

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of )  
MOANA CORPORATION )  
To Amend the Agricultural Land Use )  
District Boundary into the Urban )  
Land Use District For Approximately )  
457.54 Acres of Land Situated at )  
Poipu, Island of Kauai, State of )  
Hawai'i, TMK: 2-8-14: 05, 07, 08, )  
por. 19, 20, 21, 26-36; 2-8-15: 77; )  
2-8-29: 1-94 )  
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DOCKET NO. A76-418  
BILL OF PARTICULARS

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.

MAY 16 1996

Date

by

*[Signature]*  
Executive Officer

BILL OF PARTICULARS

MAY 16 9 47 AM '96  
LAND USE COMMISSION  
STATE OF HAWAII

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BILL OF PARTICULARS

On March 21, 1996, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, and Hawaiian Trust Company, Limited, as Trustee of the Augustus F. Knudsen Trust (collectively "Knudsen Trusts"), filed an Application for Bill of Particulars.

Pursuant to Hawai'i Revised Statutes ("HRS") section 91-9(b)(4), this Land Use Commission ("Commission") hereby issues this Bill of Particulars.

On July 11, 1977, the Commission issued a Decision and Order in LUC Docket No. A76-418/Moana Corporation ("Decision and Order"). The Decision and Order reclassified approximately 457.54 acres of land situate at Poipu, Koloa, Kauai ("Property") from the Agricultural District to the Urban District, subject to nine conditions.

Among the nine conditions, Condition No. 9 read as follows:

9. That the Petitioner substantially complete within five years from the date of this Decision and Order all off-site and on-site improvements, landscaping, all of the single-family residential homesites, at least 300 multi-family residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions.

On December 17, 1979, the Commission issued an Order Granting Motion to Amend Condition. Said order amended Condition No. 9 to read as follows:

9. That the Petitioner substantially complete within five years from the date of the granting of rezoning of the subject site by the County of Kauai, being March 23, 1979 all off-site and on-site improvements, landscaping, all of the single-family residential homesites, at least 300 multi-family residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions.

On October 26, 1989, Petitioner Moana Corporation ("Petitioner") filed its first annual report on the status of development upon the Property. Said annual report represented that through Petitioner's wholly owned subsidiary, Kiahuna Golf Village, Inc., development of a championship 18-hole golf course, golf cart barn, restaurant/clubhouse, subdivision and sales of 90 houseslots, wastewater disposal system, 35,000 square foot retail shopping village, roads, and utilities have been completed. Petitioner also informed the Commission that all remaining undeveloped land was owned by the Knudsen Trusts and Sports Shinko (Kauai) Company, Ltd. ("Sports Shinko").

On July 26, 1990, Petitioner filed its 1990 annual report. Petitioner represented that there had been no change in the development of the Property since filing of its last annual report.

On September 4, 1990, Petitioner resubmitted its 1990 annual report. Petitioner represented that Condition No. 9 was the only condition that was not satisfied. Petitioner also noted that the portions of the Property designated for construction of multi-family residential units were sold to Sports Shinko.

On January 29, 1992, Sports Shinko filed its 1991 annual report. The 1991 annual report represented that the previous annual reports reflect the status of compliance with conditions. The annual report also stated that Sports Shinko has preliminary plans to complete construction of single family and multi-family residential units, subject to improvement of economic conditions. Sports Shinko also represented that they had no knowledge of plans that the Knudsen Trusts had for the portion of the Property owned by the Knudsen Trusts.

On February 21, 1992, the Commission Staff ("Staff") transmitted a letter to Sports Shinko requesting clarification of responses made in the 1991 annual report. Staff also noted that off-site improvements, single family houselots, 300 multi-family units, and amenities should have already been completed by March 23, 1984, pursuant to Condition No. 9 of the Decision and Order.

On April 30, 1992, Sports Shinko filed a response to the Staff's February 21, 1992 letter. Attachments to said letter included Sports Shinko's Kiahuna Master Plan, ownership chart

with contact list, clarification on remaining units/location, and estimated timetable for development.

On July 7, 1992, Sports Shinko filed its 1992 annual report. The annual report represented that Sports Shinko may not proceed with any application for the permits necessary for its project during the next year, due to economic conditions beyond its control and difficulty in justifying the financial feasibility of the project. Said annual report also represented that Condition No. 9 still remained unsatisfied.

On September 14, 1993, Sports Shinko filed its 1993 annual report. The 1993 annual report represented that since the 1992 annual report, there was no progress on its project, due to Hurricane Iniki, and submitted its 1992 annual report to address Sports Shinko's compliance with conditions.

On September 24, 1993, the Staff transmitted a letter to Sports Shinko acknowledging receipt of the 1993 annual report, and informing Sports Shinko of the passing of the timeframe for development pursuant to Condition No. 9.

On October 4, 1993, the Staff transmitted a letter to the Knudsen Trusts requesting the filing of an annual report for the lands that they owned that are a portion of the Property.

On October 13, 1993, Staff received a response from the Knudsen Trusts regarding their compliance with conditions imposed on the Property. By letter dated November 4, 1993, Staff responded to the Knudsen Trusts stating that Condition No. 9 is still outstanding, and that as successors to the Property, both Knudsen Trusts and Sports Shinko must comply with conditions

imposed since said conditions run with the land, pursuant to HRS section 205-4. Staff's November 4, 1993 letter also stated that the time limitation on Condition No. 9 should be addressed.

On November 7, 1994, Sports Shinko filed its 1994 annual report. Said annual report represented that since 1992, Sports Shinko had not proceeded with any application for the necessary permits, and that there has been no progress in its project. Because there was no change in the status of the project, Sports Shinko submitted its 1992 annual report to address progress towards compliance with the conditions imposed.

On November 10, 1994, the Knudsen Trusts filed its 1994 annual report. Said annual report provided a summary of conveyance of the Property. Additionally, the annual report included a copy of the 1990 annual report filed by Petitioner Moana Corporation. The Knudsen Trusts represented that it did not have sufficient information to confirm or deny the accuracy of the 1990 annual report. Further, the Knudsen Trusts represented that it knew of no reason to believe that the 1990 annual report was not accurate.

On January 19, 1995, Sports Shinko and the Knudsen Trusts (collectively "Successor Petitioners") appeared before the Commission at its meeting in Lihue, Kauai, to provide a status report on the development. In its written testimony filed on January 19, 1995, the Knudsen Trusts represented that the County of Kauai Planning Department confirmed that Condition No. 9 had been partially satisfied. Said written testimony also represented that other components of Condition No. 9, such as the

balance of the single family housesites and multi-family residential units, had not been completed.

On January 19, 1995, The Keith Companies filed a letter on behalf of Sports Shinko. Said letter provided an update on Sports Shinko's Kiahuna Master Plan. Said letter also addressed progress towards compliance of conditions. The letter represented that Condition No. 9 still remained unsatisfied.

Based on a request for continuance by Sports Shinko, the Commission granted a continuance of the status report proceeding until its next meeting on Kauai.

On April 6, 1995, at its meeting in Lihue, Kauai, the Commission held the continued status report proceeding. In written testimony submitted by Sports Shinko on April 6, 1995, Sports Shinko provided a summary of annual reports, and a current status of development and ownership of lands covered by the Decision and Order. The written testimony also represented that Condition No. 9, as written, had not been fully complied with.

On April 21, 1995, the Knudsen Trusts filed a Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission. Said motion sought relief in regards to the conditions imposed. A Memorandum in Support submitted with said motion represented that the County of Kauai Planning Department confirmed that Condition No. 9 was partially satisfied, but other components of Condition No. 9 have not been completed.

On May 1, 1995, Sports Shinko filed its Motion to Confirm Satisfaction of and to Partially Release or Waive

Conditions Imposed by the Land Use Commission. Said motion sought similar relief to those sought by the Knudsen Trusts. The Memorandum in Support filed with said motion represented that Condition No. 9 had been partially satisfied, but not fully complied with.

On September 14, 1995, the Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission filed by the Knudsen Trusts, and the Motion to Confirm Satisfaction of and to Partially Release or Waive Conditions Imposed by the Land Use Commission, filed by Sports Shinko, came before the Commission at its meeting in Lihue, Kauai. Upon consideration of arguments presented by the parties, the Commission acted to grant, in part, and to deny, in part, the motions filed by Sports Shinko and the Knudsen Trusts. Orders regarding the Commission's action on said motions were issued on October 16, 1995.

On September 21, 1995, the County of Kauai filed a Motion for Modification of Conditions. The accompanying documents filed with said motion represented that Condition No. 9 remains unsatisfied as only ninety single family homesites have been completed and none of the multi-family residential units have been built. Further, the accompanying documents represented that construction of a majority of the single family homesites and all of the multi-family residential unit, recreational, and commercial development for the project was scheduled to be completed within fifteen years from the date of the Decision and Order. Additionally, the accompanying documents represented that

almost thirteen years have passed since the date set by the Commission to perform the obligations set forth in Condition No. 9 of the Decision and Order.

On September 26, 1995, the Office of State Planning filed a Motion to Propose Modifications, Deletions, and/or Additional Conditions to the Conditions Imposed by the Land Use Commission.

On October 3, 1995, the motions filed by the County of Kauai and the Office of State Planning came before the Commission at its meeting in Lihue, Kauai. Upon consideration of the arguments provided by the parties, the Commission acted to deny the motions filed by the County of Kauai and the Office of State Planning. Orders regarding the Commission's action on said motions were issued on October 16, 1995.

On October 3, 1995, at its meeting in Lihue, Kauai, the Commission orally moved to determine whether Order to Show Cause proceedings, pursuant to section 15-15-93, Hawai'i Administrative Rules ("HAR") should be initiated in LUC Docket No. A76-418/Moana Corporation.

The motion was made based on the unresolved matter as to whether the Successor Petitioners are in compliance, substantially or otherwise, or whether Successor Petitioners are in violation of Condition No. 9 imposed in the Decision and Order filed on July 11, 1977 and subsequently amended by Orders filed on July 5, 1978 and December 17, 1979.

On November 2, 1995, the Commission held a meeting in Honolulu, Oahu, to act upon its oral motion to initiate Order to Show Cause proceedings.

Based on arguments presented by the parties, the Commission clarified its oral motion that the initiation of Order to Show Cause proceedings would be on those lands that are undeveloped and not affect those lands within the Property that are substantially developed.

Subsequently, upon consideration of the arguments provided by the parties and with the clarification provided, the Commission acted to grant its oral motion made on October 3, 1995.

On November 14, 1995, the Commission issued an Order Granting Motion to Issue Order to Show Cause.

On January 18, 1996, the Commission caused to be published, a notice of hearing, pursuant to HRS Chapter 91, for the Order to Show Cause proceedings.

On January 19, 1996, the Commission issued the Order to Show Cause in this docket.

Based on the above, the Commission has reason to believe that there has been a failure to perform according to Condition No. 9 of the Decision and Order, as amended.

Therefore, the issues to be resolved in the Order to Show Proceedings are:

- 1) Whether or not Successor Petitioners have complied with Condition No. 9 of the Decision and Order, as amended;

- 2) If there has been a failure to perform according to Condition No. 9 of the Decision and Order, as amended, why the lands that are the subject of the Order to Show Cause should not revert to its former land use classification or be changed to a more appropriate classification.

DOCKET NO. A76-418 - MOANA CORPORATION

Done at Honolulu, Hawaii, this 16th day of May 1996,  
per motion on May 16, 1996.

LAND USE COMMISSION  
STATE OF HAWAII

By *Allen K. Hoe*  
ALIEN K. HOE  
Chairperson and Commissioner

By (absent)  
TRUDY K. SENDA  
Vice Chairperson and Commissioner

By *Rupert K. Chun*  
RUPERT K. CHUN  
Commissioner

By *M. Casey Jarman*  
M. CASEY JARMAN  
Commissioner

By *Lloyd F. Kawakami*  
LLOYD F. KAWAKAMI  
Commissioner

By *Merle A. K. Kelai*  
MERLE A. K. KELAI  
Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

Filed and effective on  
May 16, 1996

Certified by:

*Edward Leed*  
Executive Officer

By *Joann N. Mattson*  
JOANN N. MATTSON  
Commissioner

By *Elton Wada*  
ELTON WADA  
Commissioner

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Hawai'i, TMK: 2-8-14: 05, 07, 08, )  
por. 19, 20, 21, 26-36; 2-8-15: 77; )  
2-8-29: 1-94 )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Bill of Particulars was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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DATED: Honolulu, Hawaii, this 16th day of May 1996.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer