

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

December 13, 2024

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

PSF No.: 24KD-125

Kauai

Cancellation of Governor’s Executive Order No. 4623 to the Department of Health for Health-Related Services and Conveyance by Land Patent Grant to Hawaii Health Systems Corporation, the Kauai Region (HHSC) as an Addition to the Samuel Mahelona Memorial Hospital Campus; Issuance of Immediate Management Right-of-Entry to HHSCRR for Health and Health Systems Purposes, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-014:112.

CONTROLLING AGENCY:

State of Hawaii, Department of Health (DOH)

APPLICANT:

Hawaii Health Systems Corporation, the Kauai Region (HHSCRR)

LEGAL REFERENCE:

Sections 171-11, -13, -55 -95, and 323F-7(c)(18), Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Kauai situated at Kapaa, Kawaihau, Kauai identified by Tax Map Key: (4) 4-6-014:112, as shown on the attached map labeled **Exhibit A**.

AREA:

13.575 acres, more or less.

ZONING:

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

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 (EO) No. 4623 setting aside 13.575 acres to DOH for Health-Related Services Purposes.

The subject parcel contains a DOH facility which is currently being utilized by Easterseals Hawaii for contracted Adult Day Health services.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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 on 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,” and Part 1, Item 37 that states, “Transfer of title to land.” The proposed transfer of title to land will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

DCCA VERIFICATION:

Not applicable. The Applicant as an agency of the State is not required to register with DCCA.

APPLICANT REQUIREMENTS:

There is an existing CSF Map 25,773 dated December 18, 2019 for the parcel that staff intends to use for the conveyance. In the event the map requires any re-survey or similar work to update it, HHSCRR shall be required to provide the same at its sole cost and expense.

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:

Governor's Executive Order No. 30, dated July 20, 1915, set aside 120 acres of Government (Crown) Lands in the Ahupuaa of Kapaa for the Samuel Mahelona Memorial Hospital (SMMH). Subsequent executive orders added to and withdrew lands from the operations of the SMMH.

On November 14, 1975, under Executive Order No. 2791, then Governor George Ariyoshi cancelled Executive Order No. 30 and by Executive Order No. 3373, dated November 9, 1987, 60.145 acres of Kapaa were set aside to the DOH for the SMMH.

Act 262, Section 22(a), Session Laws of Hawaii 1996 created the HHSC for the purpose of operating the community hospitals statewide. It is a State public benefit corporation and assumed the assets and liabilities of the DOH, Division of Community Hospitals on November 30, 1996. Under the Act, HHSC was given the authority to control its own assets. As per HRS 323F-7(c)(18), "Regional system boards shall have custodial control over facilities and physical assets in their respective regional systems. A regional system board may own, purchase, lease, exchange, or otherwise acquire property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, other than property owned or controlled by the corporation, in the name of the regional system board; provided further that a regional system board shall be subject to section 323F-3.5".

HHSC sought the conveyance, in fee simple, of those portions of the various hospital sites identified by HHSC as being necessary for its operations. The unneeded portions would remain in the Department of Land and Natural Resources' (DLNR) land inventory.

At its meeting of August 28, 1998, Item D-28, the Board of Land and Natural Resources (Board) approved the cancellation of Governor's Executive Order Nos. 2493, 2731, 2816, 2950, 2991, 3061, 3373, 3491 & 3622, all issued to the DOH. The lands previously encumbered under the cancelled executive orders were then conveyed via a deed to HHSC. The conveyance included a conditioned that in the event any lands are found to be excess to HHSC's needs, HHSC is authorized to process such lands for subdivision. The subdivided lands that are in excess to the needs of HHSC were to remain in the DLNR land inventory. The subject parcel, which consists of 13.575 acres, was such a portion of land not needed by the HHSC, therefore it remained in DLNR's land inventory.

Research indicates that there is an existing structure on the property which is designated a DOH facility. The County Real Property Tax Office indicates that the improvement was constructed in 1999, but there are no records in file relating to plans, permits or authorizations for the construction of the improvement. Although staff cannot determine how and under what authority the DOH built the structure on the subject parcel, it has been used for health-related services since that time.

By memorandum dated April 18, 2018, Dr. Virginia Pressler, Director of Health, requested a set aside of the subject site that contains the DOH owned facility to the DOH. The property, identified as TMK: (4) 4-6-014:112 contains a facility that is currently being occupied by Easterseals Hawaii, which provides Adult Day Health services.

At its meeting of March 8, 2019, Item D-3, the Board approved a set aside to the DOH for health-related services. Executive Order No. 4623 was thereafter issued to DOH On February 12, 2020, and DOH has continued to use and manage the property.

On October 1, 2024, HHSCKR made a formal request for a fee simple transfer of the parcel. After several meetings with representatives from DOH, HHSC and DLNR staff, it was determined that HHSCKR should be granted the property in order to include it in the SMMH Master Plan. A fee simple transfer would allow HHSCKR to use the property for its highest and best use. They will be able to explore use of the property for housing purposes as well as a dialysis center.

HHSCKR intends to allow Easterseals Hawaii to continue its use for providing health-related services and expand the building’s use to include a much-needed dialysis facility. Currently there are no dialysis facility in East or North Kauai and patients are facing long travel times to receive this life saving procedure and even having to travel to Oahu for treatment.

Staff recommends that the use be restricted to health and health systems purposes and that a reverter clause be included in the deed that will provide that in the event that the land is used for purposes that are inconsistent with health or health systems related services by HHSCKR, then the title to the land shall automatically revert to the Board. Staff believes the reverter clause will help ensure the corpus of the public trust land inventory will not be depleted in the future.

Staff notes that any executive order signed by the Governor is subject to disapproval by the Legislature in the next following session. Therefore, staff recommends the Board authorize the issuance of a management right-of-entry while the cancellation EO is subject to legislative review and pending the issuance of the land patent grant.

Various government agencies were solicited for comments.

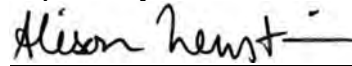
AGENCIES	COMMENTS
County of Kauai:	
Public Works Department	No comments by suspense date
Planning Department	No comments by suspense date
State of Hawaii:	
Historic Preservation	No comments by suspense date
Office of Hawaiian Affairs	No comments by suspense date

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. 4623 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. Subject to the Applicant fulfilling all the Applicant Requirements listed above authorize the fee simple conveyance by land patent grant of the subject parcel identified as Tax Map Key: (4) 4-6-014:112 to Hawaii Health Systems Corporation, the Kauai Region for addition to the Samuel Mahelona Memorial Hospital campus subject to the terms and conditions cited above, and further subject to the following:
 - A. Most current land patent grant form as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General;
 - C. The deed shall include a restriction limiting the use of the land to health and health system related purposes;
 - D. In the event HHSCKR uses the lands for purposes that are inconsistent with health or health system related purposes, then the title to the land shall automatically revert to the Board of Land and Natural resources; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate management right-of-entry permit to Hawaii Health Systems Corporation, the Kauai Region covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- C. This management right-of-entry is effective upon Land Board approval and shall continue for a period of one year or until the land patent grant is complete, whichever shall first occur, provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown.

Respectfully Submitted,



Alison Neustein
District land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

EXHIBIT A

