

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
MAKOTO NITAHARA, dba, NANI MAU)
GARDENS, INC.)
)
For a Third Amendment to the)
Special Permit which establishes)
a commercial arboretum and related)
uses on approximately 20 acres of)
land within the Agricultural)
District at Waiakea, South Hilo,)
Hawaii, Tax Map Key Number:)
2-2-48: Parcel 13)
_____)

DOCKET NO. SP73-159
MAKOTO NITAHARA, dba,
NANI MAU GARDENS, INC.

OCT 31 8 33 AM '89
LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. SP73-159
MAKOTO NITAHARA, dba, NANI MAU)	
GARDENS, INC.)	MAKOTO NITAHARA, dba,
)	NANI MAU GARDENS, INC.
)	
For a Third Amendment to the)	
Special Permit which establishes)	
a commercial arboretum and related)	
uses on approximately 20 acres of)	
land within the Agricultural)	
District at Waiakea, South Hilo,)	
Hawaii, Tax Map Key Number:)	
2-2-48: Parcel 13)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

Toyama Garden Hawaii Corporation, dba, Nani Mau Gardens, Inc. (hereinafter the "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Subchapter 12 of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter the "Commission") having considered the entire record on this matter, hereby makes the following findings of fact and conclusions of law and decision and order:

FINDINGS OF FACT

Procedural Matters

1. The third amendment to the Special Permit (hereinafter "Permit") was filed by Toyama Garden Hawaii Corporation, dba, Nani Mau Gardens with the County of Hawaii Planning Department on May 2, 1989.

2. The Hawaii Planning Commission (hereinafter "Planning Commission") conducted the public hearing on the Permit on July 18, 1989. No public testimony was received for the Permit.

3. On July 18, 1989, the Planning Commission voted to recommend approval of the Permit subject to 12 conditions consisting of the deletion of three previous conditions, the addition of seven new conditions, and the reaffirmation of five previously approved conditions.

4. A copy of the record of the proceeding before the Planning Commission was received by the Commission on August 14, 1989.

Background Information

5. On October 17, 1973, the Commission approved a special permit (SP73-159) for Makoto Nitahara, dba, Nani Mau Gardens, Inc., to establish a commercial arboretum for public tours and the sale of 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, i.e., parking, signs, etc."

6. On March 1, 1977, the Commission approved Makoto Nitahara's request for another special permit (SP77-258) to

allow the sale and serving of food and drink as well as provide entertainment at the Nani Mau Gardens Arboretum. A condition of this permit required the proposed uses to be established within one year from the effective date of approval. In 1981, Mr. Nitahara indicated that he did not plan to pursue the establishment of the proposed uses and the Planning Commission nullified the special permit (SP77-258).

7. By Decision and Order issued on September 5, 1984, the Commission approved an amendment to Special Permit (SP73-159) to allow the establishment of individual shops for the sale of locally-produced agriculturally-oriented products, a small gift shop and a snack shop subject to the following conditions recommended by the Planning Commission:

- "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."

8. By Decision and Order issued on February 18, 1988, the Commission allowed the transfer of the existing Special Permit to Toyama Garden Hawaii Corporation, an expansion of the existing building, and limited cooking of food on the 20-acre area in addition to all uses previously permitted by the Commission, subject to the following eight conditions to replace all previous conditions imposed on the Special Permit:

"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."

Description of the Property

9. The existing Special Permit area is located at the northern corner of the Makalika Street-Awa Street intersection in the Panaewa Farm Lots, Waiakea, South Hilo, Island of Hawaii, Tax Map Key Number: 2-2-48: parcel 13.

10. Soils of the subject area are of the Papai Series (rPAE) as defined by the U.S. Department of Agriculture, Soil Conservation Service, Soil Survey Report. This series consists of well-drained thin, extremely stony organic soils over fragmental Aa lava. Permeability is rapid, runoff is slow and the erosion hazard is slight.

11. Rainfall averages more than 137 inches annually and the slope is about 0 to 5 percent or relatively flat.

12. Surrounding activities are largely residential and agricultural in nature.

13. The petitioned area is located mauka of the Department of Health's Underground Injection Control Line.

14. The Land Study Bureau Overall Master Productivity Rating system defines the soils as Class E or very poor for agricultural pursuits.

15. The petitioned area is depicted as "Other Important Agricultural Lands" by the State Agricultural Lands of Importance to the State of Hawaii (ALISH) system.

16. The Federal Department of Housing and Urban Development Flood Insurance Rate Map (FIRM) prepared by the U.S. Army Corps of Engineers depicts the petition area to be in Zone X, an area determined to be outside the 500-year flood plain.

17. The existing Special Permit area consists of approximately 20 acres and is currently used for a commercial arboretum for public tours and the sale of agricultural products and snacks.

18. The operation, known as Nani Mau Gardens, was first established by special permit in 1973. Toyama Garden Hawaii Corporation purchased the subject property from Makoto Nitahara, dba, Nani Mau Gardens, Inc. in 1987 and retained the name of the current operation.

19. The existing facilities include an arboretum, a 10,562-square feet building housing restrooms, an office, snack shop, retail activities and a lounge area. Also included are two garage structures, an existing dwelling, and parking.

20. Over the past two years, Petitioner has made substantial improvements to the subject property. Additionally, Petitioner acquired surrounding properties with the intention of expanding both the project site and its arboretum.

Description of Proposed Amendment to Special Permit

21. Petitioner is requesting the following amendments to the existing Special Permit:

1. To expand the area of the existing commercial arboretum by approximately 33.786 acres of land. The total area of this development would thus be approximately 53.786 acres. The tax map key numbers for the new and existing areas are as follows:

a. 2-2-48:	13	20.0	approximate acres (existing)
b. 2-2-48:	93	4.502	approximate acres
c. 2-2-48:	15	12.732	approximate acres
d. 2-2-48:	85	2.363	approximate acres
e. 2-2-48:	86	1.518	approximate acres
f. 2-2-48:	88	7.671	approximate acres
g. 2-2-48:	por 12	5.000	approximate acres

TOTAL: 53.786 approximate acres
(hereinafter the "Property")

(It should be noted that parcels 88 and 12 are in the process of being consolidated and resubdivided. The resultant lots are 15 acres for parcel 12 and 12.671 acres for parcel 88.)

2. To expand the activities within the arboretum by including an equestrian trail and horse stables, a museum, and a new pavilion, and a separate area within the expanded area for the sale of fruit and vegetable products. Said activities would be subordinate to the commercial arboretum activities and operate only during the hours of operation of the arboretum.

3. To delete Condition Number Eight of the Commission's February 18, 1988, Decision and Order, which prohibits the operation of a kitchen or restaurant on the 20-acre property.

Petitioner proposes to convert the second floor of the building under construction into a restaurant where hot food can be sold.

22. Petitioner indicates that with the exception of Parcel 15, the expansion parcels are vacant of any active land uses. Parcel 15 has been improved with a single-family dwelling. There is also a non-potable well on the Property which is not being used for the arboretum. It will also be used for the manmade lakes/ponds.

23. Petitioner provided the following description of the project proposal:

"The Applicant hopes to provide visitors and residents with a greater sense of the island's rich agricultural history within a park-like setting. The concept thus reflects not only a display of agricultural products, but also a museum and other landscaping amenities to create a park-like ambience.

"In that regard, the expanded concept (with still a focus on agriculture) would consist of the following:

"1. Greater variety of agricultural products.

Whereas the existing operation emphasizes a lot on floricultural products, the applicant intends to include other types of agricultural products that have or could have a role in Hawaii's agricultural industry.

The plans for the expanded 33 acres would be rimmed by different types of agricultural plots. The tentative plan calls for plots accommodating ginger, miracle fruit, pineapple, taro, coffee, longan, passion fruit, banana, papaya, sugarcane, mountain apple, guava, avocado, and a whole host of other fruit and nut trees.

"2. Other agriculturally-related activities (equestrian trail/riding stables, aviary, and other native animals).

The concept of this arboretum, however, goes beyond soil-based agricultural products. It is intended to embrace other agriculturally-oriented activities. These activities include an equestrian trail with a riding stable, an aviary center displaying a variety of tropical birds, and an area displaying some of the native animals such as mongoose.

"3. A Museum displaying pictures and other artifacts associated with the agricultural industry.

The petitioner intends to convert an existing dwelling into a museum. The focus would include the immigrant's relationship to Hawaiian agricultural industry.

"4. Vegetable/Fruit Stand

A vegetable and fruit stand is also planned on the new or expanded site in the area of the proposed museum. It is intended for fruits/vegetables displayed on the premises.

"5. Landscaping, Pathways, Picnic and Barbeque Area

As indicated earlier, the concept is to create a park-like ambience - an "agricultural park." As such, an area for picnic will be set aside. A landscaped sun dial that resembles a volcano is also planned on the grounds. There will also be water features throughout the property.

While there will be pedestrian paths which meander the grounds, a 15-foot wide paved section for motorized trams to take visitors around the 53-acre site will be constructed. Presently, an "Isuzu" people mover with two passenger trailers is used on the site which can accommodate up to 12 persons per cab. These types of vehicles will be used to move people throughout the site.

"6. Restaurant Use Within the New Building Under Construction

A new office/retail building is presently under construction. While the County Planning Commission did not object to the serving of hot foods or a restaurant on the premises, the State Land Use Commission essentially limited it to only the sale of packaged food. The applicant is proposing to have this restriction deleted.

The applicant hopes to be able to serve hot food for its guests. At this point in time, they wish to have it available for breakfast, lunch, and early dinner. It would be principally oriented to groups. In so doing, the attraction would include a meal function as well. While local patrons would not be excluded, it should be emphasized that the principal market of this restaurant is the group tours.

The facility would accommodate a maximum of 120 patrons. Just as the grounds are sometimes used for special ceremonious functions like a wedding,

the applicant also hopes to make the dining facility or room available for the usual accompanying post-ceremonial gatherings.

In sum, this facility is intended to be an extension of the overall arboretum and not function as a freestanding restaurant/bar."

24. Petitioner intends to improve the Belt Highway with a left-turn storage lane into Makalika Street.

25. Petitioner indicates that water is available from a 12-inch water line which runs along Makalika Street.

26. Petitioner proposes that sewage disposal will be by cesspool.

27. Petitioner indicates that all other utilities and services are available to the project site.

State, County and Federal Plans and Programs

28. The Commission's State Land Use District Map designates the Property in the Agricultural District as reflected on map H-66 Hilo.

29. The General Plan Land Use Pattern Allocation Guide (LUPAG) map designates the area as Orchards and Alternate Urban Expansion.

30. The Property, with the exception of Parcel 93, is zoned Agricultural-10 acres (A-10a) by the Hawaii County Zoning Code. Parcel 93 is zoned Agricultural-3 acres (A-3a).

31. The Hilo Community Development Plan (CDP) Zone Guide Map suggests that the area retain its present Agricultural-10 acres (A-10a) zoning. The Hilo CDP, however,

also suggests the area for Alternate Residential Expansion should the need arise.

32. The Property is not within the Special Management Area (SMA) of the County of Hawaii.

Agency Comments

33. The State Department of Health, in its May 22, 1989, memorandum states the following:

"Please submit sewage flow calculations and proposed plans of the sewage treatment and disposal system prepared by a Registered Engineer to the Chief Sanitarian, Hawaii District, P. O. Box 916, Hilo, HI 96720.

"Food service establishment would need to meet requirements of Chapter 1-A, Public Health Regulations, Sanitation Code, Food Service Establishments."

34. The State Department of Transportation-Highways Division in its June 2, 1989, memorandum states the following:

"We have no objections on the proposed action under the subject application. Should the action be approved, applicant shall improve the existing intersection of Makalika Street and Volcano Road as stated in the amendment request. The intersection improvement shall consist of a left turn storage lane meeting the standards given in the current edition of the Hawaii Statewide Uniform Design Manual for Streets and Highways and the Specifications for Installation of Miscellaneous Improvements Within State Highways."

35. The State Department of Agriculture in its June 7, 1989, memorandum stated the following:

"According to the application, the applicant seeks to expand the commercial arboretum by over 33 acres and situate activities on the expansion area that are largely agricultural in nature. We have no objections to the applicant's proposal if, as stated in the application, the overall concept of the project can be likened to the Maui Tropical Plantation."

36. Hawaii Electric Light Company (HELCO), Waiakea Soil and Water Conservation District, and the Real Property Tax Division had no adverse comments and did not raise any objections to the proposed Permit.

37. The County Department of Water Supply in its May 11, 1989, memorandum stated the following:

"As stated in the application, a 12-inch waterline and meter were installed for the development. Further, it is stated that no additional service will be required. Therefore, we have no objections to this request."

38. The County Department of Public Works in its May 9, 1989, memorandum stated the following:

- "1. Building shall conform to all requirements of code and statutes pertaining to building construction.
- "2. All development generated runoff shall be disposed on site and shall not be directed toward any adjacent properties.
- "3. Applicant shall be informed that if drywells are included in the subject improvements, Chapter 23, Underground Injection Control (UIC), Administrative Rules, Dept. of Health, prohibit any person from operating, constructing or modifying an injection well (drywell) unless authorized by a permit issued by the Director of Health, State of Hawaii.
- "4. If this development will gain vehicular access to Railroad Avenue, it should be improved to County standards."

39. The County Police and Fire Departments had no objections to the proposed Permit and the Waiakea Soil and Water Conservation District had no comments to offer.

Conformance With Special Permit Tests

40. The request is not contrary to the objectives sought to be accomplished by the State Land Use Law. The proposed 33-acre expansion and new uses are complementary to the principal use of the site as a commercial arboretum. The expansion of a commercial arboretum and related activities would not deplete agricultural resources of the South Hilo or Puna District and the proposed agricultural museum and 64-square foot fruit and vegetable stand are supportive of the established and proposed uses within the arboretum.

41. With regards to the request of deleting Condition No. 8, which prohibited the sale of food within the existing structure, the County Planning Department believes that a 2,600 square foot restaurant within the existing 10,562 square foot support building of the arboretum would not be contrary to the objectives sought to be accomplished by the State Land Use Law. The establishment of a restaurant within the existing retail structure would not displace important agricultural lands nor would it serve as an independent commercial use.

42. The proposed uses will not unreasonably burden public agencies to provide services or facilities. The Department of Water Supply states that the existing 12-inch water line is sufficient to meet the project's demands.

In addition, Petitioner believes that Makalika Street is of sufficient width and quality to accommodate potential

increase in traffic generated by the expanded commercial arboretum. Furthermore, Petitioner proposes to install a left-turn storage lane on the Volcano Road (Highway 11) turning onto Makalika Street.

43. The proposed amendment should not adversely affect surrounding properties or uses provided mitigative conditions are imposed.

Planning Commission Recommendation

44. On July 18, 1989, the Planning Commission voted to recommend approval of the Permit subject to the following modified conditions of the Commission's February 18, 1988

Decision and Order:

1. The applicant, successors or assigns shall be responsible for complying with all of the conditions of approval.
2. 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 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 approved by the Department of Public Works. Additional accesses from Awa and Makalika Streets may be permitted as service driveways meeting 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 meeting 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 the applicant, 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.

CONCLUSIONS OF LAW

The proposed amendment, subject to the conditions in the Order, is an "unusual and reasonable" use as defined in Chapter 205-6, Hawaii Revised Statutes and the proposed amendment is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Third Amendment to Special Permit Docket Number 73-159 filed by Toyama Garden Hawaii Corporation, dba, Nani Maui Gardens, to allow the expansion of the Special Permit area by approximately 33.786 acres for a total of approximately 53.786 acres, approximately identified on Exhibit A attached hereto and incorporated by reference herein, and to allow additional uses as earlier described and to delete Condition Number Eight of the Commission's February 18, 1988 Decision and Order, is hereby approved subject to the following conditions as recommended by the County of Hawaii Planning Commission, to replace all previous conditions imposed on the Special Permit:

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.

DOCKET NO. SP73-159 - MAKOTO NITAHARA, dba, NANI MAU GARDENS, INC.

Done at Honolulu, Hawaii, this 31st day of October 1989,
per motions on September 21, 1989 and October 19, 1989.

LAND USE COMMISSION
STATE OF HAWAII

By _____ (absent)
RENTON L. K. NIP
Chairman and Commissioner

By Lawrence F. Chun
LAWRENCE F. CHUN
Vice Chairman and Commissioner

By Sharon R. Himeno
SHARON R. HIMENO
Commissioner

By Allen K. Hoe
ALLEN K. HOE
Commissioner

By Allen Y. Kajioka
ALLEN Y. KAJIOKA
Commissioner

By _____ (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By James M. Shinno
JAMES M. SHINNO
Commissioner

By Elton Wada
ELTON WADA
Commissioner

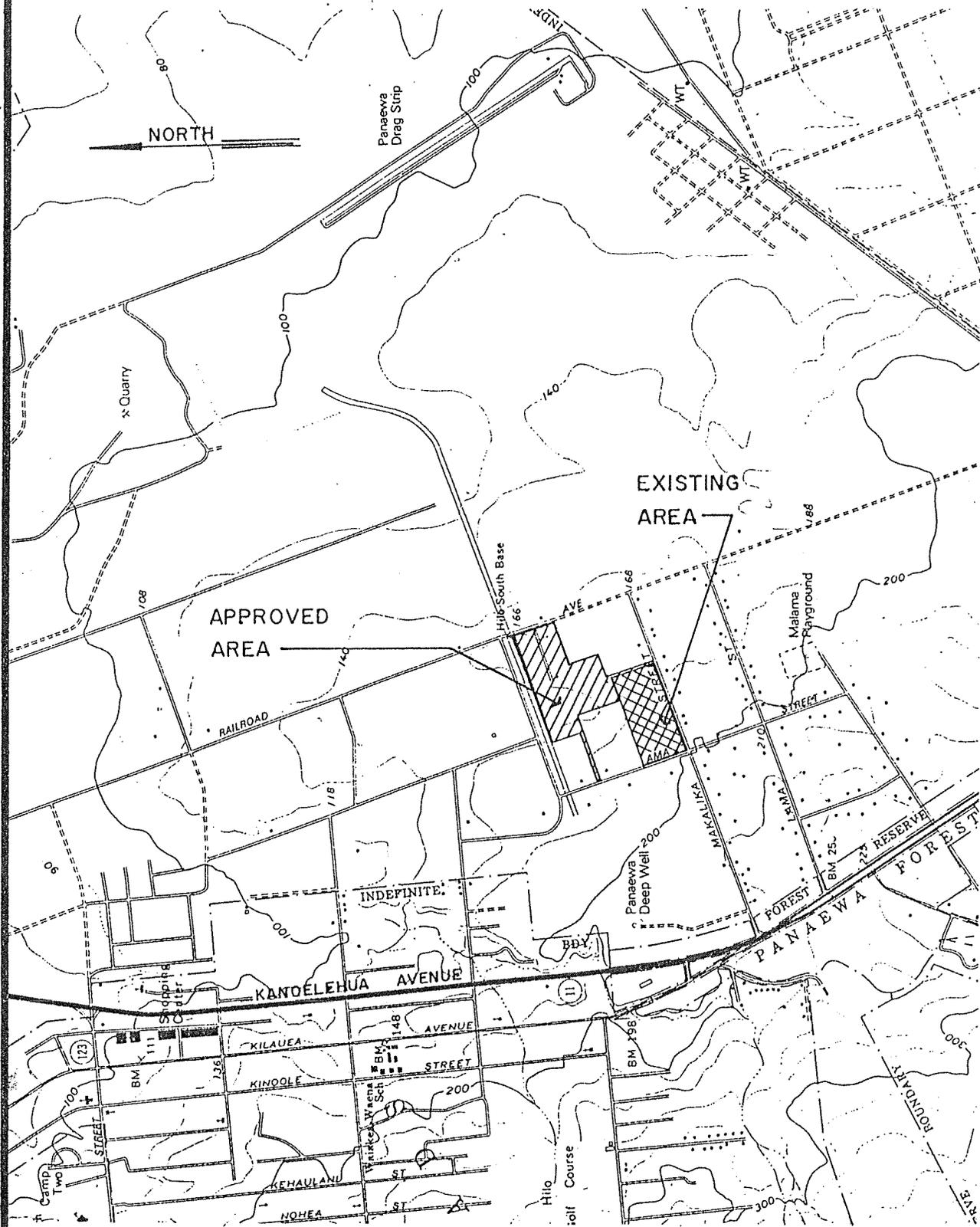
By Frederick P. Whittemore
FREDERICK P. WHITTEMORE
Commissioner

Filed and effective on
October 31, 1989

Certified by:

Esther Reed
Executive Officer

LOCATION MAP



SP73-159 / TOYAMA GARDENS HAWAII CORP., dba Nani Mau Gardens, Inc.
T.M.K. : 2-2-48 : 13, 15, 85, 86, 88, 93, & por. 12
WAIAKEA, SOUTH HILO, HAWAII

Scale: 1" = 2000' ±

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
MAKOTO NITAHARA, dba, NANI MAU)
GARDENS, INC.)
)
For a Third Amendment to the)
Special Permit which establishes)
a commercial arboretum and related)
uses on approximately 20 acres of)
land within the Agricultural)
District at Waiakea, South Hilo,)
Hawaii, Tax Map Key Number:)
2-2-48: Parcel 13)
_____)

DOCKET NO. SP73-159

MAKOTO NITAHARA, dba,
NANI MAU GARDENS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. DUANE KANUHA, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. SIDNEY FUKE, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 31st day of October 1989.



ESTHER UEDA
Executive Officer