

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

December 9, 2016

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

Hawai'i

**Cancellation of General Lease No. S-5569, Mark Allen and Jonaliza Allen,
Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-049:001.**

PURPOSE:

Cancellation of General Lease No. S-5569, Mark Allen and Jonaliza Allen, Lessee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Panaewa Farm Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-049:001, as shown on the attached map labeled Exhibit A.

AREA:

10 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Intensive agriculture purposes.

TERM OF LEASE:

30 years, commencing on 12/09/1998 and expiring on 12/08/2028.

ANNUAL RENTAL:

\$4,440.00 due in semi-annual payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5569, Mark Allen and Jonaliza Allen, Lessee, were served a Notice of Default by certified mail dated August 5, 2016 for:

X **Failure to keep lease rental payments current (\$2,220.00)**

___ Failure to post required performance bond

___ Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

___ Other: _____

Said notice, accepted by the Lessee on August 9, 2016, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on September 9, 2016. As of October 25, 2016, this breach has not been cured.

As of October 25, 2016, the current status of all lease compliance items is as follows:

RENT: The Lessee has a rental delinquency of \$2,320.00 (rent plus late fees) for the time period from June 9, 2016 to December 8, 2016.

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

PERFORMANCE BOND:

The Lessee has posted the required performance bond. This bond is in the form of a cash deposit in the amount of \$8,880.00.

CONSERVATION PLAN:

The Lessee applied as a cooperator with the Waiakea Soil and Water Conservation District but has not submitted a conservation plan and has not made any recent effort in working with NRCS to complete a conservation plan.

BACKGROUND:

General Lease No. S-5569 was sold at public auction on December 9, 1998 to Alfred Seabury for the upset price of \$740.00 per annum. The intended use of this lease is for intensive agriculture purposes only. The Lessee had performed minor improvements to the property which included partial clearing and some fencing. There was no indication of any agricultural development.

At its meeting of May 8, 2008, under agenda item D-2, the Board consented to the assignment of lease from Alfred Seabury, as Assignor to Mark Allen and Jonaliza Allen, husband and wife, as Assignees. The current Lessee also made very little if any improvements to the property. In addition, they have not submitted a conservation plan as required in the lease and have not established the tropical floral nursery they committed to when they applied for consent to assignment of this lease.

An inspection of the property on September 23, 2016 confirmed no improvements have been made to the property from the time the current Lessee took possession. However, the inspection revealed an abandoned vehicle on the property. Paragraph 51 of the lease prohibits the placing or storing of abandoned vehicles within the premises¹.

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

DATE	DEFAULT	RESULT
6/28/13	Rent	07/12/13 cured
1/3/14	Rent	12/26/13 cured
1/20/15	Rent	02/13/15 cured
2/11/16	Rent	02/11/16 cured

The Lessee has indicated that they do not have the resources to develop the property at this time. Due to unforeseen economic circumstances, a decline in the tropical flower market and recent personal issues, the Lessee wishes to surrender the lease and return the property back to the State.

¹ 51. Abandoned Vehicles. The 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 the Lessee at Lessee's cost and expense.

As a result of the current default in the lease rent, the failure to comply with the terms and conditions of the lease and the absence of any development on the property, staff is recommending the Board authorize the cancellation of General Lease No. S-5569.

RECOMMENDATION: That the Board:

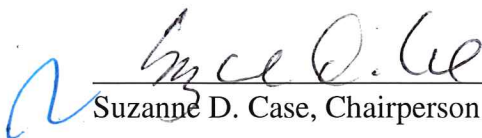
1. Authorize the cancellation of General Lease No. S-5569 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-5569 to be applied to any past due amounts;
3. Require the Lessee to remove any and all abandoned vehicles within the premises at the Lessee's own cost and expense;
4. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of December 9, 2016, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
5. 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-5569 and to pursue all other rights and remedies as appropriate.

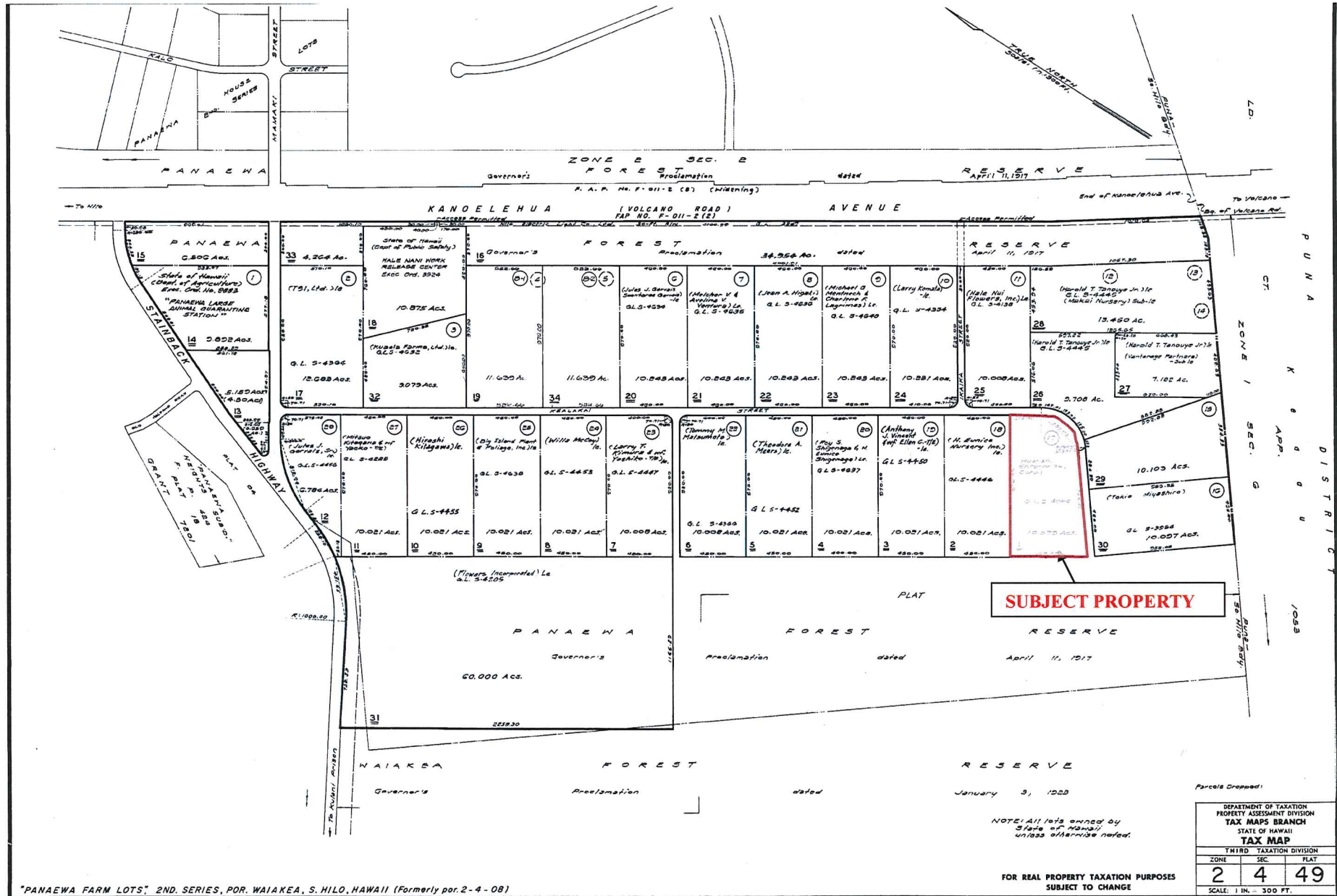
Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



GL S-4445

EXHIBIT A

