.
June 2004	Auction.
September 1, 2004	Landscape Hawaii to assume property.

Instead:

Sylvester Foundation (Candy Lake) remains on property; meter box 'disappears' from Level 1 Domicile.

March 2005	Candy Lake is evicted by DLNR.

Property continues under the control of the State until it is turned over to Landscape Hawaii in September 2006. Why the delay? Never explained. Meanwhile, Landscape Hawaii has paid the lease rent in 2004 as directed by the terms of the auction packet. Also in February, 2007, LSH pays an additional $18,500.00 for period 10/01/2006 to 3/31/2007 under threat of cancellation of General Lease. LSH has just gained access to the property as of September 2006 and is paying additional lease rent? Why?

March 2006 to September 2006	Right of Entry permit granted to LSH. Permit does not allow LSH to leave any business material/property on the land but the State hopes LSH presence will decrease the vandalism and illegal activity on the property.
September 2006	Landscape Hawaii assumes property.
May 9, 2007	Last face-to-face meeting with DLNR rep. Charlene Enoki who says she will: Stop default notices Contact HECO for electricity hook-up Advise City of 2 (two) domiciles on property rather than three Complete perimeter fencing

Of the items that she says she will resolve, the fencing has been completed as of November, 2008; other items are still pending.

August 4, 2009	Meeting at Zippy's Hawaii Kai with Rep. Gene Ward, Kyle Ushijima, Wayne Kaneshiro, and Cindy Comer. Earlier meeting of July 14, 2009 rescheduled to this date.

Current Status as of August 4, 2009:

- No electricity for business operations (meter box was stolen while property was under the control of DLNR and before transfer to LSH in September, 2006)

- Fiscal office shows LSH in arrears for lease rent.

- Lease rent amounts do not correspond to the lease payment schedule.

- Lease amount due reflects the amount due for the entire 19.961 acres and does not take into account the unavailable 4 (four) acres incorrectly fenced off by the State in February 2006 and not made available to LSH until November 2008. LSH should receive credit for the 4 (four) useable but inaccessible acres that the State divided off from the original parcel.

- City still seeking taxes for 3 (three) domiciles rather than 2 (two) that exist on the property. The State tore down the third dwelling.

- Unanticipated expenses and work involved in cleaning and renovating domiciles and property. Both domiciles and the property had been damaged and vandalized for the 2 (two) years (September 2004 to September 2006) the State controlled the property.

  A-frame domicile now lived in but only 60% renovated
  2-story office domicile is still vacant and unusable due to lack of electricity and continuing vandalism.
  Security and vandalism have been ongoing problems because there is no electricity for the nursery; also business operations are effected without electricity for timers, lights, etc. used in a nursery business
  A chain across the BWS road was removed by the City and County without warning.
  Drinking (broken bottles), prostitution (condoms), vandalism, and drug activity (needles and syringes) are now moving back into the area and threaten life, limb and property.

August 29, 2009

Ms. Charlene Enoki
Dept. of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Dear Ms. Enoki,

This is in regards to the missing meter box and resulting lack of electricity for TMK 4-1-27-016. Thank you for the good news that the back fees have been removed from the billing. Would you now please entertain one more immediate and very important request to get Landscape Hawaii back into full-time business.

First a bit of history, the removal of the meter box occurred while the State was in control of the property and Candy Lake was allowed to remain on the property. The lack of electricity continues to impact the business operations and security for Landscape Hawaii. The company has been rather patient with the State in addressing this matter in several phone calls as well as person-to-person meetings.

To expedite this matter, please let Landscape Hawaii know by September 18, 2009 about the installation of a meter box and electricity to the domicile. If the State is unable to assure Landscape Hawaii of a timely return of service, Landscape Hawaii will begin the process and will deduct the installation costs for permits required, labor and material expenses for this metering project.

If you have questions about this, please feel free to contact Kyle on his cell phone at or via email at kyle@landscapehi.com. Thank you again for helping this small business get back on its feet.

With Aloha,

Representative Gene Ward
District 17, Hawaii Kai – Kalama Valley
cc: Kyle Ushijima

Representative Gene Ward, Ph.D.
17th Legislative District
Hawaii Kai—Kalama Valley
Hawaii State Capitol, Room 318
415 South Beretania Street
Honolulu, Hawaii 96813
Phone: 808-586-6420; Fax: 808-586-6421
Email: repward@capitol.hawaii.gov

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

October 22, 2009

Ms. Charlene Enoki
Dept. of Land and Natural Resources
P.O. Box 621
Honolulu, Hi 96809

Dear Ms. Enoki,

Representative Gene Ward was kind enough to send you a letter dated August 29, 2009 with regards to the missing meter box and resulting lack of electricity for Level 1 domicile. As Landscape Hawaii and/or Rep. Gene Ward have not received any response from the State as to the return of the meter box/electricity to the property, Landscape Hawaii will begin the process.

We've discussed this issue a number of times with you both by phone and in person and always been assured that the State would resolve the problem; now too much time has passed and the problem grows more serious and costly. Please understand that Landscape Hawaii will rectify the problem but will not assume this financial obligation. Instead, installation costs for permits required, labor, and material expenses for this metering project will be tallied and credited against lease fees due the State. Please consider the time passed and the number of times we've discussed this issue with the assurance that the State would resolve the problem, all in vain.

I recognize that certain back fees have been removed from the lease billing but Charlene, as you well remember, I signed the lease at your urging with the understanding that corrections would be forthcoming with regards to future amounts due. Furthermore, please note that for the record, the period of February 2006 to November 2008, approximately 4 (four) acres were unavailable to Landscape Hawaii for use due to the State's fencing error. In essence, Landscape Hawaii was billed for the entire 19.961 acre parcel when in fact incorrect fencing obstructed Landscape Hawaii from accessing these acres as well as maintaining the acres. I would hope that the State recognizes the inequity of charging for the entire parcel and pro rates for the above period. This is will be in addition to the above credit against future lease fees due the State.

As for the ongoing lease amount due, as discussed in person-to-person meetings, a correct commencement date for the Lease will eliminate future undue lease fees from our Fiscal record and correct financial misunderstandings.

As usual, please feel free to contact me at cell phone or via e-mail at kyle@landscapehi.com. Thank you again for your help in these matters.

With Aloha,

Kyle Ushijima
President

Cc: Representative Gene Ward

January 28, 2010

Ms. Charlene Enoki
Dept. of Land and Natural Resources
P.O. Box 621
Honolulu, Hi 96809

Dear Ms. Enoki,

I am writing to you in reference to a letter sent to you August 29, 2009 re: TMK 4-1-27-016 and a problem with regards to return of a meter box/electricity to the property. This problem continues to impact business operations and security for the company and after numerous conversations, via phone and in person with you and other representatives of the DLNR, the situation is still not resolved.

We all understand that the State is limited, as we all are, with money and resources to dedicate to resolving this. If the State is unable to handle the project of returning the meter box and electricity to the domicile, will you and can you assure Landscape Hawaii that the State will deduct the installation costs for permit requests, labor, and material expenses for this metering project from its future lease fees? The company has been patient but cannot and should not be asked to assume this huge financial obligation without some assurances from the State that the final costs will indeed be reimbursed by the State. Landscape Hawaii, in lieu of the State, will dedicate not only its limited dollars but limited manpower hours to accomplish this.

Please consider the time that has passed and the impact this continues to have on business. With your assurance on behalf of the State, Landscape Hawaii can commence the process. We are all committed to invigorating our economy and providing opportunities to the people of Hawaii. This will be a step in the right direction for all of us.

If you need further clarification about this, please feel free to contact Kyle Ushijima on his cell phone at or via email at kyle@landscapehi.com. Again, time is of the essence. We thank you again for help in this matter.

With Aloha,

Representative Gene Ward
District 17, Hawaii Kai – Kalama Valley
cc: Kyle Ushijima

LANDSCAPE HAWAII INC.
2621 Waiwai Loop • Honolulu, Hawaii 96819 • Phone (808) 836-5332 • Fax (808) 836-5336

June 16, 2011

Mr. William Tam
Deputy Director
State of Hawaii DLNR
P.O. Box 621
Honolulu, Hi 96809

Dear Mr. Tam,

Subject: Tax Map Key 4-1-27:016 State land held by Landscape Hawaii Inc.

The WAA organization appreciated your attendance last month and so did our representative at the meeting, Cindy Comer, whom you met that night.

You advised her to have Landscape Hawaii give Charlene Enoki a call. I have done that and requested an update for the property in question. I placed the call weeks ago, and to date, have received no response. Moving forward, I am asking for someone at the DLNR to again review the situation and provide some remedy – we need our electricity.

I am sending you a packet (under separate cover) with a history of the property, which at the time of the walkthroughs and after the auction date in 2004, had the available utilities of water, electricity, and telephone. Presently, the nursery and office domicile have no electricity as the meter box was stolen almost 7 years ago during the period that the State was in possession of the property and before transfer to us, the new Lessee. Since then, we have sat in discussion with former Director Peter Young, Charlene Enoki, and others, and been assured that the State would resolve the problem and give us our electricity. We are still waiting.

At one time, we were willing to install the electricity ourselves with the understanding that the DLNR would give us credit against future lease fees. We awaited confirmation from the DLNR to begin the work, requesting in writing numerous times with specific start dates. So far there has been no response from the State or acknowledgment of our request. Much time has passed and we, like the State, have limited resources and monies. Our offer was time sensitive as we are treading water and - surviving and not thriving in this economy.

It seems that the only department that knows of our existence and contacts us is your Fiscal department. With that said, please read and reply. Feel free to contact me at my cell

phone of or via e-mail at kyle@landscapehi.com. Thank you for your help in this matter.

With Aloha.

Kyle Ushijima
President

July 4, 2011

Dear Mr. Tam,

Re: Landscape Hawaii letter dated June 16, 2011 involving TMK: 4-1-27:016

I have enclosed a packet of information regarding property located at 41-919 Kaulukanu Street in Waimanalo. As there is an epic amount of information, I would suggest first reading the areas noted with the green tags.

It is not our intent to overwhelm you with the information. Instead, we are trying to identify and eliminate the problems that are attributed to the State and move on.

Thank you for your consideration and help in this matter.

With Aloha,

Cindy Comer
For Landscape Hawaii

Notes from 8/8/11, 11:00am mtng on Property in Waimanalo:

In attendance: Kyle, Peter, Cindy -from LH

Barry Cheung, Bob Medeiros – from DLNR

Meeting called by Barry Cheung of the DLNR – place and time established by DLNR - to discuss issues with regards to the lease.

1- Bob Medeiros gave a brief history of the property 'til Candy Lake was evicted
2- Barry Cheung asked if electricity is the only problem saying that LH is using the other areas for the nursery

LH attendees explained that the lack of electricity means: no security, no power to run watering system since auto timers can't be used (becomes labor intensive to have pp water); without security the trucks and eqpt. on Level 1 have been damaged with fuel lines cut, etc.; break ins occur at the Office domicile, the business is not running at its potential now and has not been running optimally since the property was released to LH in Sept. 2006.

It was mentioned that the last face to face with Charlene (of DLNR) was May 2007 at Rep. Ito's office. Also asked Barry Cheung if the note to William Tam (sent July of 2011) prompted this meeting - he asked why we communicated with Mr. Tam and NO, Mr. Tam did not communicate with him as they were on different levels.

Kyle asked about renegotiating lease rent and Barry said NO – it's public record and AG's office will not as the auction bid is binding.

Again, Kyle asked for the return of electricity to the property and explained the efforts of LH to get the electricity 'turned on" and the added expenses involved; Barry and Bob talked about HECO poles that they have at baseyard and the resources at their disposal. When I asked about the possibility of the DLNR doing it – they clammed up and said they would not promise anything or say anything else. Then Barry said he would e-mail or communicate with us in about 2 weeks.

No word until this June 1, 2012 letter to Kyle with draft Board submittal.