

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

March 9, 2018

Ref. No.: 10KD-133
GLS-3832 & S-5578

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

KAUAI

After-the-Fact Consent to Assignment of 100% Membership Interest in Lessee Pixar Development, LLC from John Kenneth Purdy to Hotel Coral Reef, LLC; After-the-Fact Consent to Quitclaim Assignment of Membership Interest in Lessee Pixar Development, LLC from Michael F. Harrah to Hotel Coral Reef, LLC; After-the-fact Consent to Real Property Mortgage and Financing Statement, Pixar Development, LLC, Mortgagor, and First Hawaiian Bank, Mortgagee (2010 Mortgage); Consent to Mortgage with Estoppel Certificate, Pixar Development, LLC, Mortgagor, and First Hawaiian Bank, Mortgagee (2018 Refinance); Amendment of Development Agreement dated August 17, 2016 between the Board of Land and Natural Resources and Pixar Development, LLC, Lessee, to Allow an Additional 18 Months over the 24 Months Provided for Construction of Improvements; General Lease Nos. S-3832 and S-5578, Pixar Development, LLC, Lessee, Kapaa Town Lots, Kapaa, Kawaihau, Kauai, Tax Map Keys: (4) 4-5-011:046 and 4-5-012:005.

APPLICANTS:

Pixar Development, LLC, lessee and mortgagor, John Kenneth Purdy, assignor, Michael F. Harrah, assignor, Hotel Coral Reef, LLC, assignee, and First Hawaiian Bank, mortgagee.

LEGAL REFERENCE:

Sections 171-6, -22 and -36, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapaa Town Lots, situated at Kapaa, Kawaihau, Kauai, identified by Tax Map Keys: (4) 4-5-011:046 (Parcel 46) and 4-5-012:005 (Parcel 5), as shown on the attached maps labeled Exhibit A.

ZONING/AREA:

Lease No.	Tax Map Key: (4)	Area/Use of Land	State Land Use District	County of Kauai CZO
GLS-3832	4-5-011:046	0.5930 acre, improved with hotel structure	Urban	Open
GLS-5578	4-5-012:005	0.2210 acre, improved with parking lot	Urban	C-G (General Commercial District)

Additionally, both parcels are located in the Special Management Area.

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

CHARACTER OF USE:

GLS-3832: for resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within hotel-resort areas.

GLS-5578: for hotel parking purposes.

TERMS OF LEASES:

General Lease No. S-3832 commenced on May 18, 1964 and was set to expire on May 17, 2019. General Lease No. S-5578 commenced on May 18, 1999 and was set to expire on May 17, 2019. However, the Board extended both leases pursuant to Act 219 Sessions Laws of Hawaii 2011, until November 12, 2070 in exchange for the lessee making substantial improvements to the premises. The last rental reopening occurred on November 13, 2015; next rental reopening is scheduled for November 13, 2025.

ANNUAL RENTAL:

GLS-3832: Annual rent is \$129,000 and 2% of the annual gross revenue payable in the amount in excess of the annual base rent, with base rent due in semiannual installments of \$64,500 on the 13th Day of November and May of each year.

GLS-5578: Annual rent is \$27,000 and 2% of the annual gross revenue payable in the amount in excess of the annual base rent, with base rent due in semiannual installments of \$13,500 on the 13th Day of November and May of each

year.

CONSIDERATION FOR ASSIGNMENTS:

Assignment of 100% Membership Interest in Lessee Pixar Development, LLC from John Kenneth Purdy to Hotel Coral Reef, LLC on March 31, 2005:

GLS-3832: \$1,369,800

GLS-5578: \$249,964

Quitclaim Assignment of Membership Interest in Lessee Pixar Development, LLC from Michael F. Harrah to Hotel Coral Reef, LLC on December 23, 2014, but effective March 31, 2005:

GLS-3832: Nominal consideration – related entity transaction.

GLS-5578: Nominal consideration – related entity transaction.

RECOMMENDED PREMIUM ON ASSIGNMENTS:

Assignment of 100% Membership Interest in Lessee Pixar Development, LLC from John Kenneth Purdy to Hotel Coral Reef, LLC on March 31, 2005:

GLS-3832: Not applicable as the lease did not allow for a premium at the time of the transaction.

GLS-5578: None recommended. See discussion in Remarks section below.

Quitclaim Assignment of Membership Interest in Lessee Pixar Development, LLC from Michael F. Harrah to Hotel Coral Reef, LLC on December 23, 2014, but effective March 31, 2005:

GLS-3832: Not applicable as the lease did not allow for a premium at the time of the transaction.

GLS-5578: None – nominal consideration paid in related entity transaction.

USE OF LOAN PROCEEDS:

The mortgage consents relate to the refinancing of a 2010 loan from First Hawaiian Bank (FHB) to Pixar Development, LLC (Pixar) and its affiliates with a current balance of approximately \$3,475,000. Pixar and its affiliates are borrowing \$4,500,000 from FHB to refinance the 2010 loan. A portion of the new loan proceeds will be used to fund capital improvements to the lease premises required under the Development Agreement dated August 17, 2016 between Pixar and the State, including the addition of a third floor

and elevator to an existing two-story hotel structure on Parcel 46, and the replacement of an existing asphalt parking lot on Parcel 5 with a concrete parking lot. The Development Agreement specifies that the upgrades to the improvements on the State parcels will cost approximately \$485,000. Additionally, the loan proceeds will be used to purchase new furniture, fixtures and equipment for the six additional hotel rooms that will result from the construction of the third floor. Loan proceeds will also be used for the maintenance and operations of the Hotel Coral Reef located partly on the premises and partly on the adjoining private land (TMK: (4) 4-5-012:006), owned by Pixar's parent company, Hotel Coral Reef, LLC.

DCCA VERIFICATION:

PIXAR DEVELOPMENT, LLC

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

HOTEL CORAL REEF, LLC

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

As natural persons, John Kenneth Purdy and Michael F. Harrah are not required to register with the DCCA.

BACKGROUND:

In 1962, Ichiji and Masako Matsumura built a small hotel on their private lands at Kapaa, Kauai designated as TMK: (4) 4-5-012:006 (Parcel 6). After acquiring a lease of the adjoining State land designated as TMK: (4) 4-5-011:046 (Parcel 46), they built an additional wing of the hotel of masonry construction containing 16 guest rooms. Abutting Parcel 46 is TMK: (4) 4-5-012:005 (Parcel 5), which is improved with a parking lot for the hotel. Photos of the hotel and parking area are included in Exhibit B.

Land Division's files show the following lease history for the two State parcels:

General Lease No. S-3832 (covering Parcel 46) was sold at public auction on May 18, 1964 to the Matsumuras for a term of fifty-five (55) years expiring on May 17, 2019.

General Lease No. S-4648 (covering Parcel 5) was sold at public auction on May 16, 1980 to Dale M. Matsumura for a term of fifteen (15) years expiring on June 14, 1995.

On September 24, 1985, the Matsumuras notified Land Division that they were in the process of selling the entire hotel operation, which included General Lease No. S-3832 and General Lease No. S-4648. At its meeting of October 11, 1985, Item F-14, the Board of Land and Natural Resources (Board) approved the consent to sale of General Lease

No. S-3832 and General Lease No. S-4648 from the Matsumuras to Michael Wayne Warriner and Linda J. H. Warriner, husband and wife, via agreement of sale. At its meeting of March 13, 1987, Item F-1-c, the Board approved the Consent to Assignment of General Lease No. S-3832 and General Lease No. S-4648 to the Warriners upon satisfaction of the agreement of sale.

In 1997 the Warriners filed for divorce. The decree of divorce specified that Michael Wayne Warriner's interest in General Lease No. S-3832 was awarded to Linda J. H. Warriner.

At its meeting on October 8, 1993, Item F-5, the Board approved a request for extension of General Lease No. S-4648 for a term of five (5) years ending on June 13, 2000. Due to the lack of follow-through, it expired on June 14, 1995.

At its meeting on July 24, 1998, Item D-17, the Board authorized the sale of a lease at public auction for the premises formerly covered by General Lease No. S-4648, and also approved the issuance of an interim revocable permit. Revocable Permit No. S-7145 was thereafter issued to Linda J.H. Warriner for hotel parking lot use only. In May, 1999, Linda J.H. Warriner became the lessee under General Lease No. S-5578 for hotel parking purposes after she bid successfully at auction.

At its meeting on October 26, 2001, Item D-10, the Board consented to the assignment of General Lease No. S-3832 and General Lease No. S-5578, Linda J.H. Warriner, Assignor, to Pixar Development, LLC (Pixar), Assignee.

On April 25, 2014, Item D-2, the Board approved Pixar's request for approval in concept of an extension of the lease terms under General lease No. S-3832 and General Lease No. S-5578, pursuant to Act 219, SLH 2011, which authorized the extension of hotel and resort leases.

On July 25, 2014, Item D-1, the Board approved the negotiated Development Agreement, and proposed plans and specifications for the improvements to the lease premises. The Board additionally authorized the extension, amendment and restatement of the leases for an Aggregate Term of 55 Years.

At its meeting of September 26, 2014, Item D-3, the Board amended its prior action of July 25, 2014, to clarify that the approval of the lease extensions and plans and specifications was in concept only, and that the Pixar was to return to the Board after publication of the anticipated Finding of No Significant Impact (FONSI) in The Environmental Notice for final approval of these items.

At its meeting of November 13, 2015, Item D-3, the Land Board approved, as amended, the extension, amendment and restatement of General Lease Nos. S-3832 and S-5578. The Development Agreement required by the Board approval was executed by Pixar and the State on August 17, 2016. The Development Agreement provides plans and specifications for the addition of a third floor and elevator to an existing two-story

structure on Parcel 46, and the replacement of an existing asphalt parking lot on Parcel 5 with a concrete parking lot. The Development Agreement gives Pixar until August 16, 2018 to complete the improvements. Extended, Amended and Restated General Lease Nos. S-3832 and S-5578 were executed on September 7, 2016.

REMARKS:

Earlier this year staff became aware of a number of past transactions relating to the leases of which Pixar had not previously notified the Department. Michael F. Harrah, the current manager of Pixar and Hotel Coral Reef, LLC, explains that he was not aware the transactions required Board consent. Staff describes those transactions here and, where necessary, seeks Board consent to them after the fact.

On February 12, 2004, Pixar assigned its interest in both leases to its parent company, Hotel Coral Reef, LLC (HCR). The assignment instruments were recorded in the Bureau of Conveyances on February 13, 2004 as Document No. 2004-031847 (GLS-3832), and Document No. 2004-031846 (GLS-5578).

On March 31, 2005, John Kenneth Purdy assigned 100% of the membership interest in Pixar to HCR. Mr. Purdy was the member-manager of Pixar at the time it assigned its interest in the leases to HCR on February 12, 2004.

On July 20, 2005, Pixar and HCR cancelled the assignment of leases executed in 2004. Cancellation of assignment documents were recorded in the Bureau of Conveyances on July 29, 2005 as Document No. 2005-151266 (GLS-3832), and Document No. 2005-151267 (GLS-5578). The documents recite that the parties extinguished and cancelled the assignments. Accordingly, staff believes that there is no reason to seek Board consent for these assignments at the present time. With the recording of the cancellation instruments, it is as if the assignments had not occurred in the first place. The lessee under both leases continues to be Pixar.

On July 29, 2010, Pixar borrowed \$4,500,000 from First Hawaiian Bank (FHB). FHB recorded a Real Property Mortgage and Financing Statement in the Bureau of Conveyances as partial security for this obligation purporting to encumber the subject leases on August 17, 2010 as Document No. 2010-118887.

By instrument dated December 23, 2014, but made effective as of March 31, 2005, Mr. Harrah made a quitclaim assignment of all of his membership interest in Pixar to HCR.

After-the-Fact Consent to Assignments of Membership Interests:

Original General Lease No. S-3832 (the lease on which the hotel is located) was in effect in 2005 at the time Mr. Purdy sold his membership interest in Pixar to HCR and in 2014 when Mr. Harrah transferred 100% of his membership interest in Pixar to HCR. It is not clear under the original lease whether a stock or membership interest transfer in a lessee requires prior Board consent. At the relevant times, the lease provided in part:

Assignments, etc. That the Lessee shall not transfer or assign any right, privilege or authority herein given or in a any manner transfer or assign this lease for the whole or any part of the term hereof, except by way of devise, bequest or intestate succession; provided, that with the prior written consent of the Lessor, the assignment and transfer of a lease or unit thereof may be made where any one of the following conditions are applicable: (1) the Lessee was required to put in substantial building improvements, (2) the Lessee becomes mentally or physically disabled, or (3) extreme economic hardship is demonstrated to the satisfaction of the Lessor.

Original General Lease No. S-3832 was an older form lease that did not include any provision about the State receiving a premium upon the assignment of the lease.

Original General Lease No. S-5578 (the lease on which the parking lot is located) was a more modern lease that included the following language in the assignment clause:

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for the purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium.

Under this provision, Mr. Purdy and Mr. Harrah should have obtained prior Board consent for the two assignments of membership interest in Pixar.¹ As mentioned above, Mr. Harrah explains that Pixar was not aware of the language in the lease regarding assignments. Pixar now seeks assignment after the fact. Staff has discussed the lease requirements with Mr. Harrah, who indicates he will be more careful in the future to ensure Pixar complies with the lease terms.

The consent to assignment instruments that the Department of the Attorney General prepares typically include a signature block for the assignor and an agreement by the assignor that the assignment does not release it of liability. Staff is recommending that the consents for the assignment of membership interests discussed above not include signature blocks or continuing liability obligations on the part of the assignor because neither Mr. Purdy² nor Mr. Harrah was the lessee on the lease, or a guarantor of the performance of the lease. Pixar continued to be the lessee during this period and even

¹ Based on staff's review, it is not clear that Mr. Harrah had any membership interest in Pixar to quitclaim to HCR in 2014 or 2005. Staff is including a recommendation below that the Board consent to this assignment as a precaution. If the Department of the Attorney General finds that Board consent is not required for Mr. Harrah's quitclaim assignment, then the consent document for that part of the transaction can be dispensed with.

² In any event, Mr. Purdy's whereabouts are currently unknown. He is included as an applicant in this matter because his signature appears on the assignment of Pixar membership interest to HCR.

after HCR's acquisition of the company, Pixar has continued to be a compliant lessee with regard to rent and insurance.

Lease Assignment Premium Analysis Under Original General Lease No. S-5578:

Regarding the March 31, 2005 assignment of membership interest in Pixar, a lack of historical financial data makes it difficult to conduct a proper lease assignment premium analysis for General Lease No. S-5578 (the lease for the parking lot). When the Board approved the assignment of the lease from Ms. Warriner to Pixar on October 26, 2001, agenda Item D-10, no assignment premium was assessed based on the recommendation of the staff appraisers at the time. See Exhibit C attached. In the 2001 transaction, a lump sum sales price of \$1,100,000 was paid for the two leases and adjoining parcel of private land, but no allocation was made among the three separate land interests involved in the sale. Because no allocation was made specifically for General Lease No. S-5578, staff is unable to accurately calculate the amount of any profit made on the lease between October 26, 2001 and March 31, 2005, when HCR paid Mr. Purdy \$249,964 for General Lease No. S-5578.

A rough calculation may be possible by working backward from the March 31, 2005 assignment of Mr. Purdy's interest in Pixar to HCR. For the 2005 transaction, HCR purchased the two State leases and private land constituting the hotel for a lump sum of \$2,500,000, and allocated the purchase price as follows:

<u>Land Interest</u>	<u>Allocation</u>	<u>% of Purchase Price</u>
Fee simple land (4) 4-5-012:006:	\$ 880,236	35%
General Lease No. S-3832:	\$1,369,800	55%
General Lease No. S-5578:	\$ 249,964	10%
Totals:	\$2,500,000	100%

If we assume that the same allocations as percentages of the total purchase price were applicable to the 2001 transaction, then the purchase price attributable to General Lease No. S-5578 in 2001 was \$110,000. Adjusted for inflation,³ \$110,000 in 2001 was equivalent to \$124,474 in 2005, meaning that Mr. Purdy potentially realized as much as \$125,490 in the sale of his membership interest in Pixar as it related to General Lease No. S-5578. However, one shortcoming with this approach is the uncertainty regarding the accuracy of the allocation of the purchase price in 2001. Furthermore, the lease assignment premium is calculated as a percentage of the assignment consideration (less the adjusted depreciated cost of improvements, where applicable). The assignment of lease premium participation schedule set forth in General Lease No. S-5578 is based on a term of 55 years, as follows:

For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being

³ Consumer Price Index, All Items, 1982-84=100, for All Urban Consumers.

transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

But original General Lease No. S-5578 was for a term of 20 years, not 55, and arguably the premium participation schedule should have been based on a 20-year term, with the State's share of any assignment premium decreasing proportionately over 20 years, not 55. The March 31, 2005 assignment of membership interest in Pixar occurred 6 years into the lease term of original General Lease No. S-5578. Under a 55-year premium participation schedule, an assignment in the sixth year of the lease results in a premium participation of 45% as indicated above, while under a 20-year schedule, an assignment would result in something closer to a 35% premium.

Additionally, assignment premiums are paid by the assignor, who in this case was Mr. Purdy. Mr. Purdy's whereabouts are unknown. Even if the Board were to assess an assignment premium, the likelihood of collecting it from Mr. Purdy is low. And the fairness of requiring HCR or Mr. Harrah to pay the premium in lieu of Mr. Purdy is questionable, especially in view of Pixar's and HCR's pending investment of approximately \$485,000 in the State leases through hotel renovations/additions.

For the foregoing reasons, staff is not recommending a lease assignment premium for the March 31, 2005 assignment of membership interest in Pixar. General Lease Nos. S-3832 and S-5578 have now been updated with current lease provisions, the lease assignment premiums schedules now correspond to the lease terms, and for any assignments going forward, the lease assignment premium analysis can be conducted on such transactions for both leases. This submittal will provide a baseline to assist in the calculation of future premiums that may be due to the State.

Consent to 2010 FHB Mortgage After-the-Fact:

Original General Lease Nos. S-3832 and S-5578 both provided at the relevant time that the premises could be mortgaged with the prior consent of the Board.⁴ As discussed

⁴ Original General Lease No. S-5578 goes on to provide that any mortgage placed on the leases premises

above, Pixar and its affiliates borrowed \$4,500,000 from FHB in 2010. Among other properties owned by Pixar's affiliates in fee, the subject leases were mortgaged as security for the loan. Neither Pixar nor FHB sought the Board's prior consent to the mortgage. The mortgage is still of record. Pixar requests the Board's consent to the mortgage after the fact.

Consent to Refinance of 2010 FHB Mortgage with Estoppel Certificate:

Pixar wants to refinance the existing FHB loan. An appraisal report dated August 31, 2017 indicates the combined value of the private fee simple and State leasehold interests will be \$6,460,000 as of January 1, 2019, assuming all County permits for hotel expansion are obtained and the improvements the Board approved to the hotel are completed. Based on an earlier appraisal of the State lease lands only, the value of the improvements on the leased premises as of November 2013 was \$682,000. The total 2018 tax assessed value of the State leased lands and improvements is \$1,825,400. Accordingly, the State leased lands are providing only a portion of the security for the loan amount of \$4,500,000, with the private land portion of the hotel and other assets of Pixar's affiliates providing the balance of the security. FHB is also requesting an estoppel certificate from the State regarding Pixar's compliance with the lease terms. Staff has no objection to these requests.

Amendment of Development Agreement to Extend Time for Construction:

As mentioned above, the Development Agreement the Board executed with Pixar on August 17, 2016 provides that the hotel improvements required thereunder must be completed within 24 months of the Development Agreement, which is August 16, 2018. The Development Agreement states at Section 5:

5. Construction Period. Lessee shall have twenty-four (24) months from the Effective Date to complete the substantial upgrades to the existing improvements on the Subject Property in accordance with the approved Development Plan ("Construction Period").

That deadline was reached through discussions Pixar representatives had with the former Kauai District Land Agent, and was not a legal requirement of the Act 219, SLH 2011, under which the Board approved the lease extension. Twenty-four months turned out to be a very optimistic estimate of the completion time for the project, given that Pixar was required to obtain a number of permits and variances before it secure a building permit. One of the most challenging issues for the project was that the land is not zoned for hotel/resort use (GLS-3832 with the hotel structure on it is zoned Open).

On May 25, 2017 Pixar received the Special Management Area Use Permit, Class IV Zoning Permit, Use Permit and Variance Permit required for the construction of a third story on the hotel. On January 16, 2018, Pixar received its building permit for the

project. To allow sufficient time to complete the improvements required under the Development Agreement, Pixar is requesting an eighteen-month extension of the completion time set forth in the Development Agreement. The total construction period under the Development Agreement would therefore be 42 months. In light of Pixar's diligent pursuit of the necessary permits for the project, staff has no objection to the time extension.

With the exception of the matters sought to be resolved by this submittal, Pixar is in compliance with lease terms and conditions regarding rent, insurance and submission of percentage rent reports.

There are no pending issues relating to a rental reopening.

No government agencies or interest groups were solicited for comments as there will be no change in disposition of land use.

RECOMMENDATION: That the Board:

- A. Consent after the fact to the assignment of a 100% membership interest in Lessee Pixar Development, LLC from John Kenneth Purdy to Hotel Coral Reef, LLC on March 31, 2005, subject to the terms and conditions cited above, and further subject to the following:
 1. The standard terms and conditions of the most current consent to assignment (of membership interest) form, as may be amended from time to time; provided that the consent instrument shall not include a continuing liability covenant by Mr. Purdy or require his signature on the document;
 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. Consent after the fact to the quitclaim assignment of membership interest in Lessee Pixar Development, LLC from Michael F. Harrah to Hotel Coral Reef, LLC on December 23, 2014 but effective as of March 31, 2005, subject to the terms and conditions cited above, and further subject to the following:
 1. The standard terms and conditions of the most current consent to assignment (of membership interest) form, as may be amended from time to time; provided that the consent instrument shall not include a continuing liability covenant by Mr. Harrah or require his signature on the document; and provided further that if the Department of the Attorney General determines that no consent is legally required for this part of the transaction, such consent may be dispensed with;

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.
- C. Consent after the fact to the Real Property Mortgage and Financing Statement dated July 29, 2010 in favor of First Hawaiian Bank, subject to the terms and conditions cited above, and further subject to the following:
1. The standard terms and conditions of the most current consent to mortgage 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.
- D. Consent to a new mortgage between Pixar Development, LLC, Mortgagor, and First Hawaiian Bank, Mortgagee, to refinance the 2010 loan, subject to the terms and conditions cited above, and further subject to the following:
1. The loan proceeds shall be used for the purposes as stated in “Use of Loan Proceeds” above. The Pixar shall maintain records of loan expenditures which may be inspected by the Department;
 2. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Authorize the execution of an Estoppel Certificate subject to the following:
1. The standard terms and conditions of the most current estoppel certificate 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 interest of the State.
- F. Authorize an amendment of the parties’ Development Agreement dated August 17, 2016 to change the Construction Period as defined in Section 5 of the

Agreement from 24 months to 42 months, subject to the terms and conditions cited above, and further subject to the following:

1. The standard terms and conditions of the most current amendment of development agreement 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 interest of the State.

Respectfully Submitted,

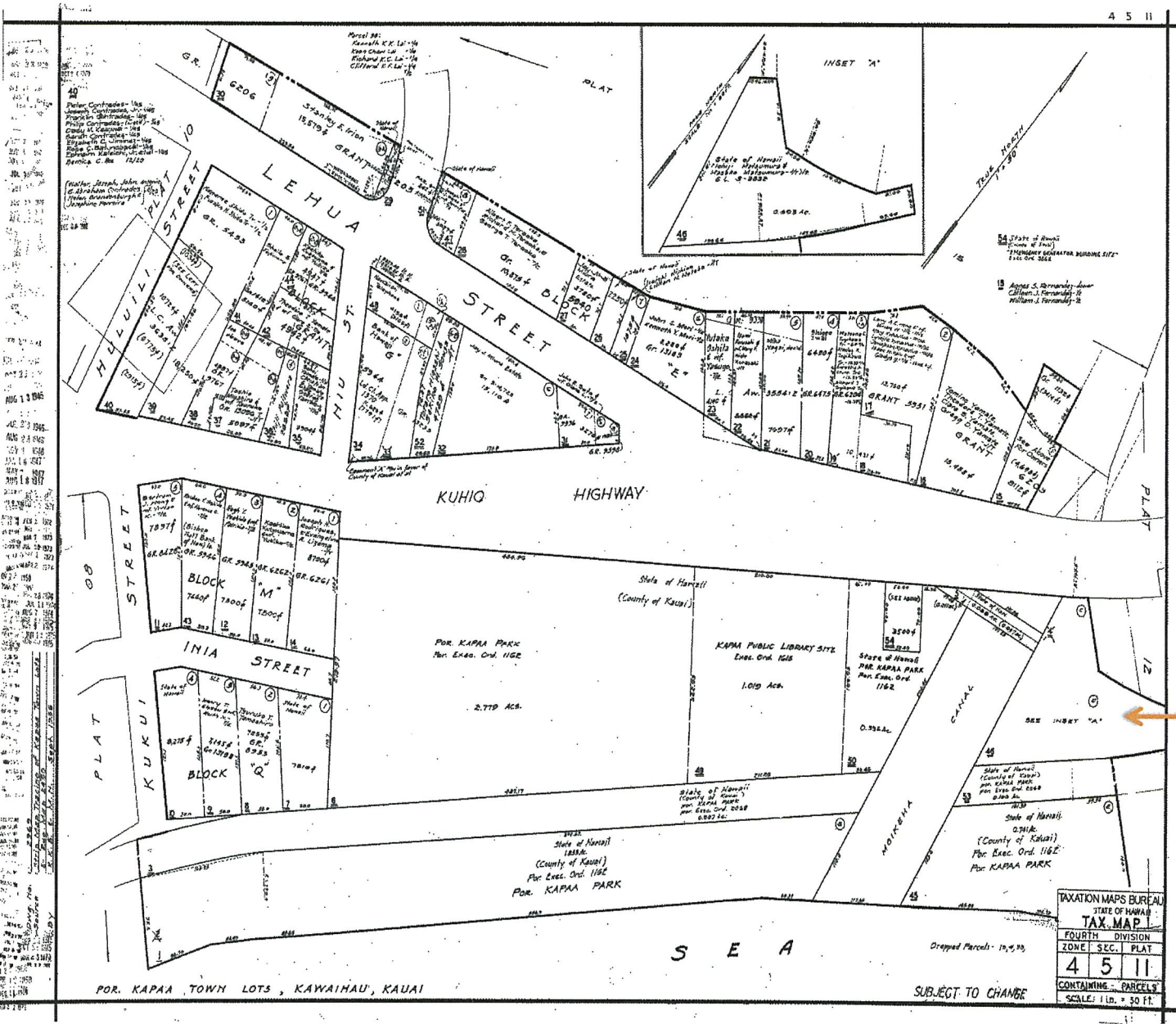


Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



SUBJECT

TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
FOURTH DIVISION	ZONE	SEC. PLAT
4	5	11
CONTAINING PARCELS		
SCALE: 1 in. = 50 ft.		

EXHIBIT A

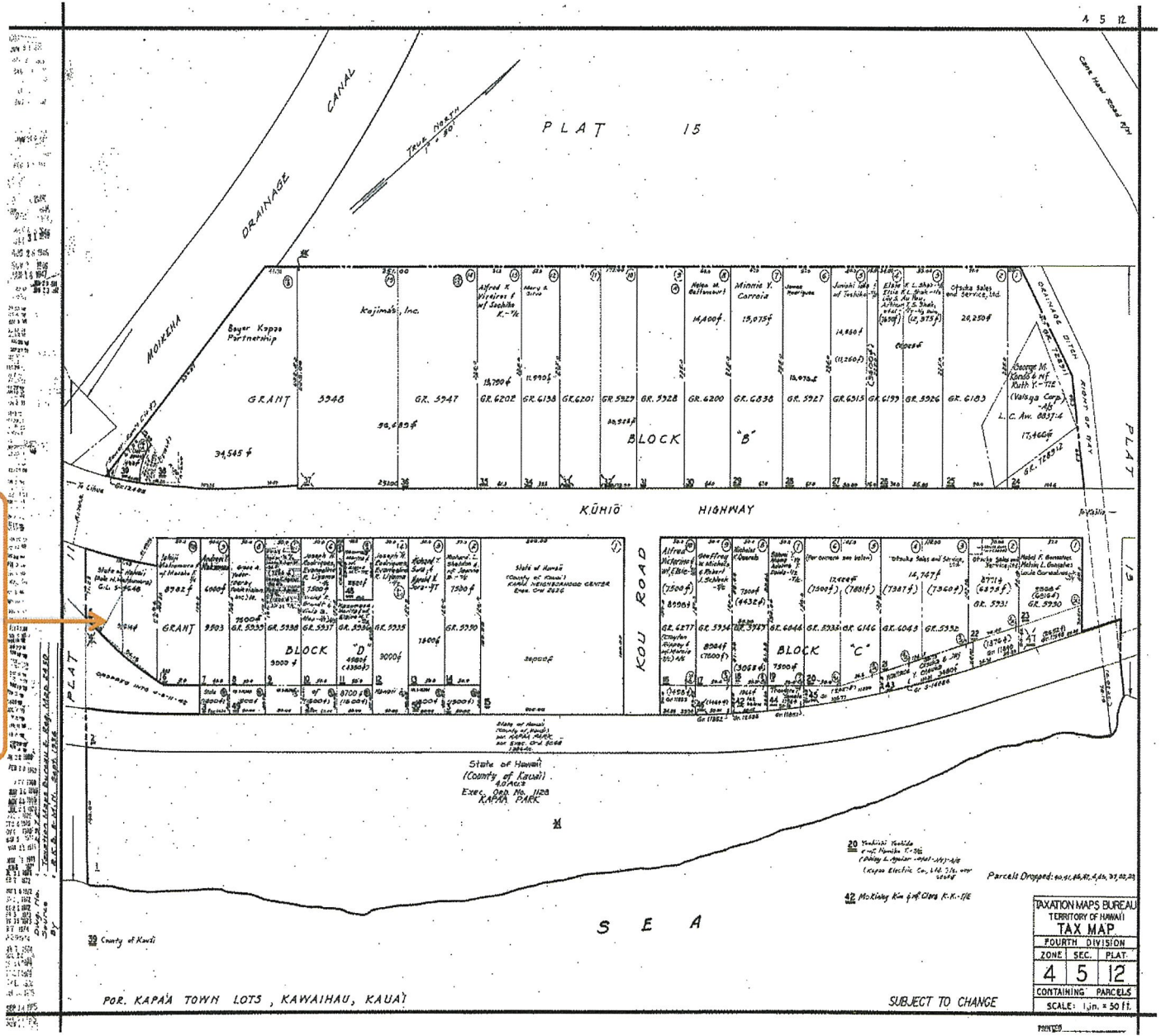
4 5 11

S E A

Dropped Parcels - 12, 4, 20

SUBJECT TO CHANGE

POR. KAPAA TOWN LOTS, KAWAIHAU, KAUAI



SUBJECT

EXHIBIT A

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH DIVISION		
ZONE	SEC.	PLAT.
4	5	12
CONTAINING PARCELS		
SCALE: 1 in. = 50 ft.		



Private parcels (4) 4-5-012: 006 & 007 and

State parcels (4) 4-5-012:005 & 4-5-011:046

EXHIBIT A



EXHIBIT B

**GL S-3832 to Pixar Development, LLC
Swimming pool and portion of hotel on TMK: (4) 4-5-011:046**







**GL S-5578 to Pixar Development, LLC
Parking lot on TMK: (4) 4-5-012:005
(Hotel in center background is on TMK: (4) 4-5-011:046)**





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 821
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

March 16, 2000

MEMORANDUM

TO: Sam Lee, Kauai District Land Agent

FROM: Benjamin Marx, Staff Appraiser *B. Marx*

RE: Hotel Coral Reef, assignment of lease premium
General Lease S-5578, Kapaa, Kauai

A cost schedule provided by Linda Warriner show the parking lot was constructed in 1995 for \$34,027. In April 1997 the hotel was appraised at \$1,300,000. The improvements including the parking lot, were appraised at \$921,200. The proposed 2000 sale is at \$1,110,000. A total of \$591,694 of the sale price was allocated to the improvements by the lessee's accountant. We were unable to obtain an allocated price for the parking lot only; however, it is reasonable to assume the 2000 value of the parking lot is less than \$34,027 once the construction cost index (C.C.I) and adjustment for depreciation have been applied. We conclude that no premium payment is required.

EXHIBIT C



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

September 25, 2001



TO: Sam Lee, Kauai District Land Agent
THROUGH: *[Signature]* Harry M. Yada, Acting Land Division Administrator
FROM: *[Signature]* Mike Nugent, Staff Appraiser
RE: Hotel Coral Reef, assignment of lease premium
General Lease S-5578, Kapaa, Kauai

On September 18, 2001 I received a request from you to examine the sale of the above named leasehold for the presence of any assignment premium. During the course of my research I discovered that Ben Marx, on March 16, 2000, had determined that there was no assignment premium involved with this sale. (See attached) Mr. Marx based his determination on the DROA provided to him by you at that time. I compared the full Agreement of Sale provided by you with this request to the DROA provided to Mr. Marx in March of 2000. I could find no discrepancies in the terms and conditions of the sale therefore Mr. Marx's determination of no assignment premium still holds. If you have any questions please feel free to call me at 7-0382.

[Handwritten mark]