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LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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August 29, 2012

Mr. Kenneth Fujiyama, CEO
Nani Mau, Inc.
421 Makalika Street
Hilo, Hawai'i 96720

Subject: Docket No. SP73-159
Toyama Gardens Hawai'i Corporation dba
Nani Mau Gardens, Inc.

Dear Mr. Fujiyama:

On March 30, 2011, the Commission received your letter comprising a verbatim statement of all conditions imposed by the Land Use Commission in the subject Special Permit. The letter also contained a report of Nani Mau, Inc.'s efforts to comply with each condition in the Decision and Order Approving the Tenth Amendment to the Special Permit issued in December 4, 2009. You have stated that all the existing conditions for the Ninth Amendment have been completed as of 2005 and Annual Reports after 2004 were stopped per Condition Number 9. In addition, you have stated that conditions 5 and 11, added during the Tenth Amendment, have been completed. Your request is to acknowledge that further annual reports are no longer necessary.

Upon review of the information you have submitted and previous approved amendments to the Special Permit; we have the following comments:

1. The Commission's rules, Section 15-15-94, Hawai'i Administrative Rules (HAR), provide a process to modify or delete conditions of orders. This requires a petitioner to file a motion in accordance with Section 15-15-70.
2. Condition No. 9 requires an annual progress report be submitted to the State Land Use Commission, County Planning Commission, and the County Planning Director prior to the anniversary date of the amendment. The condition is to remain in effect until all of the conditions of the approval have been complied with and the Planning Director acknowledges that further reports are not required.
3. Prior to receipt of the Petitioner's 2011 Annual Progress Report; the Commission had not received an annual progress report since August 18, 2004. At that time, the Commission noted conditions in effect at the time were being complied with.

4. On May 18, 2011, the Commission received a letter from the County of Hawai'i Planning Director providing a review of Nani Mau, Inc.'s 2011 annual progress report. Further, that based on Condition No. 9, that "all conditions are being complied with and acknowledges that no further reports are needed at this time."

Our reading of Condition No. 9 provides for the County Planning Director to determine if, based on compliance with conditions, further annual progress reports are required. However, this does not give the County Planning Director the power to waive or remove Condition No. 9. That decision rests with the State Land Use Commission through a Petitioner-generated motion to modify or delete conditions. This will require authoritative evidence from the appropriate State and/or County agencies substantiating compliance with each of the conditions.

Until such time as a motion to modify or delete conditions for this docket has been approved; compliance with all of the conditions of the Special Permit, including an annual progress report, are still required.

We have no further comments to offer at this time. We look forward to reviewing your 2012 annual progress report. Should you have any questions, please feel free to call me or Scott Derrickson, AICP of our office at 587-3822.

Sincerely,



DANIEL ORODENKER
Executive Officer

cc: County of Hawai'i Planning Commission
County of Hawai'i Planning Director
State Office of Planning