

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

April 12, 2013

Ref. No.: S5304/S5305

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

O'ahu

Consent to assignment of General Lease No. S-5304 (Lot No. 27 C, Kahana, District of Koolauloa, City and County of Honolulu, State of Hawai'i) to Beatrice Soga and General Lease No. S-5305 (Lot No. 27 B, Kahana, District of Koolauloa, City and County of Honolulu, State of Hawai'i) to Carol A. Soga.

APPLICANT:

Division of State Parks and Department of Attorney General

LEGAL REFERENCE:

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

LOCATION:

1. Lot No. 27 C, Kahana, District of Koolauloa, City and County of Honolulu, State of Hawai'i as shown on Exhibit 1 attached hereto.
2. Lot No. 27 B, Kahana, District of Koolauloa, City and County of Honolulu, State of Hawai'i as shown on Exhibit 2 attached hereto

Both properties are located within Kahana Valley State Park.

AREA:

1. 12,249 square feet, more or less.
2. 13,591 square feet, more or less.

TRUST LAND STATUS:

Section 5(a) lands of the Hawai'i Admission Act, i.e. non-ceded land.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ___ NO x

ITEM E-1

CHARACTER OF USE:

Residential purposes.

TERM OF LEASES:

65-years, commencing on December 1, 1993, and expiring on November 30, 2058.

ANNUAL RENTAL:

None. In lieu of monetary rent, lessees to contribute in-kind services to the Department by participating in its interpretive programs at the Park.

CONSIDERATION:

N/A

RECOMMENDED PREMIUM:

Not applicable.

DCCA VERIFICATION:

Not applicable.

ENVIRONMENTAL REVIEW

This action before the Board is merely a request to approve the transfer of interests in two existing general residential leases. State Parks believes the request will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

Pursuant to Act 5 (1987), as amended, the Legislature authorized the Department of Land and Natural Resources to negotiate and enter into long-term leases to persons residing in Kahana Valley. The department entered into 31 such leases. 28 remain in effect. Paragraph 16 of each lease requires the lessee to designate a successor to the lease upon death of the lessee.

The Department entered into General Lease No. S-5304 with Vernon Tokiharu Soga. As amended the lease covers Lot 27 C at Kahana. Exhibit 1. Mr. Soga designated his wife Beatrice Soga as his successor.

The Department entered into General Lease No. S-5305 with Vernon Nana Soga. As amended the lease covers Lot 27 B at Kahana. Exhibit 2. Mr. Soga designated his wife Carol A. Soga as his successor.

Both Mr. Sogas passed away. Their designated successors asked the department to approve assignment to them. The department declined on the advice of the Department of Attorney General which believes that – despite the provisions of the leases – assignment must be accomplished pursuant to state probate law.

The Sogas sued the State. The court ruled that Haw. Rev. Stat. § 171-36(a)(5) authorizes the Board to approve assignment to the Sogas pursuant to the terms of the lease. The Department of Attorney General respectfully disagrees with this ruling and believes that following it may cause the Sogas difficulty with - for example - mortgaging or assigning the property in the future should they wish to do so. However, the Department does not intend to appeal the decision and does not object to the Board approving the assignment as ordered by the court.

Both Beatrice Soga and Carol A. Soga are qualified assignees for a Kahana Valley lease. Act 5 itself does not impose any restrictions on assignees. The leases provide that preference as to assignment shall be given to family members who reside in the Valley. Staff understands that Beatrice and Carol A. Soga are qualified to contribute in-kind services as required by the leases.

Beatrice Soga and Carol A. Soga have 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.

Staff notes that both leases appear to be in default as to contribution of in-kind services as required by the leases. Staff proposes to discuss this issue with the assignees who do not necessarily agree as to the default. Nothing in this submittal waives rights of the Department, the State, or the assignees as to the alleged default.

No governmental agency or interest groups were solicited for comments as this is not a new disposition or change in use.

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RECOMMENDATION:

1. That the Board approve assignment of General Lease No. S-5304 to Beatrice Soga.
2. That the Board approve assignment of General Lease No. S-5305 to Carol A. Soga.
3. That the Board authorize the Chair to execute appropriate documentation subject to approval of the Department of Attorney General.

Respectfully Submitted,



Daniel S. Quinn
Administrator
Division of State Parks

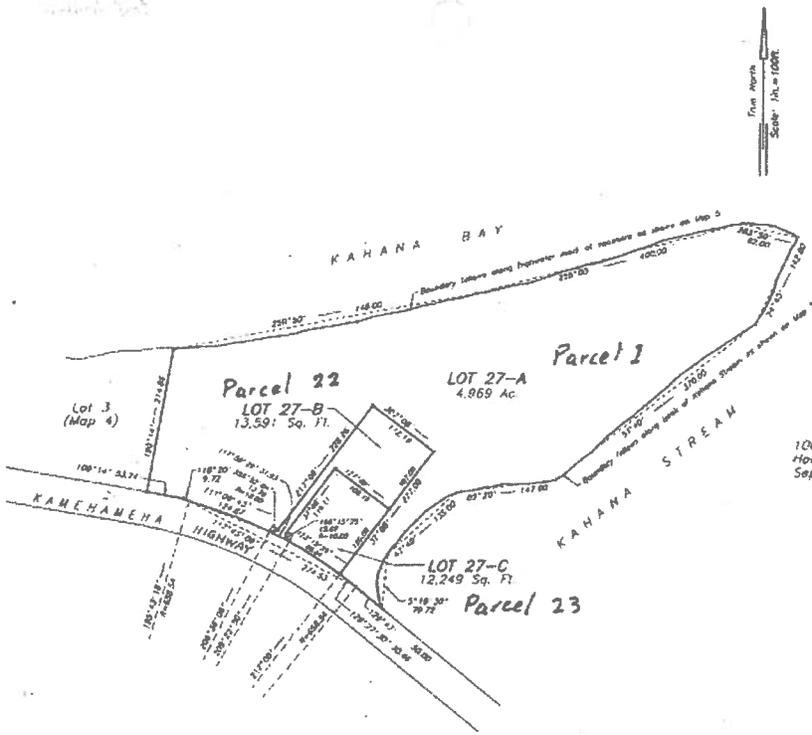
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT 1 - Lot 27C

MAP 5



LAND COURT
STATE OF HAWAII

LAND COURT APPLICATION 285

SUBDIVISION OF LOT 27
AS SHOWN ON MAP 5
INTO LOTS 27-A, 27-B AND 27-C

KAHANA, KOOLAULOA, OAHU, HAWAII



M & E Pacific, Inc.

1001 Bishop Street
Honolulu, Hawaii
September 11, 1995

Laurence M. Harawa
Licensed Land Surveyor
Certificate No. 4722
Registered Land Court Surveyor
Certificate No. 191

Owner: State of Hawaii

Transfer Certificate of Title: 174,019

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED OCTOBER 31, 1995
BY ORDER OF THE COURT

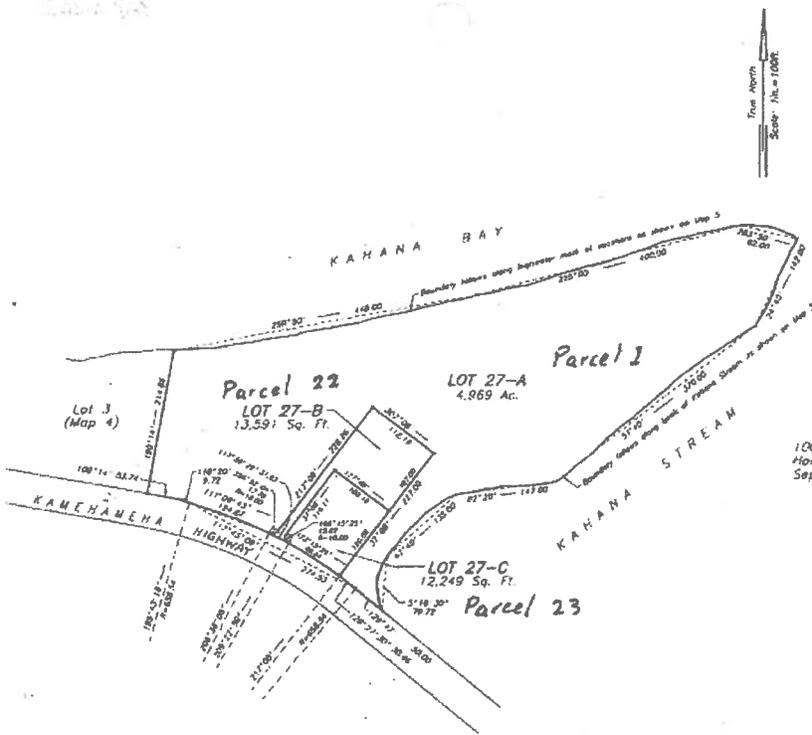
Michael Harawa
ACTING REGISTRAR OF THE LAND COURT

EXHIBIT "B" - 1

Filed October 11, 1995
Laurence M. Harawa
P9AM 282 99A 15-21-95

Exhibit 2 - Lot 27B

MAP 5



LAND COURT
STATE OF HAWAII

LAND COURT APPLICATION 285

SUBDIVISION OF LOT 27
AS SHOWN ON MAP 5
INTO LOTS 27-A, 27-B AND 27-C

KAHANA, KOOLAULOA, OAHU, HAWAII



U & E Pacific, Inc.

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Honolulu, Hawaii
September 11, 1995

Lawrence M. Maruta
Licensed Land Surveyor
Certificate No. 4722
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William H. Hara
ACTING REGISTRAR OF THE LAND COURT

EXHIBIT "B" - 1

Filed October 11, 1995
William Hara
P9AM 285 99A