

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

December 7, 2023

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

PSF No.: 23KD-061

Kauai

Cancellation of Governor’s Executive Order No. 4566; Issuance of Direct Lease to Kapa’a Business Association, Inc. for Non-Profit Office, Meeting Hall, and Public Parking Purposes, Kapa’a, Kawaihau, Kauai, Tax Map Key: (4) 4-5-008:008.

CONTROLLING AGENCY (of subject executive order):

County of Kauai (COK)

APPLICANT (requesting direct lease):

Kapa’a Business Association, Inc. (KBA), a Hawaii non-profit corporation and Internal Revenue Code Section 501(c)(3) qualified nonprofit entity.

LEGAL REFERENCE:

Section 171-11 and -43.1, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Kauai situated at Kapa’a, Kawaihau, Kauai identified by Tax Map Key: (4) 4-5-008:008, as shown on the attached map labeled **Exhibit A**. Parcel 8 was previously measured at 0.347 acre but was consolidated with parcel 9 to bring the total acreage to 0.521.

AREA:

0.521 acre, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open

TRUST LAND STATUS:

Section 5(B) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Governor's Executive Order No. 4566 setting aside 0.347 acre to COK for Community Needs and Social Services Related Purposes.

PURPOSE OF USE FOR DIRECT LEASE:

Non-profit office, meeting hall, and public parking purposes.

LEASE TERM:

Fifteen (15) Years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005).

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The annual rent shall be reopened and redetermined at the 10th and 20th years of the lease term based on the Board's then-prevailing Minimum Rent Policy for eleemosynary organizations.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – public water, sewer, and electric services

Elevation – 20 feet

Improvements – land is improved with a structure of approximately 2398 sq ft. built in 1978.

Legal access to property – Staff has verified that there is legal access to the property off of Inia and Kauwila Streets.

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – Staff has verified that the following encumbrances exist on the property: Governor’s Executive Order No. 4566.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

See **Exhibit B**

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>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to obtain any County of Kauai permits, approvals and variances needed for its planned use of the property prior to conducting operations on the premises.

REMARKS:

Pursuant to the Board of Land and Natural Resources’ (Board) action of March 23, 1973, under Item F-15, General Lease (GL) No. S-4436 was originally issued by direct negotiation to Tenrikyo Taiheiyo Kyokai (TTK) for a term of 65 years commencing on September 1, 1975. TTK had maintained a church on the property since 1940 and requested to enter into a direct lease upon construction of a new building on the property.

GL S-4436 was cancelled March 21, 2016, for failure to cure multiple notices of default (NODs) pertaining to consistent failure to remain current on rent, failure to post liability insurance, and failure to pay sewer bills. The parcel was subsequently transferred to the County of Kauai for “Community Needs and Social Services Related Purposes” under Governor’s Executive Order (GEO) No. 4566, on November 19, 2018. Under COK

jurisdiction, the subject parcel sat vacant due to issues pertaining to zoning restrictions, the parcel's location in a Special Management Area (SMA), and significant pushback from the county council and local community. On February 25, 2022, DLNR received a letter from County of Kauai Mayor, Derek Kawakami, requesting the cancellation of GEO No. 4566 (see **Exhibit C**). In August 2022, COK removed one the derelict structures that had substantially degraded during the oversight of the county.

Since the cancellation of GL S-4436, the parcel has experienced problems with criminal activity occurring on the property ranging from vandalism to squatting and drug use. These activities have resulted in numerous complaints and significant expenditures to attempt to clean and secure the structures on site. KDLO believes that it is in the best interest of the State to have a tenant to assist in the policing and oversight of the property.

KBA originally incorporated in 1999 and has the goal of promoting and providing advocacy for Kauai eastside businesses as well as improving the quality of life through cultural and community events and projects. They are actively involved in the annual Veterans Day Parade, Coconut Festival, and oversee the ongoing 1st Saturday Art Walk Night in Old Kapa'a Town. KBA plans to improve the parcel by renovating the existing structure to use as their meeting hall and event headquarters as well as with the installation of a Grasscrete Sustainable Paving System across the majority of the property to create additional parking for local businesses and access to the beach and Kapa'a bike path.

The Land Board is authorized to lease State lands to qualifying eleemosynary (charitable) organizations at nominal rent. The statutory authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3].

A section 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while a section 501(c)(3) organization is a privately organized charitable organization.

When considering lease dispositions to, or rental reopenings for, eleemosynary organizations, the Land Board may therefore set the rent by direct negotiation at an amount below fair market rental (i.e., nominal rent).

On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for a lease to a charitable organization be no less than \$480 per year. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent and the minimum rent of \$480 per year. In order to have a standard nominal rent for qualifying non-profit tenants, staff generally recommends rent be set at \$480 per year.

Various government agencies were solicited for comments.

AGENCIES	COMMENTS
County of Kauai:	
Public Works Department	No response by suspense date
Planning Department	No objections
State of Hawaii:	
Historic Preservation	See attached Exhibit D
Office of Hawaiian Affairs	No response by suspense date

KDLO initially received comments from the COK Planning Department stating that the proposed use would require a Class IV Zoning Permit, USE Permit, and an SMA Assessment to determine the need for an SMA Use or SMA Minor Permit (See attached **Exhibit E**). After further consideration, COK Planning Department revised their previous judgment upon determination that the subject parcel was located within Special Planning Area "A," and that the proposed use falls within the designated guidelines of CZO Sec. 10-1.3. COK also notes that they will be launching their East Kauai Community Plan Update in the coming months and will be exploring updating the land use regulations and policies for the area (See attached **Exhibit F**).

Staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 4566 and subject to the following:
 - A. The standard terms and conditions of the most current executive order

- form, as may be amended from time to time;
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a 15-year direct lease to Kauai Business Association covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



James C. Turner
Land agent

APPROVED FOR SUBMITTAL:

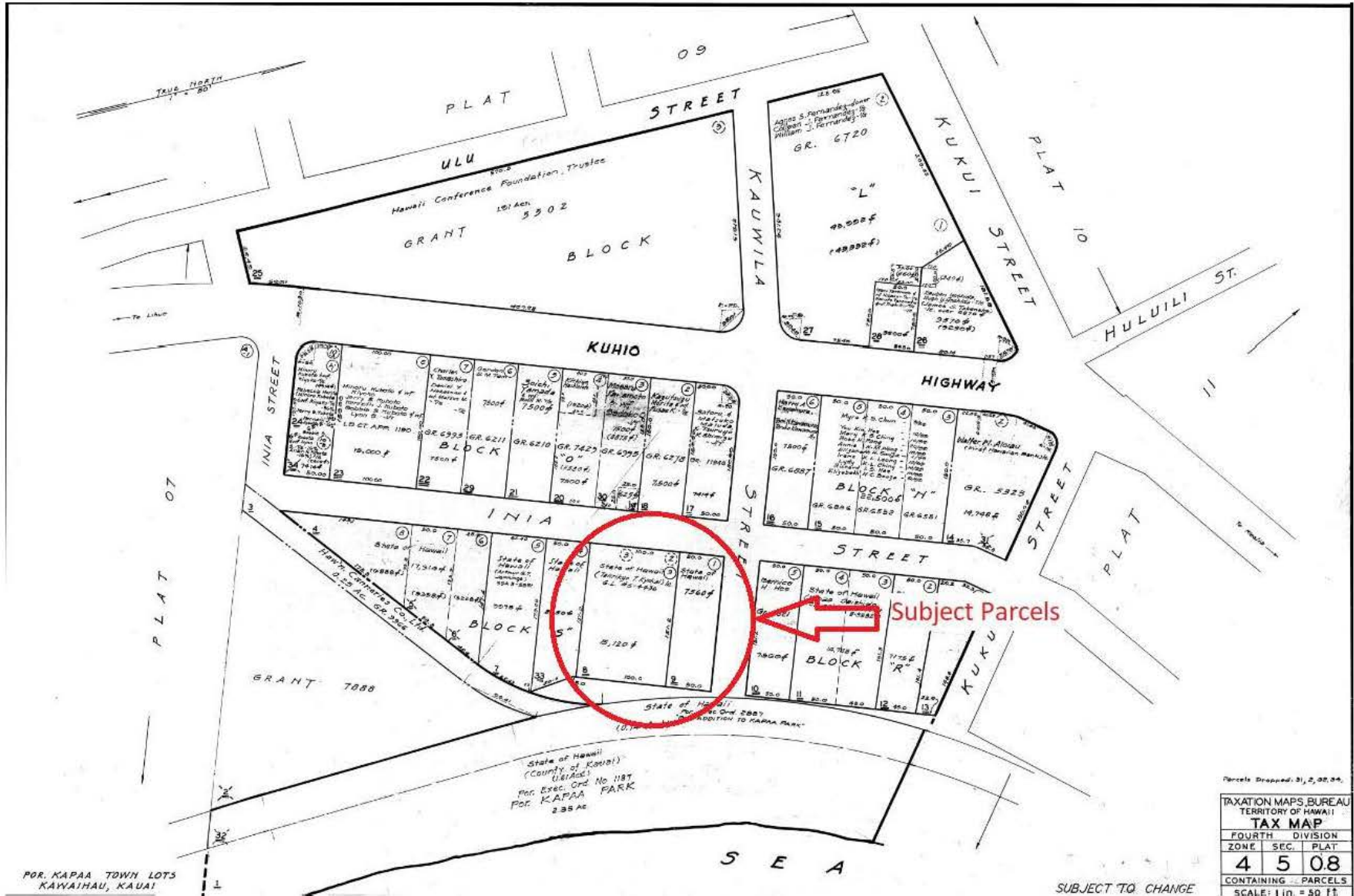


Dawn N. S. Chang, Chairperson





EXHIBIT A



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766

December 7, 2023

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1-16, Hawaii Administrative Rules (HAR):

Project Title:	Cancellation of Governor's Executive Order No. 4566; Issuance of Direct Lease to Kapa'a Business Association, Inc. for Non-Profit Office, Meeting Hall, and Public Parking Purposes, Kapa'a, Kawaihau, Kauai, Tax Map Key: (4) 4-5-008:008.
Project / Reference No.:	PSF No.: 23KD-061
Project Location:	Portion of Government lands of Kauai situated at Kapa'a, Kawaihau, Kauai identified by Tax Map Key: (4) 4-5-008:008.
Project Description:	Cancellation of Governors Executive Order No. 4566, and issuance of Direct Lease to Kapa'a Business Association.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item No.:	In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item 40 that states: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."
Cumulative Impact of Planned Successive	No. There will be no successive actions in same place or no significant cumulative impact.

EXHIBIT B

**Actions in Same Place
Significant:**

**Action May Have
Significant Impact on
Particularly Sensitive
Environment:**

No. There will be no particularly sensitive environments involved or no significant impact.

Consulted Parties:

DLNR Historic Preservation, Office of Hawaiian affairs, County of Kauai Public Works Department, County of Kauai Planning Department.

Recommendation:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.

OFFICE OF THE MAYOR

DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR



February 25, 2022

Suzanne D. Case
Chairperson
Board of Land and Natural Resources
Post Office Box 621
Honolulu, Hawai'i 96809

RE: Request for Cancellation of Executive Order No. 4566 Setting Aside Land for Public Purposes

Dear Ms. Case:

On November 29, 2018, Governor David Y. Ige approved Executive Order 4566, which set aside land in Kapa'a Kaua'i for community needs and social services. The area consisted of .521 acres on Inia Street in Kapa'a.

The County of Kaua'i is requesting the cancellation of this Executive Order. In accordance with the Executive Order, we will restore the premises to the condition in which we received it and return jurisdiction over the property to the Department of Land and Natural Resources.

The County of Kaua'i is appreciative of the Board of Land and Natural Resources continued support of our efforts to serve the people of Kaua'i.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek S. K. Kawakami", with a horizontal line extending to the right.

Derek S. K. Kawakami
Mayor, County of Kaua'i

cc: Alison Neustein (via email alison.neustein@hawaii.gov)
Russell Tsuji (via email Russell.Y.Tsuji@hawaii.gov)

JOSH GREEN, M.D.
GOVERNOR | KE KIA'AINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 19, 2023

IN REPLY REFER TO:
Project No. 2023PR01083
Doc. No. 2305LS11

TO: Russell Y. Tsuji, Administrator
Land Division, Department of Land and Natural Resources
3060 eiwa St., Room 208, Lihue, Hawai'i 96766
c/o James Turner, james.c.turner@hawaii.gov

FROM: Lehua Soares, Archaeologist

SUBJECT: Chapter 6E-8 and 6E-42 Historic Preservation Review –
Cancellation of EO 4566, Issuance of Director Lease to Kapa'a Business Association, Inc.
Landowner Name: County of Kaua'i
Kapa'a Ahupua'a, Puna District, Island of O'ahu
TMK: (4) 4-5-008:008.

RESPONSE:

[X] This is a [X] public (county or state) project [] private project and [] will [] may affect historic properties.

[X] **SHPD has no objections** to the Cancellation of Executive Order 4566, Issuance of Director Lease to Kapa'a Business Association, Inc. for business purposes. However, the **SHPD requests** the opportunity to review future projects involving ground disturbing activities prior to permit issuance.

Please contact Susan A. Lebo, Archaeology Branch Chief, at 321-9000 or at Susan.A.Lebo@hawaii.gov, if you have any questions.

Aloha, *Alan Downer*

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

EXHIBIT D

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
PHONE: (808) 274-3491
FAX: (808) 241-3535

September 6, 2023

Ref. No.: 23KD-061
Author: LD-JCT

MEMORANDUM

TO:

State Agencies:

- DOH
- DHHL
- DLNR-Aquatic Resources
- DLNR-Forestry & Wildlife
- DLNR-Historic Preservation
- DLNR-State Parks
- DLNR-Conservation and Coastal Lands
- DLNR-Water Resource Management
- DOT

County Agencies:

- Planning
- Parks & Recreation
- Public Works
- Water Department

Federal Agencies:

- Corps of Engineers
- NRCS

Other Agencies:

- Office of Hawaiian Affairs

FROM: James C. Turner

SUBJECT: Cancellation of Governor's Executive Order No. 4566; Issuance of Direct Lease to Kapa'a Business Association, Inc.

LOCATION: Kapa'a, Kawaihau, Kauai, Tax Map Key: (4) 4-5-008:008

APPLICANT: Kapa'a Business Association, Inc., a Hawaii non-profit organization and an Internal Revenue Code Section 501(c)(3) qualified nonprofit entity

Transmitted for your review and comment is a copy of the above referenced request involving State lands. We would appreciate your comments on this application. Please submit any comments by 9/22/23. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at (808)-274-3491. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: Ronnie DeLuca
Date: 9.21.23

EXHIBIT E

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

September 21, 2023

James C. Turner
Department of Land and Natural Resources
Land Division
3060 Eiwa Street, Suite 208
Līhu'e, HI 96766

RE: Ref No. 23KD-061
Cancellation of Governors Executive Order No. 4566;
Issuance of Direct Lease to Kapa'a Business Association, Inc.

The Planning Department has received and reviewed the above referenced request for comment regarding the Cancellation of Governors Executive Order No. 4566 and the issuance of a direct lease to the Kapa'a Business Association, Inc. dated September 6, 2023. As stated in the request, the proposal relates to the following:

The Board of Natural Resources (BLNR) originally issued by direct negotiations to Tenrikyo Taiheiyo Kyokai for a term of 65 years starting on September 1, 1975. The tenant has maintained the property since 1940 and requested to enter a direct lease upon construction of a new building.

GL S-4436 was cancelled March 21, 2016, for failure to cure multiple notices of default as outlined in your submittal. The parcel was transferred to the County of Kaua'i (CoK) for "Community Needs and Social Services Related Purposes" under Governors Executive Order (GEO) No. 4566, on November 19, 2018. In August 2022, CoK removed one of the derelict structures and requested cancellation of GEO No. 4566.

Since the cancellation of GL S-4436, the parcel has experienced problems with criminal activity occurring on the property ranging from vandalism to squatting and drug use. KDLO believes that it is in the best interest of the State to have a tenant to assist in the policing and oversight of the property.


The County of Kaua'i, Planning Department has no objection to the issuance of a direct lease to the Kapa'a Business Association (KBA). However, it is noted that parcel identified as Tax Map Key No. (4) 4-5-008:008 consists of 0.5210 acres and is in the County of Kaua'i's Special Management Area (SMA) and holds a County Zoning designation of "Open" (O). As represented, KBA plans to improve the parcel by renovating the existing structure for a meeting hall and event headquarters. The property will also be used for over flow parking for the businesses in the area and additional public parking for beach and the Kapa'a bike path access.

The proposed uses and structures for a meeting hall and event headquarters would require a Class IV Zoning Permit, USE permit, and also a SMA Assessment to determine whether the development will require an SMA Use Permit or an SMA Minor Permit. All new structures proposed will be subjected to

DLNR, Land Division Kauai
REF No. 23KD-061
Cancellation of Governors Executive Order No. 4566;
Issuance of Direct Lease to Kapa'a Business Association, Inc.
Page | 2

the County of Kaua'i SMA, Sea Level Rise Constraint District, and County "O" Zoning development standards. Finally, please note that the County will be launching the East Kaua'i Community Plan Update within the next couple of months and will explore updating the land use regulations and policies for the area.

Should you have any further questions regarding this matter, please contact staff Planner Romio Idica at (808) 241.4056. Aloha!



JODI A. HIGUCHI SAYEGUSA
Deputy Director

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

October 24, 2023

James C. Turner
Department of Land and Natural Resources
Land Division
3060 Eiwa Street, Suite 208
Līhu'e, HI 96766

RE: Ref No. 23KD-061 (REVISED)
Cancellation of Governors Executive Order No. 4566;
Issuance of Direct Lease to Kapa'a Business Association, Inc.

The Planning Department has received and reviewed the above referenced request for comment regarding the Cancellation of Governors Executive Order No. 4566 and the issuance of a direct lease to the Kapa'a Business Association, Inc. dated September 6, 2023. As stated in the request, the proposal relates to the following:

The Board of Natural Resources (BLNR) originally issued by direct negotiations to Tenrikyo Taiheiyo Kyokai for a term of 65 years starting on September 1, 1975. The tenant has maintained the property since 1940 and requested to enter a direct lease upon construction of a new building.

GL S-4436 was cancelled March 21, 2016, for failure to cure multiple notices of default as outlined in your submittal. The parcel was transferred to the County of Kaua'i (CoK) for "Community Needs and Social Services Related Purposes" under Governors Executive Order (GEO) No. 4566, on November 19, 2018. In August 2022, CoK removed one of the derelict structures and requested cancellation of GEO No. 4566.

Since the cancellation of GL S-4436, the parcel has experienced problems with criminal activity occurring on the property ranging from vandalism to squatting and drug use. KDLO believes that it is in the best interest of the State to have a tenant to assist in the policing and oversight of the property.

The County of Kaua'i, Planning Department has no objection to the issuance of a direct lease to the Kapa'a Business Association (KBA). The parcel identified as Tax Map Key No. (4) 4-5-008:008 consists of 0.5210 acres and is in the County of Kaua'i's Special Management Area (SMA) and holds a County Zoning designation of "SPA-A". As represented, KBA plans to improve the parcel by renovating the existing structure for a meeting hall and event headquarters. The property will also be used for over flow parking for the businesses in the area and additional public parking for beach and the Kapa'a bike path access.

The proposed change of use for a meeting hall and event headquarters would be a permitted use within the SPA-A county zone designation and subject to a Class I Zoning Permit. However, any expansion of the structures and any new structures proposed will be subjected to the County of Kaua'i SMA, Sea Level

DLNR, Land Division Kauai
REF No. 23KD-061 (REVISED)
Cancellation of Governors Executive Order No. 4566;
Issuance of Direct Lease to Kapa'a Business Association, Inc.
Page | 2

Rise Constraint District, as well as the County "SPA-A" Zoning development standards. Finally, please note that the County will be launching the East Kaua'i Community Plan Update within the next couple of months and will explore updating the land use regulations and policies for the area.

Should you have any further questions regarding this matter, please contact staff Planner Romio Idica at (808) 241.4056. Aloha!

Jodi Higuchi Sayegusa
JODI A. HIGUCHI SAYEGUSA
Deputy Director