

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

December 9, 2016

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

Hawaii

Approve Mediated Settlement of Rent for Reopening in February 2011 for General Lease No. S-4474, Parker Ranch, Inc., Lessee, Encumbering Parcels 14-A and 14-B, Portions of Puu Kawaiwai, Panoluukia and Kapia, Ilis of the Government (Crown) Land of Waimea, South Kohala, Island of Hawaii, Tax Map Key: (3) 6-2-001:003, 015.

APPLICANT:

Parker Ranch, Inc., and Land Division

LEGAL REFERENCE:

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

LOCATION AND AREA:

The leased premises are Parcels 14-A and 14-B, portions of Puu Kawaiwai, Panoluukia and Kapia, Ilis of the Government (Crown) Land of Waimea, South Kohala, Island of Hawaii, Tax Map Key: (3) 6-2-001:003, 015. The original area of the lease was 2978 acres. In May 1981, an amendment to the lease was executed for the withdrawal of .360 acre for use as a public utility sub-station site. Subsequently, at its meeting on November 19, 2009, under agenda item D-3, the Board of Land and Natural Resources approved the withdrawal of 375 acres for the purpose of setting aside the acres to the Division of Forestry and Wildlife as an addition to their existing Koiaia Forest Sanctuary (currently awaiting maps from DOFAW). The remaining land area available to the lessee is 2,602.64 acres. The attached Exhibit "A" depicts the original area. Exhibit "B" depicts the area withdrawn for the public utility substation. And Exhibit "C" depicts the area to be withdrawn for the Koiaia Sanctuary.

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 purposes; no residential structure permitted,

DCCA VERIFICATION:

Place of business registration confirmed: Yes
Registered business name confirmed: Yes
Good standing confirmed: Yes

TERM OF LEASE:

The lease term began on March 1, 1976, and originally ran for thirty-five years until February 28, 2011. At its meeting on February 25, 2011, under item D-5. the Board approved a twenty-year extension commencing on March 1, 2011 and expiring on February 28, 2031, with an immediate rent reopening on February 25, 2011¹ and another reopening on March 1, 2021. This rental dispute involves the February 25, 2011 reopening.

ANNUAL RENTAL:

From March 1, 1996 until the present, the rent paid by Parker Ranch has been \$4,680 per year. For reopenings, the lease provides that, "If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the Lessee shall continue to pay the rent effective for the previous rental period, but the Lessee shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any."

REMARKS:

The rent dispute in the February 25, 2011 rent reopening was mediated on October 26, 2016, at the Land Division office in Honolulu. Appraiser Jan R. Medusky was selected as the mediator. The resolution of this rent dispute had taken this long because it had "fallen through the cracks," as there had been three other pasture leases to Parker Ranch reopened around the same time. It was Parker Ranch's new Senior Manager who brought the unresolved dispute to Land Division's attention.

Furthermore, dispute resolution procedures changed. Prior to July 1, 2014, rent disputes were generally arbitrated by a three-member arbitration panel. But the Legislature amended HRS Section 171-17, effective as of July 1, 2014, to require (non-

¹ / While the submittal stated "February 11, 2011," the appraisers apparently found this to be a typing error and used February 25, 2011, the date of the Board meeting, as the immediate reopening date.

binding) mediation by a single mediator prior to (binding) arbitration.²

The department's appraised annual lease rent was \$33,250 and Parker Ranch's appraised annual lease rent was \$21,780. There are two parcels making up the leased premises, separated by the Kohala mountain road.

The appraisers agreed that the mauka parcel is the more productive parcel, requiring only around one-half of the number of acres needed to support one animal per year in the makai parcel. Mediator Medusky showed staff some pasture comparables in Hamakua and North Kohala, with the Hamakua parcels being better pasture lands than the subject parcels. Mediator Medusky also informed staff that the Parker Ranch livestock operations manager (who participated in the mediation) represented that in four of the last ten years, the makai parcel could not be used at all to pasture cattle.

Based on the above, Mediator Medusky proposed an annual rent of \$24,500.. The difference between the new rent and prior rent is \$19,820 per year as of February 25, 2011. Staff thought \$24,500 to be reasonable as fair market rent. Parker Ranch agreed to annual rent of \$24,500 as well. (Please see Exhibit ""D.") Parker Ranch has indicated that it wants to pay the back rent owed to the department in this current calendar year.

RECOMMENDATION:

Staff recommends that the Board approve the mediated rent of \$24,500 per year as of the February 25, 2011 reopening date.

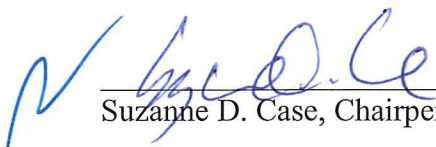


Russell Y. Tsuji
Land Division Administrator



Pamela K. Matsukawa
Appraisal and Real Estate Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

² The amending act is Act 168, Session Laws of Hawaii 2014. The division was advised by the Attorney General's Office that Act 168 applied retroactively to pending rent determinations as long as an arbitrator had not been yet appointed under Chapter 658A, HRS. Additionally, under the amended law, arbitrations for rent reopenings are now submitted to a single arbitrator for determination, rather than to a three-member panel.

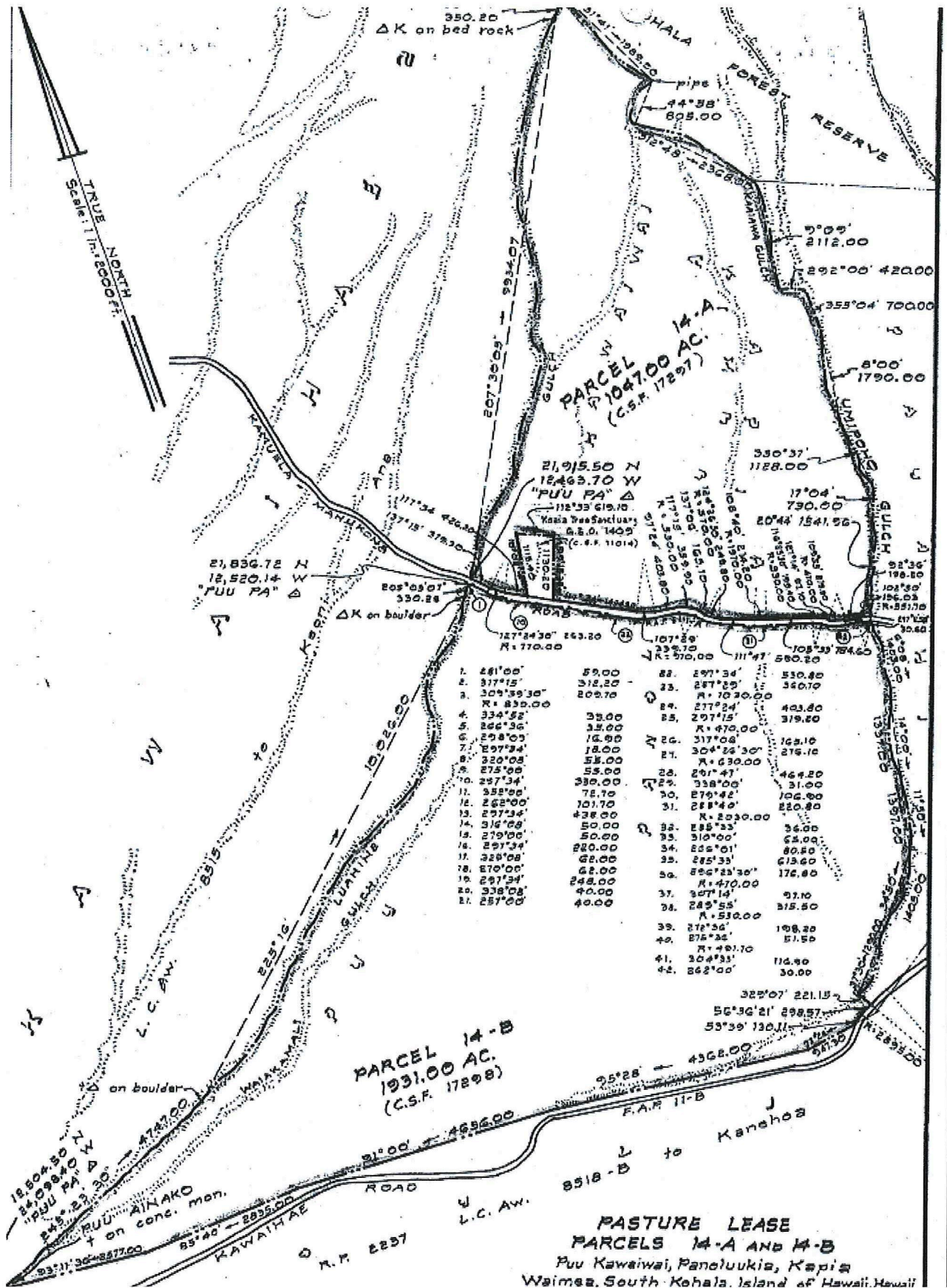


EXHIBIT "A"

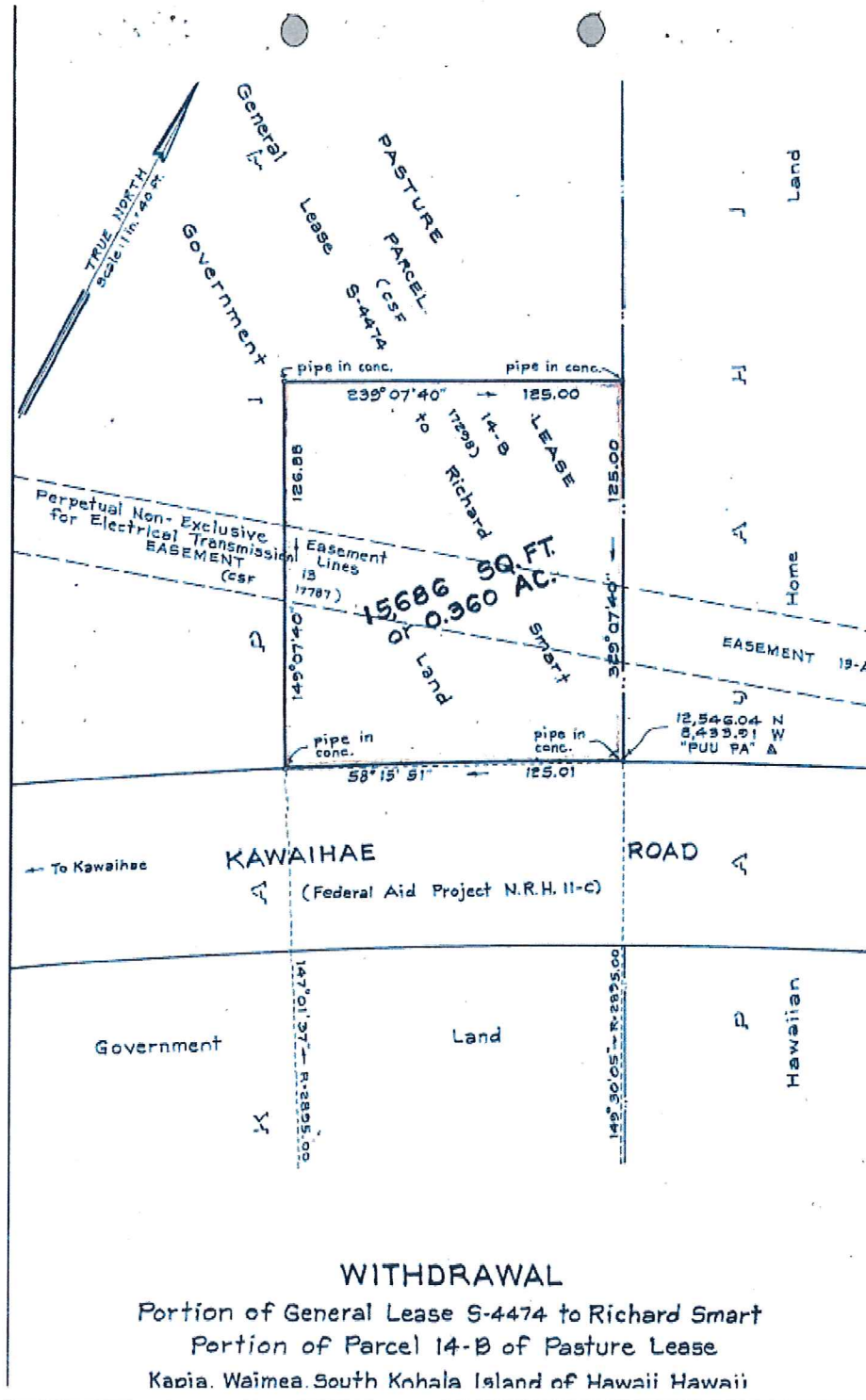


EXHIBIT "B"

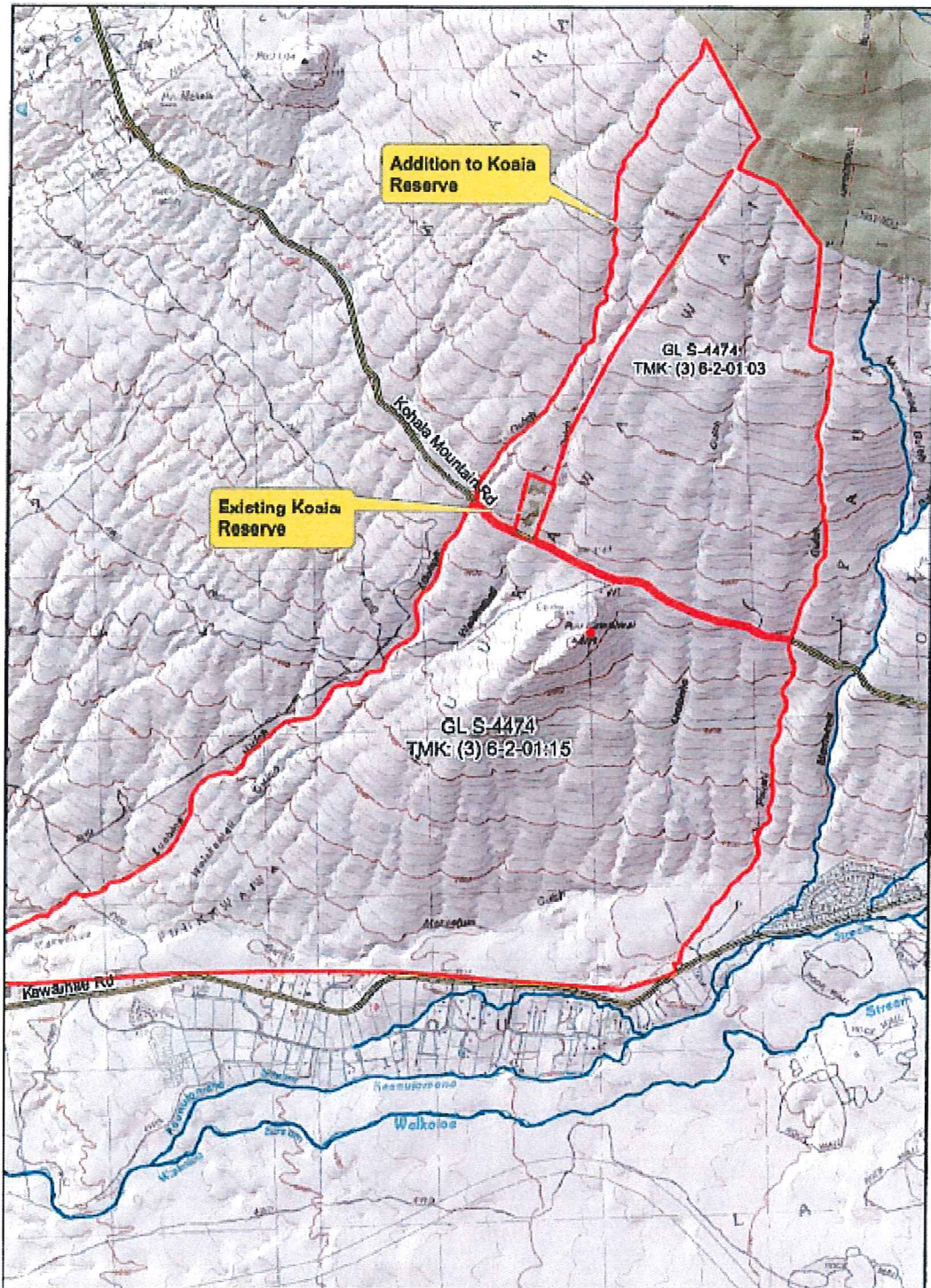


EXHIBIT "C"

From: Jan Medusky
To: Matsukawa, Pamela K
Cc: Tsuji, Russell Y; "Nahua Guilloz"
Subject: RE: Rent Reopening Mediation in GL S-4474 Parker Ranch, Inc., Lessee
Date: Wednesday, October 26, 2016 12:48:03 PM
Attachments: [Invoice 10-10 Tsuji Parker.pdf](#)

Dear Parties,

The purpose of this email is to document the result of our mediation this morning regarding General Lease No. S-4474.

The lessor (DLNR) and lessee (Parker Ranch) have agreed, via mediation, to a new rent of \$24,500 per year, subject to approval of the DLNR Board.

Our invoice for the mediation work is attached.

Jan Medusky
Medusky & Co., Inc.
Queen's Court, Suite 404
800 Bethel Street
Honolulu, Hawaii 96813

Fax (808) 599-3736

EXHIBIT "D"