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## New Owner Wants to Rezone and Subdivide, Then Obtain New Special Permit from County

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For more than 15 years, the regulatory environment under which the Nani Mau Gardens operated has been unchanged. In recent months, however, activity to change that environment has started up at a pretty fast clip.

At present, the 23 acres that make up the garden campus is split zoned. Just over 10 acres of the site – the easternmost portion – are zoned A-1a, where any future subdivision cannot create agricultural lots smaller than one acre. The remaining 13 acres, which includes the buildings used by the Kua o Ka La charter school, is zoned A-10a.

Last August, the nonprofit organization that supports the charter school, Ho‘oulu-Lahui, applied to the county to rezone the 13 acres to A-5a. The application included a map that depicted a proposed subdivision of the 13-acre portion of the garden zoned A-10a into two smaller lots. One lot, of five acres, would house the school. The remaining eight-acre lot would continue to house the garden buildings, a building used by a church, and the several gazebos and other areas used for the special events the garden frequently hosts.

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The building used by the church on Nani Mau grounds.

There are, of course, another 10 acres making up the garden lot. These were placed into the A-1a zone in 1995, when the garden owner was hoping to subdivide and convert the area into residential “ag” lots. According to the application, this rezoning “went stale after conditions of the [rezoning] ordinance were not met.” “The current project does not propose any use of the A-1a zoned area,” it continues.

After the rezoning and subdivision, the application states, the school-affiliated nonprofit would purchase the five acres from Nani Mau Garden Group, LLC. Kua o ka La (KOKL) “currently leases the 5-acre portion of the subject property containing the school facilities. ... The landowner ... has entered into a legally binding agreement with Ho‘oulu-Lahui to subdivide the property ... and then sell the approximately 5-acre parcel to Ho‘oulu-Lahui. ... The requested change of zone from A-10 to A-5a is necessary to effectuate that agreement,” according to the application.

The Hawai‘i County Windward Planning Commission heard the rezoning proposal on March 10. Dozens of letters of support were submitted, including from the mayor and other elected representatives. A number of people testified in person, all in favor. The commission voted unanimously in support of the proposal, which now goes before the County Council.

Should the council approve the rezoning, the subdivision be effected, and the school-affiliated nonprofit purchase the five-acre parcel, the state land use law still requires the school to obtain a special permit. Schools in the agricultural district are not called out as a specific allowed use and need therefore to obtain a special permit.

But no longer would the LUC be the issuing agency for the special permit. Special permits for areas that are 15 acres or more, such as that for Nani Mau Gardens, have to be issued by the Land Use Commission. But those for areas less than that can be issued by the counties. Until and unless the rezoning and subdivision are a done deal, the operation of the garden and the school are allowed only under the terms of the special permit first issued by the Land Use Commission in 1973.

The only way out of the special permit requirement would be to apply for a boundary amendment, moving the land out of the state Agricultural District and into the Urban or Rural district.

One of the conditions of the existing special permit is the filing of annual reports. In recent months, the LUC has been trying to identify those holders of permits and owners of lands that have been redistricted who are delinquent in providing those reports.

On January 29, the LUC’s executive officer, Daniel Orodenker, sent a letter to Kenneth Fujiyama of Nani Mau, Inc., informing him that the required annual reports for the special permit issued in 1973 had not been filed since 2011. The LUC was not aware that Fujiyama had lost his ownership interest in the garden more than a decade ago.

Sidney Fuke, planning consultant for the current landowner, replied to the LUC letter on February 6. Fuke argued that under one of the conditions of the tenth amendment to the original special permit, the county planning director could, upon a finding that the permittee had complied with all conditions, do away with the annual reporting requirement.

“Relative to this requirement, [Nani Maui Gardens Group] was under the understanding that an annual progress report was no longer needed,” Fuke wrote, referring to a letter dated May 16, 2011, from then-county Planning Director B.J. Leithead-Todd to then-LUC executive officer Orlando Davidson.

On February 14, Orodenker responded, stating that the condition did not give the county planning director “power to waive or remove” the condition. “That decision,” he continued, “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 as the Land Use Commission has the obligation to assure Decisions and Orders are being complied with.”

The LUC has scheduled a status update on the special permit for April 23.

— **Patricia Tummons**

 Patricia Tummons

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