

STAFF REPORT

SP73-159 Nani Mau Gardens (dba Toyama Gardens) for Status Report Hearing

Waiākea, South Hilo, Island of Hawai‘i
TMK No. 2-2-048:013
approximately 23.793 acres

Status Report Hearing and Action Meeting
April 23, 2025

Submitted: April 17, 2025



Daniel E. Orodener
Executive Officer

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1. EXPLANATION OF PROCESS

Status and Progress Report hearings provide the Applicant (“Applicant” or “Petitioner”) an opportunity to update the Commission on progress or problems in compliance with the representations and conditions of the decision and order.

AUTHORITY

Pursuant to HAR 15-15-90(c) “The Commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission.”

Condition 9 of the Tenth Amendment to the Decision and Order (2009) relating to annual reports “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. The report shall address the status of the development and the compliance with conditions of approval. 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.”

The Special Permit process differs from the process for district boundary amendments. The official evidentiary record is developed at the county-level before its Planning Commission. The in-depth review process is conducted by the County Department of Planning (“DP”) and a report with a recommendation is presented to the County Planning Commission. The applicant can and usually does present a case, complete with expert witnesses, to the County Planning

Commission. Where the County Planning Commission approves a Special Permit, it makes a decision based on the record, sets conditions to be placed on the project, and forwards a recommendation to the Land Use Commission (“LUC” or “Commission”).

The LUC’s decision must be made based on the record developed at the county-level and any amendments to conditions or additional conditions must be based on that same record. The LUC needs to be careful about allowing the introduction of any new information, whether inadvertently or purposely, into its deliberative process that might require a remand back to the County.

Section 205-6, Hawai‘i Revised Statutes (HRS), and Section 15-15-96(a), Hawai‘i Administrative Rules (HAR), provide the alternative actions that may be taken by the LUC in its consideration of a Special Permit application. The LUC may: approve, approve with modification, or deny the Application.

The LUC may impose additional restrictions as may be necessary or appropriate in granting an approval; so long as the additional restrictions or conditions are based on evidence contained in the record received from the County.

Amendments to Special Permits are required to follow the process as outlined in HAR Sections 15-15-70 and -96.1, “Any request for modification, release, or deletion of a condition imposed on a special permit, whether imposed by the county planning commission or the commission, shall first be submitted to the appropriate county planning commission and, for

special permits for land greater than fifteen acres in size, the commission, for consideration and decision.”

Guidelines for Special Permits

The guidelines for Special Permits are contained within 15-15-95, HAR, that allows certain “unusual and reasonable” uses within the Agricultural and Rural Districts. These guidelines are to be used in determining whether a proposed use is “unusual and reasonable.”

1. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Commission.
2. The desired use would not adversely affect surrounding property.
3. The use would not unreasonably burden public agencies to provide streets, sewers, water, drainage, schools, fire, and police resources.
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

2. BACKGROUND AND PROCEDURAL MATTERS

A State Special Permit (“SP”) has been in place for the operation of an arboretum and accessory uses since 1973. Over more than 50 years, the uses and ownership of the property

have evolved and changed. Annual Reports¹ were received in 1995 (covering 1994 and 1995) and the period between 1999 and 2005.

The following is the procedural narrative of over 50 years of permitting and amendments to the Special Permit (SP73-159). The last amendment (Tenth Amendment) was approved in 2009, approximately 15 years ago. The last annual report received was in 2004, over 20 years ago. Recent activity by the Applicant at the county level has only recently been conveyed to Commission staff. The Status Report will provide the Applicant an opportunity to explain to the Commission its current state of compliance with conditions and any future plans that may require review and approval by the County and the Land Use Commission.

Procedural Matters

On October 17, 1973, the Commission approved the original Special Permit (SP73-159) for Makoto Nitahara, dba, Nani Mau Gardens, Inc., to use approximately 20 acres, representing TMK 2-2-048:013, to establish a commercial arboretum to include: a constructed waterfall, pond areas, grass shack, toilet facilities, paved parking for cars and buses, and a shop for sale of local agricultural products subject to the following conditions:

1. The development of the complex be substantially as represented.
2. That any sale of products be limited to agricultural products.
3. That 'plan approval' be secured from the Planning Department before the operation commences to assure compliance with all applicable regulations,

¹ The condition requiring annual reporting was first imposed starting with the Second Amendment (1988) as Condition No. 6. No annual reports found in file before 1995.

i.e., parking, signs, etc."

The Commission granted the SP subject to the conditions proposed by the County of Hawai'i (["Original D&O"](#)).

On March 1, 1977, the Commission heard a new request for an SP for the same property (SP77-258). The request was to allow serving of food and drinks, including alcoholic beverages, as well as provide entertainment at Nani Mau Gardens. The Commission approved the SP with conditions including a requirement to establish the proposed uses within one year and Plan Approval by the County Planning Department. However, by letter dated October 15, 1981, the County Planning Commission nullified the SP due to non-compliance and that Petitioner no longer wished to proceed.

First Amendment (1984)

On July 9, 1984, the Commission heard a request to amend the SP (["First Amendment"](#)) to allow establishment of individual shops for the sale of locally-produced "agriculturally-oriented" products, a small gift shop, and a snack shop. At that time Petitioner argued that the expanded uses would make the garden more economically viable, provide an outlet for local craftsman, and a central location for tourists to observe local products. The County Planning Commission voted to recommend approval of the request subject to additional conditions to limit hours of operation, require compliance with all applicable regulations including those of the State Department of Health, and allow for automatic void of the permit by the Planning Director for non-compliance.

On September 5, 1984, the Commission approved the First Amendment with the following conditions:

1. The proposed uses shall only be conducted during the hours in which the arboretum operation is open to the public.
2. That all applicable rules, regulations, and requirements, including the requirements of the State Department of Health, shall be complied with.
3. Should the Planning Director determine that any of the foregoing conditions have not been met or substantially complied with in a timely fashion, the Special Permit shall be automatically void."

and the following three additional conditions imposed by the Commission:

4. That applicant or its sub-lessee may sell films, post cards and locally-produced agricultural and agricultural-related products on the premises.
5. That applicant or its sub-lessee may sell pre-packaged snack foods, including but not limited to soft drinks, chips and ice cream that do not require cooking on the premises.
6. That applicant may not sell other tourist items or foods requiring cooking or processing on the premises.

1987 ownership change to Toyama Garden Hawai'i Corporation

Second Amendment (1988)

On February 18, 1988, the Commission approved an amendment to the SP ("[Second Amendment](#)") with additional conditions that included: transfer of the existing Permit to Petitioner (Applicant had acquired Nani Mau Gardens from Makoto Nitahara in 1987), compliance requirements, Plan Approval by County Planning Department within one year; construction must be completed within two years; drainage system installation; **annual progress report**, and not allowing operation of a kitchen or restaurant but can operate a

snack facility subordinate to the commercial arboretum.

The following eight conditions replaced all previous conditions:

1. The Petitioner shall be responsible for complying with all of the conditions of approval.
2. Plans for the proposed addition, including parking, shall be submitted to the County Planning Department for Plan Approval review within one year from the effective date of this amendment.
3. Construction of the proposed addition shall commence within one year from the date of receipt of Final Plan Approval and be completed within two years thereafter.
4. A drainage system in accordance with the requirements of the County Department of Public Works shall be installed.
5. All other applicable laws, rules, regulations, and requirements, including those of the State Department of Health, shall be complied with.
6. An annual progress report shall be submitted to the State Land Use Commission, County Planning Commission, and County Planning Department prior to the anniversary date of the approval of this amendment. The report shall address the status of the development and the compliance with the conditions of approval. 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.
7. An extension of time for the performance of conditions within the permit may be granted by the County Planning Director with the concurrence of the State Land

Use Commission, upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the Petitioner and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extensions would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the permit.

8. The Petitioner may not operate a kitchen or restaurant on the Property, but may operate a snack facility during the hours of operation of the commercial arboretum which shall be subordinate to its commercial arboretum activity provided, however, that it satisfies all applicable county and state sewage, health, drainage, water and building requirements.

Third Amendment (1989)

On October 31, 1989, the Commission approved an amendment to the SP (“[Third Amendment](#)”) to expand the original acreage of the arboretum approximately 53.786 acres and allow additional uses including: expansion of agricultural products, equestrian trail and riding stable, display of native animals such as mongoose, agricultural museum, vegetable and fruit stand, picnic and barbeque area, restaurant and dining area within a new building,

improvements to the Belt Highway; and the deletion of Condition 8 that prohibited the operation of a restaurant or kitchen. The Commission imposed twelve conditions that restated and replaced previous conditions and imposed additional restrictions on hours of operation, restriction of access from Makalika Street, limitation on access from Railroad Avenue, improvement of the Belt Highway, and installation of a drainage system.

1. Petitioner, successors or assigns shall be responsible for complying with all of the conditions of approval.
2. Petitioner shall secure consolidation approval from the Planning Department within one year from the effective date of this amendment showing the Gardens development approved under this permit as one parcel.
3. Final Plan Approval for the expanded development shall be secured by Petitioner from the Planning Department within one year from the date of consolidation approval. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), 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 11, 12, 14, 91, 92 and 97. Parking shall comply with the requirements of Chapter 25, Zoning Code and no parking variance 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.
4. Construction of the various improvements shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two

- years thereafter.
5. The hours of operation for the arboretum shall be limited between 8 a.m. and 7 p.m. The secondary uses (i.e., restaurant, retail gift shop, equestrian trails, agricultural museum, exhibits) shall operate only during arboretum hours.
 6. Retail commercial activities shall be confined to the existing 10,562 square foot structure, the proposed fruit/vegetable stand, and the agricultural museum. For the purposes of this condition, retail commercial activities refer to the gift shop, restaurant, fruit/vegetable stand, and the agricultural museum but do not include the aviary/animal exhibits and equestrian stables and trails.
 7. Main access to the development from Makalika Street shall be restricted to two entrance/exit driveways as approved by the Department of Public Works.

Additional accesses from Awa and Makalika Streets may be permitted as service driveways which shall meet with 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.
 8. The Hawaii Belt Highway (Highway 11) shall be improved with a left-turn storage lane leading to Makalika Street which shall meet with the requirements of the Department of Transportation-Highways Division. Highway improvements shall be constructed and approved by the Department of Transportation prior to the approval of an occupancy permit by the Planning Director for any portion of the expanded development approved under this amendment.
 9. A drainage system in accordance with the requirements of the County Department of Public Works shall be installed.

10. All other applicable laws, rules, regulations, and requirements, including those of the State Department of Health, shall be complied with.
11. An annual progress report shall be submitted to the State Land Use Commission, County Planning Commission, and County Planning Department prior to the anniversary date of the approval of this amendment. The report shall address the status of the development and the compliance with the conditions of approval. 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.
12. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of Petitioner, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied within a timely fashion, the Director may initiate procedures to nullify the permit.

Fourth Amendment (1991)

On July 24, 1991, the Commission approved an amendment to the SP (“[Fourth Amendment](#)”) to expand the existing commercial arboretum by approximately five acres for stockpiling, storage and to establish forest trails, amendment of Condition 5 to allow expanded hours of operation for the restaurant and commercial uses, allow expansion of retail functions outside the commercial structure, amend Condition 6 to allow expansion by doubling the square footage of retail activities, and to amend Condition 7 to allow additional access from Makalika Street for special events parking.

Fifth Amendment (1993)

On June 17, 1993, the Commission approved an amendment to the SP (“[Fifth Amendment](#)”). The 5th Amendment requests a time extension to comply with Conditions 3 and 8 of the 1991 Decision and Order (“Fourth Amendment”). The property covered by the SP at that point was 58.786 acres in size; as expanded in the Third and Fourth Amendments. Condition 3 required the applicant to secure Final Plan Approval from the County; Condition 8 required the applicant to complete highway improvements, within one year of the filing date of the Fourth Amendment – which was by July 24, 1992. In April 1992, the Planning Director, pursuant to Condition 12 (Fourth Amendment) granted a one-year extension of time for performance of conditions – allowing applicant to have until July 24, 1993 to meet conditions. Applicant represented that unfavorable economic conditions and costs resulted in not completing the roadway improvements. The Commission amended Conditions 3, 8, and 12 providing the applicant additional time to complete the conditions and provided the Planning Director the ability to nullify the SP if conditions were not substantially complied

with in a timely fashion.

Sixth Amendment (1994)

On October 24, 1994, the Commission approved amendments to the Fourth and Fifth Amendments to the SP (“Sixth Amendment”). The Applicant requested amendment to Condition 8 of the Fifth Amendment relating to required improvements to the Hawai‘i Belt Highway and to delete an approximately 5-acre garden expansion on TMK No. 2-2-048:011 (portion).

The Property is identified as TMK Nos. 2-2-048:011 (portion) and 013 (portion) approximately 58.793² acres improved as a botanical garden with related improvements. The existing structures and uses identified at that time were the botanical garden, greenhouses, garden pavilions, restaurant, snack shop, gift shop, fruit and vegetable building, tram station and garage, and a single-family dwelling.

In July 1994, the Planning Commission approved the Applicant’s Use Permit to establish a nine-hole pitch and putt golf course on 12-15 acres of land located within the Property. The Applicant represented that the proposed golf course would diversify the park and open space activities and help attract a more diversified group of people to the area. In addition, the Applicant represented its intent to rezone and develop 18 to 20 one-acre lots around the Property to help underwrite some of the required off-site improvements and to generate funds to complete improvements within the arboretum area.

The Applicant no longer has a property interest in the five-acre area and requests

² Applicant indicated that an updated survey of TMK No. 2-2-048:013 found the parcel to be 53.793 acres which is different than previously represented. With the addition of the 5-acre portion of TMK No. 2-2-048:011, the Special Permit area is approximately 58.793 acres.

deleting it from the SP which will affect the requirement to provide a metes and bounds map description for the 5-acre area (Condition No. 2) and Final Plan Approval for the expanded development under the Fourth Amendment (Condition No. 3). In addition, Applicant is requesting amendment of Condition No. 8 to allow an extension of time of five years to construct required roadway improvements; based on sluggish economy, declining visitor counts, and additional time needed to permit and construct the improvements.

The Hawai'i County Planning Commission recommended approval to extend the time by 5 years for roadway improvements under Fifth Amendment Condition No. 8 (now Condition No. 7) and deletion of a 5-acre portion of the garden expansion area represented by TMK No. 2-2-048:011 (portion).

The Commission adopted the County Planning Commission's recommendations by deleting the 5-acre garden expansion area, approving the requested 5-year time extension for providing roadway improvements (now Condition No. 7), and added conditions to allow Applicant to file amendments to the SP to delete the pitch and putt acreage (new Condition No. 12) and delete the acreage comprising a proposed 18-20 one-acre lot subdivision upon receipt of rezoning approval from the County (new Condition 13).

Seventh Amendment (1998)

On March 23, 1998, the Commission approved amendments to the SP ("[Seventh Amendment](#)"). The Applicant requested to amend the SP by deleting approximately 30 acres from the SP pursuant to Conditions No. 12 and 13 imposed under the Fourth Amendment (1991), Fifth Amendment (1993), and Sixth Amendments (1994). Those conditions required Applicant to amend the SP to delete acreage for the proposed 9-hole

pitch and putt golf course (Condition 12) and acreage comprising a proposed 18-20 one-acre lots subdivision, upon approval of its rezoning by the County (Condition 13).

The Commission approved the removal of approximately 30 acres from the SP and the deletion of Condition Nos. 12 and 13, with all eleven other conditions reaffirmed and continuing in effect.

Eighth Amendment (1999)

On August 16, 1999, the Commission approved amendments to the SP (“[Eighth Amendment](#)”). The Applicant requested to amend the SP by extending the time to comply with Condition No. 7 which required the Applicant to complete highway improvements³, to an additional five years from the date of this Decision and Order.

Applicant cited non-favorable economic conditions and cost for why the required roadway improvements had not been completed. The Applicant did report that it had completed a left-turn storage lane and installation of a street light.

The Hawaiʻi County Planning Department and County Planning Commission recommended allowing the requested five-year extension of time to comply with Condition No. 7.

The Commission approved the amendment of Condition No. 7 to allow five-year time extension to complete required roadway improvements from the date of this Decision and Order.⁴

³ Pursuant to Condition No. 7 of the Seventh Amendment, the Applicant was required to complete highway improvements within five (5) years, or by October 24, 1999 (as originally required in the Sixth Amendment Order dated October 24, 1995).

⁴ Under the Eighth Amendment, the Applicant is required to complete highway improvements by August 16, 2004.

Ninth Amendment (2005)

On May 24, 2005, the Commission approved amendments to the SP (“[Ninth Amendment](#)”).

The Applicant requested to amend the SP by deleting Condition No. 7 that identified required roadway improvements, timing for those improvements, submission of annual traffic volume counts to the State Department of Transportation (“DOT”), and required provision of street lighting at Hawai`i Belt Highway-Makalika Street intersection. The Hawai`i County Planning Commission recommended approval of the Applicant’s request to delete Condition No. 7 and further recommended amending Conditions No. 4 and 5 to reflect actual uses of SP area. These amendments detailed specific regular hours of operation for the arboretum, hours allowed for special events, hours allowed for secondary uses (i.e. restaurant, retail gift shop, and exhibits), and a restriction for all retail commercial activities to be confined to the 25,000-square foot building. The DOT and OPSD requested that the Commission add a condition that should Applicant propose any amendment to increase the activities/uses and acreage of the Property then a Traffic Impact Analysis Report (“TIAR”) should be prepared and subject to the review and approval of the DOT and County of Hawai`i.

The Commission approved the deletion of Condition No. 7 as requested by the Applicant, the amendments to Conditions Nos. 4 and 5 as recommended by the Planning Commission, and inclusion of new language requiring a TIAR should additional uses or expansion of the retail area be proposed.

Tenth Amendment (2009)

On December 4, 2009, the Commission approved amendments to the SP (“[Tenth Amendment](#)”).

The Applicant requested to amend the existing uses allowed to include a charter school through conversion of an existing maintenance building and existing salon. The County Planning Department and Windward Planning Commission recommended approval of the request and in addition the deletion of Condition No. 3, renumbering of Conditions No. 4 and 5, and the addition of a new Condition No. 5 pertaining to operating hours for the charter school.

The Commission approved the charter school use as requested by Applicant, the recommendations by the Windward PC, and included an additional Condition No. 11 regarding the responsibility of the Applicant and charter school operator to inform parents and staff on roadway access restrictions.

List of Currently Applicable Conditions Under the Tenth Amendment⁵

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

⁵ In addition to the 11 stated conditions; additional instructions appear from the Ninth Amendment “...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 mitigation measures; (ii) reflects the latest planning efforts for transportation; and (iii) is subject to the 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.” [see *Decision and Order Approving a Ninth Amendment to a Special Use Permit; Docket No. SP73-159 Nani Mau Gardens*, pg. 6]

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 and in accordance with Chapter 25-44 (Zoning Code), 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.
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.
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.
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.

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.

7. A drainage system in accordance with the requirements of the County Department of Public Work shall be installed.
8. All other applicable laws, rules, regulations, and requirements, including those of the State Department of Health, shall be complied with.
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. The report shall address the status of the development and the compliance with conditions of approval. 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.
10. Should any of the conditions not be met or substantially complied within a timely fashion, the Planning Director of the County of Maui⁶ may initiate procedures to nullify the Permit.

⁶ This is a mistake that should read County of 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 (Hawai'i Belt Highway) for access to Makalika Street.

Post-Tenth Amendment Activities (2009-2025)

Between August 2004 and March 2011 the Commission received no annual progress reports regarding this Special Permit.

In 2011, Glory Nani Mau acquired 22 acres where the buildings and garden are sited. [Environment Hawai'i, April 2025; pg. 7]

On March 30, 2011, Applicant sent a letter to the Commission reporting on efforts to comply with conditions in the Tenth Amendment to the SP. Applicant stated that all existing conditions from the Ninth Amendment to the SP had been completed as of 2005 and all Annual Reports after 2004 were stopped per Condition No. 9. In addition, Applicant stated that Conditions 5 and 11, added in the Tenth Amendment, had been completed. The letter requested acknowledgment that annual reports were no longer necessary. The included Report on Tenth Amendment Conditions provided a verbatim recitation of each of the eleven conditions with a short sentence that "all items are completed." No authoritative documentation was provided to verify compliance and/or completion of conditions; and no acknowledgement of the additional requirement from the Ninth Amendment (2005).

On May 18, 2011, the Commission received a [letter from the County of Hawai'i Planning Director](#), titled as Eleventh Amendment to LUC Docket No. SP73-159, providing a review of Applicant's 2011 Annual Progress Report that concluded by stating that "all

conditions are being complied with and acknowledges that no further progress reports are needed at this time.” The County provided no authoritative documents to verify compliance and/or completion of conditions. The County did, at that time, remind Applicant of the additional requirement imposed by the Commission under the Ninth Amendment (2005).

On August 29, 2012, the [Commission responded to Petitioner](#) that prior to the receipt of the 2011 letter and progress report; the Commission had not received any progress reports since August 18, 2004. In addition, the Commission identified the process to modify or delete conditions required of a Petitioner under Hawai`i Administrative Rules (“HAR”) 15-15-70. The County Planning Director does not have the power to waive or remove Condition No. 9. That decision rests with the Commission through an Applicant-generated motion to modify or delete conditions. This will require authoritative evidence from appropriate State and/or County agencies substantiating compliance with each of the conditions. The Commission indicated to Applicant that until such a motion was filed and approved, Applicant was still required to provide annual progress reports.

Periodically, since 2012, Commission staff have been contacted by several members of the public regarding activities taking place at the Property and inquiring as to whether they were permitted. Commission staff have also been contacted by staff from the County Planning Department as they have had questions about ongoing or new uses being conducted on the Property.

In 2022, the main garden area was sold to Nani Mau Garden Group. [Environment Hawai`i, April 2025; pg. 7]

On April 30, 2024, the Commission received a letter from John Pipan from Land

Planning Hawaii LLC providing information regarding recent ownership changes, a desire to sell and subdivide a portion of the property, and intent to amend the SP to create two separate SP's each with areas less than 15-acres, that would only require County of Hawai'i permitting.

In January 2025, Commission staff was contacted by Hawai'i County Planning Department staff to discuss Petitioner's applications for zoning change and amendments to the SP to allow for subdivision of the Petition Area and desire to create two separate, under 15-acre parcels, that might be under County rather than LUC jurisdiction.

On January 29, 2025, the [Commission sent a letter to Nani Mau, Inc.](#) indicating that annual reports had not been filed with our office since 2011, cited Condition No. 6 requiring these reports, scheduling a date to hear a comprehensive status report from Applicant, and a date by which to provide the updated annual reports.

On February 6, 2025, the [Applicant responded with an update on compliance with conditions of the Tenth Amendment](#). Applicant attached a copy of the 2011 Hawai'i County letter and then provided some background on their understanding and reasoning as to why annual reports were no longer necessary. Additional information was provided regarding current efforts to rezone a portion of the Petition Area to allow for operation of a charter school and sale of any subdivided property.

On February 18, 2025, the [Commission staff response letter](#) explained the process required to modify or delete conditions and scheduled a comprehensive status report to be held on March 19, 2025 ⁷. At that time, Applicant would have an opportunity to update the Commission with ongoing compliance with all conditions, ownership changes, and future

⁷ The Status Report hearing date was subsequently rescheduled to April 23, 2025.

plans for the Property under the Special Permit.

On March 13, 2025, the [Applicant responded to the Hawai'i County Planning Director](#), Jeff Darrow, which had been processing, and returned their applications as incomplete, to revoke SP73-159 and process two new Special Permit applications for separating Nani Mau Gardens and the charter school. The Applicant had not provided this information or correspondence to the Commission or OPSD for review or comment.

In [April 2025, the monthly newsletter, Environment Hawai'i](#), published two articles providing a history of Nani Mau Gardens' and amendments through the State Special Permit process, ownership changes, and evolving uses on the Property.

3. STAFF RECOMMENDATIONS

The Status Report hearing is an opportunity for the Applicant, the County, and OPSD to update the Commission on issues related to the Special Permit and any future plans that may require the Commission's involvement. The lack of compliance with the annual reporting condition needs to be explained by both the Applicant and the County. The Applicant and County have both been provided with direction and citation to the appropriate administrative procedures required for amending or deleting conditions of the SP. The Applicant has signaled an intent to nullify the existing SP and reapply to the County only for separate, under 15-acre, Special Permits – one for the garden operations and another for the charter school. This should generate a discussion about the policy issues implicated for the Special Permit process.

Questions the Commission Might Ask:

1. What conditions has the Applicant completed and which ones remain to be completed?

2. What is the operative timeframe, per the Tenth Amendment, for completing each of these conditions; including the unnumbered condition identified in the Ninth Amendment?
3. Has the County received any complaints regarding ongoing use of the Property? What was the nature of those complaints? Was any action taken by the County?
4. What do the surrounding areas look like from a Land Use District standpoint?
5. Should either of the primary uses under the SP, arboretum and charter school, be more appropriately permitted and processed as a district boundary amendment?
 - SPs have generally been viewed as appropriate for projects that do not clearly fit into the State Agricultural or Urban designations.
 - SPs are generally granted for uses that have a recognizable end date and are uses that are not permanent in nature (e.g. rock quarries, solar projects, landfills) such that the land can be returned to its original state.