

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

June 14, 2024

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

HAWAII

Consent to Assign General Lease Nos. S-4303, S-4379, S-5656 and S-5848, Big Island Toyota, Inc., Assignor, to Servco Pacific Inc., Assignee, Waiakea House Lots Extension, Hilo, Hawaii, TMK: (3) 2-2-058:015 (GLS-4303 & GLS-4379), TMK: (3) 2-2-058:017 (GLS-5656); Waiakea House Lots, Hilo, Hawaii, TMK: (3) 2-2-037:063 (GLS-5848)

APPLICANT:

Big Island Toyota, Inc., a Hawaii corporation, as Assignor, to Servco Pacific Inc., a Hawaii corporation, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

GLS-4303 & GLS-4379: Portion of Government lands of Waiakea House Lots Extension situated at Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-058:015.

GLS-5656: Portion of Government lands of Waiakea House Lots Extension, Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-058:017.

GLS-5848: Portion of Government lands of Waiakea House Lots, Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-037:063.

\*Maps labeled Exhibit A (2 pages), attached for reference.

AREA:

GLS-4303 & GLS-4379: 1.5037 acres (65,500 sq. ft.), more or less.

GLS-5656: 0.8953 acres (39,000 sq. ft.), more or less.

GLS-5848: 0.8953 acres (39,000 sq. ft.), more or less.

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:

GLS-4303: Industrial purposes.

GLS-4379: General industrial purposes (operation of a scrap metal yard, junk yard and similar type operation shall be prohibited).

GLS-5656: General industrial purposes.

GLS-5848: General industrial purposes.

TERM OF LEASE:

GLS-4303: Original Term: 40 years, commencing on June 11, 1970 and expiring on June 10, 2010.

Extended Term: 25 years, commencing on June 9, 2010, and expiring on June 10, 2035.

Amended & Restated Term: 65 years, commencing on June 11, 1970, and expiring June 10, 2035. The next rental reopening is set for June 10, 2030.

GLS-4379: Original Term: 37 years, commencing on June 14, 1973, and expiring on June 13, 2010.

Extended Term: 25 years, commencing on June 9, 2010, and expiring on June 10, 2035.

Amended & Restated Term: 65 years, commencing on June 11, 1970, and expiring June 10, 2035. The next rental reopening is set for June 10, 2030.

GLS-5656: 30 years, commencing on August 28, 2002, and expiring on August 27, 2032. The only rental reopening for this term was on August 28, 2017.

GLS-5848: 20 years, commencing on January 1, 2006, and expiring on December 31, 2026. The only rental reopening for this term was on January 1, 2016.

ANNUAL RENTAL:

GLS-4303: \$27,210.00 annually.

GLS-4379: \$35,870.00 annually.

GLS-5656: \$31,700.00 annually.

GLS-5848: \$33,850.00 annually.

RECOMMENDED PREMIUM:

See discussion in Remarks section.

DCCA VERIFICATION:

ASSIGNOR:

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

ASSIGNEE:

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

APPLICANT REQUIREMENTS:

Applicant Big Island Toyota, Inc. (BIT) shall be required to:

1. Pay for an independent appraisal to be procured by the State to determine the fair market value of all four of the subject leases, i.e., the amount a willing buyer would pay to a willing seller to acquire the leases and leasehold improvements thereon.
2. Deposit \$100,000 in an escrow account to be applied toward a lease assignment premium if one is determined to be due to the State in this transaction. If the premium comes out higher than \$100,000, BIT will

need to make up the difference within 30 days of the Board action assessing the premium. If the difference is not paid to the State within the time allowed, the consent to assignment of lease will be subject to rescission by the Board. If the premium is lower than \$100,000, the excess will be released to BIT.

## BACKGROUND:

### General Lease Nos. S-4303 and S-4379:

At a public auction held in 1970, GLS-4303 was awarded to the highest bidder, Kwiki Pacific, Ltd., and subsequently, assigned to Economy Motors, Inc. pursuant to the consent given by the Board of Land and Natural Resources (BLNR or Board) at its meeting of September 24, 1971 under agenda item F-1. The BLNR consented to the assignment of GL S-4303 from Economy Motors, Inc., assignor, to David S. De Luz, Sr., assignee, at its meeting dated October 13, 1978, item F-1-g. The staff submittal recites a nominal consideration of \$1.00 for this assignment.

At a public auction held in 1973, GLS-4379 was awarded to the highest bidder, Economy Motors, Inc. The BLNR subsequently consented to the assignment of GLS-4379 from Economy Motors, Inc., assignor, to David S. De Luz, Sr., assignee, at its meeting dated October 13, 1978, item F-1-g. The staff submittal recites a nominal consideration of \$1.00 for this assignment.

At its meeting of June 23, 1995, under agenda item F-10, the BLNR approved, as amended, the lessee's request to extend the terms of both leases, modifying the fixed rental periods, authorizing the consolidation of Lots 5, 6, & 7 of Block 48, Waiakea House Lots, and consenting to a mortgage covering both leased premises. The BLNR's approvals and consent to the mortgage allowed the lessee to construct a new showroom and storage facilities.

In 1996, the consolidation of Lots 5, 6, & 7 into Lot 5-A received final approval from the County of Hawaii, Planning Commission. Consequently, and for real property tax purposes, the County of Hawaii Real Property Tax Division dropped Parcel 36 (previously Lot 6 & 7; 39,000 sq. ft.), which was the parcel previously identified with GLS-4379, into Parcel 15 (previously Lot 5; 26,500 sq. ft.), which is the parcel identified with GLS-4303. As a result, Parcel 15 (currently Lot 5A; 65,500 sq. ft.) includes both leases, GLS-4303 and GLS-4379.

At its meeting of August 10, 2001, item D-18, the BLNR approved the amendment and restatement of GLS-4303 and GLS-4379, David S. De Luz, Sr., as Lessee, to reflect the consolidated parcels, among other things. Hence, GLS-4303 and GLS-4379 have a combined annual rent that covers a single property identified by both leases. The property has been, and will continue to be, used as the sales/administration and parts/service buildings of the Toyota dealership business operating on the property.

General Lease No. S-5656:

At its meeting of May 23, 1997, item D-14, the BLNR approved the sale of thirty-year lease at public auction for industrial purposes under GLS-5656, situate at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:017.

On August 1, 1997, using the Direct Sales Comparison approach, staff appraiser set the upset annual rent at \$16,000.00.

At public auction on August 28, 2002, GLS-5656 was sold to Big Island Toyota, Inc. for the successful bid of \$16,000.00 per annum. On August 28, 2017, the annual rent was reopened at \$31,700.00 per annum.

General Lease No. S-5848:

At its meeting of November 19, 2004, Item D-16, the BLNR approved the sale of a twenty-year lease at public auction for general industrial purposes under GLS-5848. It was sold to successful bidder, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust, commencing on January 1, 2006, and expiring December 31, 2026. The annual rent was reopened on January 1, 2016 at \$33,850.00 per annum.

General Lease Nos. S-4303, S-4379, & S-5848:

At its meeting of December 11, 2015, item D-4, the BLNR consented to the assignment of GLS-4303 and GLS-4379, from David S. De Luz Sr., also known as David De Luz, as Assignor, and GLS-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Revocable Trust dated October 23, 1991 (De Luz Trust), as amended, as Assignor, to Big Island Toyota, Inc. (BIT), as Assignee. The reason for the assignment was to change the name of these three leases to BIT, a single corporate entity, rather than having some of the leases in the name of a person or Trust.<sup>1</sup> Requesting consent to assignment of the leases was the only way to accomplish the desired change in title. BIT is a De Luz family-owned and operated business. David S. De Luz Sr., De Luz Trust and BIT are an affiliated individual, trust, and corporation, respectively. The 2015 assignment was essentially intended to consolidate ownership of the leases in a single family corporation, and as such, there was no consideration exchanged among the parties and no premium charged for the assignments.

Although the Board approved the transfer of GLS-4303, GLS-4379, and GLS-5848, the consent documents have not been finalized to date. Staff is currently working with the Department of the Attorney General to complete the documentation.

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<sup>1</sup> The fourth lease referenced in this submittal, GLS-5656, was already in the name of BIT, who was the successful bidder at auction.

## REMARKS

The present request for consent to assign GLS-4303, GLS-4379, GLS-5656 and GLS-5848 is in connection with BIT's agreement to sell its dealership to Servco Pacific Inc. (Servco) on terms and conditions set forth in the Asset Purchase Agreement dated October 21, 2022, as amended by First, Second, Third, and Fourth Amendments (APA).

Servco, founded in 1919, is Hawaii's largest private company with operations in the United States and Australia. Servco owns a diverse group of automotive businesses including exclusive distributorships of Toyota, Lexus, and Subaru in Hawaii. Servco is one of the top 30 largest automotive dealer groups based in the U.S. Servco is also an active investor in venture capital, owning majority shares in Fender Musical Instruments Corporation, the world's largest electric guitar, bass, and amplifier company.

Servco intends to continue the subject leases as a Toyota auto dealership, aiming to uphold the established reputation of the business and preserve existing relationships with current employees, customers, and vendors.

BIT is currently compliant with all terms & conditions of the three subject leases and has not had a lease, permit, easement or other disposition terminated within the last five years due to non-compliance with such terms and conditions.

### Lease Assignment Premium Analysis:

As originally issued at public auction in the early 1970s, GLS-4303 and GLS-4379 did not include a lease assignment premium provision. But when the Board approved the consolidation and extension of those leases in 1995, the Department of the Attorney General updated the extended and consolidated lease document to include the lease assignment premium provision and other standard lease conditions in use at the time. With respect to GLS-5656 and GLS-5848, those leases were issued more recently and included the lease assignment premium provision as originally sold at public auction. Accordingly, the lease assignment premium analysis needs to be conducted for all four leases.

Unfortunately, staff does not have enough information to conduct a proper analysis. The parties' APA provides that the total purchase price for the transaction, which includes assets other than the State leases, will be the total of the following:

1. Goodwill (per the parties, this is the Toyota franchise value):  
\$42,500,000;
2. Fixed Assets and Leasehold Improvements – an amount equal

- to their depreciated net book value not to exceed \$1,057,711;<sup>2</sup>
3. Parts Inventory – at Big Island Toyota’s cost;
  4. New Vehicle Inventory – at Big Island Toyota’s cost; and
  5. Used Vehicle Inventory – mutually agreed price for each vehicle.

The parties assigned no separate purchase price to the leases themselves. The table below shows the depreciated net book value assigned to the leasehold improvements and fixed assets in BIT’s applications to the Department for consent to assignment of the leases:

Lease No.	Parties’ Depreciated Net Book Value	Tax Assessed Value
GLS-4303 & GLS-4379	\$403,926	Land: \$1,186,900 Building: \$2,889,400 Total: \$4,076,300
GLS-5656	\$41,592	Land: \$706,700 Building: \$0 Total: \$706,700
GLS-5848	\$8,727	Land: \$706,700 Building: \$273,600 Total: \$980,300
Totals:	\$454,245	\$5,763,300

The leases have between 2½ - 11 years remaining on their terms, so staff would not expect the leases to sell at tax assessed value in an open market.<sup>3</sup> However, staff would expect a willing buyer to pay more than the depreciated net book values the parties have set in their APA.<sup>4</sup>

For sake of comparison, the Board recently consented to the assignment of another lease in the Kanoelehua Industrial Area of Hilo at its meeting of April 12, 2024, Item D-1. In that case, Hawaiian Fresh Products, Inc. (HFP) sold a lease with a land area of 24,200 sf improved with a warehouse and office and expiring

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2 The tax consequences of assigning the depreciated net book value of improvements as the sales price for the lease would likely result in zero (\$0) gain and likewise no taxes owed.

3 Although the leases are eligible for an extension under Act 149 Session Laws of Hawaii 2018 (Act 149), staff has not received an extension application to date.

4 In its application for consent to assignment, BIT states that even if the amount paid for the leases exceeded the depreciated cost of improvements in the manner calculated in the lease assignment premium policy attached to the lease, the State would not be entitled to a premium as to GLS-4303 and GLS-4379 because more than 50 years have run on those leases since their issuance in the early 1970s. But because of the 1978 assignment, the count starts from that year resulting in at least small percentage of any excess potentially due to the State.

in October 2027 to Hilo Products, Inc. (HPI) for \$445,000, or about \$18.39/sf. The BIT leases have a combined area of 143,500 sf with improvements on the premises of GLS-4303, GLS-4379 and GLS-5848. Using the same per-square-foot purchase price from the HFP/HPI transaction, the market value of the subject leases with improvements could be as much as \$2,638,965 or even higher because the BIT leases generally have longer terms remaining on them.

While the mathematical analysis in the preceding example is admittedly oversimplified, appraisers do refer to comparable sales when determining fair market value. To assist staff in completing the lease assignment premium, staff is including an applicant requirement above that BIT pay for an independent appraisal to be procured by the State to determine what a willing buyer would pay to a willing seller for BIT's leasehold interest under the subject leases.<sup>5</sup>

Staff additionally asked BIT for the actual sales price paid when De Luz acquired GLS-4303 and GLS-4379 in 1978. This information is relevant under the lease assignment premium policy, which resets the percentage share due to the State upon each assignment. The consideration paid for the previous assignment becomes the basis for calculating the premium due, if any.<sup>6</sup> However, BIT does not have information on the 1978 transaction and is willing to stipulate to \$1 per lease for GLS-4303 and GLS-4379 as recited in the staff submittal from 1978. Once staff has the appraisal reports mentioned above, staff will conduct the lease assignment premium analysis called for under the leases using \$1 per lease for GLS-4303 and GLS-4379 as the basis.

Staff normally prepares a complete lease assignment premium analysis for presentation to the Board prior to recommending consent to assignment. In this case, however, BIT and Servco have indicated they need to close this transaction by July 1, 2024. Accordingly, staff is willing to make a recommendation for consent now provided that BIT satisfy the appraisal requirement as noted above and additionally agree to deposit \$100,000 in escrow to be applied toward a lease assignment premium if one is determined to be due to the State in this transaction. If the premium comes out higher than \$100,000, BIT will need to make up the difference within 30 days of the Board action assessing the premium. If the difference is not paid to the State within the time allowed, the consent to assignment of lease will be subject to rescission by the Board. If the premium assessed is lower than \$100,000, the excess will be

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<sup>5</sup> Staff believes that requiring BIT to pay for an appraisal of the fair market value of the leases is a reasonable condition of consenting to the assignment.

<sup>6</sup> Alternatively, the lease assignment premium policy also contemplates that the date of construction of the improvements can be used as the base year for purposes of calculating whether a premium is due to the State, which may be appropriate in this case where the improvements were constructed after the 1978 assignment. Staff will likely run calculations under both alternatives for the Board's review when staff returns with a recommendation on this matter.



released to BIT.

Finally, the parties have informed staff that, in the event the Board consents to the assignment, Servco will need to take possession of the leases as of July 1, 2024, which should be after the Board consent but will likely be prior to the time the Department of the Attorney General prepares the formal consent instrument for execution by BIT and the Chairperson. Staff has no objection to Servco taking possession as of July 1, 2024 provided that BIT satisfies the applicant requirements above.

RECOMMENDATION:

That the Board, subject to the Applicant Big Island Toyota, Inc. fulfilling the Applicant Requirements above, consent to the assignment of General Lease Nos. S-4303, S-4379, S-5656 and S-5848 from Big Island Toyota, Inc., as Assignor, to Servco Pacific Inc., as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time; provided, however that the consent shall additionally require Big Island Toyota, Inc. to:
  - a. Pay for an independent appraisal to be procured by the State to determine the fair market value of all four of the subject leases, i.e., the amount a willing buyer would pay to a willing seller to acquire the leases and leasehold improvements thereon; and
  - b. Deposit \$100,000 in escrow to be applied toward a lease assignment premium if one is determined to be due to the State as part of the assignment. If the premium is determined to be higher than \$100,000, Big Island Toyota, Inc. shall make up the difference within 30 days of the Board action assessing the premium. If the difference is not paid to the State within the time allowed, the consent to assignment of lease shall be subject to rescission by the Board. If the premium assessed is lower than \$100,000, the excess shall be released to Big Island Toyota, Inc.
2. Review and approval by the Department of the Attorney General; and

June 14, 2024

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Dan Gushiken*

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Dan K. Gushiken  
Land Agent

APPROVED FOR SUBMITTAL:



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Dawn N. S. Chang, Chairperson

*gch*

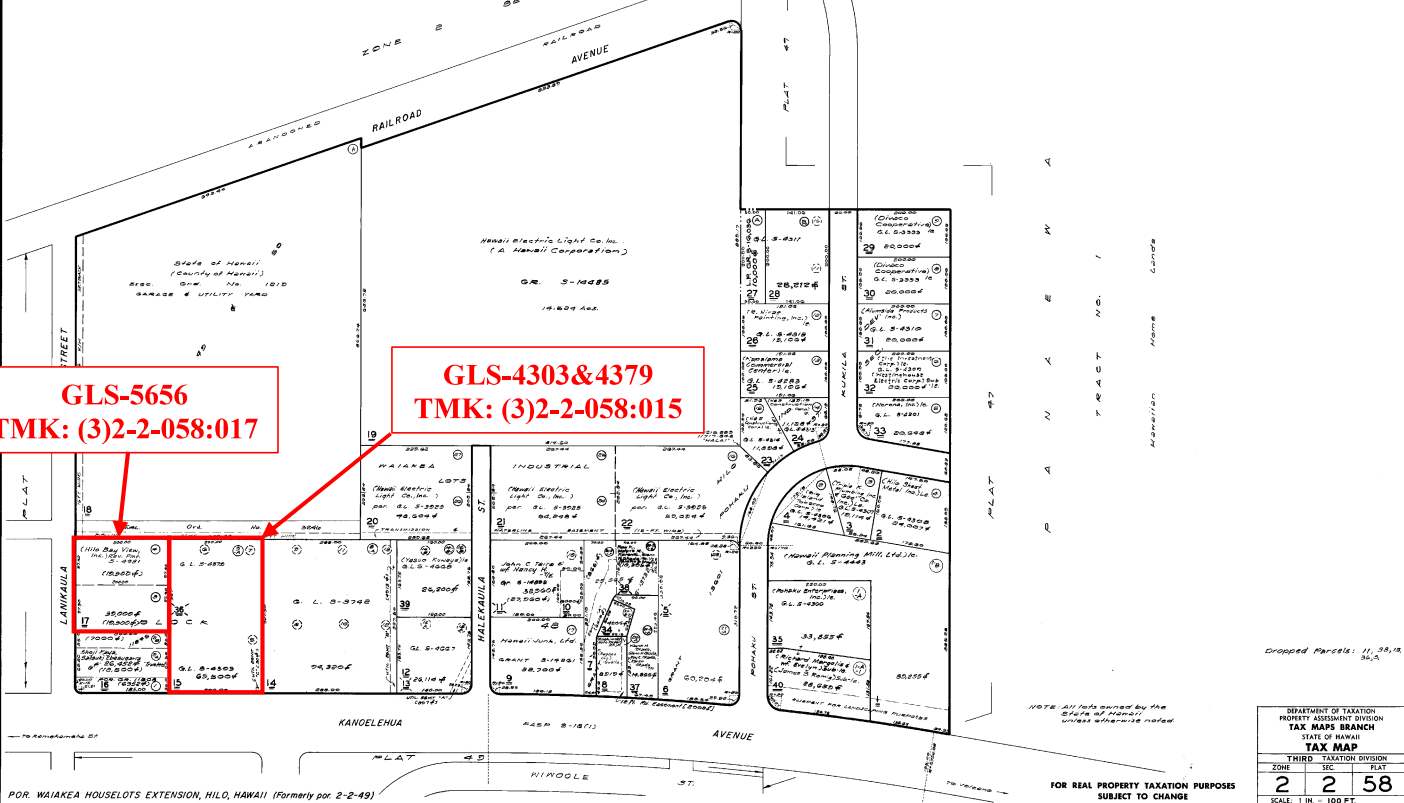
*km*

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# Exhibit A (TMK)

**GLS-5656  
TMK: (3)2-2-058:017**

**GLS-4303&4379  
TMK: (3)2-2-058:015**



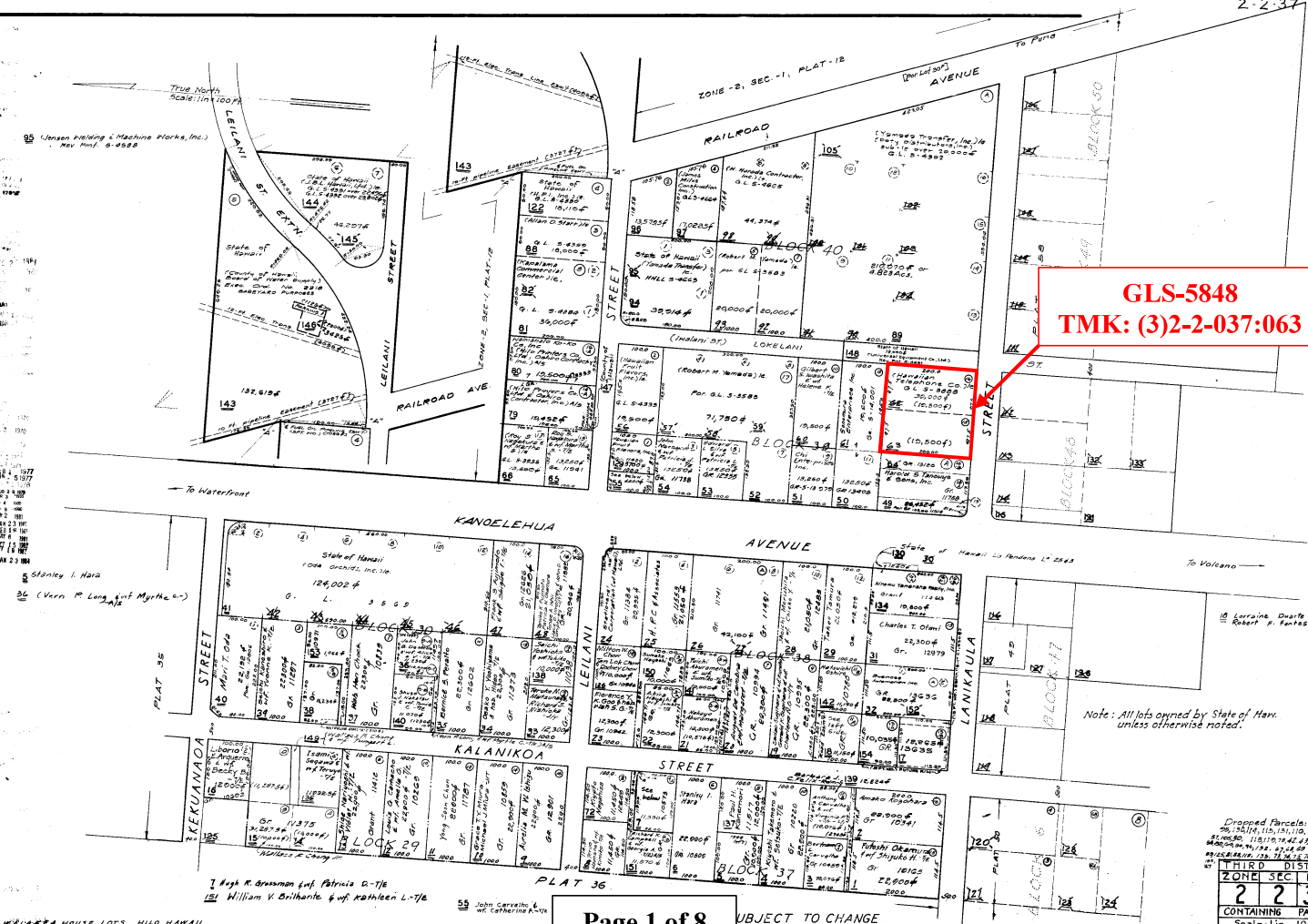
Dropped Parcels: 11, 29, 19, 30, 31

DEPARTMENT OF TAXATION PROPERTY ASSESSMENT DIVISION TAX MAPS BRANCH STATE OF HAWAII TAX MAP			
THIRD	TAXATION DIVISION	SEC	PLAT
2	2	2	58
SCALE: 1 IN. = 100 FT.			

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

2-2-37

**GLS-5848  
TMK: (3)2-2-037:063**



Dropped Parcels: 11, 115, 46, 29, 30, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200

THIRD DISTRICT TAX MAPS BRANCH STATE OF HAWAII TAX MAP			
THIRD	TAXATION DIVISION	SEC	PLAT
2	2	2	37
CONTAINING PARCELS Scale: 1 in. = 100 ft.			



**Exhibit A  
(Aerial View)**





# GLS-4303 & GLS-4379

## TMK: (3) 2-2-058:015

Help



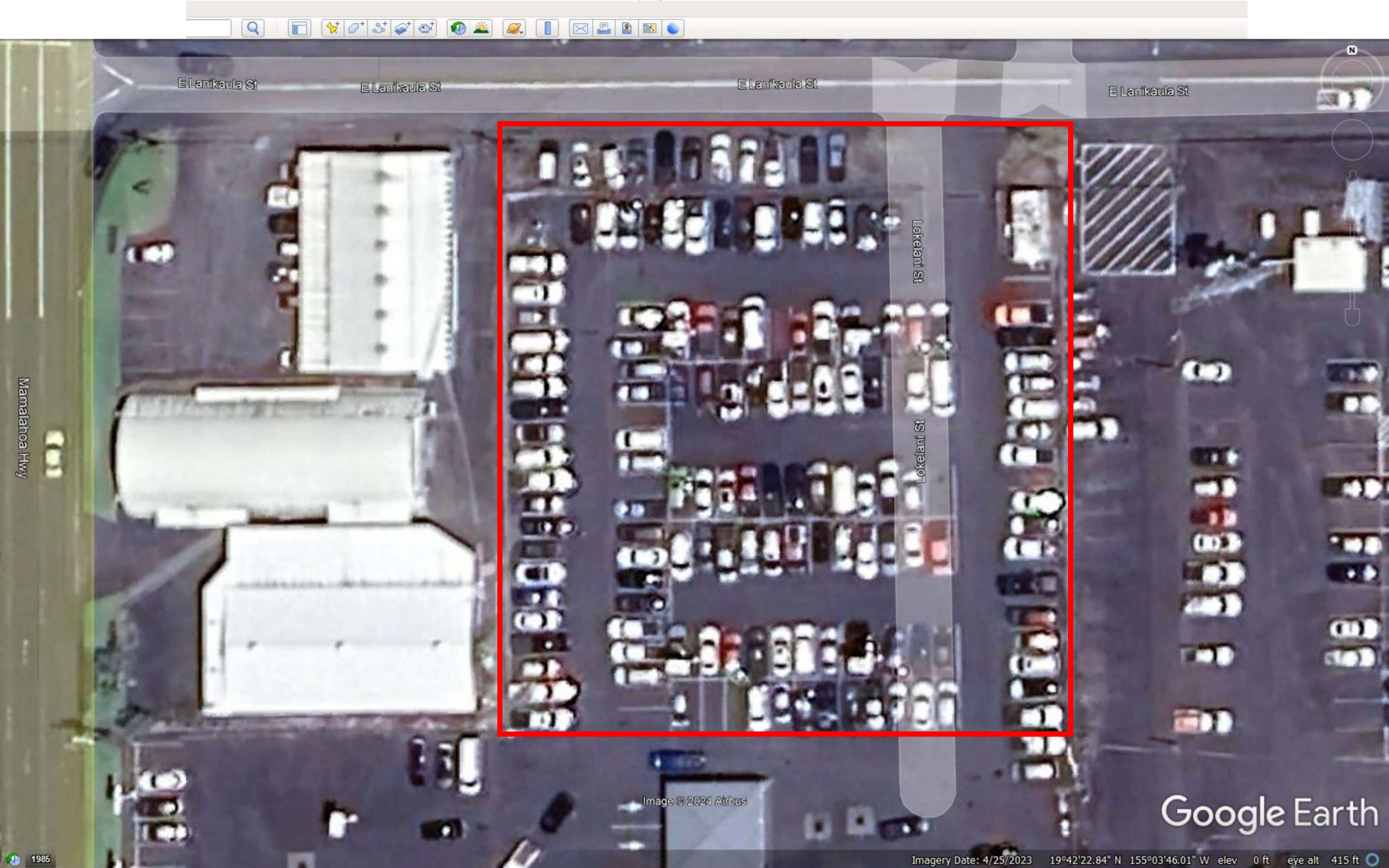
Image © 2024 Airbus

Google Earth

Imagery Date: 4/25/2023 19°42'21.05" N 155°03'46.36" W elev 0 ft eye alt 415 ft



**GLS-5656**  
**TMK: (3) 2-2-058:017**





# GLS-5848

## TMK: (3) 2-2-037:063

Help



E Lanikaula St

E Lanikaula St

Image © 2024 Airbus  
E Lanikaula St

E Lanikaula St

Google Earth

1985

Imagery Date: 4/25/2023 19°42'25.31" N 155°03'45.75" W elev 0 ft eye alt 415 ft



**Exhibit A**  
**(Photos)**

**GLs S-4303 & S-4379**  
**TMK: (3) 2-2-058:015**  
**Sales/Admin and Parts/Service Center**





**GLS-5656  
TMK: (3) 2-2-058:015  
Service Department Parking**





**GLS-5848**  
**TMK: (3) 2-2-037:063**  
**Car Care Center**

