
New Public Testimony

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To DBEDT LUC <dbedt.luc.web@hawaii.gov>



Agenda Item

Docket No. SP73-159 Toyama Gardens dba Nani Mau Gardens

Position

Oppose

Attachment (if any)

- [2024-08-12-PL-PCV-2024-00642-Notice-of-Order-to-Nani-Mau-Garden-Group-LLC.pdf](#)

Mitchell D. Roth
Mayor

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County of Hawai'i PLANNING DEPARTMENT

Zendo Kern
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CERTIFIED MAIL
9589 0710 5270 2163 5115 50

August 12, 2024

Nani Mau Garden Group LLC
421 Makalika street
Hilo HI. 96720-5843
Attention: Cindy Cui

Dear Ms. Cui:

SUBJECT: NOTICE OF VIOLATION AND ORDER

Complaint:	Unpermitted Outdoor Events Which Exceeds the Special Permits Allowance
Landowner(s):	Nani Mau Garden Groups LLC
Reference:	Courtesy Letter Dated June 14, 2024
File No.:	PL-PCV-2024-00642
TMK:	<u>(3) 2-2-048:013, 345 Makalika Street, Hilo Hawai'i</u>

We have received several complaints stating that an unpermitted outdoor music event known as 808 Day took place on August 3, 2024, at Nani Mau Garden's property. Further, we received information that participant vehicles were parked along Makalika Street and nearby streets.

Our department issued a courtesy letter dated June 14, 2024, informing Nani Mau Garden Group LLC that we received complaints that large outdoor events were being held on the subject property above. The letter informed the LLC that these outdoor events may not be consistent with Special Permit (SP73-159) and to contact our Inspector.

On June 26, 2024, our Planning Inspector met with Cindy Cui of Nani Mau Garden Group at their property. Our Inspector informed the owner of the numerous complaints that the department received pertaining to large outdoor events being held by Nani Mau Garden Group. The owner admitted that outdoor events were being conducted within Nani Mau's parking lot, and the next event called "Classic Cars" is scheduled to be held on July 5, 2024. Cindy explained it would be difficult to cancel this event since it was scheduled for the following week. The owner stated that Nani Mau Garden wants to comply to Special Permit (SP73-159) tenth amendment, which our Inspector

provided. Our Inspector informed the owner to cease any future outdoor events after the Classic Car event. Our Inspector informed the owner in order to hold outdoor events, they would need to secure an amendment to the Special Permit to allow outdoor events.

On July 24, 2024, approximately 2:00pm a meeting was held with the Planning Director, Planning Department staff, Cindy Cui and associate Susan Osborne. The department informed the owner not to hold the upcoming 808 Day event which was scheduled for August 3, 2024, and if for any reason this event is held, we will issue a Noticed of Violation and Order (NOVO) with fines.

On August 8, 2024, our Planning Inspector received information that the event known as 808 Day was held on August 3, 2024, even after you were instructed by this department to not hold the event. Please refer to exhibit below.

We are issuing you this NOVO with assessed fines in the sum of \$1,000 for violating HRS 205-4.5 permitted uses within the State Land Use Agricultural and \$500 for violating Hawaii County Code (HCC) Chapter 25-4-4 and 25-5-72(a). In addition, for exceeding the conditions of the Special Permit (SP73-159).

FINDINGS

Our initial investigation based on a complaint, has revealed the following:

The property is located at TMK (3) 2-2-048:013, 421-Makalika Street and is hereinafter referred to as the "property". The property is owned by Nani Mau Garden Group LLC and consists of approximately 22.3490 acres. The property is located within the State Land Use (A) Agricultural and within the County of Hawai'i, Zoning District Agricultural (A-10a)(A-1a). This property has secured a Special Permit (SP73-159) to hold special events related to "parent teacher conferences, PTA meetings, and other meeting and events for student activities".

HAWAII REVISED STATUTES (HRS)

HRS Section 205-13(a) provides that any person who violates any provision of **HRS Section 205-4.5**, or any regulation established relating thereto, shall be fined not more than \$5,000, and any person who violates any other provision of Chapter 205, or any regulation established relating thereto, shall be fined not more than \$1,000.

HRS Section 205-4.5 (b) and **HRS Section 15-15-25(a)** provide that uses in the State Agricultural District not expressly permitted in **HRS Section 205-4.5(a)** shall be prohibited unless a special permit has been granted by the Planning Commission under HRS section 205-6.

HAWAII COUNTY CODE (HCC)

Section 25-4-4 Uses Prohibited provides in pertinent part that any use not listed among the permitted uses in a zoning district is prohibited use within that district.

Section 25-5-72(a) Permitted uses: Unpermitted Events, overnight camping / accommodations is not listed as permitted uses within the Agricultural zoned district.

NOTICE OF VIOLATION

Hawaii Revised Statutes (HRS) Section 205-4.5 (Permissible uses within the agricultural districts), HRS Section 205-2, Hawai'i Administrative Rules ("HAR") Section 15-15-25(a) and (b), and Hawai'i County Code ("HCC") Section 25-5-72 (Permitted uses within the agricultural district). You are in violation of HRS Section 205-4.5 and HCC 25-5-72(a) therefore you are being assessed a fine of \$1,000 for violating the HRS and \$500 violating the HCC.

The violations must be corrected as stated in the Order below, on or before the deadline date to avoid the accrual of daily fines.

ORDER

You are hereby ordered to take the following corrective action(s) at your own expense:

1. Immediately cease and desist all further unpermitted outdoor events on the property and disable/remove all advertisements for any upcoming events.
2. Pay the assessed fine in the sum of \$1,500.00 for conducting unpermitted events which exceeds the Special Permit (SP73-159) conditions listed on pg. 7, line 4&5.
3. Correct all violations at your own expense on or before the date specified below.
4. Pay all fines due to this office and complete corrective actions by the deadline date of 30 days after the USPS Post Masters Stamp Date on the envelope. Payment may be made by cash, cashier's check, or money order. **Personal checks are not accepted.** Make cashier's check or money order payable to the County Director of Finance.
5. Provide a Letter of Understanding, stating that Nani Mau Garden Group will not hold any future unpermitted events other than allowed by SP73-159.
6. Contact the Inspector below and schedule an inspection of the subject property to verify compliance.

Upon satisfactory compliance with all conditions of the above order, we may close the complaint with no further action.

GENERAL INFORMATION

9-19 Administrative Fines

The Department is authorized to impose administrative fines in accordance with established rules.

What happens if you do not correct the violation?

A violation that is not corrected by the **deadline date** may be assessed daily fines.

Administrative Fine: According to County of Hawai'i Planning Department Rules of Practice and Procedures 9-5(a) Administrative Fines:

Resolution of a violation includes correction of the violation and payment of administrative daily fines not to exceed \$500. In specifying the amount of the fine, the Director shall consider the following:

- 1) The nature and degree of the violation.
- 2) Whether the violation involves a threat to public health and safety.
- 3) Whether there are multiple violations.
- 4) Whether it is a repeated violation.

Note: Items highlighted are the reason for the civil fine.

What happens if you do not correct the violation?

A violation that is not corrected by the **"deadline date"** shall be assessed daily fines starting at **\$100 per day beginning the day after the "deadline date"** unless it is a recurring violation. (See table below.) After 3 months, the fine increases to \$200 per day; after 6 months, to \$300 per day; after 9 months, to \$500 per day until the case is resolved. It is in your best interest to correct this problem before or on the **"deadline date"** as indicated above.

Daily Fines: According to County of Hawai'i Planning Department Rules of Practice and Procedure Rule 9-5(d): When a violation is not corrected by the **deadline** set by the order, the Director may assess additional fines to a maximum of \$500 for each day that the violation remains uncorrected in accordance with the following schedule:

DAILY FINES FOR VIOLATION	FIRST 3 MOS.	AFTER 3 RD MO.	AFTER 6 TH MO.	AFTER 9 TH MO.
Initial Violation	\$100	\$200	\$300	\$500
First Recurrence	\$200	\$300	\$400	\$500
Second Recurrence	\$300	\$400	\$500	
Third Recurrence	\$400	\$500		
Fourth and subsequent recurrences will be assessed \$500 per day of additional daily fines from the date that the violation was to cease as set forth in the order.				

Can you appeal this Notice of Violation?

Yes. In accordance with Section 6-9.2 (a) of the Hawai‘i County Charter, the Board of Appeals is authorized to hear and determine any appeal from the final decisions of the Planning Director.

1. An appeal shall be electronically submitted in the format prescribed by the Board of Appeals and shall specify the person’s interest in the subject matter of the appeal and the grounds of the appeal. Unless otherwise specifically provided by the Board of Appeals rules, an electronic copy of each document shall be filed. A filing fee of \$250 shall accompany any such appeal. (Application must be submitted electronically)
2. The appellant, landowner(s) if not the appellant, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the Board of Appeals.

For your convenience, we have provided the website address for Hawai‘i County’s new EPIC System (Electronic Processing and Information Center) for applications.

WEBSITE: <https://hawaiicountyhi-energovpub.tylerhost.net/Apps/SelfService#/home>

Due Date for Appeal:

The appeal must be received within thirty (30) calendar days from the date of receipt of this Notice of Violation and Order. An appeal to the Board of Appeals shall not stay the provisions of the Director’s “Order” pending the final decision of the Board of Appeals. The appeal must be made in accordance with the Board of Appeals Rules of Practice and Procedures, or it may result in the dismissal of the appeal.

What happens if I lose my appeal?

The assessment and accumulation of fines does not stop when you file an appeal. If the Board of Appeals denies your appeal, then you will be required to pay your fines from the day the fines began to the date the violation(s) has been corrected, which must be verified by the Planning Department. You can also take corrective action as described in this letter and stop the daily fines while appealing. If you do not take corrective action, daily fines will continue to accrue incrementally.

Should you acquire the services of an attorney/counsel representation, then you are required to also submit a letter of consent with your response letter authorizing the County to correspond and respond to the attorney/counsel representation.

Can I get a time extension to have more time to correct the violation?

If you know you cannot complete the corrective action by the deadline date, you may want to submit a "request for a time extension" before the deadline date. **Include all the following information with your request:**

1. Describe what you have accomplished prior to requesting this time extension.
2. The amount of additional time necessary to complete the corrective action.
3. The name and telephone number of the person assisting you in this effort.
4. The date in which you expect the violation to be fully corrected.

The submission of a time extension request does not guarantee the approval of the request, nor does it extend your right to appeal.

If your time extension is denied, daily fines will continue to accrue from the date as described above and until the violation is corrected. If approved, the daily fines will be delayed until the new deadline date.

Should you have any questions on this matter, please contact Planning Inspector Mark Iwamoto at (808) 961-8151.

Sincerely,

Zendo Kern

Zendo Kern (Aug 12, 2024 15:30 HST)

ZENDO KERN
Planning Director

MI:sklo

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cc: (via email) Jean Campbell- Corporation Council



Exhibit: Depict the scheduled date of the event, venue and time of the event.