

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
for Special Permit of)
MAKOTO NITAHARA DBA NANI MAU)
GARDENS, INC. (AMENDMENT))

SP73-159 - MAKOTO NITAHARA DBA
NANI MAU GARDENS,
INC. (AMENDMENT)

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
for Special Permit of) SP73-159 - MAKOTO NITAHARA DBA
) NANI MAU GARDENS,
MAKOTO NITAHARA DBA NANI MAU) INC. (Amendment)
GARDENS, INC. (Amendment))
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW
DECISION AND ORDER

The Land Use Commission of the State of Hawaii having duly considered the entire record in the above entitled matter at its meeting on July 9, 1984 at Hilo, Hawaii, makes the following Findings of Fact, Conclusions of Law and Decision and Order:

FINDINGS OF FACT

1. Makoto Nitahara, doing business as "Nani Mau Gardens, Inc." filed a petition with the Hawaii County Planning Commission to amend Special Permit Docket No. 73-159 to allow the establishment of individual shops for the sale of locally-produced agriculturally-oriented products, a small gift shop and a snack shop within the State Land Use Agricultural District, Tax Map Key 2-2-48: 13.

2. The petition area, hereinafter referred to as the "subject property," is located at the northern corner of the Makalika Street-Awa Street intersection in the Panaewa Farm Lots, Waiakea, South Hilo, Island of Hawaii.

3. Petitioner proposes to locate the uses within an existing 3,840 square foot metal building on the subject property.

4. The Land Use Commission granted the original Special Permit on October 17, 1973. The permit allowed the establishment of a commercial arboretum for public tours and the sale of agricultural products on 20 acres of land.

5. The subject property is presently developed as a botanical garden. A single family dwelling, garage, and a metal building are also situated on the subject property.

6. Neighboring activities include single family dwellings and agricultural activities.

7. In support of his request, the Petitioner states that the proposed uses would enable the "Nani Mau Gardens Arboretum" to be more economically viable, provide an outlet for the display and sale of handiwork of local craftsmen, and provide a central location in which tourists can observe various local products.

8. The Planning Commission of the County of Hawaii voted to approve the request at its meeting on May 31, 1984, subject to the following conditions:

- "1. The proposed uses shall only be conducted during the hours in which the arboretum operations 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."

9. The County submitted the complete record of the special permit amendment request to the Land Use Commission office on June 14, 1984.

10. Cooking food on premises and unrestricted sale of tourist items are not reasonable and unusual uses of the Agricultural District.

CONCLUSIONS OF LAW

Approving the subject request will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The proposed use is complementary to the principal use of the subject property which is related to agriculture. The use will be small relative to the entire Nani Mau Gardens Arboretum site and will not burden public agencies to provide additional services and facilities, nor would it adversely affect surrounding properties.

The proposed use would be located in the existing metal building and would not impact or detract the agricultural potential of the subject property and surrounding areas.

The proposed use, which is complementary to the primary use, is an "unusual and reasonable use" as defined by Chapter 205-6 Hawaii Revised Statutes, and State Land Use District Regulations 5-2.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition to amend Special Permit 73-159 for establishment of individual shops for the sale of locally-produced agriculturally-oriented products, a small gift shop and a snack shop within the State Land Use Agricultural District at Panaewa, South Hilo, Hawaii, Tax Map Key 2-2-48: 13 be approved subject to the following additional conditions:

- "1. That applicant or its sub-lessee may sell films, post cards and locally-produced agricultural and agricultural-related products on the premises.
- "2. 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.
- "3. That applicant may not sell other tourist items or foods requiring cooking or processing on the premises."

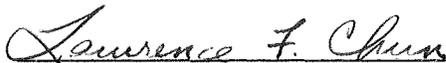
SP73-159 - MAKOTO NITAHARA DBA NANI MAU GARDENS (AMENDMENT)

Done at Honolulu, Hawaii, this 24th day of August,
1984 per motion on July 9, 1984.

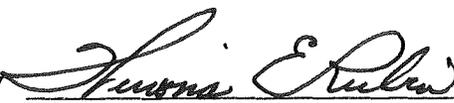
LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN
Chairman and Commissioner

By 
TEOFILO PHIL TACBIAN
Vice Chairman and Commissioner

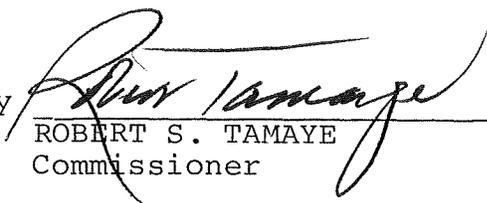
By 
LAWRENCE F. CHUN
Commissioner

By 
EVERETT L. CUSKADEN
Commissioner

By 
WINONA E. RUBIN
Commissioner

SP73-159 - MAKOTO NITAHARA DBA NANI MAU GARDENS (AMENDMENT)

By  _____
TORU SUZUKI
Commissioner

By  _____
ROBERT S. TAMAYE
Commissioner

By  _____
FREDERICK P. WHITTEMORE
Commissioner

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)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following in the U. S. Postal Service by certified mail:

SIDNEY FUKU, Planning Director
Hawaii County Planning Department
25 Aupuni Street
Hilo, Hawaii 96720

MAKOTO NITAHARA DBA NANI MAU GARDENS, INC.
c/o Matthew G. Jewell, Attorney-at-Law
275 Ponahawai Street, Suite 201
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 5th day of September, 1984.

Ray Yon

for GORDAN Y. FURUTANI
Executive Officer

SP73-159 - MAKOTO NITAHARA DBA NANI MAU GARDENS, INC. (AMENDMENT)

A Certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on September 5, 1984.

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

REAL PROPERTY TAX OFFICE
County of Hawaii
865 Piilani Street
Hilo, Hawaii 96720

REAL PROPERTY ASSESSMENT DIVISION
City and County of Honolulu
Mapping Section
Property Technical Office
Property Assessment Section
1188 Fort Street Mall
Honolulu, Hawaii 96813

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
550 Halekauwila Street, Room 301
Honolulu, Hawaii 96813

DIVISION OF LAND MANAGEMENT
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

ANNETTE CHOCK, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

STEPHEN MENEZES, Corporation Counsel
Office of the Corporation Counsel
County of Hawaii
25Aupuni Street
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