

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

May 8, 2020

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

PSF No.: 20KD-010

Kauai

Cancellation of Revocable Permit No. S-7498 (RPS-7498) to Kamanawa Foundation and Waiver of Phase I Environmental Site Assessment Required under RP S-7498; Issuance of Direct Lease to Kamanawa Foundation for Cultural and Educational Purposes; Lot 5 Hanapepe Rice and Kula Lots, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-012:013.

APPLICANT:

Kamanawa Foundation, a Hawaii non-profit organization.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Hanapepe situated at Lot 5 Hanapepe Rice and Kula Lots, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-012:013, as shown on the attached map labeled Exhibit A.

AREA:

1.84 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:

Encumbered by RP S-7498 to Kamanawa Foundation for cultural and educational purposes.

CHARACTER OF USE:

Cultural and educational purposes.

LEASE TERM:

Thirty (30) years.

COMMENCEMENT DATE:

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

ANNUAL RENT:

\$480.00 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 and electric services

Legal access to property – Staff has verified that there is legal access to the property off

of Awawa Road.

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:
Revocable Permit No. S-7498

Improvements – The land is improved with a structure of approximately 480 square feet originally constructed in 1958.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as Exhibit B

DCCA VERIFICATION:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for the costs of public notice pursuant to section 171-16, HRS, if applicable.

REMARKS:

The subject property was originally leased to the Konko Kyo Church for religious purposes under General Lease S-3733. General Lease S-3733 was cancelled September 30, 1994 and on October 27, 1994, Kamanawa Foundation was issued Revocable Permit No. S-6937. Kamanawa Foundation (KF) is a Hawaii non-profit corporation. KF currently holds Revocable Permit No. S-7498 (RP S-7498) covering use of the subject property for cultural and educational purposes. The applicant's proposed cultural (halau) and educational use of the property is similar to the religious use that had previously existed under General Lease No S-3733 to the Konko Kyo Church.

On November 22, 2010, the Board approved the reissuance of a large number of revocable permits statewide to update insurance and other provisions to protect the State's interest. As a part of that process, RP S-6937 to KF was replaced by RP S-7498 also to KF, commencing on January 21, 2010.

KF is a cultural eleemosynary organization whose primary function is to serve the community and to educate the people and visitors to the island of Kauai in the practice of Hawaiian culture and hula as taught by the founder and president, Kapu Kinimaka-Alquiza. KF's purpose is to teach and support the students of halau hula, Na Hula O

Kaohikukapulani, to perpetuate the values, practices and traditions of the Hawaiian culture. KF has been in existence for nearly 39 years and has an enrollment of nearly 300 students ranging from ages 3 to adult.

KF's purpose is to preserve, promote, and perpetuate the native Hawaiian language, arts, music, crafts, social values and culture, utilizing hula the native Hawaiian dance form as and the primary educational vehicle; to provide educational programs to the general public by offering instruction in the hula to persons desirous of increasing their knowledge and participating in the Hawaiian culture and to provide scholarship assistance to persons who seek advanced education and training in matters consistent with the purpose for which the KF was founded.

KF supports the students of Na Hula O Kaohikukapulani with two major cultural events: the Holiday Hula Celebration in December will mark its 34th year and the Kauai Hula Exhibition in June at its 38th year. The proceeds from these events will provide educational scholarships, costumes, culture exchanges, Hawaiian and Polynesian dance workshops and also provide the opportunity for the students of Na Hula O Kaohikukapulani to compete in hula, Tahitian and Maori dance competition at the State and national level. KF supports families with two or more children with their hula instructions fee by providing complimentary or discounted rates.

KF for twelve years has produced and contributed to the Kauai Polynesian Festival a four-day event during the Memorial Day weekend offering dance competition in Hawaiian, Tahitian, Maori and Samoan fire knife dance and a Polynesian music contest including cultural workshops and Polynesian artisan and craft vendors. KF also participates and supports community events yearly.

It is KF's intent to repair and renovate the existing building structure and to cultivate the land. It is their vision to serve as a cultural center. KF plans on cultivating native taro, wauke (the paper mulberry for kapa making), hala (for weaving), awa (piper methysticum) and many of the plants used to produce la'au (medicines), wai ho'olulu (dyes), na mea ulu wehiwehi (adorning plants used for leis and adornments) and various plants of importance to the people of Hawaii.

KF has applied for a 30-year direct lease at nominal rent for the continued use of the premises for cultural and educational purposes

The Board of Land and Natural Resources (Board) has authority to issue the leases at a nominal consideration and by direct negotiation to eleemosynary (charitable) organizations pursuant to the following authority:

§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. [L1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c202, §1; am l 1991, c 212, §3]

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

On May 13, 2005, the land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for leases to charitable organizations be no less than \$480 per year.

Kamanawa Foundation is a domestic 501(c)(3) nonprofit corporation. See Exhibit C.

Kamanawa Foundation has not had a lease, permit, easement or other disposition of State lands terminated within the past five years due to non-compliance with such terms and conditions.

To date, no other parties have expressed interest to utilize/lease the subject area.

The last inspection was conducted on February 4, 2020. The premises and building were clean, but there is some deferred maintenance to the building that is needed, as shown in photos attached as Exhibit D. The structure on the land was built in 1958. State leases typically include the following standard language:

Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

To provide clarity that this language extends to the improvements on the premises, staff is recommending the standard language be amended to read:

Non-warranty. The Lessor does not warrant the conditions of the premises or any improvements thereon, as the same are being leased as is, where is with all faults and defects, whether latent or patent.

The following State and County of Kauai (COK) agencies were consulted on this action with the results indicated:

Agency:	Comment:
Historic Preservation	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
Department of Health	No objection

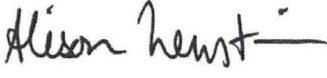
COK Department of Public Works	No objection
COK Water Department	No response by suspense date
County of Kauai (COK) Planning Department	No response by suspense date
COK Police Department	No response by suspense date
COK Fire Department	No response by suspense date

RP S-7498 to Kamanawa Foundation includes a requirement that the permittee conduct a Phase I Environmental Site Assessment (ESA) of the property before termination of the permit. In this case, Kamanawa Foundation will be the lessee under the new direct lease and the new lease will contain its own Phase I ESA requirement. Accordingly, staff is recommending a waiver the of the Phase I ESA requirement in RP S-7498.

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. Authorize the cancellation of RP S-7498 to Kamanawa Foundation and Waiver of Phase I Environmental Site Assessment Required under RP S-7498, with the cancellation being effective upon the commencement of the direct lease to the applicant.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Kamanawa Foundation 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 non-profit lease document form, as may be amended from time to time; provided that the lease shall include language to the following effect: “Non warranty. The Lessor does not warrant the conditions of the premises or any improvements thereon, as the same are being leased as is, where is with all faults and defects, whether latent or patent,” or such other language as the Department of the Attorney General may determine appropriate and in the best interests of the State;
 - 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,

Alison Neustein  *wn*

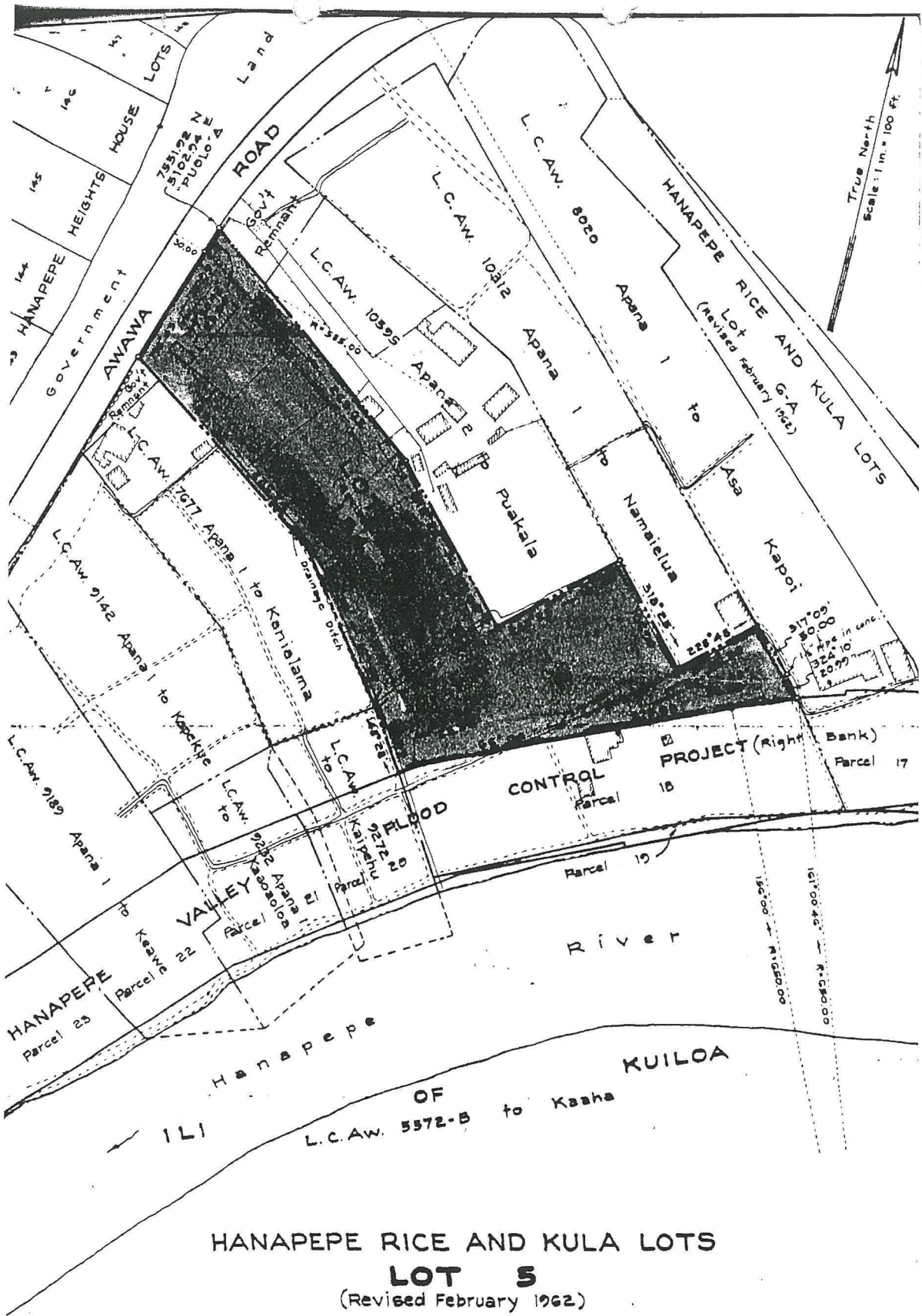
Alison Neustein
Land Agent

APPROVED FOR SUBMITTAL:

RT

Suzanne D. Case

Suzanne D. Case, Chairperson



HANAPEPE RICE AND KULA LOTS

LOT 5
 (Revised February 1962)

Hanapepe Waimea (Kona) Kauai, Hawaii

Scale: 1 inch = 100 feet

JOB 932
 C.BK 11, Sakamoto

TAX MAP 1-9-12

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

KAAIAI FILE-CARTON 20

STATE OF HAWAII

LS, Feb. 14, 1962

EXHIBIT A Subject Property



SUBJECT TMK (4) 1-9-012:013

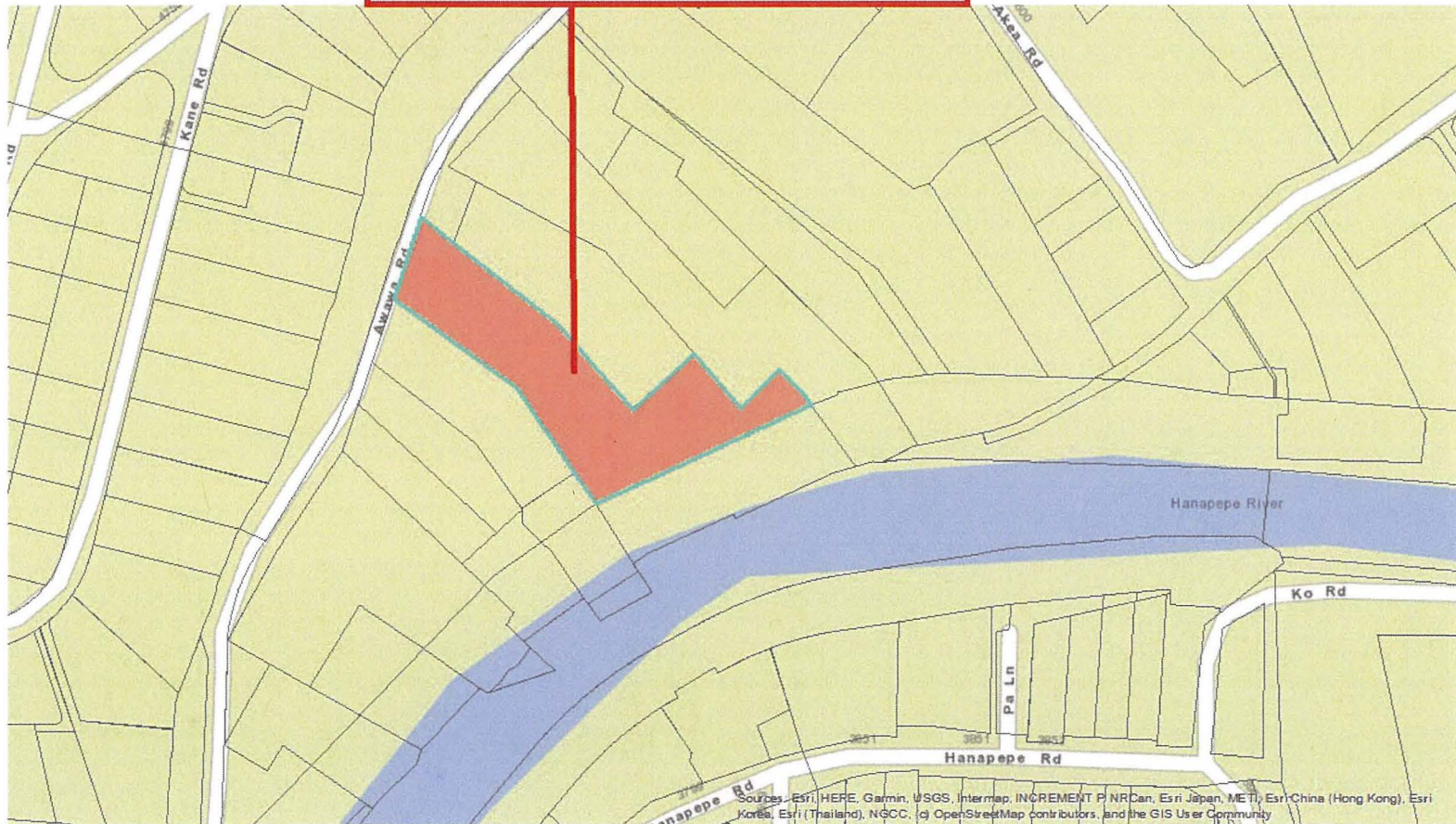


EXHIBIT A

DAVID Y. IGE
GOVERNOR OF HAWAII



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

**STATE OF 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

May 8, 2020

EXEMPTION NOTIFICATION

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

Project Title: Cancellation of Revocable Permit No. S-7498 (RPS-7498) to Kamanawa Foundation and Waiver of Phase I Environmental Site Assessment Required under RP S-7498; Issuance of Direct Lease to Kamanawa Foundation for Cultural and Educational Purposes

Project / Reference No.: PSF No. 20KD-010

Project Location: Lot 5 Hanapepe Rice and Kula Lots, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-012:013.

Project Description: Issuance of Direct Lease to the Kamanawa Foundation for Cultural and Educational Purposes and Cancellation of RPS-78498.

Chap. 343 Trigger(s): Use of State land.

Exemption Class No. and Item No.: In accordance with Section 11-200.1-15 of the Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing, and Item 40, which states, "Leases of state land involving

EXHIBIT B

negligible or no expansion or change of use beyond that previously existed.”

Cumulative Impact of Planned Successive Actions in Same Place Significant?

No, the request is a single occurrence in the area.

Action May Have Significant Impact on Particularly Sensitive Environment?

No, the action proposed will have no significant impact to any particularly sensitive environment.

Analysis:

Since 1984, the subject property has been used for cultural and educational purposes by the Kamawa Foundation. As such, staff believes that the requests would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties:

Comments from The State Historic Preservation Division, Office of Hawaiian Affairs, Department of Health, COK Public Works, COK Water Department, COK Fire Department, COK Police Department, and COK Planning were solicited. No agency had any objection by the suspense date to the proposed exemption.

Recommendation:

It is anticipated this activity will probably have minimal or no significant effect on the environment. As a result, it will involve minimal or no significant effect on the environment and staff recommends the Board find the requests to be exempt from the preparation of an environmental assessment.

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
2 CUPANIA CIRCLE
MONTEREY PARK, CA 91755-7406

DEPARTMENT OF THE TREASURY

Date: APR 12 1996

KAMANAWA FOUNDATION
P O BOX 49
HANAPEPE, KAUAI, HI 96716

Employer Identification Number:

~~XXXXXXXXXX~~

Case Number:

~~XXXXXXXXXX~~

Contact Person:

JULIE Y. CHAN

Contact Telephone Number:

(213) 725-6619

Accounting Period Ending:

March 28, 1994

Form 990 Required:

yes

Addendum Applies:

yes

Dear Applicant:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

If your sources of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status and foundation status. In the case of an amendment to your organizational document or bylaws, please send us a copy of the amended document or bylaws. Also, you should inform us of all changes in your name or address.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes. If you have any questions about excise, employment, or other Federal taxes, please let us know.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

~~Contribution deductions are allowable to donors only to the extent that their contributions are gifts, with no consideration received. Ticket purchases and similar payments in conjunction with fundraising events may not necessarily qualify as deductible contributions, depending on the circumstances. See Revenue Ruling 67-246, published in Cumulative Bulletin 1967-2,~~

Letter 947 (DO/CG)

EXHIBIT C