

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

July 22, 2009

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

(Kauai)

Consent to Assign General Lease No. SP-154, A.J. Toulon and Elizabeth Toulon, Cecelia Williams and Peter Baldwin, Assignor, to Hale Poha LLC, Cecelia Williams and Peter Baldwin, Assignee

APPLICANT:

A.J. Toulon and Elizabeth Toulon, Cecelia Williams and Peter Baldwin, Assignor, to Hale Poha LLC, Cecelia Williams and Peter Baldwin, Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Lot 52, Waimea (Kona), Kauai, Tax Map Key: (4)1-4-003:003, as shown on the attached map labeled Exhibit A.

AREA:

.96 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO  X

CHARACTER OF USE:

Recreation - residence.

**ITEM E12**

TERM OF LEASE:

20 years, commencing January 1, 2009, and expiring on December 31, 2029. There is one rental reopening scheduled after ten years.

ANNUAL RENTAL:

\$5900.00.

CONSIDERATION:

\$0.00.

RECOMMENDED PREMIUM:

None.

DCCA VERIFICATION:

The sole member (owner) of Hale Poha LLC is Pueo Kai LLC. The Toulons' revocable living trusts are the members (owners) of Pueo Kai LLC. Pueo Kai LLC taxpayer IDs with DCCA are W20042888-01 and W2004288-02. Hale Poha LLC taxpayer ID with DCCA is W67061952-01. Business history search of Pueo Kai LLC, DCCA File 30072 C5, and Hale Poha LLC, DCCA File 62566 C5, revealed no complaints.

APPLICANT REQUIREMENTS:

Applicant/assignee shall prepare and submit fully executed assignment of lease.

REMARKS:

A.J. Toulon and Elizabeth Toulon, Cecelia Williams and Peter Baldwin, Assignor held the previous lease covering the property.

Act 223 (2008) and board action directed staff to negotiate new leases with existing permit holders so the new lease was issued to A.J. Toulon and Elizabeth Toulon, Cecelia Williams and Peter Baldwin, Assignor who now wishes to assign to Hale Poha LLC, Cecelia Williams and Peter Baldwin.

Lessee is in compliance with all lease terms and conditions. There have been no prior defaults.

Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Rent re-opening is not scheduled until after the first ten years of the lease. There are no outstanding rental reopening issues.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. SP-154 from A.J. Toulon and Elizabeth Toulon, Cecelia Williams and Peter Baldwin, Assignor, to Hale Poha LLC, Cecelia Williams and Peter Baldwin Assignee, subject to the following:

1. No premium to be charged;
2. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



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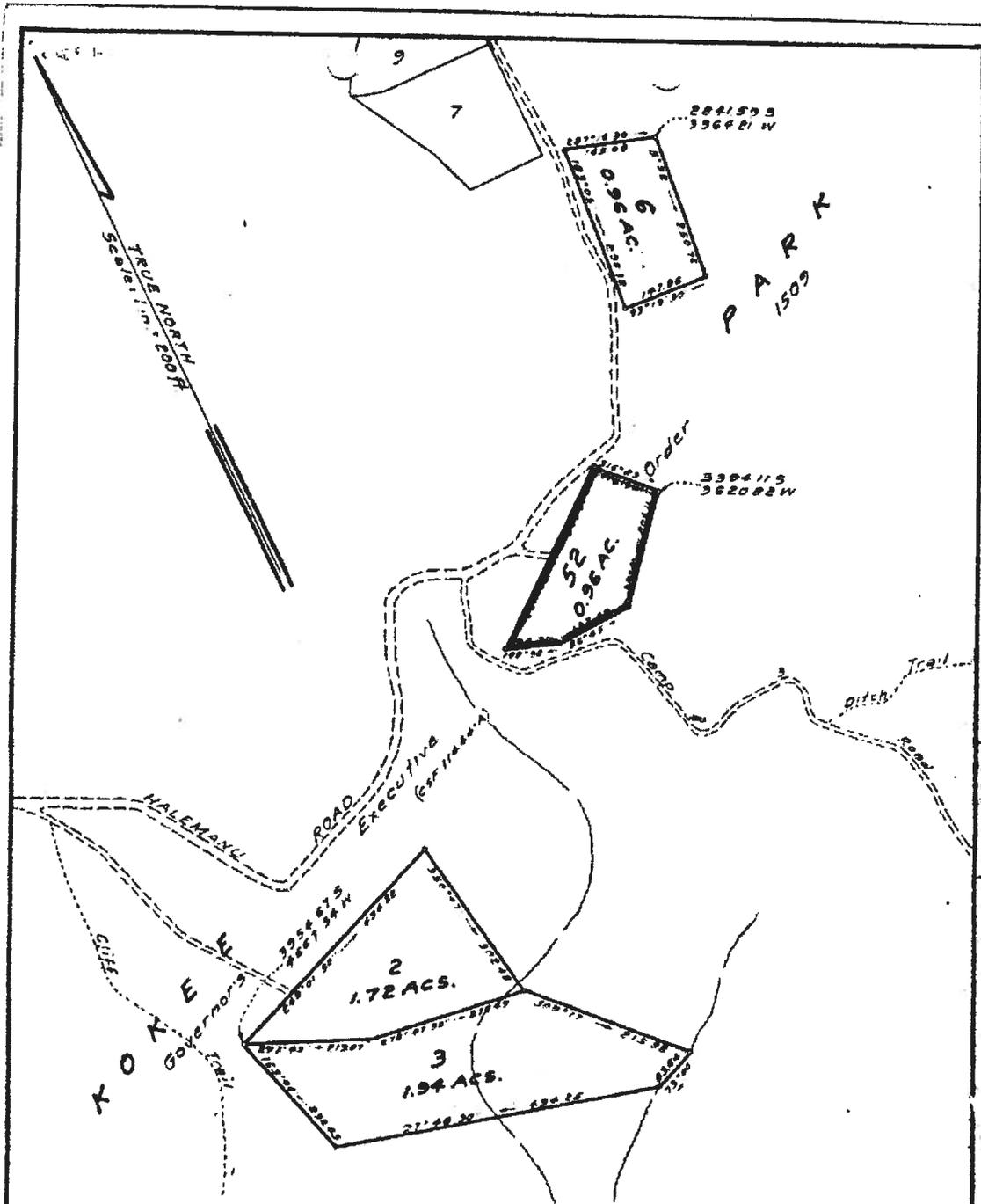
Daniel S. Quinn  
State Parks Administrator

APPROVED FOR SUBMITTAL:



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Laura H. Thielen, Chairperson



**KOKEE CAMP SITE LOTS**  
**LOTS 2, 3, 6 AND 52**  
 Weimea, (Kona) Kauai, Hawaii.  
 Scale: 1 inch = 200 feet

**EXHIBIT A**

*All corners marked with pipes  
 Coordinates referred to KOKEE 'A*

JOB K-3666  
 C. BK

TAX MAP 1-4-04  
 KAUAI FILE  
 FOLDER 3

SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
**STATE OF HAWAII**

Sheet 1 of 7 Sheets

AT Nov 2, 1966

20119

**A.J. Toulon and Elizabeth K. Toulon  
P.O. Box 666  
Koloa, Hawaii 96756**

April 5, 2009

Daniel S. Quinn, State Parks Administrator  
State of Hawaii Department of Land  
And Natural Resources  
State Parks Division  
Post Office Box 621  
Honolulu, Hawaii 96809

DEPT OF LAND &  
NATURAL RESOURCES

09 APR 13 AIO:28

RECEIVED  
STATE PARKS DIV

Re: State of Hawaii Department of Land and Natural Resources General Lease No. SP-0154 between State of Hawaii and A.J. & Elizabeth Toulon, Cecelia Williams and Peter Baldwin covering Lot 52 Waimea (Kona), Kauai, Hawai'i ("General Lease No. SP-0154")

Tax Map Key No. (4) 1-4-003:003.

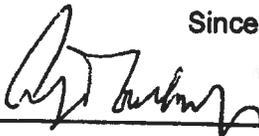
Dear Lessor:

1. We, A.J. (also known Alfred J.) & Elizabeth Toulon, together with Cecelia Williams and Peter Baldwin, are the lessees of General Lease No. SP-0154.
2. We, A.J. & Elizabeth Toulon, desire to assign our interest in General Lease No. SP-0154 to Hale Poha LLC. The sole member (owner) of Hale Poha LLC is Pueo Kai LLC. Our revocable living trusts are the members (owners) of Pueo Kai LLC.
3. We propose to assign General Lease No. SP-0154 to Hale Poha LLC as a part of our estate planning.
4. No money or consideration of any kind will be paid for the assignment of our interests in General Lease No. SP-0154 to Hale Poha LLC.

Enclosed with this letter is the proposed Assignment of Lease and Consent to Assignment of Lease.

Please let us know if you have any questions. Thank you.

Sincerely,

  
\_\_\_\_\_  
A.J. Toulon

  
Elizabeth Toulon

enclosures

417355.1

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Return by Mail [ ] Pickup [ ]

Rinesmith & Sekiguchi LLLC  
737 Bishop Street, Suite 2775  
Honolulu, Hawaii 96813  
Attention: Cathy Lee Sekiguchi, Esq.

Total Pages: 5

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Tax Map Key Number: (4) 1-4-003:003

(Lot 52)

### **ASSIGNMENT OF LEASE**

THIS ASSIGNMENT OF LEASE is dated \_\_\_\_\_, 2009, by and between **A.J. Toulon (also known as Alfred J. Toulon) and Elizabeth Toulon**, husband and wife, of Koloa, Hawaii, hereinafter called the "Assignor", and **Hale Poha LLC**, a Hawaii limited liability company, whose address is P.O. Box 666, Koloa, Hawaii 96756, hereinafter called the "Assignee".

### **WITNESSETH:**

Subject to the condition that the Lessor of the lease identified below, consents to this assignment, the Assignor does remise, release and quitclaim unto the Assignee, all of Assignor's right, title and interest, in and to said lease, upon the terms and conditions set forth herein:

State of Hawaii Department of Land and Natural Resources  
General Lease No. SP-0154 made January 6, 2009, by and between the State of Hawaii as the "Lessor", by its Board of Land and Natural Resources, and A.J. & Elizabeth Toulon, Cecelia Williams and Peter Baldwin, as the "Lessee".

AND all of the estate, right, title and interest of the Assignor in and to the land thereby

demised, and all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or used, occupied and enjoyed in connection with said lease and the land thereby demised.

TO HAVE AND TO HOLD the same unto the Assignee, for and during the remainder of the term of said lease.

SUBJECT HOWEVER, to the payment of the rents reserved by said lease and subject also to the observance and performance by the Assignee of all of the covenants and conditions contained in said lease which are or ought to be performed by the Lessee therein named.

IN CONSIDERATION of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with the Lessor, that the Assignee will, effective as of and from the date shown above and during the residue of the term of said lease, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said lease, and will also faithfully observe and perform all of the covenants and conditions contained in said lease which from and after the date hereof are or ought to be observed and performed by the lessee therein named, and will at all times hereafter indemnify and save harmless the Assignor and the Lessor from and against the nonpayment of said rents and the nonobservance or nonperformance of said covenants and conditions and each of them.

The rights and obligations of the Assignor and the Assignee shall be binding upon and inure to the benefit of their respective heirs, devisees, personal representatives, successors, and permitted assigns. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein. The term "lease" herein shall mean and include the lease described herein and any amendments thereof.

THE PARTIES HERETO AGREE that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.



STATE OF HAWAII  
COUNTY OF KAUAI

)  
) SS.  
)

On \_\_\_\_\_, 2009, before me, personally appeared **A.J. Toulon**, also known as Alfred J. Toulon, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the *Assignment of Lease*, consisting of 5 pages, dated \_\_\_\_\_, 2009, as the free act and deed of such person, and if applicable in the capacity shown having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_, Notary Public  
Fifth Circuit, State of Hawaii  
My commission expires: \_\_\_\_\_

STATE OF HAWAII  
COUNTY OF KAUAI

)  
) SS.  
)

On \_\_\_\_\_, 2009, before me, personally appeared **Elizabeth Toulon**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the *Assignment of Lease*, consisting of 5 pages, dated \_\_\_\_\_, 2009, as the free act and deed of such person, and if applicable in the capacity shown having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_, Notary Public  
Fifth Circuit, State of Hawaii  
My commission expires: \_\_\_\_\_

STATE OF HAWAII  
COUNTY OF KAUAI

)  
) SS.  
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On \_\_\_\_\_, 2009, before me, personally appeared **Elizabeth K. Toulon**, Manager of Hale Poha LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the *Assignment of Lease*, consisting of 5 pages, dated \_\_\_\_\_, 2009, as the free act and deed of such person, and if applicable in the capacity shown having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Fifth Circuit, State of Hawaii  
My commission expires: \_\_\_\_\_

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Return by Mail [ ] Pickup [ ]

Rinesmith & Sekiguchi LLLC  
737 Bishop Street, Suite 2775  
Honolulu, Hawaii 96813  
Attention: Cathy Lee Sekiguchi, Esq.

Total Pages: 3

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Tax Map Key Number: (4) 1-4-003:003

(Lot 52)

**CONSENT TO ASSIGNMENT OF LEASE**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter called the "Lessors," Lessors under that certain General Lease No. SP-0154, dated January 6, 2009, recorded at the Bureau of Conveyances as Document No. 90-070274, hereinafter called the "Lease," do hereby consent to that certain Assignment of Lease dated \_\_\_\_\_, 2009, made by and between A. J. Toulon, also known as Alfred J. Toulon, and Elizabeth Toulon, husband and wife, as Assignor, and Hale Poha LLC, a Hawaii limited liability company, as Assignee, recorded in said Bureau as Document No. \_\_\_\_\_, upon the express condition that this consent shall not be deemed or construed to be a waiver of any term, covenant, condition or provision contained in the Lease nor a consent to any other assignment thereof, nor shall it be deemed or construed to authorize any other or further assignment or sublease or

modification of the Lease, that all rights of the Lessors under the Lease are hereby reserved and that said Assignment of Lease shall be subject to all the provisions of the Lease.

IN WITNESS WHEREOF, the Lessors have executed these presents this \_\_\_\_ day of \_\_\_\_\_, 2009.

STATE OF HAWAII

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson  
Board of Land and Natural Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
Dated: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2009, before me, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the *Consent to Assignment of Lease*, consisting of 3 pages, dated \_\_\_\_\_, 2009, as the free act and deed of such person, and if applicable in the capacity shown having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, State of Hawaii  
My commission expires: \_\_\_\_\_