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LAND USE COMMISSION  
STATE OF HAWAII

2007 AUG 13 A 8:35

August 9, 2007

**SENT CERTIFIED MAIL**

Land Use Commission  
State of Hawaii  
P. O. Box 2359  
Honolulu, HI 96804-2359

**Re: Docket No. A76-418 (2007 Annual Status Report  
Of Kiahuna Mauka Partners, LLC)**

Gentlemen:

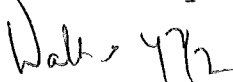
We enclose herewith, the original and 16 copies of the 2007 Annual Status Report of Kiahuna Mauka Partners, LLC, on Conditions to Decision and Order of Land Use Commission.

We would appreciate your filing the same and returning the extra filed copies to me for my records after filing.

If you will also advise me of the date, time and place where the report will be considered by the Commission, if our attendance is required, we will make plans to be present.

Thank you for your assistance in this matter. If there are any questions regarding the above, please feel free to contact me.

Yours very truly,



Walton D. Y. Hong

WDYH:ckf

Encl.

cc: Greg Kamm  
Terry Kamen

LAND USE COMMISSION  
STATE OF HAWAII

ORIGINAL

WALTON D. Y. HONG  
A Law Corporation

2007 JUL 13 A 8:36

WALTON D. Y. HONG 890-0  
3135 Akahi Street, Suite A  
Lihue, HI 96766

Attorneys for Kiahuna Mauka Partners, LLC

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A76-418
	)	
of	)	2007 ANNUAL STATUS
	)	REPORT OF KIAHUNA MAUKA
MOANA CORPORATION	)	PARTNERS, LLC, ON CONDITIONS
	)	TO DECISION AND ORDER OF
To Amend the Agricultural Land Use	)	LAND USE COMMISSION;
District Boundary into the Urban Land Use	)	CERTIFICATE OF SERVICE
District for Approximately 457.54 Acres of	)	
Land Situated at Poipu, Island of Kauai,	)	
State of Hawaii, TMK: 2-8-14: 05, 07, 08,	)	
POR. 19, 20, 21, 26-36; 2-8-15: 77; 2-8-29:	)	
1-94.	)	
	)	

2007 ANNUAL STATUS REPORT OF KIAHUNA MAUKA PARTNERS, LLC,  
ON CONDITIONS TO DECISION AND ORDER OF LAND USE COMMISSION

Comes now KIAHUNA MAUKA PARTNERS, LLC, a Hawaii limited liability company, and respectfully submits this as the 2007 annual report for the period from August 1, 2006 through July 31, 2007, with respect to compliance with the conditions imposed on the properties formerly owned by Sports Shinko (Kauai) Co., Ltd., by the Decision and Order of the Land Use Commission of the State of Hawaii (herein the "Commission") dated and filed July 7, 1977, as amended by (a) the Commission's Decision and Order dated July 3, 1978, (b) the Commission's two Orders Granting Motion to Amend Conditions, each dated December 13, 1979, (c) the Commission's Order Granting In Part Movant Knudsen's Motion to Confirm Satisfaction of and to Partially Delete or Modify Condition Imposed by the Land Use Commission dated October 16, 1995, (d) the Commission's Order Granting In Part Movant Sports Shinko's Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Commission dated October 16, 1995, (e) the Commission's Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to

Motion to Modify Condition Imposed by Land Use Commission (the Modification Order") dated and entered on August 5, 1997, and (f) Order Granting Kiahuna Mauka Partners, LLC's Motion To Amend Or Modify Condition No. 9 of Decision And Order, As Amended In August 5, 1997, dated March 18, 2004 and entered March 25, 2004, (collectively, the "Decision and Order"), which Decision and Order imposed certain Conditions (the "Conditions") on the reclassified lands.

## I. GENERAL PROGRESS OF THE PROJECT

As previously noted in prior annual status reports, Kiahuna Mauka Partners, LLC, was formed by the owners of the respective parcels to effect a single representative to manage and represent project-wide issues before agencies such as the Commission. Kiahuna Mauka Partners, LLC, accordingly submits this annual report on behalf of its members, as owners of the respective parcels under consideration.

The respective parcels owned by the members of Kiahuna Mauka Partners, LLC (herein "KMP") were originally acquired on or about April 10, 2003. Since their acquisition, the members have proceeded diligently, continue to be in various stages of planning and design, and are moving forward in an expeditious manner. While necessary to recognize that the economic realities of each member's project will dictate the timing of that project's development, the project-wide issues are being addressed collectively, including water, sewerage, traffic, wire utilities and overall entitlements. As will be shown in this report, substantial progress has and will continue to be made towards completion of the project.

As set forth in the Order Granting (1) Kiahuna Mauka Partners, LLC's Motion To Amend Or To Modify Condition No. 9 Of Decision And Order, As Amended in August 5, 1997, dated March 18, 2004, Condition No. 9b of the Decision and Order of the Land Use Commission of the State of Hawaii (herein the "Commission") dated and filed July 7, 1977, as amended, Condition No. 9b thereof was further amended that:

“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. \* \* \* “

The Kiahuna Mauka Partners, LLC’s owners have to date invested substantial effort and have expended funds in excess of \$11,000,000 to provide for infrastructure and other improvements for the required housing units to be developed on the properties. KMP has received final subdivision approval from the County of Kauai for 176 single-family residential homesites (lots), which is more than 50% of the 300 required under Condition 9b. Additionally, 299 multi-family units are currently in the building permit review process before the County of Kauai.

The following is a brief descriptive summary of those efforts and expenditures:

(1) KMP 2, 3 and 4 have included in their respective plans, a publicly-accessible walking path along the length of Kiahuna Plantation Drive, with several connections to Hapa Road, together with a designated future trail shelter with drinking fountain and publicly accessible bathrooms at the northerly end of the KMP-4 project, to be built and maintained by KMP-4. The portion of the path adjacent to KMP-3 is completed;

(2) KMP-4 has designated planned public parking at the site of its public trail shelter;

(3) Provided a site for and completed construction of a Civil Defense warning siren under the direction and consensus of the State Civil Defense Agency, increasing local coverage during emergencies. The work was completed in December of 2006, at a cost of approximately \$35,000, exclusive of necessary site work;

(4) Developed and secured approval of a Water Master Plan to provide increased pressure and capacity to the project, as well as surrounding areas, which include the interconnection between the 366 and 245 service areas for second source looping in case of emergency. The entire off-site water infrastructure required is 100% complete;

(5) Development of an Employee Housing Agreement Program with the Kauai County Housing Agency, which program was recommended by the County Housing Agency for approval by the Planning Commission. Four of the five KMP projects have signed Agreements with the County of Kauai to pay money into the County’s Revolving Housing Fund to satisfy this condition;

(6) Design plans for public sidewalks to be constructed along Poipu Road were submitted to and have been approved by the County of Kauai, and a bond has been posted for the costs of construction. Plans for most of Kiahuna Plantation Drive have been approved, with one section already built. The total costs of these sidewalks is estimated at \$100,000;

(7) Design of plans for the construction of a planned bus-stop and shelter on Poipu Road have been submitted to and approved by the County of Kauai, at an estimated cost of \$50,000;

(8) The placement of over 11 acres of land into permanent archaeological preserves. One of the designated preserves is being cleared of the cactus to provide access to the general public through a recorded public vehicular and pedestrian easement, including public parking outside and adjacent to the Preserve proper. This Preserve will also include interior walking trails with State Historic Preservation Division's approved interpretive signage;

(9) Expenditure of approximately \$2,563,000 to complete the upgrading of the Poipu Wastewater Facility to R-1 status, with plans to recycle a portion of the treated effluent to irrigation purposes. The upgrade to R-1 status is completed, and is awaiting certification;

(10) The construction of a separate non-potable irrigation system to draw water from the Waita Reservoir to minimize impacts on domestic water demands has been completed at a cost in excess of \$500,000. This project has been completed and is currently in use;

(11) In accordance with the approved Water Master Plan, a new 500,000 gallon domestic water tank in Omao has been completed at a cost of approximately \$2,100,000; it has been conveyed to the County Department of Water;

(12) Completion of approximately 3 miles of public domestic waterline to serve the project area, as well as the Koloa and Poipu regions. This waterline also connects two different pressure zones, correcting a current low pressure problem in one area of Poipu and upgrading fire protection capabilities for Koloa. The total cost for this waterline is in excess of \$3,400,000, and the makai section of the project has been completed and conveyed to the County Department of Water, with the mauka section completed and expected to be conveyed to the Department of Water in August 2007; and

(13) Contribution by Kiahuna Mauka Partners, LLC, of 33.5% of the cost for the County Department of Water's Well F. The 33.57% contribution is approximately \$750,000, and the well is completed and awaiting only the approval from the State Department of Health before being put into service. It is expected to be fully operational within the next several months. This is in accordance with the approved Water Master Plan.

As noted in the 2003/2004 Annual Status Report, the 2004-2005 Annual Status Report and the 2005/2006 Annual Status Report of Kiahuna Mauka Partners, LLC, the representations of the original petitioner Moana Corporation was that the project would ultimately consist of 300 single family lots and 1,150 multi-family units, for a total unit count of 1,450 units. Due to the changes in market conditions and other circumstances in the

intervening years, KMP and the Eric A. Knudsen Trust believed that an increase in the number of single family units and decrease in the number of multi-family units will better meet the needs of the area, and have reached an understanding as to the increase and reallocation of the single family units and decrease in the multi-family units. While there may be a continued need to adjust the allocation in the future, in no event will the total units exceed 1,450 units, and may even result in a decrease in the number of total units upon final build-out. The reallocation of single family and multi-family units, nonetheless, remains consistent with the intent of the project, without any significant adverse impacts.

## II. STATUS OF COMPLIANCE WITH CONDITIONS

### Condition Nos. 1, 2, 3, 4 and 6

**Current Status:** As reported in the preceding 2002/2003 Annual Status Report, the 2003/2004 Annual Status Report, the 2004/2005 Annual Status Report, and the 2005-2006 Annual Status Report, each of these Conditions have been previously satisfied as confirmed by (a) the Commission's Order Granting in Part Movant Knudsen's Motion to Confirm Satisfaction of and to Partially Delete or Modify Condition Imposed by the Land Use Commission dated October 16, 1995, and (b) the Commission's Order Granting in Part Movant Sports Shinko's Motion to Confirm Satisfaction of and to Partially delete or Modify Condition Imposed by the Land Use Commission dated October 16, 1995.

### Condition No. 5

5. *That the Petitioner make the recreational and other amenities of the development such as the golf course, clubhouse, swimming facilities, tennis courts, and theater and cultural center available for public use at reasonable usage fees.*

**Current Status:** The existing recreational amenities on the reclassified lands, including the Kiahuna Golf Club and Kiahuna Tennis Club, which includes the swimming pool, are available for public use at reasonable usage fees. The Kiahuna Golf Club's eighteen-hole course has recently been upgraded.

### Condition No. 7

7. *That Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserves any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the*

*present habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of the archaeological and biological study; provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by Petitioner upon certification by the archaeologist and biologist that the area for which work is to be commenced does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.*

**Current Status:** As noted in the prior Annual Status Reports, a comprehensive Archaeological and Biological Survey of the Proposed Kiahuna Golf Village Area, dated September 1978, was prepared for the petitioner Moana Corporation by Archaeological Research Center of Hawaii, Inc., towards meeting this condition.

A new Inventory Survey Report and Data Recovery Report have been accepted by SHPD as final. This resulted in four archaeological preserves, totaling approximately 11 acres, and their metes and bounds descriptions were established pursuant to agreement from SHPD and the Kauai Historic Preservation Review Commission. KMP has expended an aggregate total of approximately \$350,000 for archaeological review and preservation.

Preservation Plans were prepared for these four Preserves, and those plans have been approved by SHPD, as well, fully completing the archaeological requirements for the KMP project. Easements granting public access have been recorded, and actual implementation of public access to Preserve 1 will be available as soon as it is safe to do so.

A flora survey and a fauna survey were completed and submitted to the County of Kauai on or about March 29, 2004. As no endangered or threatened species was found, no further work is planned in this area. With respect to the habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers, and despite finding none of these spiders and sandhoppers in at least the past five years, KMP has established areas identified as critical habitats to support these species should they reappear.

#### Condition No. 8

8. *That to whatever extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Petitioner hire Kauai contractors so long as they are reasonably competitive with*

*other contractors, and employ residents of Kauai in the temporary construction and permanent hotel related jobs. The Commission understands that the Petitioner may have to employ non-Kauai residents for particular skilled jobs when no Kauai resident possess such skills. However, the Petitioner shall cooperate with, and utilize, whatever government training programs may be available so that Kauai residents can be trained to fill such jobs. For the purposes of this condition, the Commission relieves the Petitioner of this requirement if he is subjected to anti-competitive restraints on trade or other monopolistic practices.*

**Current Status:** Pursuant to the foregoing conditions, KMP has used a number of Kauai businesses as much as reasonably possible. Where the needed services were not available from Kauai based firms, businesses doing work in the State of Hawaii were utilized, with Kauai-based personnel used as much as possible.

The Kauai businesses, or firms using Kauai personnel, used by KMP to date include, but are not limited to Cultural Surveys Hawaii; Goodfellow Brothers; Law Offices of Walton D. Y. Hong; Law Offices of Belles, Graham, Proudfoot and Wilson; Greg Kamm Planning & Management; Camp Consulting, LLC; Irrigation Technology Corporation; Unlimited Construction Services, Inc.; Kauai Nursery and Landscaping, Inc.; No Ka Oi Plants; David Rita Equipment Rental; Scientific Consulting Services, Inc.; Coral Sea Construction, LLC; and Moana Palama Management Services.

KMP will endeavor to meet this condition on a continuing basis by using Kauai firms or Hawaii based firms with Kauai personnel as much as such firms are available and able to provide the required work and are competitive in pricing.

#### Condition No. 9

9. *As of the effective date of this amendment, Petitioner has completed 90 single-family residential homesites, 48 multi-family residential units, an 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.*

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 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.*

**Current Status:** The KMP project area consists of five (5) developments, with the status of each being summarized as follows:

**Project 1** is a 106-lot single family lot subdivision. It has obtained Final Subdivision approval from the County Planning Commission. It is currently under construction with a completion targeted for December 2007.

**Project 2** is a 164-unit condominium project, which has received its land use permits from the County of Kauai. A temporary sales trailer is in service on the site. It has received a grading permit and is currently seeking building permits for 108 units.

**Project 3** is a 191-unit condominium project which has received its land use and grading permits from the County of Kauai, and is seeking building permit approval for all 191 units.

**Project 4** is a 280 multi-family and a 2-unit single family project, for which land use permits have been issued by the County of Kauai. Condition compliance is underway. The main roadway and utilities through the project have been completed.

**Project 5** is a 70-lot single family lot subdivision, in which all homes will be built by the developer. The project has received Final Subdivision approval from the County of Kauai. Construction of the roadway and underground utilities up to and within the subdivision has been completed, and building permits for the houses are pending with the County of Kauai.

Condition No. 10

*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 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 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 Sports Shinko Property, if rezoning is not required.*

**Current Status:** The Water Master Plan has been completed by KMP's consultant, Tom Nance Water Resource Engineering (TNWRE), and was approved by the Kauai County Department of Water by its letter of June 7, 2004. Subsequent updated revisions were also submitted and approved by the Department of Water, per its letter of July 17, 2006.

KMP has also reached a cost-sharing agreement with the County Department of Water for its new Well F in Poipu, and has paid its share of this source as required by the County of Kauai under the agreement.

KMP has completed construction of the required approximately 9,700 linear feet of pipeline from Koloa Road east of Poipu Road, through Koloa Town, and down Hapa Road to the extension of Kiahuna Plantation Drive, and connected to the existing County system off of Pa'u A Laka Street.

KMP has completed construction of the 500,000 gallon Omao water storage tank at KMP's cost and dedicated it to the County Department of Water.

These KMP Water Master Plan improvements are currently completed, conveyed to the County, and operational.

#### Condition No. 11

*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 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 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 Sports Shinko Property, if rezoning is not required.*

**Current Status:** The County of Kauai requested a master drainage plan in the summer of 2006.

Each of the component KMP projects provided or will provide individual drainage studies addressing the effects thereof on other potentially affected properties in compliance with applicable drainage standards. Drainage studies have been completed and accepted for Projects 1, 2, 3 and 5, as described above.

Esaki Surveying and Mapping, Inc., submitted the Master Drainage Study to the County of Kauai Department of Public Works Engineering Division, and Final Subdivision approvals have been issued based on the Master Drainage Plan.

In March, 2007, KMP requested a letter from the Department of Public Works to confirm its acceptance of the Master Drainage Plan, but no letter has yet been issued.

Condition No. 12

*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 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 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 Sports Shinko 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.*

**Current Status:** A comprehensive Traffic Impact Assessment Report was prepared by Austin, Tsutsumi and Associates, and was submitted on March 4, 2004 to the County of Kauai and on July 28, 2004 to the State Department of Transportation for information and review.

In addition, KMP is participating and sharing in the costs of the regional transportation study conducted by Charlier & Associates, Inc., in cooperation with the Koloa Community Association, the collective development community in Koloa and Poipu, and the County of Kauai.

Condition No. 13

*13. Wastewater treatment for the future development upon the currently undeveloped portions of the Sports Shinko Property will be handled and processed by one or more of the following: (a) the expansion of the existing Kiahuna Wastewater Treatment Plant, (b) the development and construction upon the Sports Shinko 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. Sports Shinko and any subsequent owner of the Sports Shinko Property will not look to the County of Kauai for the provision of wastewater treatment facilities.*

**Current Status:** KMP has negotiated with and received a will-serve letter agreement from HOH Utilities, LLC, a Public Utilities Commission-regulated entity, that operates the Kiahuna Waste Water Treatment Plant.

KMP has completed funding (in the amount of \$2,563,000.00) for the upgrades and expansion of that plant according to the terms of the agreement. The required improvements have been completed and the plant has capacity for and is ready to serve the KMP projects.

Condition No. 14

*14. All of the internal roadways within the future developments on the remaining undeveloped portions of the Sports Shinko Property will be private and therefore private, not County of Kauai, trash collection will be used for any future development on the currently undeveloped portions of the Sports Shinko Property.*

**Current Status:** KMP members have constructed several of these private roadways and will honor this condition, with all roads within the project on the KMP lands planned to remain private.

Condition No. 15

*15. Effective soil erosion and dust control measures will be implemented during future construction upon any currently undeveloped portions of the Sports Shinko Property to the satisfaction of the County of Kauai and the Department of Health, State of Hawaii.*

**Current Status:** KMP members are fully complying with this condition, as well as the County Grading Ordinance. Best Management Practices are being employed by each project as required by the respective grading permits.

Condition No. 16

*16. Sports Shinko or any subsequent owner of the Sports Shinko Property, 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 the Sports Shinko Property.*

**Current Status:** KMP has installed the civil defense siren adjacent to the KMP Project 4 site, and it is currently available for use by the State Civil Defense Agency.

This improvement was requested by and plans and location approved by the State Civil Defense Agency as a compliance measure with the foregoing condition.

Condition No. 17

*17. Sports Shinko or any subsequent owner of the Sports Shinko Property, shall notify all prospective buyers of the Sports Shinko Property 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, limited the circumstances under which pre-existing farm activities may be deemed a nuisance.*

**Current Status:** All transfers of KMP properties have included the required disclosures of potential nuisances from surrounding agricultural lands. All future transfers will include similar disclosures.

Condition No. 18

*18. Absent approvals 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 on 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 [Commission on Water Resource Management of the State of Hawaii] the Department of Land & Natural Resources of the State of Hawaii, and the United States Fish & Wildlife Service for comment prior to approval by the County of Kauai.*

**Current Status:** KMP does not have any plans to channelize Waikomo Stream. It has designated a buffer zone along the stream, and submitted the same to the Department of Land and Natural Resources and the United States Fish and Wildlife Service by letter of July 14, 2004.

The U.S. Fish & Wildlife approved the same by its letter of July 26, 2004; the State Department of Land and Natural Resources, Aquatic Resources Division, did not respond. KMP submitted the designated stream buffer zone to the County of Kauai Planning Department for its approval by letter of July 6, 2006.

After meeting with the County Planning Director, the buffer was expanded. After meeting with the County Planning Department staff, a Declaration of Stream Buffer was drafted, allowing County enforcement. KMP submitted the amended stream buffer zone to the County Planning Department for approval by letter of July 6, 2006, as well as the draft Declaration by email, and is waiting approval of the same.

Based on the Planning Department and Planning Commission's approval of the Kiahuna Mauka Partners' subdivision (S-20004-16), the Planning Department and Planning Commission approved the Stream Buffer Zone as it is shown on the final subdivision map. As requested by the Planning Director, the final subdivision map shows the Stream Buffer Zone extending an additional 20 feet further back (generally East) from the Waikomo Stream floodway than the plan approved by the United States Fish and Wildlife Service.

It is noted that the reference to the Commission on Water Resource Management of the State of Hawaii in the above condition was stricken, as it was erroneously introduced into the condition. The original condition did not include the reference to the Commission on Water Resource Management. See the attached excerpt of the Land Use 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 in Docket No. A76-418, dated August 5, 1997, which states Condition No. 18.

Condition No. 19

*19. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Sports Shinko Property upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioners.*

**Current Status:** KMP has met a number of the conditions of approval and will be filing a motion for release thereof by the Commission with appropriate documentation in support thereof.

Condition No. 20

*20. The noncompliance with or nonperformance of any remaining conditions of the Decision and Order 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 Knudsen Property (TMK No. (4) 2-8-14:19(por.)).*

**Current Status:** KMP acknowledges the condition that it has no responsibility as to compliance with the conditions which are applicable to the Eric A. Knudsen Trust lands.

Condition No. 21

21. *The obligations and liability of First Hawaiian Bank, as Trustee 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.*

**Current Status:** This Condition is not applicable to KMP or the Sports Shinko Property.

Condition No. 22


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.*

**Current Status:** Sports Shinko complied with Condition No. 22 as applicable to the Sports Shinko Property by the filing of that certain Certificate and Amendment and Modification of Conditions dated November 17, 1997, in the Bureau of Conveyances of the State of Hawaii as Document No. 97-164842. A copy thereof was previously delivered to the Commission. A copy of the Order Granting Kiahuna Mauka Partners, LLC's Motion To Amend Or Modify Condition No. 9 Of Decision And Order, As Amended In August 5, 1997, dated March 18, 2004, has been recorded in the Bureau of Conveyances on August 25, 2005, as Document No. 2005-168955.

Dated: Lihue, Hawaii, this 8<sup>th</sup> day of August, 2007.

Respectfully submitted,

KIAHUNA MAUKA PARTNERS, LLC

By:   
Greg Kamm  
Its Project Manager

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

In the Matter of the Petition of )	DOCKET NO. A76-418
MOANA CORPORATION )	
To Amend the Agricultural Land Use )	ORDER GRANTING FIRST
District Boundary into the Urban )	HAWAIIAN BANK, TRUSTEE
Land Use District For Approximately )	OF THE ERIC A. KNUDSEN
457.54 Acres of Land Situated at )	TRUST'S AMENDMENT TO
Poipu, Island of Kauai, State of )	MOTION TO MODIFY
Hawai'i, TMK: 2-8-14: 05, 07, 08, )	CONDITION IMPOSED BY THE
por. 19, 20, 21, 26-36; 2-8-15: 77; )	LAND USE COMMISSION
2-8-29: 1-94 )	

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,



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.

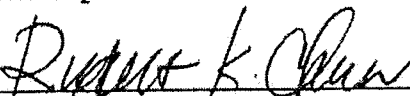
IT IS HEREBY FURTHER ORDERED that Conditions No. 5, 7, and 8 imposed previously by the Commission in the subject docket, are reaffirmed and shall remain in effect.

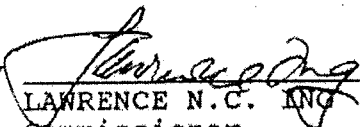
DOCKET NO. A76-418 - MOANA CORPORATION

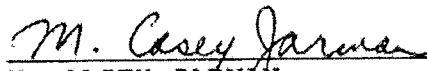
Done at Honolulu, Hawai'i, this 5th day of August 1997,  
per motions on June 26, 1997 and July 31, 1997.

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. ING  
Commissioner

By   
M. CASEY JARMAN  
Commissioner

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

By   
LLOYD F. KAWAKAMI  
Commissioner

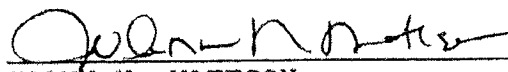
By (absent)  
MERLE A. K. KELAI  
Commissioner

Filed and effective on  
August 5, 1997

Certified by:

  
Executive Officer

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

By   
JOANN N. MATTSON  
Commissioner

ORIGINAL

CERTIFICATE OF SERVICE

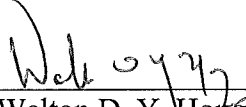
I hereby certify that copies of the foregoing were served on the following by depositing the same in the United States Postal Service, postage prepaid, addressed as follows, on this date:

OFFICE OF PLANNING  
Attention: Mary Lou Kobayashi  
Planning Program Administrator  
235 South Beretania Street, 6<sup>th</sup> Floor  
Honolulu, HI 96813

PLANNING DEPARTMENT  
COUNTY OF KAUAI  
Attention: Ian Costa  
Planning Director  
4444 Rice Street  
Lihue, HI 96766

GRACE NIHEI KIDO, Esq.  
Cades Schutte  
1000 Bishop Street, 11<sup>th</sup> Floor  
Honolulu, HI 96713

Dated: Lihue, Hawaii, this 9<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
Walton D. Y. Hong  
Attorney for Kiahuna Mauka Partners, LLC