

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

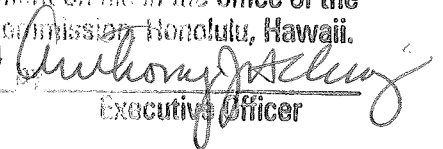
In the Matter of the Petition of	)	DOCKET NO. A76-418
)	
MOANA CORPORATION,	)	ORDER GRANTING KIAHUNA
	)	MAUKA PARTNERS, LLC'S
To Amend the Agricultural Land Use	)	MOTION TO AMEND OR MODIFY
District Boundary into the Urban Land Use	)	CONDITION NO. 9 OF DECISION
District for Approximately 457.54 acres of	)	AND ORDER, AS AMENDED IN
land Situated at Poipu, Island of Kauai, State	)	AUGUST 5, 1997; AND
of Hawai'i, TMK Nos: 2-8-14: 05, 07, 08, por.)	)	ERIC A. KNUDSEN TRUST'S
19, 20, 21, 26-36; 2-8-15: 77; 2-8-29: 1-94	)	MOTION TO MODIFY CONDITION
_____	)	NO. 9a OF DECISION AND ORDER

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.

MAR 25 2004

Date

Executive Officer



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19, 20, 21, 26-36; 2-8-15: 77; 2-8-29: 1-94)	MOTION TO MODIFY CONDITION
_____)	NO. 9a OF DECISION AND ORDER

ORDER GRANTING (1) KIAHUNA MAUKA PARTNERS, LLC'S MOTION TO AMEND OR MODIFY CONDITION NO. 9 OF DECISION AND ORDER, AS AMENDED IN AUGUST 5, 1997; AND (2) ERIC A. KNUDSEN TRUST'S MOTION TO MODIFY CONDITION NO. 9a OF DECISION AND ORDER

On August 13, 2003, Kiahuna Mauka Partners, LLC ("KMP"), Successor Petitioner to Sports Shinko (Kauai) Co. Ltd. ("Sports Shinko"), filed its Motion to Amend or Modify Condition No. 9 of Decision and Order ("KMP Motion 1"). The KMP Motion 1 requested a five-year time extension of the August 5, 2004 deadline to commence the development of at least 300 single-family homesites and/or multi-family residential units, pursuant to Condition No. 9b of the Commission's 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 issued on August 5, 1997 ("1997 Order").

On October 10, 2003, the Eric A. Knudsen Trust ("EAK"), Successor Petitioner to the Eric A. Knudsen Trust and the Augustus F. Knudsen Entities and Interests, filed its Motion to Modify Condition No. 9a of Decision and Order ("EAK Motion 1"). The EAK Motion 1 requested a two-year time extension of the August 5, 2004 deadline to commence the development of at least fifty (50) single-family homesites and/or multi-family residential units, pursuant to the 1997 Order. EAK Motion 1 also requested clarification that substantial commencement of development for single-family residences would be issuance of a grading permit rather than the issuance of a building permit.

On October 24, 2003, the Planning Department, County of Kauai ("County") filed its Testimony in Support of the Motion For Order to Amend Condition 9 of Decision and Order ("County's Testimony"). The County's Testimony supported the time extension and requested deletion of Condition No. 20. In addition, the following concerns were raised: i) the need for master planning of the entire Petition Area by KMP and EAK; ii) the coordination and implementation of required public facility planning and improvements; iii) the subsequent change in the original project representation from non-performance of one entity; iv) the need for a master development agreement because of the existence of multiple, unrelated landowners in the Petition Area; and v) the need of potential land purchasers to know the encumbrances imposed upon the property.

On November 4, 2003, KMP filed the Testimony of Greg Kam in Support of the KMP Motion 1.

On November 5, 2003, the Office of Planning, Department of Business, Economic Development & Tourism ("OP") filed its Testimony in Support of the Motions to Modify Condition No. 9 of Decision and Order Dated August 5, 1997. OP had no objections to the time extension requests by KMP and EAK.

On November 6, 2003, EAK filed its Testimony in Support of the EAK Motion 1.

The Motions came on hearing before this Commission on November 6, 2003, in Kapa`a, Hawai`i, with appearances by Movants KMP and EAK; the County; and OP. The Commission consolidated the action of the EAK Motion 1 and KMP Motion 1.

KMP described its efforts in coordinating with the County and EAK in infrastructure planning and improvements and compliance with the conditions of the Decision and Order; and stated its belief that a five-year extension was necessary for its development timeframes since it had acquired its share of the Petition Area only recently, in 2003.

EAK stated that it commenced its development efforts with a subdivision application to the County that was still pending tentative and final approvals. It stated its belief that the two-year time extension was necessary to allow adequate time to secure the approvals and commence further development activities. It also requested

clarification that final subdivision approval could evidence substantial development rather than the issuance of building permits.

The County testified that it still considers the Petition Area as one master plan development despite the recent landownership changes and commencement of respective development plans. The County stated that the existence of multiple owners of different portions of the Petition Area was posing problems with respect to planning infrastructure improvements and was making it difficult to determine if the parties were in compliance with County and LUC conditions of approval. It recommended deferral of the action on the motions, to allow the County to review the respective development and improvement plans and coordinate same with the Movants.

The Commission subsequently deferred action on both motions to allow Movants to provide the Commission with more information on their respective development plans and coordination on regional facility planning activities with the County, pursuant to the Commission's Order Granting Continuance of Kiahuna Mauka Partners, LLC's Motion To Amend or Modify Condition No. 9 as Filed by the Eric A. Knudsen Trust, issued on December 12, 2003.

On January 6, 2004, KMP filed its Post Hearing Submittal Documenting Petitioner's Undertakings Towards Development of Project and Exhibits 1 through 25 ("Post Hearing Documents"). KMP also filed its Motion to Delete Conditions No. 7 and 10 through 18 of the Decision and Order ("KMP Motion II").

On January 7, 2003, EAK filed its Amended Motion to the EAK Motion I ("EAK Amended Motion I") and Motion to Release Condition Nos. 7, 10 – 17 of the Decision and Order ("EAK Motion II").

On January 14, 2004, OP filed its Testimony in Partial Support of the Motions to Modify Condition No. 9 of Decision and Order Dated August 5, 1997 and to Delete Certain Conditions. OP did not have any objections to a uniform time extension for both Petitioners. However, it believed that Condition Nos. 7, 12, 16, and 18 should be retained as Federal and State regulations approvals may be required.

On January 16, 2004, this Commission continued its action on KMP Motion I and Amended EAK Motion I, and commenced action on KMP Motion II and EAK Motion II, with appearances by KMP and EAK; the County; and the OP.

KMP described its coordination efforts with EAK and the County, including a joint development time chart for compliance with LUC and County conditions of approval and the Agreement Re Conditions of Approval entered by KMP, EAK and the County ("Three Party Agreement"). It believed that the Three Party Agreement supported its time extension request and provided its basis for deletion of Conditions pursuant to KMP Motion II. KMP acknowledged that there may be questions on Condition Nos. 10, 11, 23, 14, 15, and 17, and deferred to the Commission's decision on its Motion II.

EAK clarified it amended its time request extension to five years; acknowledged the Three Party Agreement; and requested clarification of what would

be proper evidence of commencement of construction. It believed that final subdivision approval would provide appropriate evidence and the Three Party Agreement provided support of this clarification. EAK acknowledged that the conditions referred to in its Motion II have not yet been satisfied and deferred to the Commission's decision on this motion.

The County had no objections to the five-year time extensions requested by the Movants as described in KMP Motion I and EAK Amended Motion I. It provided clarification on the County subdivision approval processes in relation to project development. In regard to the deletion of conditions pursuant to the KMP Motion II and EAK Motion II, the County did not have any objections for the release of those condition relating to the County issues, but it deferred to OP for those conditions relating to State concerns.

OP had no objections to the time extensions requested by the Movants. In regard to the KMP Motion II and EAK Motion II, it believed that Condition Nos. 7, 12, 16 and 18 should be retained because compliance with State agency approvals or reviews have not been completed and confirmed. OP believed that the other conditions requested for deletion or release have not been satisfied.

The Commission believed that the intent for the conditions of approval imposed on reclassification approvals was to address concerns of development impacts and not to distinguish between State and County enforcement authorities. Further, the

Commission believed that it could not delegate its responsibilities of compliance and it cannot release any condition that have not been proven to be satisfied.

KMP and EAK subsequently voluntarily withdrew their respective Motion II.

Commission granted Movants' time extension, pursuant to KMP Motion I and EAK Amended Motion I, to August 2009.

ORDER

IT IS HEREBY ORDERED that the time extensions, requested pursuant to KMP Motion I and EAK Amended Motion I, are granted to August 5, 2009; and substantial commencement of development shall be evidenced by final subdivision approval by the County pursuant to the Three Party Agreement.

Condition Nos. 9a and 9b. shall be amended to read as follows:

9a. 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 on or before or "not later than" August 5, 2009, of not less than fifty (50) 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 by the County of Kauai of a final subdivision approval (in the case of single-family homesites) or the initial building permit for such construction (in the case of multi-family residential units), and in accordance with the terms and conditions of the Agreement Regarding Conditions of Approval dated December 24, 2003 by and among Kiahuna Mauka Partners, LLC, Stacey T. J. Wong, as and in the capacity of the Successor Trustee of the Eric A. Knudsen Trust, and the County of Kauai. 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.

9b. 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 "on or before" or "not later than" August 5, 2009, 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 by the County of Kauai of a final subdivision approval (in the case of single-family homesites) or the initial building permit for such construction (in the case of multi-family residential units), and in accordance with the terms and conditions of the Agreement Regarding Conditions of Approval dated December 24, 2003 by and among Kiahuna Mauka Partners, LLC, Stacey T. J. Wong, as and in the capacity of the Successor Trustee of the Eric A. Knudsen Trust, and County of Kauai. Sports Shinko or subsequent owners of the Sports Shinko Property 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 portions of the Sports Shinko Property only.

All other conditions pursuant to the Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on August 5, 1997, shall remain in full force and effect.

At the hearing conducted on January 16, 2004, a Motion to approve Movants' time extension request and to clarify that substantial commencement of development shall be evidenced by final subdivision approval (in the case of single-family homesites) or the initial building permit for such construction (in the case of

multi-family residential units) was made and seconded. There being a vote tally of eight ayes, the Motion was PASSED, having received the affirmative votes required by Section 15-15-13, HAR.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 18th day of March, 2004. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Kihei, Maui, Hawai'i, this 18th day of March, 2004,
per motion on March 18, 2004, 2004.

APPROVED AS TO FORM

Russell A. Smylie
Deputy Attorney General

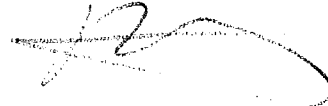
LAND USE COMMISSION
STATE OF HAWAII


By Lawrence N.C. King
LAWRENCE N.C. KING
Chairperson and Commissioner

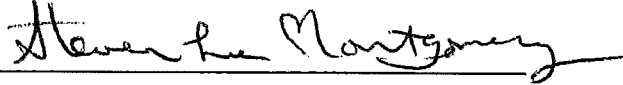
By P. Roy Catalani
P. ROY CATALANI
Vice-Chairperson and Commissioner

By Bruce A. Coppa
BRUCE A. COPPA
Vice-Chairperson and Commissioner

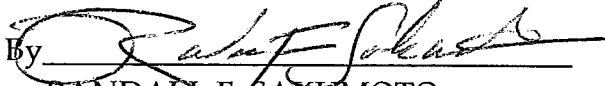
By ABSENT
PRAVIN DESAI
Commissioner

By 
KYONG-SU IM
Commissioner

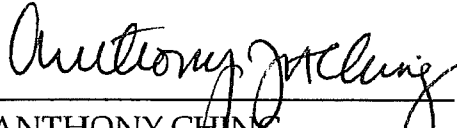
By 
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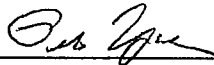
By 
STEVEN LEE MONTGOMERY
Commissioner

Filed and effective on
MAR 25 2004

By 
RANDALL F. SAKUMOTO
Commissioner

Certified by:


ANTHONY CHING

By 
PETER YUKIMURA
Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting (1) Kiahuna Mauka Partners, LLC's Motion To Amend Or Modify Condition No. 9 Of Decision And Order, As Amended In August 5, 1997; And (2) Eric A. Knudsen Trust's Motion To Modify Condition No. 9a Of Decision And Order, 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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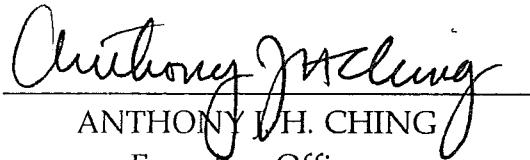
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MAR 25 2004

Dated: Honolulu, Hawaii, _____.


ANTHONY H. CHING
Executive Officer