

**DOWLING
COMPANY, INC.**

BUILDING IN BALANCE®

TRANSMITTAL LETTER

DATE: June 17, 2013

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

CC: Office of Planning, State of Hawaii P.O. Box 2359, Honolulu, HI 96804
Dept. of Planning, County of Maui 200 S High Street, Wailuku, HI 96793

FROM: Mei Lee Wong

SUBJECT: Annual Report Docket No. A97-721 Makena Resort
TMK: (2) 2-1-05:083, 084 and 085

2013 JUN 18 P 1:16
LAND USE COMMISSION
STATE OF HAWAII

Enclosed please find the following documents:

<u>NUMBER</u>	<u>DESCRIPTION</u>
1	Annual Report Docket No. A97-721 Makena Resort TMK: (2) 2-1-05:083, 084 and 085

<input checked="" type="checkbox"/>	AS REQUESTED	<input type="checkbox"/>	FOR SIGNATURE
<input type="checkbox"/>	FOR YOUR REVIEW	<input type="checkbox"/>	PLEASE RETURN
<input type="checkbox"/>	RETURNING	<input type="checkbox"/>	FOR NECESSARY ACTION
<input type="checkbox"/>	FOR YOUR INFORMATION	<input type="checkbox"/>	FOR YOUR USE AND FILES

COMMENTS:

**HAWAII DEVELOPMENT LLC
2000 N Classen Boulevard
Oklahoma City, OK 73106**

June 5, 2013

Land Use Commission
State of Hawaii
PO Box 2359
Honolulu, Hawaii 96804

SUBJECT: Annual Report for Land Use Commission
Docket No. A97-721 Makena Resort
TMK: (2) 2-1-05:083, 084, and 085

Dear Chair and Members of the Commission:

Hawaii Development LLC hereby submits this Annual Report for Docket No. A97-72 with respect to the parcels it currently own at Makena Resort.

I. INTRODUCTION

On February 19, 1998, the Land Use Commission of the State of Hawaii (the "Commission") filed its "Findings of Fact, Conclusions of Law and Decision and Order" (the "**1998 D&OU**"), which reclassified 145.943 acres of land in Makena, Maui, Hawaii from the State Land Use Agricultural District into the State Land Use Urban District (hereinafter, the "**LUC Reclassified Property**").

The LUC Reclassified Parcels that are currently owned by Hawaii Development LLC are TMKs (2) 2-1-05:083, 084, and 085. Hawaii Development LLC has obtained these parcels on 06/30/11.

This Annual Report covers those portions of the LUC Reclassified Parcels that are owned by the Hawaii Development LLC, and does not address any properties owned by others, including those owned by ATC Makena Entities.

II. STATUS OF COMPLIANCE WITH LUC CONDITIONS

The following are the conditions set forth in the **1998 D&O**, and a description of efforts that are being made to comply with each stated condition:

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawai'i in accordance with applicable laws, rules, and regulations of the County of Maui. The location and distribution of the affordable housing or other provisions for affordable

housing shall be under such terms as may be mutually agreeable between Petitioner and the County of Maui.

Response to 1: Hawaii Development LLC acknowledges that it is subject to the provisions of said condition and shall comply accordingly.

2. Petitioner shall coordinate with the County of Maui Board of Water Supply to incorporate the proposed project into the County Water Use and Development Plan for the area. Prior to the granting of the first discretionary permit for the single-family and multi-family residential development described in paragraph 20 of the Decision and Order or the hotel described in paragraph 21 of the Decision and Order and by or before one year from the issuance date of this Decision and Order, Petitioner shall furnish the Commission with a letter from the County of Maui Board of Water Supply confirming that (a) the potable water allocation that will be credited to Petitioner will be available to and sufficient for the proposed project as it is described in the Petition, (b) the availability of potable water will not be an obstacle or impediment to the development of the proposed project as described in the Petition and (c) the proposed project as it is described in the Petition has been incorporated into the County Water Use and Development Plan for the area and that this plan will prevent the continued over pumping of the sustainable yield of the lao aquifer.

Response to 2: Hawaii Development LLC understands that this condition has been complied with. Hawaii Development LLC has obtained a water meter from the County of Maui Department of Water Supply to serve its parcels.

3. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed project in accordance with the applicable laws, rules and regulations of the County of Maui, and consistent with the County of Maui water use and development plan.

Response to 3: Hawaii Development LLC understands that this condition has been complied with. Hawaii Development LLC has obtained a water meter from the County of Maui Department of Water Supply to serve its parcels.

4. Petitioner shall participate in the funding and construction of adequate wastewater treatment, transmission and disposal facilities to accommodate the proposed project under such terms as are agreeable between Petitioner and the County of Maui.

Response to 4: Hawaii Development LLC understands that this condition has been complied with.

5. Petitioner shall contribute to the development, funding, and/or construction of school facilities, on a pro rata basis for the residential developments in the proposed project, as determined by and to the satisfaction of the State Department of Education ("DOE"). Terms of the contribution shall be agreed upon by Petitioner and DOE prior to Petitioner acquiring county rezoning or prior to Petitioner applying for building permits if county zoning is not required.

Response to 5: Hawaii Development LLC acknowledges that it is subject to the provisions of said condition and shall comply accordingly.

6. Petitioner shall participate in the pro rata funding and construction of adequate civil defense measures as determined by the State of Hawai'i and County of Maui civil defense agencies.

Response to 6: Hawaii Development LLC understands that ATC Makena Entities will be complying with this condition.

7. Should any human burials or any historic sites such as artifacts, charcoal deposits, stone platforms, pavings, or walls be found, Petitioner shall stop work in the immediate vicinity and contact SHPD. The significance of these finds shall then be determined and approved by SHPD, and an acceptable mitigation plan shall be approved by SHPD. SHPD must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceeding in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawai'i Revised Statutes.

Response to 7: Hawaii Development LLC acknowledges that they are subject to provisions of said condition and will comply.

8. Petitioner shall follow the State DLNR recommendations for Petition Areas 1, 2 and 3, for archaeological data recovery and preservation. An archaeological data recovery & (scope of work) must be approved by SHPD. That plan then must be successfully executed (to be verified in writing by the SHPD), prior to any grading, clearing, grubbing or other land alteration in these areas. In Petition Area 1, three significant historic sites (1969, 2563, and 2569) are committed to preservation. A preservation plan must be approved by SHPD. This plan, or minimally its interim protection plan phase, must be successfully executed (to be verified in writing by the SHPD), prior to any grading, clearing, grubbing or other land alteration in these areas.

Response to 8: Hawaii Development LLC acknowledges that they are subject to provisions of said condition and will comply.

9. Petitioner shall implement efficient soil erosion and dust control measures during and after the development process to the satisfaction of the State Department of Health and County of Maui.

Response to 9: Hawaii Development LLC acknowledges that they are subject to provisions of said condition and will comply at the appropriate time prior to commencement of construction.

10. Petitioner shall initiate and fund a nearshore water quality monitoring program. The monitoring program shall be approved by the State Department of Health in consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Services, and the State Division of Aquatic Resources, DLNR. Petitioner shall coordinate this consultation process with the concurrence of the State Department of Health. Mitigation measures shall be implemented by Petitioner if the results of the monitoring program warrant them. Mitigation measures shall be approved by the State Department of Health in consultation with the above mentioned agencies.

Response to 10: Hawaii Development LLC understands that ATC Makena Entities shall be complying with this condition.

11. Petitioner shall submit a Traffic Impact Analysis Report (TIAR) for review and approval by the State Department of Transportation and the County of Maui.

Response to 11: Hawaii Development LLC understands that this condition has been complied with.

12. (as amended) Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs including dedication of rights-of-way as determined by the State Department of Transportation ("DOT") and the County of Maui. Agreement between Petitioner and DOT as to the level of funding and participation shall be obtained within fourteen (14) years from June 1, 2000.

Response to 12: Hawaii Development LLC acknowledges that they are subject to provisions of said condition.

13. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Property to the satisfaction of the appropriate State of Hawai'i and County of Maui agencies.

Response to 13: Hawaii Development LLC acknowledges that they are subject to provisions of said condition.

14. The Petition Areas will be developed in accordance with the Kihei-Makena Community Plan.

Response to 14: Hawaii Development LLC acknowledges that development of its parcels will be in accordance with the Kihei-Makena Community Plan.

15. Petitioner shall obtain appropriate changes in zoning from the County of Maui for the Petition Areas.

Response to 15: Hawaii Development LLC understands this condition has been complied with.

16. Petitioner shall fund, design and construct all necessary traffic improvements necessitated by development of the Petition Areas as required by the State Department of Transportation and the County of Maui Department of Public Works and Waste Management.

Response to 16: Hawaii Development LLC Entities acknowledge that it is subject to the provisions of this said condition.

17. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in a reversion of the Property to its former classification, a change to a more appropriate classification, or other reasonable remedy as determined by the Commission.

Response to 17: Hawaii Development LLC acknowledges that it is subject to the provisions of this said condition.

18. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

Response to 18: Hawaii Development LLC acknowledges that it is subject to the provisions of this said condition.

19. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County of Maui Planning Department in connection with the status of the subject project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Response to 19: The submittal of this Annual Report by Hawaii Development LLC is in compliance with this condition.

20. The commission may fully or partially release or amend the conditions provided herein as to all or any portion of the petition area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Response to 20: Hawaii Development LLC acknowledges that it is subject to the provisions of this said condition. .

21. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

Response to 21: Hawaii Development LLC understands this condition has been complied with.

22. (as amended) Petitioner shall record the conditions imposed herein by the Commission and every amendment thereto with the Bureau of Conveyances pursuant to Section 15-1 5-92, Hawai'i Administrative Rules.

Response to 22: Hawaii Development LLC acknowledges that it is subject to the provisions of this said condition.

If you have any questions or require any further information, please contact Everett Dowling at (808) 244-1500 or everett@dowlingco.com.

Sincerely,



Authorized Signor
Hawaii Development LLC

cc: State of Hawaii, Office of Planning
County of Maui, Department of Planning