

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

April 27, 2012

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

HL No. 16A

OAHU

Amend Prior Board Action of July 14, 2006, Agenda Item D-10, by Replacing One of the Assignees, Pok Ye Kamalolo, with Michael S. Padeken, Jr.; Consent to Assignment of Homestead Lease No. 16A (HL No. 16A), Walter Kimokeo Kamalolo, Sole Heir to the Estate of Annie Aukai Kamalolo, Assignor, to Walter Kimokeo Kamalolo and Pok Ye Kamalolo, Assignees, Hauula, Koolauloa, Oahu, TMK: (1) 5-4-01:26, and 29, and (1) 5-4-07:26

BACKGROUND:

At its July 14, 2006, meeting under agenda item D-10 (attached), the Board consented to the above referenced assignment.

Walter Kimokeo Kamalolo, by way of Probate No. 38101, dated October 15, 1984, was declared the sole heir to the estate of his mother, Annie Aukai Kamalolo, who died on December 19, 1971. Her estate, among other things, included a 100% interest in HL No. 16A.

When John K. Kamalolo, the original lessee under HL No. 16A, died on March 14, 1940, his interest in HL No. 16A then vested equally in his living children, which included Annie Aukai Kamalolo, pursuant to Section 1630, Revised Laws of Hawaii, 1935.

Annie Aukai Kamalolo acquired all of the interest in HL No. 16A by way of Section 4581, Revised Laws of Hawaii, 1945. She offered, with the assistance of the Office of the Commissioner of Pubic Lands, to purchase the interests of her brother and sisters at a nominal consideration. On April 30, 1940, the Office of the Commissioner of Public Lands notified the living children of John Kamalolo of their interests in HL No. 16A due to their father's death, and also, if they were interested in surrendering their respective interests to Annie Aukai Kamalolo, their sister.

On May 8, 1945, a written affirmative reply was received from the brother of Annie Aukai Kamalolo the last to respond to the Commissioner's April 30, 1940, notification letter. The sisters of Annie Aukai Kamalolo had previously agreed, in writing, to transfer to her their interests' in HL No. 16A.

On June 5, 1947, the Office of the Commissioner of Public Lands transmitted to Annie Aukai Kamalolo a quitclaim deed, dated May 24, 1947,

conveying to her the interests of her living siblings in HL No. 16A.

Subsequent to the Board's July 14, 2006, approval of the assignment from Walter Kimokeo Kamalolo of his interest in HL No. 16A to himself and his wife, Pok Ye Kamalolo, a request was sent by the Department to the Department of the Attorney General (DAG) for its assistance in preparing the appropriate consent document.

Initially, DAG disapproved the Department's request. It indicated that under present law the Board approved transfer of interest to a spouse is allowed. The problem, however, with this transfer is that the 1947 quitclaim deed and 1984 probate are apparently void under prior law casting doubt on whether Walter Kimokeo Kamalolo is the sole holder of the entire interest in HL No. 16A.

Recently, the Department provided DAG with information not provided earlier showing that the Department, between 1940 and 1947, was following a process pursuant to Section 4581, Revised Laws of Hawaii 1945, relating to "Joint tenants' interests, option to purchase or sell; procedure."

When two or more persons succeed together to the interest of a lessee any of those persons may file an offer in the office of the subagent to purchase the interests of the others in the Homestead Lease.

It now appears likely that DAG will review the succession of the entire interest in HL No, 16A to Annie Aukai Kamalolo based on Section 4581, Revised Laws of Hawaii 1945 and conclude the quitclaim deed, dated May 24, 1947, conveying to Annie Aukai Kamalolo the interests' of her then living siblings and the 1984 probate of Annie Aukai Kamalolo's estate are valid. Such a conclusion by DAG would allow the assignments of HL No. 16A, requested by Walter Kimokeo Kamalolo, to be completed.

REMARKS:

By their letter, dated November 2, 2011, Walter Kimokeo Kamalolo and Pok Ye Kamalolo, husband and wife, requested that the Board's July 14, 2006, approval of the assignment of HL No. 16A from Walter Kimokeo Kamalolo to himself and his wife be amended. They would like to remove Pok Ye Kamalolo, as an assignee under HL No. 16A and replace her with his cousin, Michael S. Padeken, Jr., who is a direct descendant of the original lessee, John K. Kamalolo. This amendment is being requested to ensure the continued stewardship of the land under the operation of HL No. 16A by the family of the original lessee.

RECOMMENDATION: That the Board amend its prior action of July 14, 2006, under agenda item D-10 as follows:

1. Amend Recommendation B, by deleting "Pok Ye Kamalolo, tenants by entirety" and replace with "Michael S. Padeken, Jr., joint tenants."

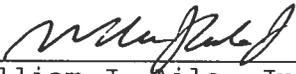
2. Except as amended herein, all other terms and conditions listed in agenda item D-10 of the Board's July 14, 2006, meeting to remain the same.

Respectfully Submitted,



Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



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

July 14, 2006

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

OAHU

Consent to Assign Homestead Lease No. 16A; Walter Kimokeo Kamalolo, Heir to the Estate of Annie Aukai Kamalolo, Assignor, to Walter Kimokeo Kamalolo and Pok Ye Kamalolo, Assignee; Hauula, Koolauloa, Oahu, Tax Map Key: (1) 5-4-1:26, 29 & (1) 5-4-7:26.

APPLICANT:

Walter Kimokeo Kamalolo, heir to the estate of Annie Aukai Kamalolo, as Assignor, to Walter Kimokeo Kamalolo and Pok Ye Kamalolo, husband and wife, tenants by the entirety, whose business and mailing address is 96717, as Assignee.

LEGAL REFERENCE:

Section 171-99, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hauula situated at Hauula, Koolauloa, Oahu, identified by tax map key: (1) 5-4-1:26, 29 & (1) 5-4-7:26, as shown on the attached map labeled Exhibit A1 & A2.

AREA:

| | |
|--------------|----------------------------|
| (1) 5-4-1:26 | 0.750 acres |
| (1) 5-4-1:29 | 1.520 acres |
| (1) 5-4-7:26 | <u>0.200 acres</u> |
| Total | 2.470 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

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

July 14, 2006

CHARACTER OF USE:

Residential purposes.

TERM OF LEASE:

999 years, commencing on August 21, 1907 and expiring on August 20, 2906.

ANNUAL RENTAL:

Not applicable.

CONSIDERATION:

Not applicable.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

Not applicable.

REMARKS:

Homestead Lease (HL) No. 16A was issued to John Kamalolo commencing from August 21, 1907 for a term of 999 years. At the time of John Kamalolo's death in 1940, particulars of his family are tabulated below:

| Name | Relationship | Date of Death (if applicable) |
|------------------------|--------------|----------------------------------|
| Elizabeth Kamauoha | Wife | 11/24/27 |
| Lupo Kamalolo | Daughter | 8/23/45 |
| Emily Kuene | Daughter | 3/13/32 |
| Julia Kepaa | Daughter | 12/8/28 |
| John Inui Kamalolo Jr. | Son | |
| Elizabeth Sennett | Daughter | |
| Annie Aukai Kamalolo | Daughter | |
| Emily Kaili | Daughter | |

Following the death of John Kamalolo in 1940, John Inui Kamalolo Jr., Elizabeth Sennett, and Emily K. Opulauoho (former Emily Kaili) as the surviving heirs-at-law under Section 4580, Revised Laws of 1945, conveyed their interest in HL 16A by a quitclaim deed dated May 24, 1947 to Annie Aukai Kamalolo. This deed was recorded in the Bureau of Conveyances as Liber 2117/131. In June 1947, both the Acting Governor and Commissioner of Public Lands gave consent to the quitclaim deed.

Annie Aukai Kamalolo died on December 19, 1971 and was survived

by her only son, Walter Kimoqueo Kamalolo. By Probate No. 38101 dated October 15, 1984, Walter Kimoqueo Kamalolo became the sole heir of the estate of Annie Aukai Kamalolo, which included the subject HL 16A. A copy of the probate is attached as Exhibit B.

In 1985, Walter Kimoqueo Kamalolo requested the subject HL be transferred to his name. Staff is not aware of any reason why the 1985 request was never processed.

Recently, Walter Kimoqueo Kamalolo submitted an application transferring the HL to him and his wife as tenants by the entirety. Section 171-99(e) of Hawaii Revised Statutes reads:

"(e) Assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family.

For the purposes of this section, "family" means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, nephews, a parent's siblings, children of a parent's siblings, and grandchildren of a parent's siblings, of the occupier or lessee."

Since Walter Kimoqueo Kamalolo is the sole heir to the estate of Annie Aukai Kamalolo, who acquired the subject HL pursuant to the quitclaim deed in 1947, and the assignee is the spouse of the assignor, staff has no objection to the request.

Due to the fact that there was never an assignment transferring the subject HL from Annie Aukai Kamalolo to Walter Kimoqueo Kamalolo, staff recommends the Board consent to the assignment of HL to Walter Kimoqueo Kamalolo, pursuant to Probate No. 38101, and subsequent assignment from Walter Kimoqueo Kamalolo to Walter Kimoqueo Kamalolo and Pok Ye Kamalolo.

In addition, the applicants are interested in purchasing the fee title of the subject State land. Staff will bring this subject to the Board at a later date.

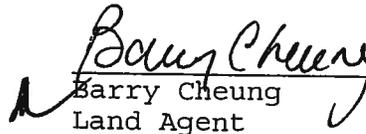
Staff did not solicit comments from other agencies. There are no other pertinent issues and concerns.

Assignees 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.

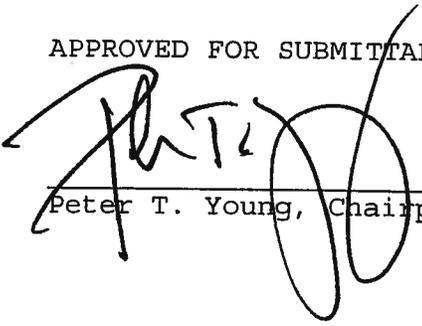
RECOMMENDATION:

- A. That the Board consent to the assignment of Homestead Lease No. 16A from the Estate of Annie Aukai Kamalolo, as Assignor, to Walter Kimokeo Kamalolo, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. That the Board consent to the assignment of Homestead Lease No. 16A from Walter Kimokeo Kamalolo, as Assignor, to Walter Kimokeo Kamalolo and Pok Ye Kamalolo, tenants by the entirety, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
Land Agent

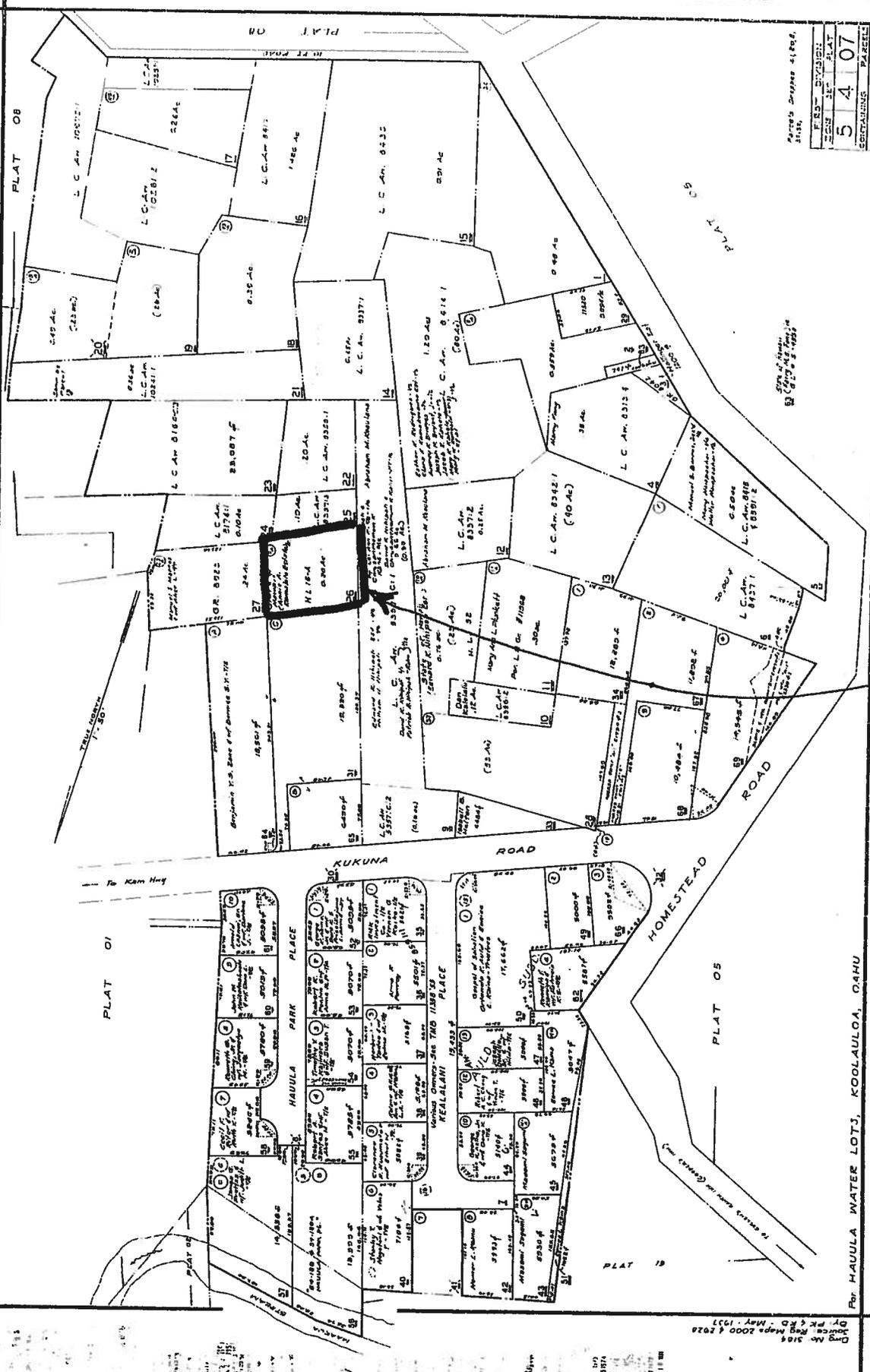
APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

PLAT 08

PLAT 08

| | |
|----------|----------|
| FILE NO. | 5407 |
| DIVISION | PLAT |
| SCALE | 1" = 40' |
| COUNTAIN | PARCELS |
| SCALE | 1" = 40' |



Subject Location

FOR HAUULA WATER LOTS, KOOLAULOA, OAHU

Dwg No. 3104
By P.K. & R.D. - May - 1937
Revised by Maps 2000 & 2023

EXHIBIT "A2"

16
C. 2.50



R-1327 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 09, 2004 11:00 AM
Doc No(s) 2004-184843



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 22

LAND COURT

REGULAR SYSTEM

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail or Pick-up Phone#:

FILL IN NAME AND ADDRESS BELOW:

WALTER KAMALDO
HAUULA, HI 96717

DOCUMENT CONTAINS _____ PAGES

EXHIBIT "B"

1st CIRCUIT COURT
STATE OF HAWAII
FILED

1984 OCT 15 PM 12:16

EDWIN Y. SASAKI #549
705 City Bank Building
810 Richards Street
Honolulu, Hawaii 96813
Tel. No. 537-5955

B. CHO
CLERK

Attorney for Personal Representative

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

| | | |
|-----------------------|---|---------------------------|
| THE ESTATE |) | P. NO. 38101 |
| |) | |
| OF |) | ORDER APPROVING FINAL |
| |) | ACCOUNTS AND DISTRIBUTING |
| ANNIE AUKAI KAMALOLO, |) | AND SETTLING ESTATE |
| |) | |
| Deceased. |) | |

ORDER APPROVING FINAL ACCOUNTS AND
DISTRIBUTING AND SETTLING ESTATE

On September 21, 1984, the "Petition for Approval of Final Accounts and Distribution and Complete Settlement of Estate" filed August 9, 1984, was heard. The Court finds:

1. Notice of the time and place of hearing the petition was given to all interested persons as provided by law.
2. An inventory of the estate was filed on March 9, 1976.

I do hereby certify that this is a full, true and correct copy of the original on file in this office.

[Signature]
Clerk, Circuit Court, First Circuit
State of Hawaii

*land as of
1987-04??*

3. Notice to creditors was given in the manner provided by law.

4. All debts, expenses and Hawaii inheritance taxes have been paid.

5. The heirs and devisees of the decedent are:

WALTER KIMOYFO KAMALOLO.

Hauula, Hawaii 96717

Son and sole heir

6. The estate is in a condition to be closed.

7. The final accounts are correct.

8. Personal Representative waives his fees and attorney's fees of \$2,431.94 is reasonable.

9. The property remaining in the estate should be distributed in the following manner:

WALTER KIMOKEO KAMALOLO

Hauula, Hawaii 96717

Son and sole heir

IT IS ORDERED THAT:

1. The final accounts of the Personal Representative are approved.

2. The Personal Representative shall distribute the property of the estate to person entitled, as set forth above.

3. The hereinafter described real property shall vest in WALTER KIMOKEO KAMALOLO, unmarried, whose residence address is Hauula, Hawaii, and whose post office address is , Hauula, Hawaii 96717:

FIRST PARCEL:

Real property under Homestead Lease No. 16A situate at Kamehameha Highway, Hauula, District of Koolauloa, City and County of Honolulu, State of Hawaii, being LOT NUMBER TWENTY-FIVE (25) of the "HAUULA HOMESTEADS" containing an area of .75 acre or thereabouts; Tax Map Key 5-4-1-26, together with improvements thereon.

54-116
Hauula

SECOND PARCEL:

Real property under Homestead Lease No. 16A situate off Kamehameha Highway, Hauula, District of Koolauloa, City and County of Honolulu, State of Hawaii, being LOT NUMBER TWENTY-FIVE (25) of the "HAUULA HOMESTEADS", containing an area of 1.52 acres or thereabouts; Tax Map key 5-4-1-29, together with improvements thereon.

Hauula

THIRD PARCEL:

Real property under Homestead Lease No. 16A situate off Kukuna Road, Hauula, District of Koolauloa, City and County of Honolulu, State of Hawaii, being LOT NUMBER NINE A (9A) of the "HAUULA HOMESTEADS", containing an area of .20 acres or thereabouts; Tax Map Key 5-4-7-26, together with improvements thereon.

Hauula

FOURTH PARCEL:

Real property situate at Hauula, Hawaii, area 18,991 square feet, Tax Map Key 5-4-5-28, together with a 1/6 common interest in roadway designated as Tax Map Key 5-4-5-4.

54-224

587-0414

3. The Personal Representative shall pay attorney's fees of \$2,431.94.

4. Upon the filing of receipts showing distribution as provided herein, the appointment of Personal Representative shall be terminated and the Personal Representative shall be discharged from any further claim or demand of any interested person.

DATED at Honolulu, Hawaii, OCT 15 1984

/s/ PHILIP T. CHUN (SEAL)
JUDGE OF THE ABOVE ENTITLED COURT

CONCLUSION AS TO VALUE:

In view of the data and analysis presented, it is the opinion of this appraiser that the fair market value of the subject property as of December 19, 1971 is:

TWENTY-ONE THOUSAND AND NO/100 DOLLARS

(\$21,000.00)



Owen Ebisuya
Appraiser