

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

February 12, 2016

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

Hawaii

Approve Mediated Settlement of Rent Reopening Dispute in General Lease No. S-4478, Boteilho Hawaii Enterprises, Inc., Lessee, located in Hamakua, Island of Hawaii, TMK No. (3) 4-3-010:002

APPLICANTS:

Boteilho Hawaii Enterprises, Inc., a Hawaii corporation, and Land Division, Department of Land and Natural Resources.

LEGAL REFERENCE:

Section 171-17, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of the Government Land of Kaohe-2, Hamakua Island of Hawaii, TMK No. (3) 4-3-010:002.

AREA:

The original land area of 7,932.36 acres is shown on the attached map labeled Exhibit A. Exclusion of 2,228.384 acres for Palila mitigation related to Saddle Road improvements is shown on the attached map labeled Exhibit A-1, which was prepared by appraiser Craig Leong for his appraisal report on this reopening dated February 28, 2014. A restriction on the use of 239 acres for stands of Bluegum Eucalyptus trees is shown in the attached letter from the department dated May 28, 1976, which is labeled Exhibit B.

The total useable area for the lessee is 5,465 acres (rounded).

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:

Pasture

TERM OF LEASE:

55 years

ANNUAL RENTAL:

The mediated rent subject to Board approval is as follows: Effective February 1, 2016 through February 29, 2024, the rent is \$53,000 (FIFTY-THREE THOUSAND DOLLARS) per year, payable in equal monthly installments. The immediately prior rent of \$24,300 per year shall continue to be effective through January 31, 2016.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

REMARKS:

General Lease S-4478, covering 7,932.36 acres, was issued for pasture purposes for thirty-five years from March 1, 1976 to February 28, 2011. By letter dated May 28, 1976, the lessee was informed that 239 acres of Bluegum Eucalyptus stands of trees would be restricted from the lease pursuant to the terms of the lease (Exhibit B). In 2002, Grant of Non-Exclusive Easement S-5665 was issued to the Department of Transportation for Palila mitigation relating to the Saddle Road improvements, which encumbered 2,228.384 acres of the leased property. By Amendment of General Lease No. S-4478 in 2003, lessee's right to pasture or graze in the easement area encumbering a portion of the leased property was withdrawn. The result of all of the above was a drop in useable acres under the lease from 7,932.36 acres to 5,465 acres (rounded). In 2004, Extension of General Lease No. S-4478 extended the lease for twenty years from March 1, 2011 up to and including February 28, 2031, and set the reopening dates of March 1, 2014 and March 1, 2024.

The current rent reopening period is March 1, 2014 through February 29, 2024. An independent appraisal report contracted for by the department concluded a fair market rental value of \$121,000 per year. The lessee did not accept this rental value and obtained

its own independent appraisal of fair market rental value, which was \$26,800 per year.

Disputes in rent reopenings for leases of public lands are governed by Hawaii Revised Statutes Section 171-17, as amended. Prior to July 1, 2014, rent disputes were generally arbitrated by a three-member arbitration panel. However, the Legislature amended HRS Section 171-17 effective as of July 1, 2014 to require (non-binding) mediation by a single mediator prior to (binding) arbitration.<sup>1</sup> Under this amended provision, the parties agreed to have Andrew Wilson, Esq., serve as the mediator.

Mediation between the parties was conducted on December 3, 2015 and January 8, 2016 in Hilo. Participants in the mediation were Edward Boteilho, Jr., president of Boteilho Hawaii Enterprises, Inc., Wayne Boteilho, and lessee's attorneys Roy Nakamoto, Esq., Alan Okamoto, Esq., and James Kunimura, Esq. Participants from the department were Russell Tsuji, Pamela Matsukawa, and Gordon Heit, with deputy attorney general Daniel Morris as the department's attorney.

At the start of the mediation process, the parties agreed that the mediation would be treated as confidential under Rule 408 of the Hawaii Rules of Evidence and The Uniform Mediation Act. In other words, the parties had agreed to confidentiality during mediation to allow for candor and flexibility and in the event mediation was not successful and arbitration proceedings had to be conducted. Therefore, the details of the mediation discussions are not set forth in this submittal. If any board member has any questions on the issues addressed during mediation, staff will ask the deputy attorney general to contact the board member directly.

Mediation involved issues relating to a formula that appraisers use for pasture leases, including the number of acres needed per animal unit per year, the weight gain per animal per year, price per pound, and percentage of gross revenues. After one and a half days of discussions and negotiations, the parties reached agreement and mediation was successful. Attached as Exhibit C is the Settlement of Lease Rental on GL 4478 that was drafted by hand and executed at the end of the mediation session. The mediated settlement was made subject to approval by the Board.

The mediated settlement provides that the agreed upon rent of \$53,000 per year would begin on February 1, 2016 and will be paid in equal monthly installments. The immediately prior rent (at \$24,300 per year) would be in effect until January 31, 2016.

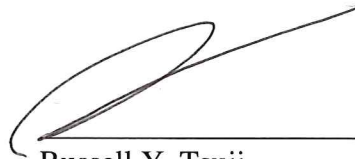
#### RECOMMENDATION:

That the Board approve the mediated settlement as set forth hereinabove and in Exhibit C.

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<sup>1</sup> Additionally, under the amended law, arbitrations are now submitted to a single arbitrator for determination, rather than to a three-member panel. The amending act is Act 168, Session Laws of Hawaii 2014.

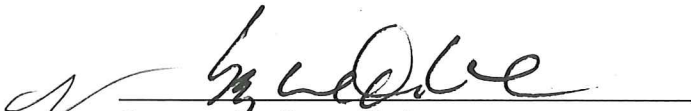
Respectfully Submitted,



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Russell Y. Tsuji  
Land Division Administrator

APPROVED FOR SUBMITTAL:

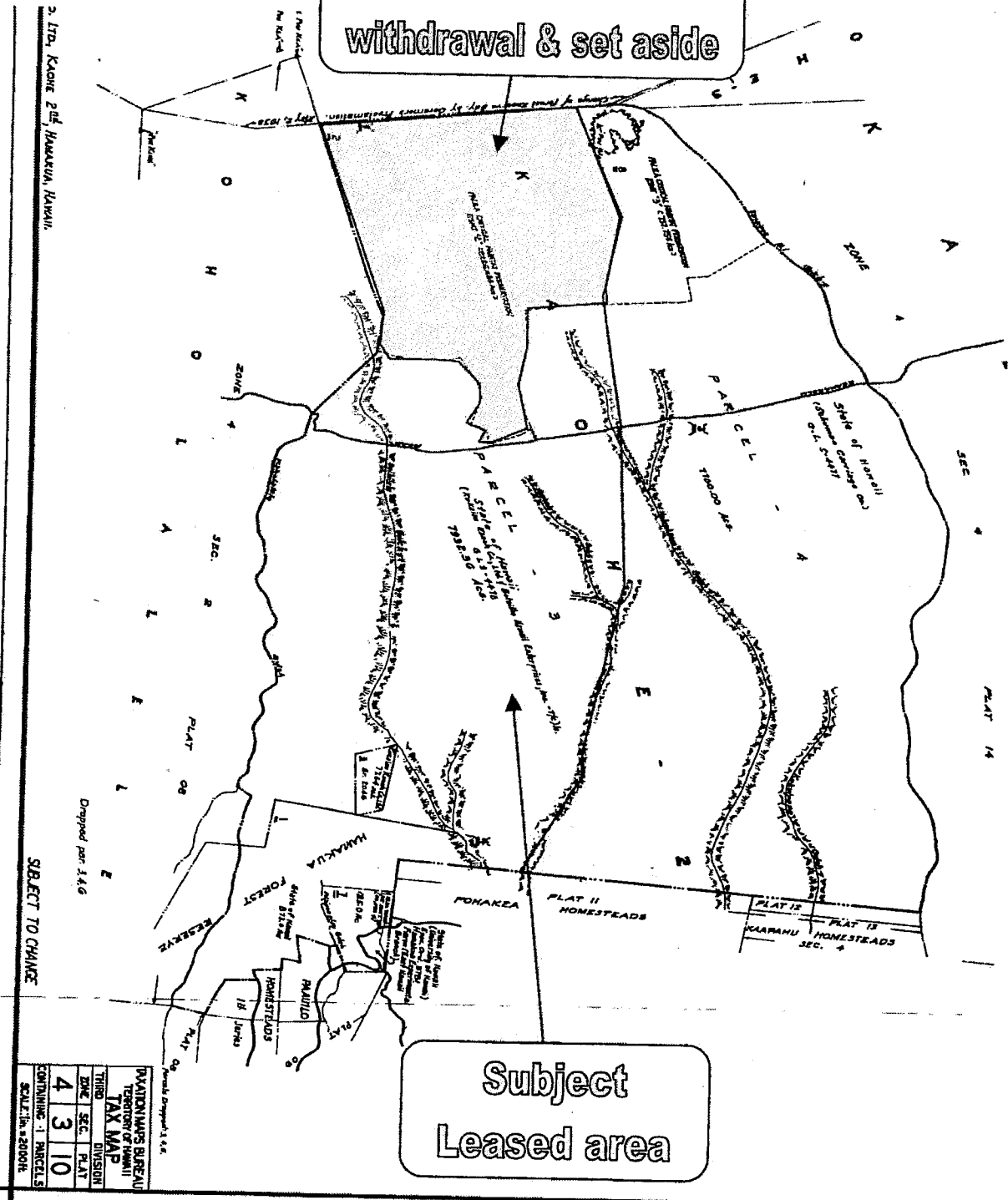


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Suzanne D. Case, Chairperson



Easement Area for withdrawal & set aside



Subject Leased area

EXHIBIT A-1

May 28, 1976

Mr. Edward Boteilho  
Boteilho Hawaii Enterprises, Inc.  
Honolulu, Hawaii 96727

Dear Mr. Boteilho:

Re: General Lease No. S-4478

Pursuant to paragraphs 5, page 3b, 29 and 32, page 9d, of the subject lease document, I hereby designate as timber areas the following:

1. The stands of Bluegum Eucalyptus encompassing two hundred thirty-nine (239) acres, more or less, with its approximate boundaries as shown shaded in green on the attached map.
2. The stands of koa (Acacia koa), the approximate boundaries for which to be delineated at a later date in cooperation with the Lessee.

Although the State (Lessor) has not as yet initiated development of a woodland management program, it is planned that the Bluegum areas be utilized strictly for timber production and the koa areas for both grazing and perpetuation of the koa stands.

It should be clarified and emphasized that the stands of Bluegum Eucalyptus, although included within the boundaries of your lease, were not intended for grazing use during the term of the lease. In essence, these areas should be regarded similarly with waste land such as lava land and gulches in terms of grazing use.

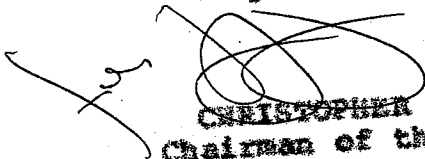
*Exhibit B*



As you know, these plantations of Bluegum Eucalyptus have existed on the land for a long time. Our records show that the required plantings were made by the lessee, Kukaiau Plantation Co., Ltd., under General Lease No. 623 between the years 1908 and 1928. And, all through the years, the lands on which the Bluegum Eucalyptus stood, although included in the lease, were never used for grazing purposes.

It is our hope that a woodland management program mutually beneficial to you and the State can be worked out. If you have any questions on this matter, please let us know.

Very truly yours,

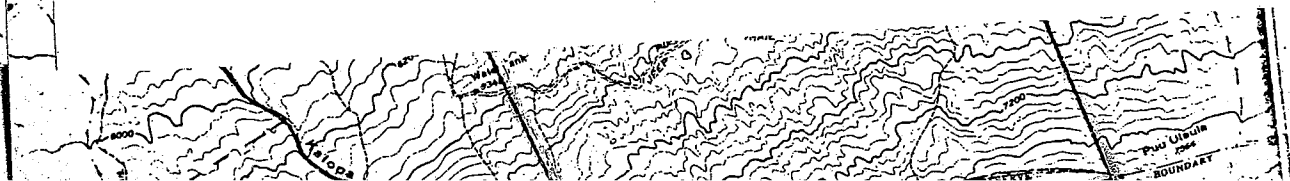
  
CHRISTOPHER COBB  
Chairman of the Board

Encl.

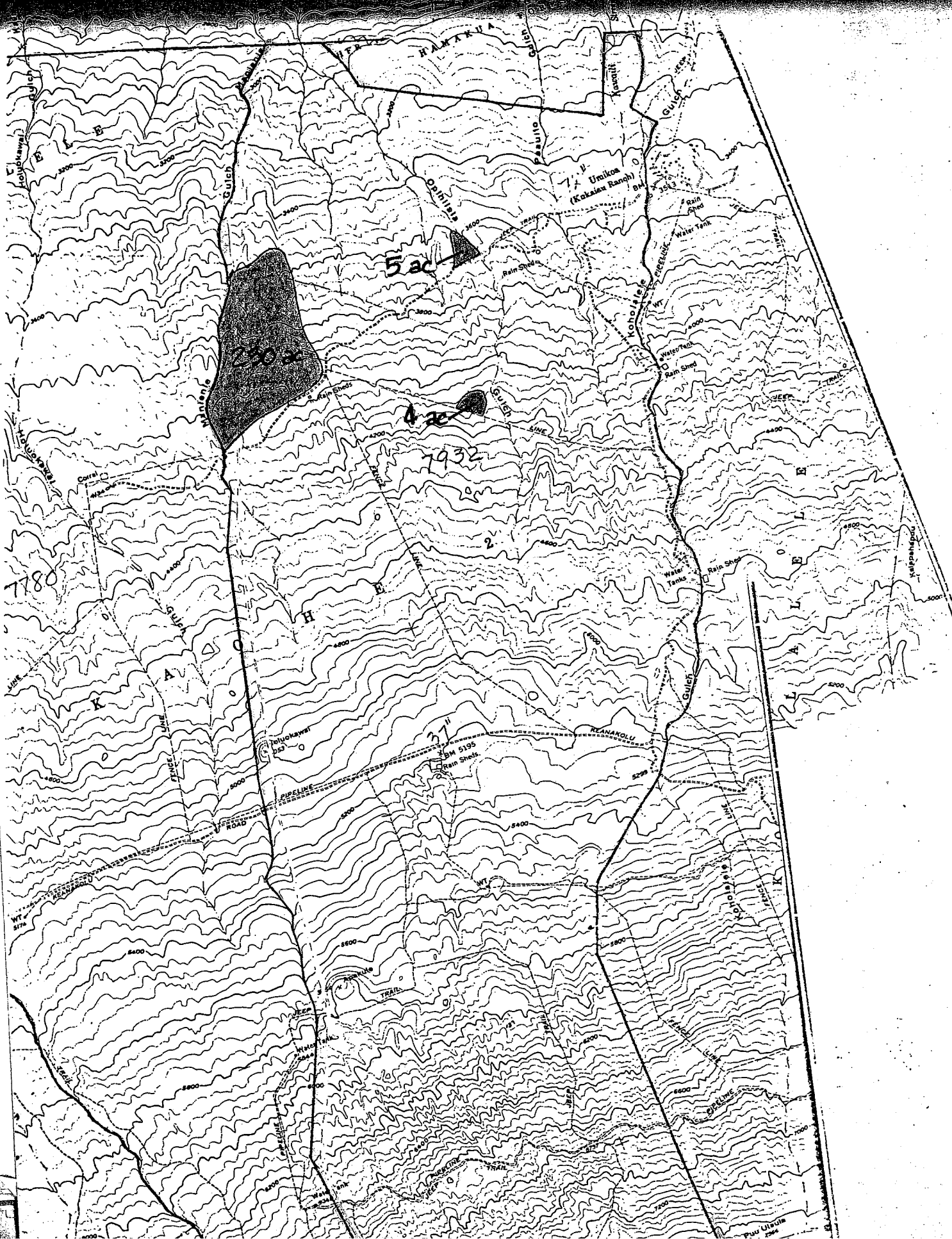
cc: Mr. Larry Mehau  
Mrs. Mildred K. Yamamoto  
Mr. Tom Tagawa

HKY:gm

*Hee*







5 ac

4 ac

7932

7780

Umikom  
(Kokaiian Ranch)

HAKA K U A

Koholele

Puu Ulaui

BM 5195

Hakawai

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## Exhibit C

(1)

Settlement of Lease Rental on GL  
4478

This Agreement between Boteilho  
Hawaii Enterprises, Inc and the  
Department of Land and Natural Resources  
("DLNR") resolves the annual rents for  
the period March 1, 2014 through  
February 29, 2024.

1. The present annual rent shall  
continue at its present rate until  
January 31, 2016

2. Annual lease rent effective  
(payable  
February 1, 2016 shall be paid  
in equal monthly amounts) shall be

(2)

\$53,000 until February 29, 2024.

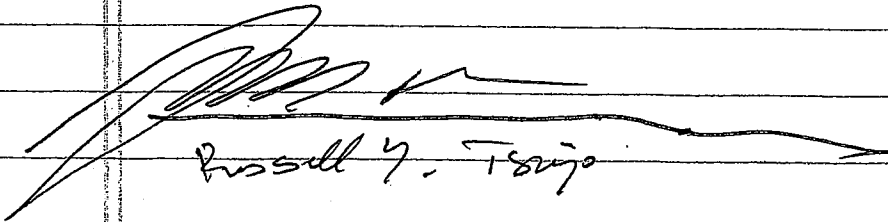
3. This agreement is subject to approval by the Board of Land and Natural Resources.

Date: January 8, 2016

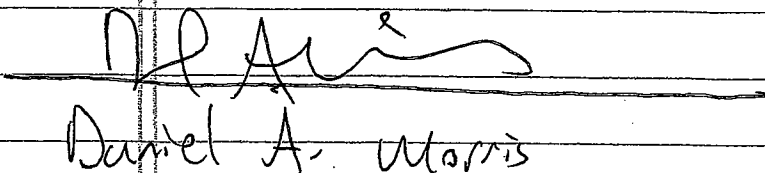
Boteillo Hawaii Enterprises, Inc

Edward Botehoff President

Department of Land + Natural  
Resources

  
Russell Y. Tsuji

Approved at to Form

  
Daniel A. Morris