

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)
_____)

DOCKET NO. A76-418
ORDER GRANTING FIRST
HAWAIIAN BANK, TRUSTEE
OF THE ERIC A. KNUDSEN
TRUST'S AMENDMENT TO
MOTION TO MODIFY
CONDITION IMPOSED BY THE
LAND USE COMMISSION

**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.**

AUG 05 1997

Date

by



Executive Officer

ORDER GRANTING FIRST HAWAIIAN BANK, TRUSTEE OF THE
ERIC A. KNUDSEN TRUST'S AMENDMENT TO MOTION
TO MODIFY CONDITION IMPOSED BY THE LAND USE COMMISSION

LAND USE COMMISSION
STATE OF HAWAII
1997 AUG -5 A 11:37

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OF THE STATE OF HAWAI'I

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)	HAWAIIAN BANK, TRUSTEE
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District Boundary into the Urban)	TRUST'S AMENDMENT TO
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ORDER GRANTING FIRST HAWAIIAN BANK, TRUSTEE OF THE
ERIC A. KNUDSEN TRUST'S AMENDMENT TO MOTION
TO MODIFY CONDITION IMPOSED BY THE LAND USE COMMISSION

On October 31, 1995, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, and Hawaiian Trust Company, Limited, as Trustee of the Augustus F. Knudsen Trust (hereinafter collectively "Knudsen Trusts"), filed a Motion To Modify Condition Imposed By The Land Use Commission pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, and Hawai'i Administrative Rules ("HAR") Chapter 15-15.

On November 2, 1995, Sports Shinko (Kauai), Co., Ltd. (hereinafter "Sports Shinko") filed its Motion To Amend Or Modify Condition No. 9 Of Decision and Order, and its Joinder In Knudsen Trusts' Motion To Modify Condition Imposed By The Land Use Commission.

On December 14, 1995, the respective motions filed by the Knudsen Trusts and Sports Shinko came before the Land Use Commission (hereinafter "Commission") at its meeting in Honolulu,

Oahu. The Commission deferred action on the respective motions pending the completion of hearings on the Order to Show Cause proceedings for the subject docket.

On March 14, 1996, the Commission held a meeting in Lihue, Kauai, to hear the Order to Show Cause. The Order to Show Cause proceedings were continued until such time that the appropriate parties were known, due to the termination of the Augustus F. Knudsen Trust, and distribution of trust assets to beneficiaries or designees. The Order to Show Cause proceedings were subsequently continued due to interventions by some of the beneficiaries of the Augustus F. Knudsen Trust and to allow the parties to meet and discuss possible resolution of the issues surrounding the subject docket.

On or about June 18, 1997, the Commission scheduled the respective motions for action at the Commission's June 26, 1997 meeting in Honolulu, Oahu.

On June 25, 1997, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, filed its Amendment To Motion To Modify Condition Imposed By The Land Use Commission ("Motion to Modify Condition"). The Motion to Modify requested that the Commission consider an amendment to Condition No. 9, as well as the imposition of a number of additional conditions, which were a result of the negotiations that took place between and among the parties.

On June 26, 1997, Sports Shinko filed its Joinder In Movant First Hawaiian Bank's Motion To Modify Condition Imposed

By The Land Use Commission Filed Herein On October 31, 1995, As Amended By Filing Dated June 25, 1997.

Also on June 26, 1997, Sports Shinko filed a Withdrawal Of Its Motion To Amend Or Modify Condition No. 9 of Decision and Order Originally Filed Herein On November 2, 1995.

The Motion to Modify Condition, having come before the Commission at its meeting on July 26, 1996 in Honolulu, Oahu, and the Commission, having considered the arguments presented by the Movants and other parties to the proceeding, both written and oral, and having reviewed the entire record for the subject docket to date, and with good cause shown;

NOW HEREBY GRANTS the Motion to Modify Condition, and Condition No. 9 shall be amended to read as follows:

9. As of the effective date of this amendment, Petitioner has completed 90 single-family residential homesites, 48 multi-family residential units, and appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, as well as all off-site and on-site improvements and landscaping servicing the same as provided by the original Condition No. 9.
 - a. The Eric A. Knudsen Trust and the other Knudsen Entities or any subsequent owner of the properties (the "Knudsen Property") identified by TMK Nos. (4) 2-8-14: 19 (por.) as shown on the map attached hereto as Exhibit "A" and made a part hereof, and consisting in the aggregate of approximately 63 acres, will substantially commence the development and construction within seven (7) years from the effective date of this amendment of not less than fifty (5) single-family homesites and/or multi-family residential units on the currently undeveloped portions of the Knudsen Property or on other property owned by the Eric A. Knudsen Trust and the other Knudsen Entities in the urban district immediately adjacent to the Knudsen Property as evidenced by the issuance of the initial building permit for such construction by

the County of Kauai, and the Eric A. Knudsen Trust and the other Knudsen Entities shall report to the Commission annually on the progress of the development and their compliance with these conditions as they relate to such Knudsen Property. The annual report of the Eric A. Knudsen Trust and the other Knudsen Entities to the Commission on the progress of their development and compliance with conditions will cover the undeveloped portions of the Knudsen Property only.

- b. Sports Shinko or any subsequent owner of the properties (the "Sports Shinko Property") identified by TMK Nos. (4) 2-8-14:8, 28, 32, 33, 34, and 35; and (4) 2-8-15: 77, as shown on the map attached hereto as Exhibit "A" and made a part hereof, and consisting of approximately 179 acres, will substantially commence the development and construction within seven(7) years from the effective date of this amendment of not less than three hundred (300) single-family residential homesites and/or multi-family residential units on the currently undeveloped portions of the Sports Shinko Property, as evidenced by the issuance of the initial building permit for such construction by the County of Kauai, and Sports Shinko shall report annually on the progress of its development and its compliance with these conditions as they relate to the Sports Shinko Property. The annual report of Sports Shinko to the Commission on the progress of its development and compliance with conditions will cover the undeveloped and compliance with conditions will cover the undeveloped portions of the Sports Shinko Property only.

IT IS FURTHER ORDERED that the following additional conditions shall be imposed on the subject Property in its entirety:

10. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated water master plan covering the then remaining undeveloped portions of the Knudsen Property and the Sports Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of

the Knudsen Property or the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required.

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated master drainage plan covering the then remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Knudsen Property or the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required.
12. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated traffic impact analysis and report covering the remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Knudsen Property or the Sports Shinko Property or prior to approval of any county subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required. A copy of any such updated traffic impact analysis and report shall be submitted to the State Department of Transportation for comment prior to approval by the County of Kauai, and following approval by the County of Kauai, a copy of the approved traffic impact analysis and report shall be filed with the State Department of Transportation.
13. Wastewater treatment for the future developments upon the currently undeveloped portions of the Knudsen Property and Sports Shinko Property will be handled and processed by one or more of the following: (a) the expansion of the existing Kiahuna Wastewater Treatment Plan, (b) the development and construction upon the Property of private sewage treatment facilities, or (c) a satisfactory agreement to connect into the private

sewage treatment facility to be developed and constructed by Alexander & Baldwin upon adjoining property. The Eric A. Knudsen Trust and other Knudsen Entities, Sports Shinko and any subsequent owner of the subject properties will not look to the County of Kauai for the provisions of wastewater treatment facilities.

14. All of the internal roadways within the future developments on the remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property will be private and therefore private, not County, trash collection will be used for any future development on the currently undeveloped portions of the Knudsen Property and the Sports Shinko Property.
15. Effective soil erosion and dust control measures will be implemented during construction upon any currently undeveloped portion of their respective properties to the satisfaction of the County of Kauai and the Department of Health, State of Hawaii.
16. The Eric A. Knudsen Trust and the other Knudsen Entities with respect to the Knudsen Property, or any subsequent owner of the Knudsen Properties, and Sports Shinko with respect to the Sports Shinko Property, or any subsequent or any subsequent owner of the Sports Shinko Properties, shall fund and construct adequate civil defense measures as determined by the County of Kauai and the State Civil Defense agency as part of the future development upon the currently undeveloped portions of their respective properties.
17. The Eric A. Knudsen Trust and the other Knudsen Entities with respect to the Knudsen Property, or any subsequent owner of the Knudsen Properties, and Sports Shinko with respect to the Sports Shinko Property, or any subsequent owner of the Sports Shinko Properties, shall notify all prospective buyers of their respective properties of the potential odor, noise and dust pollution which may result from surrounding agricultural district lands and that the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.
18. Absent approval from the appropriate federal, State and County agencies, Sports Shinko or any subsequent owner of the Sports Shinko Property

shall not channelize Waikomo Stream for flood control purposes. A reasonable buffer zone from the edge of Waikomo Stream shall also be provided as to any development fronting Waikomo Stream as may be required by the County of Kauai. Within the approved stream buffer zone landscaping shall be permitted. A copy of the proposed stream buffer area along Waikomo stream shall be submitted to the State of Hawaii Department of Land and Natural Resources and U.S. Fish and Wildlife Service for comment prior to approval by the County of Kauai.

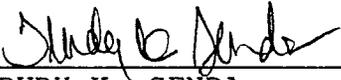
19. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Knudsen Property or the Sports Shinko Property upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioners.
20. The noncompliance with or nonperformance of any remaining conditions of the Decision and Order by the Eric A. Knudsen Trust and the Other Knudsen Entities with respect to the Knudsen Property or by Sports Shinko with respect to the Sports Shinko Property will not constitute nonperformance of or noncompliance with the remaining conditions of the Decision and Order as it may concern or relate to the other party's property.
21. The obligations and liability of the Eric A. Knudsen Trust under the Decision and Order are not personally binding upon nor shall resort be had to the private property of First Hawaiian Bank, or any other trustee of the Eric A. Knudsen Trust, but only the Trust estate shall be bound.
22. A copy of this amendment and modification to the Decision and Order shall be recorded against the subject properties with the Bureau of Conveyances of the State of Hawaii in accordance with Section 15-15-92 of the Hawaii Administrative Rules.

IT IS HEREBY FURTHER ORDERED that Conditions No. 5, 7, and 8 imposed previously by the Commission in the subject docket, are reaffirmed and shall remain in effect.

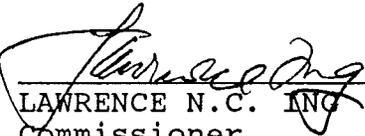
DOCKET NO. A76-418 - MOANA CORPORATION

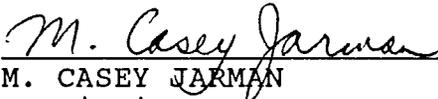
Done at Honolulu, Hawai'i, this 5th day of August 1997,
per motions on June 26, 1997 and July 31, 1997.

LAND USE COMMISSION
STATE OF HAWAI'I

By 
TRUDY K. SENDA
Chairperson and Commissioner

By 
RUPERT K. CHUN
Vice Chairperson and Commissioner

By 
LAWRENCE N.C. KING
Commissioner

By 
M. CASEY JARMAN
Commissioner

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

By 
LLOYD F. KAWAKAMI
Commissioner

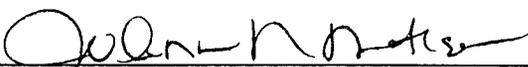
By (absent)
MERLE A. K. KELAI
Commissioner

Filed and effective on
August 5, 1997

Certified by:


Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By 
JOANN N. MATTSON
Commissioner

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

In the Matter of the Petition of) DOCKET NO. A76-418
MOANA CORPORATION) CERTIFICATE OF SERVICE
To Amend the Agricultural Land Use)
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Land Use District For Approximately)
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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 Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by the Land Use Commission 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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CERT. WILFRED J. BALDWIN
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5451 Wailaau Road
Koloa, Hawaii 96756

DATED: Honolulu, Hawaii, this 5th day of August 1997.



ESTHER UEDA
Executive Officer

