

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
TOYAMA GARDENS HAWAII CORPORATION,)
dba, NANI MAU GARDENS, INC.)
)
For a Seventh Amendment to the)
Special Permit Which Establishes A)
Commercial Arboretum For Public)
Tours And The Sale Of Agricultural)
Products On Approximately 553.793)
Acres Of Land Situated Within The)
State Land Use Agricultural)
District At Waiakea, South Hilo,)
Hawaii, Tax Map key Number:)
2-2-48: 13)

DOCKET NO. SP73-159
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

LAND USE COMMISSION
STATE OF HAWAII
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For a Seventh Amendment to the)	
Special Permit Which Establishes A)	
Commercial Arboretum For Public)	
Tours And The Sale Of Agricultural)	
Products On Approximately 53.793)	
Acres Of Land Situated Within The)	
State Land Use Agricultural)	
District At Waiakea, South Hilo,)	
Hawaii, Tax Map key Number:)	
<u>2-2-48: 13</u>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Toyama Gardens Hawaii Corporation, dba, Nani Mau Gardens, Inc. (hereinafter "Applicant" or "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawai'i Revised Statutes (HRS). The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On November 4, 1997, the Applicant filed a seventh amendment to the Special Permit (hereinafter "Seventh Amendment") with the County of Hawaii Planning Department (Hereinafter "Planning Department"). The Seventh Amendment requested the deletion of approximately 30 acres from the Permit pursuant to Conditions No. 12 and 13, imposed by the LUC in its Findings of

Fact, Conclusions of Law, and Decision and Order Amending Conditions of the Decision and Orders Dated July 24, 1991 and June 17, 1993, issued on October 24, 1994 (hereinafter "Decision and Order").

2. On January 16, 1998, the Hawaii County Planning Commission (hereinafter "Planning Commission") conducted the public hearing on the Seventh Amendment. The Planning Commission did not receive any public testimony on the Seventh Amendment.

3. On January 16, 1998, the Planning Commission recommended approval of the Seventh Amendment to the LUC by recommending the deletion of approximately 30 acres from the Special Permit.

4. On January 29, 1998, a copy of the supporting documents of the Seventh Amendment, as well as a copy of the record of the Planning Commission's proceedings were received by the LUC.

5. On February 10, 1998, the requisite copies of the supporting documents of the Seventh Amendment, including copies of the record of the Planning Commission's proceedings were received by the LUC.

DESCRIPTION OF SUBJECT PROPERTY

6. The subject property, consisting of approximately 53.793 acres, is identified as TMK: 2-2-48: 13 (hereinafter "Property").

7. The Property currently includes greenhouses and garden pavilions, an office building (containing a restaurant), a snack shop, a gift shop, fruit and vegetables stands, stables and

equestrian trails, a maintenance building, and an existing dwelling.

8. According to the U.S. Army Corps of Engineers Flood Insurance Rate Map, the Property is outside the 500-year flood plain (Zone X).

9. The Land Study Bureau Detailed Land Classification Report designates the Property as Class "E" lands.

10. In accordance with the Agricultural Lands of Importance to the State of Hawaii (ALISH) system, the Property is classified as "Other Important Agricultural Lands."

11. The Property is surrounded by mixed residential and agricultural uses.

12. The Property is situated at the corner of Makalika Street and Awa Street. Access to the Property is Makalika Street via Hawaii Belt Highway.

13. Electrical, telephone and water services are available to the Property.

DESCRIPTION OF PROPOSED AMENDMENT TO SPECIAL PERMIT

14. Pursuant to Conditions No. 12 and 13 of the Decision and Order, the Applicant was required to file an amendment to the Special Permit with the Planning Commission to delete the acreage comprising the 9-hole pitch and putt golf course (Condition No. 12), and to delete the acreage comprising the proposed 18-20, one-acre, lot subdivision from the Special Permit upon receiving approval of its rezoning application for the proposed subdivision (Condition No. 13).

15. According to the Applicant, on April 26, 1995, the Hawaii County Council rezoned an approximately 37 acre area (Ordinance No. 95-55) into the A-1a District. The approximately 37 acre area included the proposed 9-hole pitch and putt golf course, and the proposed 18-20, one acre, lot subdivision.

16. According to the Applicant, on October 25, 1996, tentative subdivision approval was granted by the Planning Department for the proposed one acre lots.

17. The approximately 30 acres proposed to be deleted encompasses the area proposed for the pitch and putt golf course, and a portion of the 1-acre, 18-20 lot subdivision. The remainder of the 1-acre lot subdivision (approximately 7 acres) is currently being utilized for garden operations. The Applicant may seek deletion of this area upon final subdivision approval.

STATE AND COUNTY PLANS AND PROGRAMS

18. The State Land Use district Classification of the Property is Agricultural, as reflected on State Land Use District Boundary Map H-66 (Hilo).

19. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map designates the Property as Orchards and Alternate Urban Expansion.

20. Current zoning for the Property is County Agricultural-10 acres (A-10a) and County Agricultural-1 acre (A-1a).

21. The Hilo Community Development Plan Zone Guide Map recommends that the present A-10a zoning be retained.

22. The Property is not within the Special Management Area of the County of Hawaii.

SUMMARY OF STATE, COUNTY, AND OTHER AGENCIES COMMENTS

23. The County of Hawaii Department of Public Works, Police Department, Fire Department, and Department of Water Supply had no objections or comments to offer on the Seventh Amendment.

24. The County of Hawaii Real Property Tax Office commented that real property taxes were paid through December 31, 1997.

25. The State Department of Transportation commented that the conditions pertaining to transportation and drainage improvements as reflected in the Special Permit should remain in effect.

26. The LUC confirmed that the Special Permit area was within the State Land Use Agricultural District and also noted that the Seventh Amendment was pursuant to conditions imposed by the LUC.

27. The State Departments of Agriculture and Health did not provide any comments on the Seventh Amendment.

28. Hawaii Electric Light Company did not provide any comments on the Seventh Amendment.

CONFORMANCE WITH SPECIAL USE PERMIT TESTS

29. The Planning Department, in its recommendation to the Planning Commission, provided the following comments related to the conformance of the Seventh Amendment with the guidelines

for "unusual and reasonable use" under Section 15-15-95(b) of the LUC's Rules:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law Rules and Regulations are intended to preserve, protect, and encourage the development of land for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. Six previous amendments for the subject property and related uses have been approved by the State Land Use Commission. The subject request to delete 30± acres of land in compliance with Condition Nos. 12 and 13 would not be contrary to Chapter 205, Hawaii Revised Statutes. A favorable recommendation of the petitioner's request to delete the 30± acres previously approved under Special Permit No. 247¹ would not compromise the integrity of the existing Nani Mau Gardens complex or the substance of the State Land Use Commission's initial approval of Special Permit No. 247 and amendments thereto.

The desired use will not adversely affect surrounding properties. The Nani Mau Gardens development was approved by the State Land Use Commission through the issuance of Special Permit No. 247 and amendments thereto upon findings that the development would not have an adverse impact to surrounding properties. A favorable recommendation of the request would not affect the general scope of the development as an arboretum. The deletion of the 30± acre area in compliance with Condition Nos. 12 and 13 will reduce the acreage of the overall development, but not its concept as a botanical garden. Therefore, the original findings of no adverse impact to surrounding properties are still applicable.

The desired use will also not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. In compliance with Condition Nos. 12 and 13 of Special Permit No. 247, the applicant is requesting that 30± acres of land be deleted from the 53.793 acre subject area. The area of Nani Mau Gardens would be reduced to 23± acres, but the overall concept of Nani Mau Gardens remains the same. Existing utilities and facilities are or will be made available

¹ Special Permit No. 247 is the County's special permit number assigned to LUC Docket No. SP73-159.

to accommodate the existing development and its future expansion as approved under Special Permit No. 247. Further, the applicant proposes to reduce the size of the golf course, due to the depressed nature of marketing and economic conditions for golf courses in general.

PLANNING COMMISSION RECOMMENDATION

30. At its meeting on January 16, 1998, the Planning Commission recommended approval of the Seventh Amendment to the LUC by recommending deletion of approximately 30 acres from the Special Permit.

CONCLUSIONS OF LAW

The Seventh Amendment requesting the deletion of approximately 30 acres from the Special Permit, pursuant to Conditions No. 12 and 13 of the Decision and Order, 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 Seventh Amendment to delete approximately 30 acres, as approximately shown in Exhibit "A" attached hereto and incorporated herein be reference, to comply with Conditions No. 12 and 13 of the Decision and Order is and shall be GRANTED.

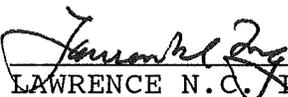
IT IS HEREBY FURTHER ORDERED that Conditions No. 12 and 13 of the Decision and Order are DELETED. All other conditions imposed in the Decision and Order are hereby reaffirmed and shall continue in effect.

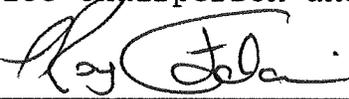
Done at Honolulu, Hawai'i, this 23rd day of March 1998,
per motions on February 26, 1998 and March 19, 1998.

LAND USE COMMISSION
STATE OF HAWAI'I

By 
RUPERT K. CHUN
Chairperson and Commissioner

By (absent)
M. CASEY JARMAN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. KING
Vice Chairperson and Commissioner

By 
P. ROY CATALANI
Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

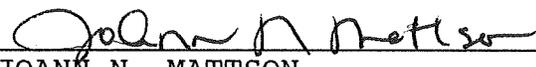
By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

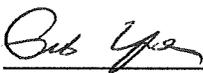
By (absent)
MERLE A. K. KELAI
Commissioner

Filed and effective on
March 23, 1998

Certified by:


Executive Officer

By 
JOANN N. MATTSON
Commissioner

By 
PETER YUKIMURA
Commissioner



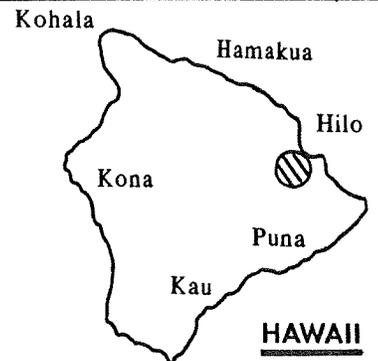
LOCATION MAP

DOCKET NO. SP73-159 / TOYAMA GARDENS HAWAII, Inc.
dba NANI MAU GARDENS, Inc. (7th Amendment)

TAX MAP KEY NO.: 2-2-48: 13
WAIAKEA, SOUTH HILO, HAWAII

SCALE: 1" = 2,000 ft.±

- SPECIAL PERMIT AREA
- DELETED AREA



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CERTIFICATE OF SERVICE

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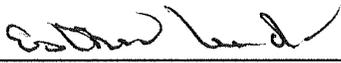
I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. RICHARD D. WURDEMAN, ESQ.
Corporation Counsel
County of Hawaii
The Hilo Lagoon Center
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Hilo, Hawaii 96720

CERT. SIDNEY FUKE, Representing Petitioner
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 23rd day of March 1998.



ESTHER UEDA
Executive Officer