



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 2, 2022

Ref. No: GL 5844

Mr. Ed Bushor
WHR LLC
1050 Bishop Street, Suite 530
Honolulu, Hawaii 96813

Dear Mr. Bushor:

Subject: General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

On June 1, 2022, our office emailed you a copy of the Board of Land and Natural Resources' (Board) action deferring to the Board's meeting of June 9, 2022 the request of WHR LLC (WHR) for consent to mortgage, estoppel certificate, and pledge agreement. A copy of the Board action is enclosed. You responded later that day expressing concerns about maintaining the confidentiality of profit and loss statements of WHR if provided to the State.

Please note that we are willing to accommodate your concern to the extent legally permissible,¹ but as you already know, the ability of the Department of Land and Natural Resources to withhold records from public disclosure is governed by the Uniform Information Practices Act (UIPA), Chapter 92F, Hawaii Revised Statutes. In your case, WHR is a State lessee seeking the Board's permission to encumber State lands with a new loan and mortgage, and the Board has requested additional information from you, specifically financial statements showing operating income and capital in sufficient amounts to timely meet the payment obligations under the new proposed adjustable-rate loan/mortgage.² Based on our review of the UIPA, we did not readily see any confidentiality protection extending to financial records of a State lessee in your situation that is a limited liability company or other single purpose entity. If there are provisions of the UIPA you believe would allow the State to withhold the financial statements sought by the Board, then please let us know.

¹ Please note that we do not intend to publish or make public any financial records received, but only to forward the same to the Board members for their review and consideration. The Land Division anticipates presenting an analysis and opinion on whether the financial statements received actually show operating income and capital in sufficient amounts to timely meet the payment obligations under the new proposed adjustable-rate loan/mortgage.

² The Board also asked to see and review all mortgagee protection provisions in the proposed new loan and mortgage and any collateral documents such as a consent and estoppel agreement.

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As I stated in my email to you earlier today, in order to evaluate whether the Naniloa Hotel will have sufficient operating income and capital to meet the payment obligations under the new adjustable rate loan, in addition to the above-requested financial information, please send us the promissory note and loan agreement—we are looking to identify the borrower and mortgagor (to see if they match), and to review the payment terms that include the minimum monthly payment and how high and how often the interest rate may fluctuate, which may result in increases to the monthly payment obligation.

If you have any questions, please feel free to contact me at (808) 587-0422 or email at russell.y.tsuji@hawaii.gov. Thank you.

Sincerely,

Russell Tsuji

Russell Y. Tsuji
Administrator

Enclosure