

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

October 11, 2024

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

PSF No.: 24KD-109

KAUAI

Amend General Lease No. S-4401 to Kauai Soto Zen Temple Zenshuji for Church and Related Purposes, Waimea Village, Waimea, Kauai, Tax Map Key: (4) 1-8-008:082.

The purpose of the amendment is to change the rent payable from a net annual rent of \$2,400 per year for the term of the lease to rent for the final 15 years of the lease term based on the Board of Land and Natural Resources then prevailing policy on leasing to eleemosynary organizations, which is currently \$480 per year, and to add a rent reopening provision specifying rental reopenings in alignment with the policy at the 50th and 60th years of the lease.

APPLICANT:

Kauai Soto Zen Temple Zenshuji (KSZ) a Hawaii non-profit corporation and an Internal Revenue Code Section 501(c)(3) qualified nonprofit entity.

LEGAL REFERENCE:

Sections 171-6 and 43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) lands of Waimea situated at Waimea Village, Waimea, Kauai identified by Tax Map Key: (4) 1-8-008:082, as shown on the attached map labeled **Exhibit A**.

AREA:

3.126 acres, more or less.

ZONING:

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

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 General Lease No. S-4401 to KSZ for church and related purposes.

CHARACTER OF USE:

Church and Related Purposes.

LEASE TERM:

Sixty-Five (65) years commencing on July 1, 1974, and expiring on June 30, 2039.

ANNUAL RENT:

Rent was originally set at \$2,400 per annum for the duration of the lease. Staff is recommending rent for the final 15 years of the lease be based on the Board of Land and Natural Resources' (Board) prevailing policy on leasing to eleemosynary organizations, which is currently set at \$480 per annum.

RENTAL REOPENINGS:

The original lease does not provide for rental reopenings. This submittal seeks to add a rental reopening in 2024 and 2034, the 50th and 60th years of the lease, based on the Board of Land and Natural Resource's then prevailing policy on leasing to eleemosynary organizations.

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 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 negligible or no expansion or change of use beyond that previously existed." The proposed lease amendment is a de minimis action that 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:

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

APPLICANT REQUIREMENTS:

None.

REMARKS:

General Lease No. S-4401 was issued by direct negotiation on July 1, 1974 to Kauai Soto Zen Temple, Zenshuji, Inc. for church and related purposes. Kauai Soto Zen Temple, Zenshuji, Inc. filed two name changes with the Department of Commerce and Consumer Affairs, one in 1992 and another in 1995, and is now known as Kauai Soto Zen Temple Zenshuji (KSZ).

The intention of this submittal is to acknowledge the work done in the Kauai community by KSZ and its status as a non-profit corporation and recommend adjustment of applicant KSZ's rent to be based on the Board's prevailing policy on leasing to eleemosynary organizations which is currently \$480 per year, in line with its status as an eleemosynary organization rather than a commercial business.

Applicant KSZ was incorporated April 30, 1968, but its origins date back to 1903, with the arrival of Reverend Ryoum Kan to Kauai. With the stated objective of sponsoring and promoting of cultural, religious, and other secular activities for the entire community such as the largest Obon festival in Kauai, taiko drumming, mindfulness and meditation programs, peace events and initiatives, classes and activities in health, wellness, spirituality, and recreation. KSZ welcomes participation from all segments of the community to enrich their lives, and to make the ordinary extraordinary. KSZ also partners with a number of other community organizations such as Hoike TV, the Department of Defense, Taiko Kauai, the Kauai Chorale, Kauai Community College, Kauai Buddhist Council, and the US Peace Institute.

KSZ's outreach programs go toward initiatives like hosting the Tropic Care Instant Readiness Training Program in West Kauai, which provides free healthcare services to thousands of residents on Kauai Island, delivering Thanksgiving turkeys to community members in partnership with the Marshallese Association of Kauai, and providing first aid kits to unhoused Kauai Residents. KSZ also contributes to cultural outreach by supporting activities like the Hanapepe History Days, Ikebana and Lei making workshops, and helping Japanese exchange students finding host families while studying in Kauai.

Applicant KSZ is primarily funded through donations from the community and believes that bringing their lease in line with the State's nominal rent policy would allow them to continue to grow their outreach and provide greater benefit to Hanapepe town and the greater Kauai community regardless of age, race, religion, background, or political affiliation.

The 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.

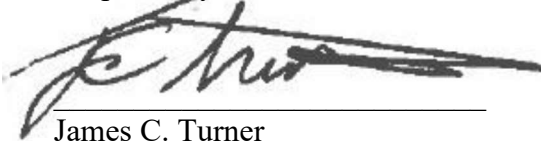
Staff has verified Applicant is an Internal Revenue Code Section 501(c)(3) entity (see **Exhibit C** attached) and that it is compliant with the terms and conditions of the subject lease and there are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Section 11-200.1-16, 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 as a de minimis activity.

2. Authorize the amendment of General Lease No. S-4401 by changing the rent payable from a net annual rent of \$2,400 per year for the term of the lease to rent for the final 15 years of the lease term based on the Board of Land and Natural Resource's then prevailing policy on leasing to eleemosynary organizations, which is currently \$480 per year, and to add a rent reopening provision specifying rental reopenings in alignment with the policy at the 50th and 60th years of the lease, subject to the terms and conditions cited above, and further subject to the following:
 - A. Most current amendment of lease 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



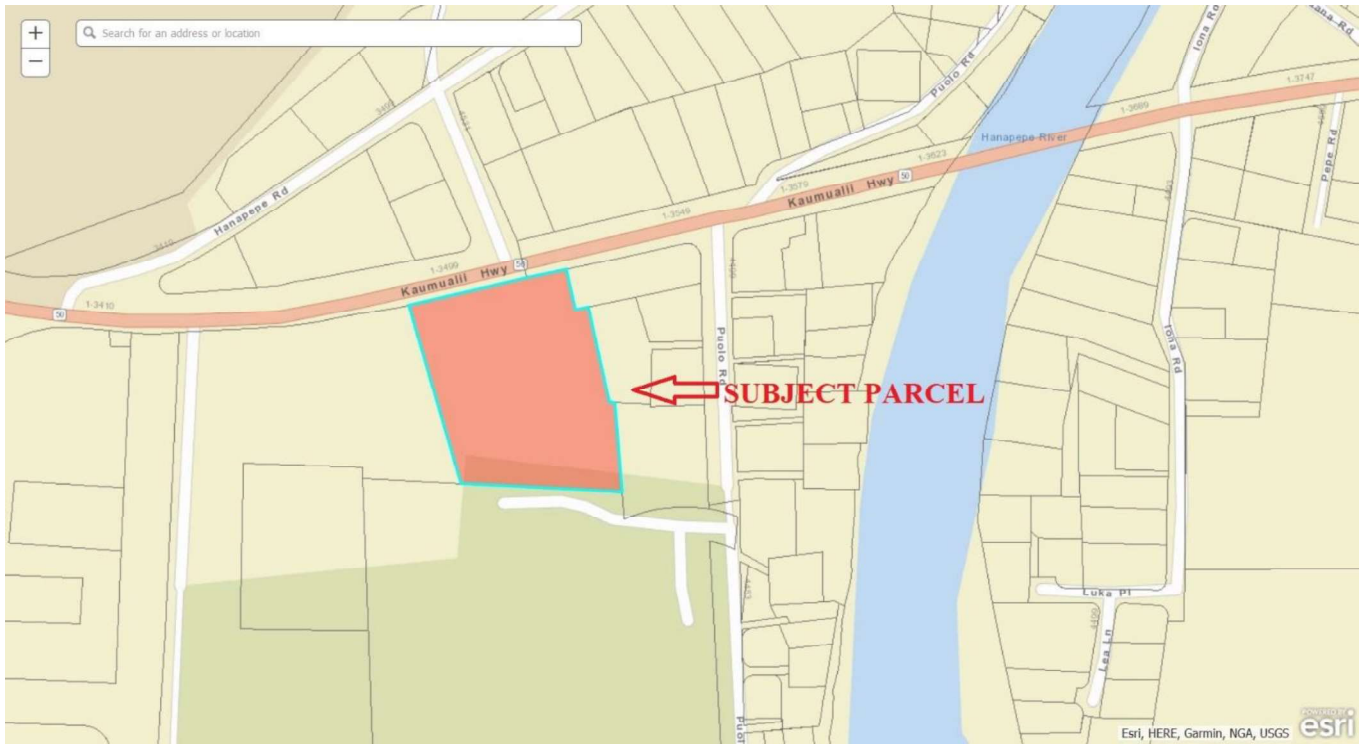
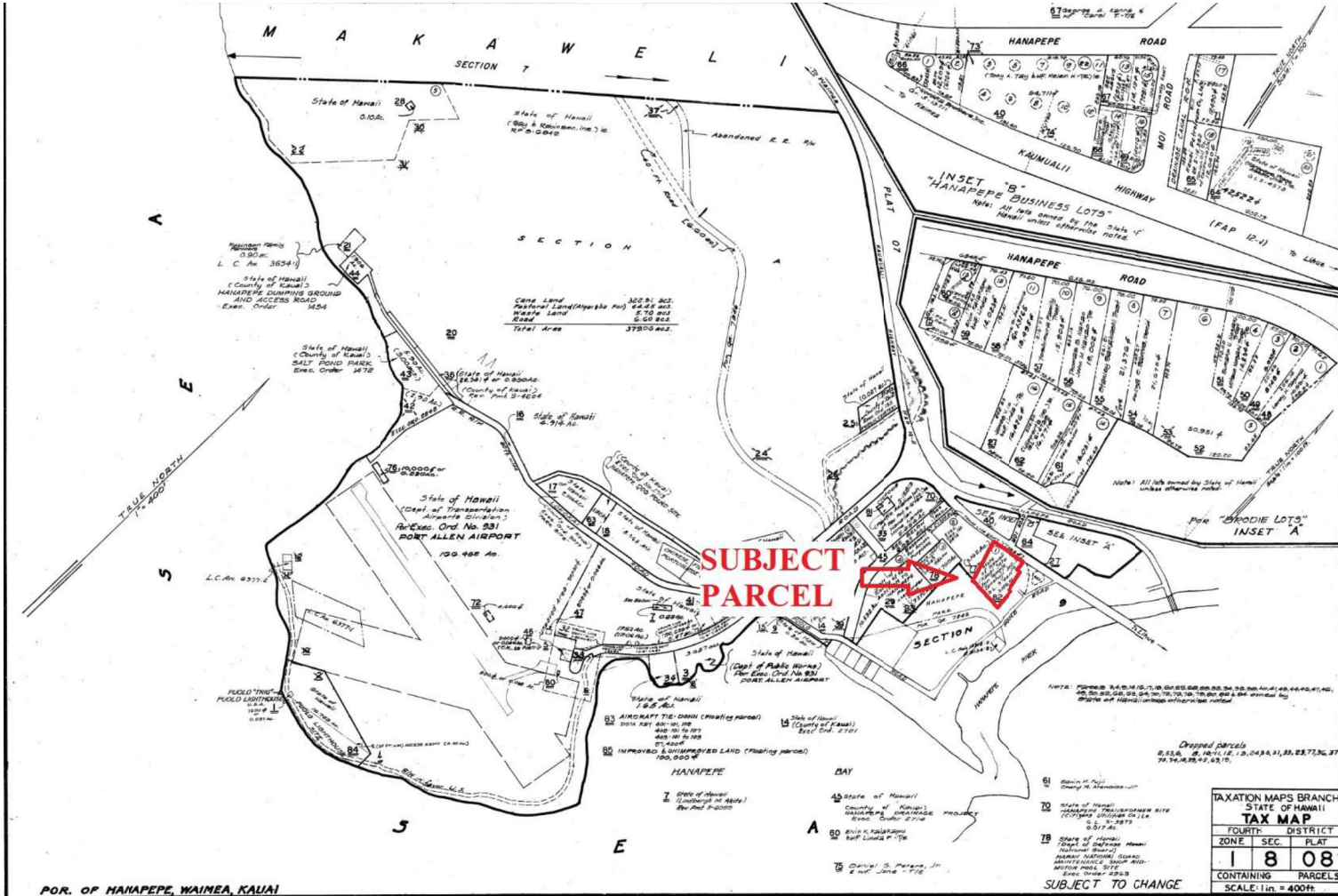


EXHIBIT A



POR. OF HANAPEPE, WAIMEA, KAUAI

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

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766

October 11, 2024

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1-15, Hawaii Administrative Rules (HAR):

Project Title: Amend General Lease No. S-4401 to Kauai Soto Zen Temple, Zenshuji, Inc., for Church and Related Purposes, Waimea Village, Waimea, Kauai, Tax Map Key: (4) 1-8-008:082.

Project / Reference No.: PSF No. 24KD-109/ GLS-4401

Project Location: Hanapepe, Waimea, Kauai, TMK: (4) 1-8-008:082.

Project Description: Replacing the rental provision to make it consistent with other non-profit leases.

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

Exemption Class No. and Description: 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 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 negligible or no expansion or change of use beyond that previously existed." The proposed lease amendment is a de minimis action that 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,

EXHIBIT B

HAR.

Cumulative Impact of Planned Successive Actions in Same Place Significant? No. There will be no change to the current activities on the land.

Action May Have Significant Impact on Particularly Sensitive Environment: No. There will be no change to the current activities on the land.

Analysis: Based on the above mentioned, staff believes there would be no significant impact to the environment.

Recommendation: It is recommended that the Board of Land and Natural Resources find that the proposed action will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B

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

DEPARTMENT OF THE TREASURY

Date:

OCT 03 1995

KAUAI SOTO ZEN TEMPLE, ZENSHUJI,
INC.
C/O MS. TOYOKO IWASE
1-3500 KAUMUALII HIGHWAY, PO BOX248
HANAPEPE, HI 96705

Employer Identification Number:

Case Number:

955237014

Contact Person:

JULIE Y. CHAN

Contact Telephone Number:

(213) 725-6619

Accounting Period Ending:

December 31

Form 990 Required:

no

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)(i).

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. This does not apply, however, if you make or have made a timely election under section 3121(w) of the Code to be exempt from such tax. 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 pur-

Letter 947 (DO/CG)

EXHIBIT C

KAUAI SOTO ZEN TEMPLE, ZENSHUJI,

chance 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, on page 104, which sets forth guidelines regarding the deductibility, as charitable contributions, of payments made by taxpayers for admission to or other participation in fundraising activities for charity.

In the heading of this letter we have indicated whether you must file Form 990, Return of Organization Exempt From Income Tax. If Yes is indicated, you are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. However, if you receive a Form 990 package in the mail, please file the return even if you do not exceed the gross receipts test. If you are not required to file, simply attach the label provided, check the box in the heading to indicate that your annual gross receipts are normally \$25,000 or less, and sign the return.

If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$10 a day is charged when a return is filed late, unless there is reasonable cause for the delay. However, the maximum penalty charged cannot exceed \$5,000 or 5 percent of your gross receipts for the year, whichever is less. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

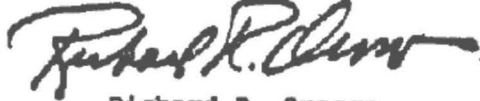
If we have indicated in the heading of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

KAIJAI SOTO ZEN TEMPLE, ZENSHUJI,

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Richard R. Grosco
District Director

Addendum

KAIJAI SOTO ZEN TEMPLE, ZENSHUJI,

The effective date of this determination letter is April 30, 1968.

Letter 947 (DO/CG)

EXHIBIT C