



SidneyFuke, Planning Consultant

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• Planning • Variance • Zoning  
• Subdivision • Land Use Permits  
• Environmental Reports

February 3, 2025

Mr. Daniel Orodener, Executive Officer  
Land Use Commission  
STATE OF HAWAII  
P.O. Box 2359  
Honolulu, HI 96804



Dear Mr. Orodener:

**Subject: SP 73-159 Toyama Gardens dba Nani Mau Gardens, Inc.**  
**Waiakea, South Hilo, Hawai'i, TMK: (3) 2-02-048: 013**

This is in response to your letter of January 29, 2025, to Mr. Kenneth Fujiyama noting the absence of the required annual reports and requesting that one be provided on or before February 24, 2025.

First of all, we would like to note that the subject property was acquired by Nani Mau Gardens Group LLC ("NMGG") on May 17, 2022. As such, we respectfully request that subsequent contacts and/or correspondences on this matter be directed to Ms. Cindy Cui. Ms. Cui's mailing address is still the same – 421 Makalika Street, Hilo, HI 96720; her email address is [cindy988@yahoo.com](mailto:cindy988@yahoo.com); and her phone numbers are land - (808) 959-3500 and cell - (248) 835-5428.

The 10<sup>th</sup> and last amendment to the subject Special Permit was approved on December 4, 2009. This approval consisted of 11 conditions which, like earlier amendments, superseded conditions of the previous amendment. In that regard, Condition No. 9 of the 10<sup>th</sup> amendment requires the submittal of an annual progress report, which is the nature of your letter.

Relative to this requirement, NMGG was under the understanding that an annual progress report was no longer needed per the attached letter, dated May 16, 2011, from the County Planning Director to your office. You will note that the first paragraph of that letter stated that "Based on Condition No. 9, the Planning Director acknowledges that all conditions are being complied with and acknowledges that no further reports are needed at this time." Since then, neither the former nor current owner has received a letter from the County Planning Director noting that another annual report was due.

Notwithstanding the absence of such a letter, we would like to use this means to update you on the current situation.

NMGG has licensed a 5+ acre area to HO'OULU-LAHŪI ("HL") who operates the Kua O Ka Lā New Century Public Charter School. HL has applied for the rezoning

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of this area, where if successful, it would be able to subdivide and eventually acquire the 5+ acre in fee. The rezoning request will be considered by the Windward Planning Commission and County Council in the coming months.

The following are the specific conditions and NMGG's response:

1. Petitioner, successors of assigns shall be responsible for complying with all of the conditions of approval.

*There are 2 distinct operators covered by this Special Permit – NMGG and HL. Both have and will continue to comply with their respective conditions of approval. It should be noted that both are now working with the County Planning Department in finding a way to best have their interest and entitlements separated.*

2. Final Plan Approval for the expanded development, as approved under the fourth amendment by the State Land Use Commission – Decision and Order effective July 24, 1991, and exclusive of the 5-acre addition to the Special Permit area (portion of Parcel 11) shall be secured by petitioner from the Planning Department within one year from the date of the amendment. To assure adequate time for plan approval review...plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall include a landscaping buffer along the property lines adjacent to Parcels 12, 14, 91, 92, and 97. Parking shall comply with the requirements of Chapter 25, Zoning Code and no parking variances from the Code shall be applied for. Additional parking for buses, vans and cars may be imposed at the time of plan approval. Parking for all functions shall be maintained on the subject properties.

*Plan Approval for the charter school was secured on November 13, 2019. Further, since most if not all of the uses exist, it is not known whether Plan Approval would be required. Should the 5+ acre be subdivided, if some of KOKL's parking and/or access fall on NMGG's property, that must be addressed via the Plan Approval process.*

3. The regular hours of operation for the arboretum shall be limited between 8 a.m. and 7 p.m., provided, however, that the arboretum may remain open until 11 p.m. for special events. The secondary uses (i.e., restaurant, retail gift shop, exhibits) shall operate only during arboretum hours.

*Instead of 8 a.m., the arboretum opens at 9 a.m. Whenever, special events have been held, they have respected the 11 p.m. curfew.*

4. Retail commercial activities shall be confined to: a) a 25,000-square foot area, including the existing main structure and outdoor dining area, and b) coin-operated dispensing machines and mobile vendors. For the purposes of this condition, retail commercial activities do not include the aviary/animal exhibits.

*On several instances, special events have occurred within the parking lot resulting in some complaints. As such, NMGG no longer will authorize and limit special events to occur within the arboretum area only.*

5. The hours of operation for the charter school shall be limited to 7:00 a.m. to 4:00 p.m. Mondays through Fridays provided that the school may remain open until 10:00 p.m. and on weekends for special events such as parent teacher conference, PTA meetings, and other meetings and events for student activities.

*This is being adhered to by HL and KOKL.*

6. Main access to the development from Makalika Street shall be restricted to three entrance/exit driveways as approved by the Department of Public Works. Additional access from Awa and Makalika Streets may be permitted as service driveways which shall meet the requirements of the Department of Public Works. No access shall be allowed from Railroad Avenue unless and until it has been improved to County dedicable standards.

*There are currently two accesses, which are currently sufficient to accommodate the access needs of NMG and KOKL. KOKL will continue to use these accesses. However, it may in the future wish to construct another access from Awa Street so as to help disperse traffic and enhance traffic circulation. If the 5-acre area is subdivided, appropriate access easement(s) to this area from Makalika Street will be reflected on the final subdivision map.*

7. A drainage system in accordance with the requirements of the County Department of Public Works shall be installed.

*This is being adhered to both by HL and NMGG in conjunction with any land disturbance permit requirement.*

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8. All other applicable laws, rules, regulations, and requirements, including those of the State Department of Health, shall be complied with.

*This is an on-going requirement and will be complied with by both HL and NMGG.*

9. An annual progress report shall be submitted to the State Land Use Commission, County Planning Commission, and County Planning Director prior to the anniversary date of the approval of this amendment. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

*As noted earlier, in a letter dated May 16, 2011, the County Planning Director determined that no further reports were needed "at this time." No request for additional reports has been made since then.*

10. Should any of the conditions not be met or substantially complied within a timely fashion, the Planning Director of the County of Maui may initiate procedures to nullify the Permit.

*It should be noted and understood that the reference to Maui was erroneous and should have been Hawai'i.*

11. That the Applicant and the charter school operator shall periodically remind parents and staff to use Railroad Avenue rather than State Route 11 (Hawaii Belt Highway) for access to Makalika Street.

*Since its opening, KOKL has periodically reminded parents and staff to consider using Railroad Avenue.*

We trust that this adequately responds to your letter. If not, please feel free to contact me. Thank you very much.

Sincerely,

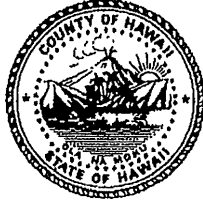
SIDNEY M. FUKE  
Planning Consultant

Enclosures

Copy – Mr. Jeff Darrow, County Planning Director w/ enclosures

Ms. Cindy Cui, Nani Mau Garden Group w/enclosure

William P. Kenoi  
*Mayor*



BJ Leithead Todd  
*Director*

Margaret K. Masunaga  
*Deputy*

## County of Hawai'i

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

May 16, 2011

LAND USE COMMISSION  
STATE OF HAWAII  
2011 MAY 18 P 1:33

Mr. Orlando "Dan" Davidson, Executive Officer  
Department of Business, Economic Development & Tourism  
Land Use Commission  
P.O. Box 2359  
Honolulu, HI 96804-2359

Dear Mr. Davidson:

**Eleventh Amendment to LUC Docket No. SP73-159 (SPP No. 247)**

**Applicant: Nani Mau, Inc.**

**Subject: 2011 Annual Progress Report**

**Tax Map Key: 2-2-048:013**

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We have reviewed the 2011 annual progress report submitted in compliance with Condition No. 9 of LUC Docket No. 73-159. We find that the report is acceptable. Based on Condition No. 9, the Planning Director acknowledges that all conditions are being complied with and acknowledges that no further reports are needed at this time.

The Applicant should keep in mind that during the Ninth Amendment a motion was made to delete Condition No. 7 (roadway improvements), subject to the condition that in the event the Applicant seeks to amend the Special Use permit and said amendment involves either additional uses beyond those which are currently allowed or the expansion of the retail commercial area beyond 25,000 square feet, the Applicant shall prepare a traffic impact analysis report ("TIAR") that (i) identifies the traffic impacts attributable to the proposed development and recommended mitigative measures, (ii) reflects the latest planning efforts for transportation, and (iii) is subject to review and approval of the DOT and the County of Hawai'i. The Applicant shall further provide the appropriate mitigative measures pursuant to the TIAR.

Mr. Orlando "Dan" Davidson  
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If you have any questions, please feel free to contact Daryn Arai at 961-8142.

Sincerely,

  
BJ LEITHEAD TODD  
Planning Director

JWD:smn

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cc: Jon Hayashi