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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	DOCKET NO. SP73-159
)	
TOYAMA GARDENS HAWAII)	DECISION AND ORDER
CORPORATION dba NANI MAU)	APPROVING THE TENTH
GARDENS, INC.)	AMENDMENT TO THE LAND
)	USE COMMISSION SPECIAL
)	USE PERMIT
For the Tenth Amendment to the Land Use)	
Commission Special Use Permit establishing)	
A Commercial Arboretum For Public Tours)	
And the Sale of Agricultural Products on)	
Approximately 23.793 acres of Land in the)	
State Agricultural District at Panaewa Farm)	
Lots Subdivision, Waiakea, South Hilo,)	
<u>Hawaii, TMK: 2-2-48:Por. 13</u>)	

DECISION AND ORDER APPROVING THE TENTH AMENDMENT
TO THE LAND USE COMMISSION SPECIAL USE PERMIT

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF
THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE
COMMISSION, HONOLULU, HAWAII.

December 4, 2009 by
DATE

EXECUTIVE OFFICER





BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of) DOCKET NO. SP73-159
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TOYAMA GARDENS HAWAII) DECISION AND ORDER
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DECISION AND ORDER APPROVING THE TENTH AMENDMENT
TO THE LAND USE COMMISSION SPECIAL USE PERMIT

On January 20, 2006, Nani Mau, Inc. (Applicant) filed a written request with the County of Hawaii Planning Department (Planning Department) to amend Special Use Permit SP73-159 pursuant to section 205-6, Hawaii Revised Statutes (HRS) and sections 15-15-95 and 15-15-96, Hawaii Administrative Rules (HAR).

Applicant sought to amend existing uses allowed under SP73-159 to include charter school uses. An existing maintenance building and an existing salon building are to be converted to charter school facilities (Proposed Amendment). The Planning Department recommended approval of the Proposed Amendment subject to the deletion of Condition No. 3, the renumbering of Conditions No. 4 and 5 to 3 and 4, respectively, and the addition of a new Condition No. 5 to read as follows:

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 conferences, PTA meetings, and other meetings and events for student activities.*

On August 7, 2009, the Windward Planning Commission (Planning Commission) conducted a hearing on the Applicant's Proposed Amendment. No public testimony was received or provided. After due deliberation, the Planning Commission voted to approve the Proposed Amendment subject to the deletion of Condition No. 3, the renumbering of Conditions No. 4 and 5 to 3 and 4, respectively; and the addition of a new Condition No. 5.

The Land Use Commission (Commission) has jurisdiction over the Applicant's Proposed Amendment. Section 205-6, HRS and sections 15-15-95 and 15-15-96, HAR, authorize this Commission to approve special permits and amendments thereto for areas greater than 15 acres.

On September 15, 2009, the Commission received a copy of the decision and a portion of the record. On October 7, 2009, the Commission received the remaining portion of the record.

On November 13, 2009, the Commission met in Honolulu, Hawaii, to consider the Proposed Amendment. Ken Fujiyama of Nani Maui Inc. represented the Applicant, and John Thatcher, Principal of Connections Public Charter School was also present. Gerald Takase, Esq, and Norman Hayashi represented the County of Hawaii Planning Department.

At the hearing, the Commission acknowledged receipt of emailed testimony from Marvin and Lori Naito-Hata, Trent Hata, dated November 12, 2009, and Jack Branco dated November 13, 2009. All were opposed to the Proposed Amendment.

Both the Applicant and the Planning Department provided presentations to the Commission. The Applicant stated that Railroad Avenue has evolved to a County standard roadway since the initial approval of the Special Permit. The Planning Department reiterated that the Planning Commission voted in favor of the Proposed Amendment and that neither the Planning Department nor the Planning Commission had received any public testimony for or against the Proposed Amendment.

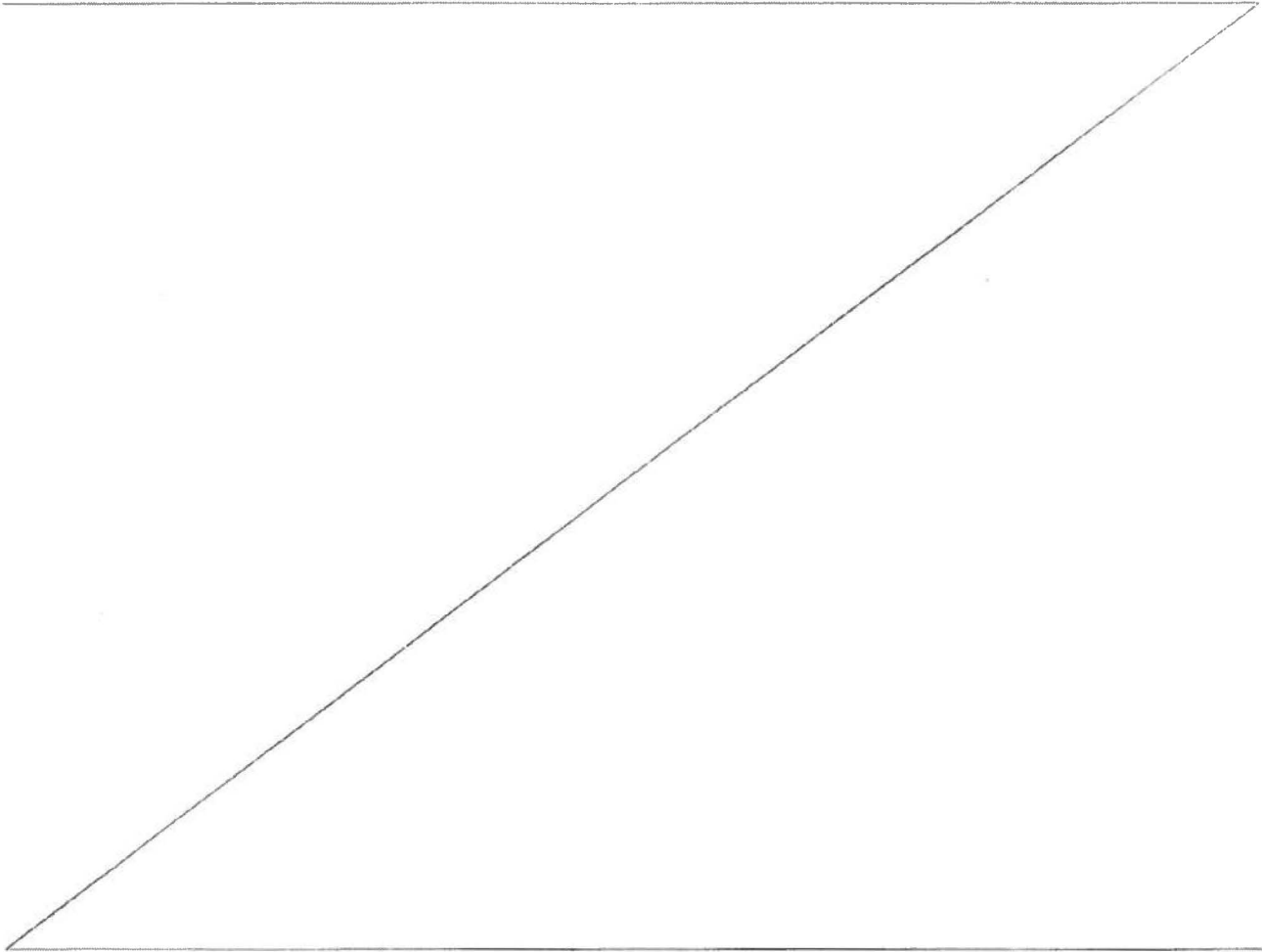
Bryan Yee, Esq. provided public testimony on behalf of the State Office of Planning, taking no position on the Proposed Amendment.

Following discussion by the Commission, a motion was made and seconded to approve the Proposed Amendment. This motion was amended to include a new condition as follows:

That the Applicant and charter school operator shall periodically remind parents and staff to use Railroad Avenue rather than State Route 11 (Hawaii Belt Highway) for access to Makalika Street.

Following deliberation by the Commission, a vote was taken on the amended motion.

There being a vote tally of 5 ayes and 4 excused, the amended motion passed.



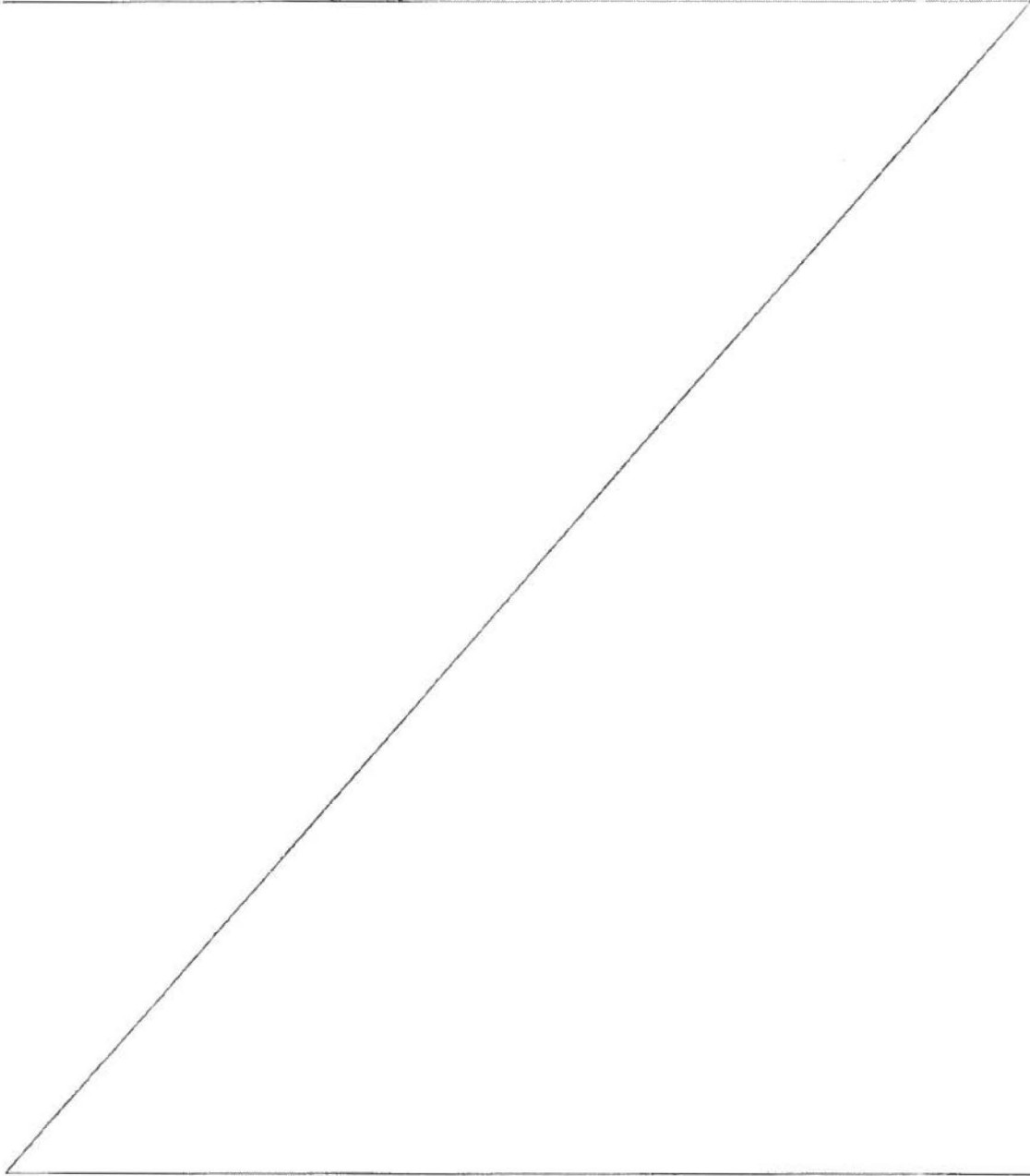
ORDER

Having duly considered the complete record of the Applicant's Proposed Amendment and oral arguments presented by the parties present in the proceeding, and an amended motion having been made at a meeting on November 13, 2009, in Honolulu, Hawaii, the amended motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, the Commission hereby APPROVES Applicant's Proposed Amendment to amend existing uses allowed under SP73-159 to include charter school uses through the conversion of an existing maintenance building and an existing salon building to charter school facilities subject to the following conditions:

1. Petitioner, successors or assigns shall be responsible for complying with all of the conditions of approval.
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 25-244 (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 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 Works 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 Maui may initiate procedures to nullify the Permit.
11. That the Applicant and the charter school operator shall periodically remind parents and staff to use Railroad Avenue rather than State Route 11 (Hawaii Belt Highway) for access to Makalika Street.



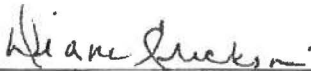
ADOPTION OF ORDER

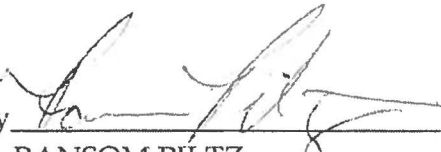
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 13th day of November, 2009. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is filed by this Commission.

Done at Honolulu, Hawaii, this 4th day of December, 2009,
per motion on November 13, 2009.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII


Deputy Attorney General

By 
RANSOM PILTZ
Chairperson and Commissioner

By (Excused)
VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner

By (Excused)
REUBEN S. F. WONG
Vice-Chairperson and Commissioner

By _____ (Excused)
KYLE CHOCK
Commissioner

By _____ (Excused)
THOMAS CONTRADES
Commissioner

By Lisa M. Judge
LISA M. JUDGE
Commissioner

By _____
DUANE KANUHA
Commissioner

Filed and effective on:

By [Signature]
NORMAND LEZY
Commissioner

Certified by:

[Signature]
ORLANDO DAVIDSION
Executive Officer

By [Signature]
NICHOLAS W. TEVES, JR.
Commissioner



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the DECISION AND ORDER APPROVING THE TENTH AMENDMENT TO THE LAND USE COMMISSION SPECIAL USE PERMIT' was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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DEL.: Deputy Attorney General
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MAIL: Corporation Counsel
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Dated December 4, 2009

Honolulu, Hawai'i, .



ORLANDO DAVIDSON
Executive Officer