

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i 96813

October 22, 2021

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

KAUA'I

CONSENT TO ASSIGN GENERAL LEASE NO. SP0119, DAVID KOCH, ASSIGNOR, TO, ASSIGNEE, M & M FITZGERALD LIVING TRUST;

AND

AMENDMENT OF GENERAL LEASE NO. SP0119, DAVID KOCH, LESSEE, WAIMEA CANYON STATE PARK, LOT 45, KOKE'E CAMP SITE LOTS, WAIMEA (KONA), KAUA'I, HAWAII, TAX MAP KEY: (4) 1-4-004:009. THE PURPOSE OF THE AMENDMENT IS TO CORRECT THE TERMINATION DATE TO READ DECEMBER 31, 2028

APPLICANT:

David Koch, as Assignor, to Michelle P. Fitzgerald, as Trustee of M & M Fitzgerald Living Trust, Assignee

LEGAL REFERENCE:

Section 171-36(a)(5), Hawai'i Revised Statutes, as amended.

LOCATION:

Lot 45, Koke'e Camp Site Lots, Waimea (Kona), Kaua'i, Tax Map Key: (4)1-4-004:009, as shown on the attached legal description and survey map labeled **EXHIBIT A**.

AREA:

1.32 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admission Act
DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: NO

CHARACTER OF USE:

Recreation – residence.

TERM OF LEASE:

Twenty (20) years, commencing January 1, 2009, and expiring on December 31, 2028.

ANNUAL RENTAL:

Six thousand eight hundred dollars (\$6,800.00) annually due on the first of every January.

PERFORMANCE BOND:

Equal to the annual rental amount of six thousand eight hundred dollars (\$6,800.00).

CONSIDERATION:

None.

APPLICANT REQUIREMENTS:

Applicant/Assignee shall prepare and submit fully executed assignment of lease and meet other requirements as described herein.

BACKGROUND:

David Koch entered into a lease under General Lease No. SP0119 effective January 6, 2009, as a result of direct negotiations with the Department of Land and Natural Resources (DLNR) pursuant to Act 223 SLH 2008. Mr. Koch held the previous lease covering the property and a revocable permit immediately prior to the new lease being issued.

By way of a letter dated August 9, 2021, David Koch, as Assignor, had informed State Parks that he desires to assign and consent, the General Lease No. SP0119 to Michelle P. Fitzgerald, Trustee of the M & M Fitzgerald Living Trust, dated January 7, 2009, as amended, upon the Board's approval. See affidavit attached as **EXHIBIT B**.

Mr. Koch and his 'ohana has a long history connection with Koke'e camp site Lot 45. Their relationship with the Fitzgerald family began around 2013. Both families frequently interacted through tennis activities as their children played together on O'ahu. Through the Fitzgerald's desire to spend more time in Koke'e hiking and swimming, they inquired about sharing in the use of the Koch's cabin.

As the relationship grew throughout the years and visiting Koke'e, they have enjoyed many weekends at the cabin celebrating birthdays, Easter, anniversaries, as well as workdays: splitting firewood, weeding, planting, and removing evasive species. Here the Fitzgerald 'ohana shares a brief comment:

“Sharing the cabin with the Koch’s ‘ohana has been a blessing and a treasure for many years allowing our family to relax, unwind, unplug, and recharge from busy lives and create many wonderful memories. Our goal is to maintain the cabin with its rustic and historical characteristics. We plan to share the cabin and the blessings of the cabin and Koke'e has to offer with both family and friends. The Koch’s ‘ohana started this tradition, and we plan to follow their example of stewardship and responsibility for the cabin and land while our time here on earth allows.”

REMARKS:

Lessee is in compliance with the rent as well as the liability insurance required pursuant to the terms of the lease.

Staff notes that the term of the lease is for a period of 20 years commencing January 1, 2009. On the first page of the lease, however, the termination date is listed as December 31, 2029, in error. This would indicate a 21-year lease and is inconsistent with Act 223. Upon consultation with the Department of the Attorney General, a simple amendment can be made to the lease correcting the termination date to read December 31, 2028. Staff recommends this be completed simultaneously with the other documents necessary for the assignment.

The 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.

No comments have been solicited or received from any agency or the community. Staff has no objections to this request.

RECOMMENDATION:

That the Board Consent to the Assignment of General Lease No. SP0119, David Koch, as Assignor, to Assignee, Michelle P. Fitzgerald, as Trustee of M & M Fitzgerald Living Trust, subject to the terms above which are hereby incorporated by reference and further subject to the following:

- a. That the lease be amended to correct the termination date to read December 31, 2028.
- b. The standard terms and conditions of the most current consent and/or amendment to lease forms, as may be amended from time to time.

October 22, 2021

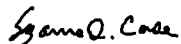
- c. Review and approval by the Department of the Attorney General; and,
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



CURT A. COTTRELL
Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

ATTACHMENTS:

- EXHIBIT A – Lot 45 Location
- EXHIBIT B – Affidavit, Letter of Request



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.P. No. KAUAI FILE
FOLDER 3

November 2, 1966

KOKEE CAMP SITE LOTS

LOT 45

Waimea (Kona), Kauai, Hawaii

Being a portion of Kokee Park
(Governor's Executive Order 1509)

Beginning at a pipe at the southerly corner of this lot, the southeast corner of Lot 43 of Kokee Camp Site Lots, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KOKEE" being 2133.21 feet North and 2140.73 feet East, as shown on H.S.S. Plat 3096, thence running by azimuths measured clockwise from True South:-

1. 148° 14' 258.28 feet along Lot 43 of Kokee Camp Site Lots to a pipe;
2. 233° 26' 75.67 feet along the remainder of Kokee Park (Governor's Executive Order 1509) to a pipe;
3. 262° 11' 351.13 feet along Lot 46 of Kokee Camp Site Lots to a pipe;
4. 41° 07' 414.66 feet along the remainder of Kokee Park (Governor's Executive Order 1509) to the point of beginning and containing an AREA OF 1.32 ACRES.

EXCEPTING AND RESERVING to the State of Hawaii, its successors and assigns, a roadway, over and across the above-described Lot 45 as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Akira Taga*
Akira Taga
Land Surveyor

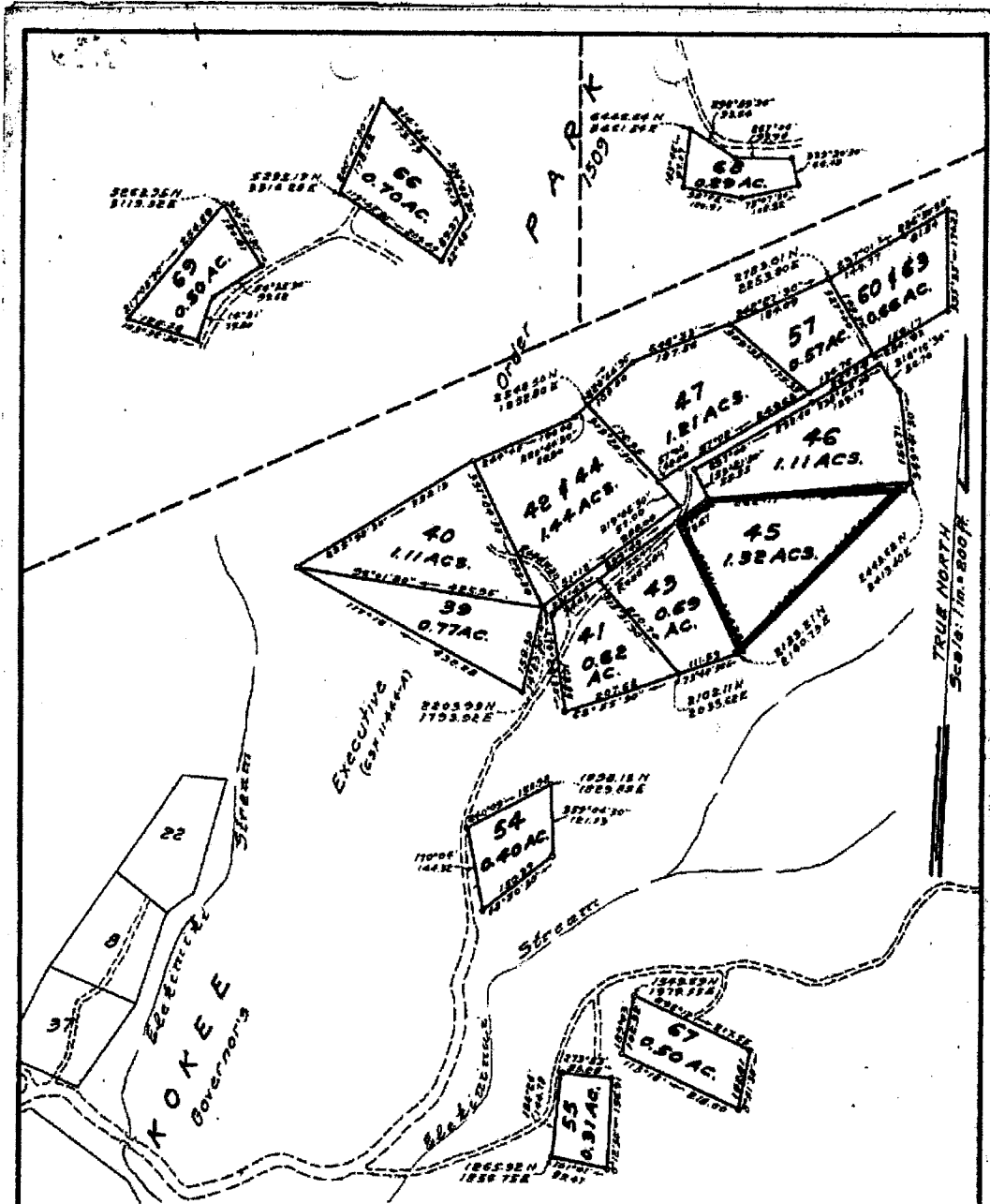
Compiled from maps by
Henry Sumida and Associates,
Inc. and Govt. Survey Records.

mm

BM Class 15 Area Coord J. Christa
0321 D.C.W 1.321 Acc Accepted 11/21/66

EXHIBIT "A"

EXHIBIT A



KOKEE CAMP SITE LOTS
LOTS 39, 40, 41, 42 & 44, 43, 45, 46, 47,
54, 55, 57, 60 & 63, 66, 67, 68 AND 69

Waimea, (Kona) Kauai, Hawaii

Scale: 1 inch = 200 feet

EXHIBIT "B"

JOB K-3686
 C. BK

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

TAX MAP 1-2-04
 KAUAI FILE

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

STATE OF HAWAII

A.T. Nov. 2, 1966

FOLDER 3

Sheet 9 of 79 sheets

AFFIDAVIT OF DAVID KOCH

STATE OF HAWAII)
CITY AND) SS:
COUNTY OF HONOLULU)

I, DAVID KOCH, Lessee of General Lease No. SP-0119 dated November 19, 2008, being first duly sworn upon oath, deposes and says:

1. I am the Lessee of General Lease No. SP-0119 dated November 19, 2008, which was made and entered into by and between David Koch, as Lessee, and the State of Hawaii, as Lessor, for the lease of those certain premises identified as Lot 45, Waimea (Kona), Kauai, Hawaii, Tax Map Key No. (4) 1-4-004:009, containing an area of 1.32 acres, more or less ("Lease");

2. Subject to approval by the State of Hawaii, by and through its Board of Land and Natural Resources, I desire to assign and consent to the Assignment of General Lease No. SP-0119 to Michelle P. Fitzgerald, Trustee of the M & M Fitzgerald Living Trust, dated January 7, 2009, as amended;

3. I have known Michelle P. Fitzgerald and her family for eight years. Kilauea residents, they are multi-generation owners of Hanalei Poi. All four of their wonderful children have grown working the farm and factory. They are respected and successful in the business. They have handled all aspects of our relationship with a giving nature and absolute trust. I believe them to be exactly the right people to treat with respect the leasehold land, the Class 5 historic dwelling, and all other lease holders in the area.

EXHIBIT B

4. I attest that no compensation was given for the foregoing Assignment and Michelle P. Fitzgerald, as said Trustee, has agreed to accept the terms of General Lease No. SP-0119.

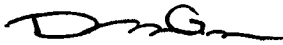
FURTHER AFFIANT SAYETH NAUGHT.

DATED: Honolulu, Hawaii, AUGUST 23, 2021.



DAVID KOCH

Subscribed and sworn to before me this 23rd day of August, 2021.



Notary: David Goo
Notary Public, First Judicial Circuit,
State of Hawaii, Commission No. 18-670
My Commission expires: 11-25-2022
Document Name: Affidavit of David Koch
Date of Document: Aug. 23rd, 2021
Document contains two (2) pages

