

ORIGINAL

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Attorneys for Knudsen Trusts

RECEIVED

JAN 19 1995

BEFORE THE LAND USE COMMISSION
State of Hawaii
LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition)	DOCKET NO. A76-418
)	
of)	TESTIMONY OF KNUDSEN TRUSTS
)	BEFORE THE LAND USE
MOANA CORPORATION)	COMMISSION JANUARY 19, 1995;
)	EXHIBITS "A", "B" & "C"
For Reclassification of)	
certain Lands at Poipu,)	Hearing Date: January 19,
Island of Kauai)	1995
)	
)	

TESTIMONY OF KNUDSEN TRUSTS BEFORE THE LAND USE COMMISSION
January 19, 1995

STATUS OF DEVELOPMENT REPORT OF KNUDSEN TRUSTS/DOCKET
NO. A76-418 OF MOANA CORPORATION

HONORABLE CHAIRPERSON AND MEMBERS OF THE LAND USE COMMISSION:

My name is Grace Nihei Kido. I am here on behalf of the Eric Knudsen Trust and the Augustus Knudsen Trust (the "Trusts"). First Hawaiian Bank is the Trustee of the Eric Knudsen Trust and Hawaiian Trust Company, Limited, is the successor trustee of the Augustus Knudsen Trust. Also here today are Jim Bell, the planning consultant for the Trusts, Allan Zawtocky for the Eric Knudsen Trust and Fred Ferguson-Brey for the Augustus Knudsen Trust.

On October 24, 1994, the Land Use Commission requested that the Trusts submit an annual report for the approximately 62.97 acre portion of Kauai Tax Key No. 2-8-14-Parcel 19 ("Parcel 19"). On November 10, 1994, the Trusts responded by submitting their 1994 Annual Report.

In that report, the Trusts reported that they are the fee simple owners of Parcel 19. Approximately 457.54 acres of land, including the 62.97 acre portion of Parcel 19, were the subject of LUC Docket No. A76-418. The rest of Parcel 19 was not part of this Docket. The Petition was brought by Moana Corporation ("Moana"). Such portion of Parcel 19 and other lands were reclassified from the Agricultural to the Urban District by the Decision and Order of July 7, 1977. We submit as Exhibit "A" a map which depicts the project area of the petition brought by Moana Corporation. The map also shows the land area currently remaining under the Trusts' ownership.

As stated in the annual report, the Trusts were not the petitioners in Docket A76-418. Neither were the Trusts at any time the developer of any portion of the project contemplated in that Docket. Moana or its affiliates were the lessee of Parcel 19 and other lands under a recorded Lease (the "Moana Lease") dated July 1, 1978. (The Lease is recorded in the Bureau of Conveyances of the State of Hawaii in Book 13425, Page 474, and also recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 919326).

Moana defaulted in its lease obligations. In 1987, the Trusts filed suit to enforce their remedies. The dispute was eventually settled. As of September 30, 1987, more than 9 years after the date of the Lease, the Moana Lease was cancelled and Parcel 19 was surrendered to the Trusts. At the same time, Moana or its affiliate assigned to Sports Shinko (Kauai) Co., Ltd. ("Sports Shinko"), its leasehold interest in approximately 321 acres of land covered by the Decision and Order. The Trusts also conveyed to Sports Shinko their fee simple interest in such land.

We submit as Exhibit "B" a summary of the various parcels covered by the Decision and Order. The Summary also shows the current status of their development and ownership. As shown by the summary:

1. Sports Shinko currently owns approximately 321 acres. The 321 acres includes the existing 18-hole golf course and the golf clubhouse on 144 acres of land. According to its 1993 annual report, Sports Shinko intends to develop 560 multifamily residential units and 158 single family residential lots on its undeveloped residential land.
2. Approximately 35.456 acres (TMK No. (4) 2-8-29:1-94) were developed by Moana or its affiliate into a 90 lot residential subdivision. The subdivision includes roadways and an open area

required to preserve archaeological or biological sites. The 90 lots are currently owned in fee simple by various owners.

3. More than 18 acres (TMK Nos. (4) 2-8-17: 11, 13, 14, 24) were dedicated to the County of Kauai for a park site. Such dedication satisfied this Commission's Condition No. 6.
4. More than 26 acres remaining under the Trusts' ownership (TMK Nos. (4) 2-8-14:27, 29, 20, 21, 5 and 10) have been developed. The developed projects include a sewage treatment plant, a shopping center, a tennis center, a roadway known as Kiahuna Plantation Drive, and Phase V of the Kiahuna Plantation condominium project. The condominium project includes 48 multi-family units. Except for the roadway, all such developed areas are currently leased to various entities under long-term leases as shown on Exhibit B.
5. Of the remaining undeveloped land, 11.5 acres are currently leased under two long-term leases to Kiahuna Land Company. Kiahuna Land Company is an affiliate of Moana Corporation, the original petitioner. One lease covers the 3.815 acre parcel zoned Neighborhood Commercial (TMK 2-8-14:26). That lease permits the development of condominiums and/or commercial sites. The initial development is to be a shopping center. The other lease covers the 7.685 acre parcel zoned R-20 (TMK 2-8-14:30). That lease permits the development of condominiums and/or commercial facilities if the lessee can obtain the governmental permits for commercial development.
6. The remaining undeveloped zoned land comprises the 58.4 acre portion of Parcel 19 that was classified Urban by the Decision and Order. The Trust owns an additional 4.3 acres that are zoned open. Such portion of Parcel 19 was surrendered to the Trusts at the end of September 1987. In 1989, the Trusts leased all of Parcel 19 and adjacent lands to Poipulani Development Corporation ("Poipulani"). Such adjacent lands are not part of this Docket. The Poipulani Lease permitted the development of a golf course and up to 90 residential house-lots. In connection with such permitted use, Poipulani obtained a county zoning amendment for a portion of Parcel 19 subject to a number of conditions. The

conditions were set out in Kauai County Ordinance No. PM-211-90.

After Hurricane Iniki in 1992, Poipulani defaulted on its lease obligations. The Trusts do not know the particulars of why Poipulani defaulted or why it was not able to proceed with its proposed project. However, it is probably safe to say that the devastating physical and economic effects of Hurricane Iniki contributed to the eventual failure of Poipulani's efforts. The Trusts filed suit in the First Circuit Court to confirm the cancellation of the Poipulani Lease. Such confirmation was obtained by Default Judgment for Damages and Lease Cancellation dated March 8, 1994 (filed in Civil No. 93-1621-04).

The Trusts generally are not in the business of developing property. They generally enter into leases with developers who seek to develop trust lands. Their first lessee, Moana Corporation, initiated the petition to the Land Use Commission. Moana proceeded to develop the project as described in the petition and substantially complied with the 9 conditions of the Decision and Order.

After Moana surrendered a portion of the project area to the Trusts, the Trusts entered into another lease with a developer. This second developer, Poipulani, developed a plan and sought the necessary approvals and financing to implement its plan. Unfortunately, it was not successful in doing so, and eventually defaulted. The property was again surrendered to the Trusts. Such surrender occurred just last year.

The Trusts hope to obtain a suitable lease or other development agreement to develop Parcel 19 and the adjacent lands in an orderly manner. Currently, they are entertaining a serious proposal to lease Parcel 19 and adjacent lands. They have also scheduled a meeting with members of the Kauai Planning Department to discuss various issues in connection with such property.

Prior to its surrender and sale of the various parcels, Moana reported to the Land Use Commission on the progress of its development and satisfaction of the 9 conditions of the Decision and Order. We met with members of the Kauai Planning Department last Wednesday on January 11, 1995. The Planning Department confirmed the satisfaction in full of this Commission's Conditions 1, 2, 3 and 4 by payment of \$2,000,000 to the County Housing Fund. The County did not require full payment of the \$2,000,000 until January 28, 1991. However, payment in full was made ahead of schedule in October 1987. The

Department also confirmed the satisfaction in full of Condition 6 by dedication of the Park Site.

Conditions 5, 7 and 8 are continuing conditions. The Planning Department confirmed that such conditions are currently in compliance. As required by Condition 5, the golf and tennis facilities developed by the petitioner are available for public use at reasonable usage fees. As required by Condition 7, the petitioner performed certain archaeological and biological studies and took measures to protect and preserve the archaeological sites and habitats of the blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers. Condition 8, regarding of employment of Kauai workers, is currently in compliance.

The Planning Department also confirmed that Condition 9 has been partially satisfied by completion of the following projects: the 18-hole golf course and clubhouse, the tennis center, the 90 single-family residential homesites and 48 multifamily residential units. The landscaping, water systems, underground utilities and other improvements servicing such projects have also been completed.

We submit as Exhibit "C", a copy of a letter from the County Planning Department confirming such compliance.

Other components of Condition 9 have not yet been completed. Such components are the balance of the single family homesites and multi-family units required by Condition 9. Since the Decision and Order contemplated the development of 300 single family homesites and 90 have been completed, 210 homesites remain to be developed. Since Condition 9 required the development of at least 300 multi-family units and 48 have been completed, 252 multifamily residential units remain to be developed.

The Trusts are not the developers or the petitioners of the project contemplated by the Decision and Order. However, certain things are evident from a review of the 9 Conditions and the status of compliance with such Conditions.

On the one hand, substantially all of the conditions which confer a direct benefit to the public have been satisfied in full or are in compliance to date. The Park Site was dedicated in fee to the county. It is a valuable 18 acre ocean view site in Poipu, which was owned by the Knudsen Trusts. That valuable resource is now owned by the County for park use. The \$2,000,000 payment to the County housing fund was paid in full. The sewage treatment plant developed by the petitioner services lands in the Poipu area including those that are not covered by this Docket. The golf and tennis facilities developed by the petitioner are available for public use at reasonable fees.

On the other hand, the conditions that remain to be satisfied are the ones that would confer benefit to the private landowners. Such conditions are the development and sale of the balance of the residential units. It appears that the private interests have paid dearly in public benefits for the Urban classification, without the opportunity to yet fully realize on their investments.

The Trusts intend to submit a motion to confirm the satisfaction of the conditions that have been satisfied in full.

Also, the Trusts intend to request a release of all or part of the remaining Trust lands from the remaining requirements of Condition 9. Such request would be based on the following: (i) the construction requirements which confer public benefits have been substantially satisfied; (ii) the bulk of the land zoned for residential use have been conveyed to Sports Shinko, and under Sports Shinko's development plan, the balance of the multi-family units required by Condition 9 and the balance of the single-family lots intended to be developed by Moana would be developed on Sports Shinko's lands; and (iii) current zoning for the lands remaining under the Trusts' ownership does not permit the balance of the multi-family units required by Condition 9 or the balance of the single family lots that Moana intended to develop.

In the alternative, the Trusts intend to request a modification of Condition 9. Such requested modification may include an extension of time to satisfy Condition 9 and/or a reduction in the number of residential units required to be built on Trust property.

The Trusts would prefer to have entered into a new lease of Parcel 19 before bringing a motion before the Commission or causing its lessee to bring a motion. However, the Trusts are preparing to bring a motion in the event such a lease is not obtained in the near future.

Thank you for this opportunity to report on the status of this matter.

EXHIBIT "B"

SUMMARY OF LAND DEVELOPMENT AND OWNERSHIP
LUC DOCKET A76-418

TMK NO.	SIZE (Acres)	ZONING	DEVELOPMENT	OWNER/LESSEE
2-8-14:7, 36	140.133	Open, R-6, R-4	18-hole Golf Course	Sports Shinko (Kauai) Co., Ltd.
2-8-14:31	4.038	Open, R-10	Clubhouse	Sports Shinko (Kauai) Co., Ltd.
2-8-14:8	78.468	Open, R-4	Vacant	Sports Shinko (Kauai) Co., Ltd.
2-8-14:28	1.424	Open	Vacant	Sports Shinko (Kauai) Co., Ltd.
2-8-15:77	<u>1.588</u>	Open	Vacant	Sports Shinko (Kauai) Co., Ltd.
	(225.651	Subtotal Sports Shinko Golf Course Lands)		
2-8-14:32	45.195	R-10/R-6/Open	Vacant	Sports Shinko (Kauai) Co., Ltd.
2-8-14:33, 34	29.525	R-10	Vacant	Sports Shinko (Kauai) Co., Ltd.
2-8-14:35	<u>20.692</u>	R-4/Open	Vacant	Sports Shinko (Kauai) Co., Ltd.
	(95.412	Subtotal Sports Shinko Residential Lands)		
	<u>321.063</u>	<u>Total Sports Shinko Lands</u>		
2-8-29-1 to 94	35.456	Open, R-4	90-Single Family Lots Roads and Open Area	Various Individuals
*2-8-17:11, 13, 14, 24	<u>18.318</u>	Open	ParkSite	County of Kauai

*Part of Moana's Project Area, but in Urban classification prior to Docket A76-418

TMK NO.	SIZE (Acres)	ZONING	DEVELOPMENT	OWNER/LESSEE
2-8-14:27	1.996	Open	Sewer Treatment Plant	Knudsen Trusts/Waiohai Resort Partners, Ltd., Kiahuna Investors, Ltd., Obayashi Corp.
2-8-14:29	4.485	Neighborhood Commercial	Shopping Center	Knudsen Trusts/Village Properties, Ltd.
2-8-14:20, 21	10.425	Open	Tennis Center	Knudsen Trusts/Kiahuna Investors, Ltd.
2-8-14:5	6.257	Neighborhood Commercial R-10, R-20, Open	Roadway	Knudsen Trusts
*2-8-17:10	<u>3.216</u>	R-20, Open	Kiahuna Plantation Phase V (48 units)	Knudsen Trusts/Moana Kauai Corporation
	<u>26.379</u>	<u>Total Developed Area</u>		
2-8-14:26	3.815	Neighborhood Commercial	Vacant	Knudsen Trusts/Kiahuna Land Company
2-8-14:30	<u>7.685</u>	R-20	Vacant	Knudsen Trusts/Kiahuna Land Company
	<u>11.500</u>	<u>Total undeveloped land currently leased to Kiahuna Land Company</u>		
2-8-14-19 (portion)	22.9 +	R-10	Vacant	Knudsen Trusts
	<u>35.5 +</u>	R-6	Vacant	Knudsen Trusts
	(58.4 +	Subtotal undeveloped zoned land currently not leased to others)		
	<u>4.3 +</u>	Open		
	<u>62.7 +</u>	<u>Total undeveloped land currently not leased to others</u>		

*Part of Moana's Project Area, but in Urban classification prior to Docket A76-418

3 Augustus Knudsen Trust - 1/2
Eric A Knudsen Trust - 1/2
Popu Beach Co. Ltd. - 1/2

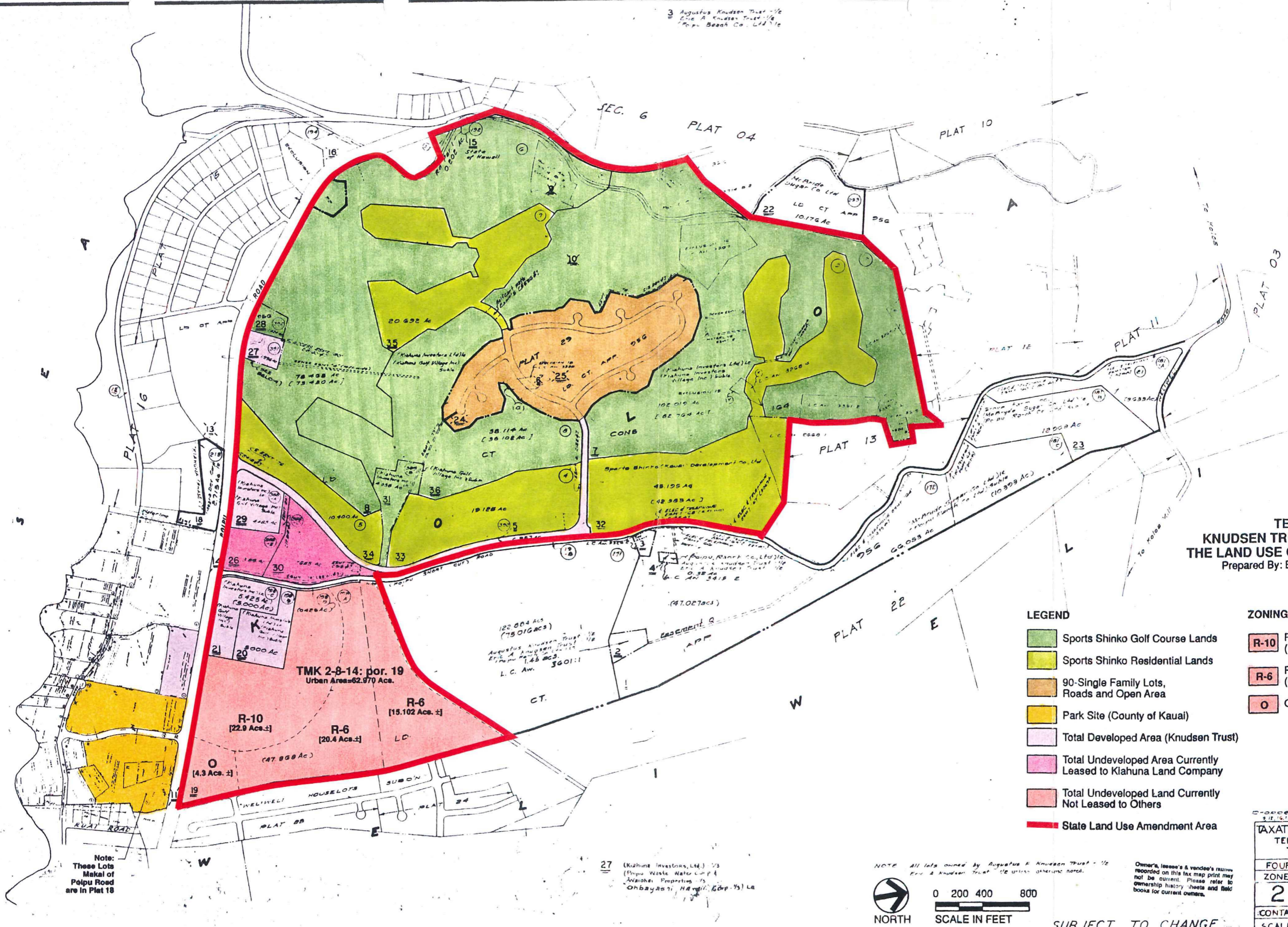


Exhibit A
TESTIMONY OF
KNUDSEN TRUST BEFORE
THE LAND USE COMMISSION
 Prepared By: Belt Collins Hawaii
 January 18, 1995

- LEGEND**
- Sports Shinko Golf Course Lands
 - Sports Shinko Residential Lands
 - 90-Single Family Lots, Roads and Open Area
 - Park Site (County of Kauai)
 - Total Developed Area (Knudsen Trust)
 - Total Undeveloped Area Currently Leased to Kiahuna Land Company
 - Total Undeveloped Land Currently Not Leased to Others
 - State Land Use Amendment Area

- ZONING INFORMATION**
- R-10** Residential District (10 Units/Acre)
 - R-6** Residential District (6 Units/Acre)
 - O** Open District

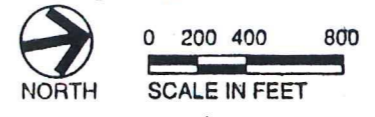
Note:
 These Lots
 Makai of
 Popu Road
 are in Plat 18

3037
 Div. No.
 Source: Lt. Ct. App. 956 (Am.)
 By: D.F.G. & J.L.C. Oct., 1936.

27 (Kiahuna Investors, Ltd.) 1/3
 (Popu Waste Water Corp.) 1/4
 Awaoka Properties 1/3
 Ohbayashi, Haruki, Corp. 1/3

NOTE: All info owned by Augustus E. Knudsen Trust - 1/2
 Eric A. Knudsen Trust - 1/2 unless otherwise noted.

Owner's, lessee's & vendee's names
 recorded on this tax map print may
 not be current. Please refer to
 ownership history sheets and field
 books for current owners.



SUBJECT TO CHANGE

Crossed Parcels 2, 8, 14, 19, 27, 28, 29, 30, 31, 32, 33, 34, 35

TAXATION MAPS BUREAU TERRITORY OF HAWAII TAX MAP		
FOURTH	SEC	DIVISION
2	8	14
CONTAINING PARCELS		
SCALE: 1 in. =		
PRINTED JAN 13 1995		

POR. of KOLOA, KOLOA, KAUAI.

EXHIBIT 11C4

GADES SCHUTTE FLEMING & WRIGHT
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P.O. BOX 838
HONOLULU, HAWAII 96808-0838
1000 BISHOP STREET
HONOLULU, HAWAII 96813-4810

TELECOPIER: (808) 831-8738
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TELEPHONE: (808) 831-8738

COUNTY OF KAUAI

January 13, 1995
95 JAN 17 12:33

PLANNING DEPT.

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ERIC H. ROOSE
MARJORIE A. LAU
LAURIE A. KUPFERMAYR
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NANI LEE
CYNTHIA M. JOHNSO
JOHN R. POWELL
DENNIS W. CHONG KEE
CARLITO R. CALIBOSO
CATHERINE A. GANEY

DANIEL H. DEWANEY IV
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C. MICHAEL HAYNE
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LORRAINE H. ANOBA
MILTON M. YASUNAGA
SUSAN OKI HOLLWAY
GINO L. GABRIO
COLIN G. MIMA
MARTIN E. HIMA
PETER W. OLSON
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DONNA Y. L. LEONG
DAVID F. S. BURNS
DENNIS J. GAUGHAN

VIA MAIL AND TELECOPIER

Mr. Dee M. Crowell
Planning Director
County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

Dear Mr. Crowell:

Thank you for meeting with us on January 11, 1995. As we discussed, this letter confirms our discussion as to the status of the nine (9) conditions contained in the Decision and Order dated July 7, 1977, as amended, issued by the Land Use Commission of the State of Hawaii, in its Docket No. A76-418 of Moana Corporation. For your convenience, we attach a list of the conditions as amended. You have confirmed the following:

Conditions 1, 2, 3 and 4, as amended by Order Granting Motion to Amend Condition dated December 13, 1979, were satisfied in full by payment of \$2,000,000 to the County of Kauai for its County housing program.

Condition 5 is in compliance. Golf and tennis facilities are available for public use at reasonable usage fees.

Condition 6 was satisfied in full by dedication of the park site, by Quitclaim Deed from the Knudsen Trusts to Kiahuna Land Company recorded in the Bureau of Conveyances of the State of Hawaii in Book 23633, Page 590, and by Deed from Kiahuna Land Company to the County of Kauai recorded in said Bureau in Book 23633, Page 590.

Condition 7 regarding archaeological and biological studies, as amended by the Commission's Decision and Order dated July 3, 1978, is in compliance.

Condition 8 regarding of employment of Kauai workers, is in compliance.

Mr. Dee M. Crowell
Page 2
January 13, 1995

Condition 9, as amended by Order Granting Motion to Amend Condition dated December 13, 1979, has been partially complied with to the following extent: an 18-hole golf course, a tennis center, 90 single-family residential homesites and 48 multi-family residential units comprising Phase 5 of the Kiahuna Plantation condominium project have been completed as well as landscaping, water systems, underground utilities and other improvements servicing the improvements described in this paragraph. The other components of Condition 9 have not been completed, yet.

If the statements in this letter meet with your understanding, please sign and return a copy of this letter to the undersigned by telecopier at (808) 531-8738. We would also appreciate receipt of the enclosed copy of this letter bearing your original signature.

This letter also confirms our meeting on February 24, 1995, at 1:30 p.m. at your offices to discuss various issues concerning the Knudsen land at Poipu which was most recently leased to Poipulani Development Corporation (TMK Nos. (4) 2-8-13-1, 2-8-14-1, 3, 4 and 19 (por)). Representatives of the two Knudsen Trusts as well as their Planning Consultant will be attending.

Thank you again for your time.

Very truly yours,



Grace Nihei Kido

for

CADES SCHUTTE FLEMING & WRIGHT

UNDERSTOOD AND ACKNOWLEDGED:

COUNTY OF KAUAI
DEPARTMENT OF PLANNING

By 

cc: Mr. Keith Nitta
E. Andrew Daymude, ASLA
Mr. James R. Bell
Fred Ferguson-Brey, Esq.
Mr. Allan Zawtockl
Philip J. Leas, Esq.