

**ATC MAKENA HOLDINGS, LLC**

c/o Trinity Investments, LLC  
55 Merchant Street, Suite 1560  
Honolulu, HI 96813

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April 1, 2015

**Via Hand Delivery**

Land Use Commission  
State of Hawaii  
235 South Beretania Street, Suite 406  
P. O. Box 2359  
Honolulu, Hawaii 96804

SUBJECT: Seventeenth Annual Report for Land Use Commission  
Docket No. A97-721 (Makena Resort)

Dear Chair and Members of the Commission:

On behalf of the ATC Makena Entities (identified below), we hereby submit this Seventeenth Annual Report for Docket No. A97-72.

**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&O**"), 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 Property is currently owned by multiple owners. ATC Makena N Golf LLC, ATC Makena S Golf LLC, ATC Makena Land SF1 LLC, ATC Makena Land MF1 LLC, ATC Makena Land MF2 LLC, ATC Makena Land MF3 LLC, ATC Makena Land C1 LLC, ATC Makena Land U1 LLC, ATC Makena Land B1 LLC, ATC Makena Land MF4 LLC, ATC Makena Land SF2 LLC and ATC Makena Land AH1 LLC (collectively, "ATC Entities") acquired portions of the LUC Reclassified Property by two Commissioner's Deeds dated August 27, 2010. One deed was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-125618 (applies to TMK No. (2) 2-1-005: 108). The other deed was recorded in the Bureau as Document No. 2010-125620 (applies to TMK No. (2) 2-1-008: 090). ATC Makena Hotel LLC, a Delaware limited liability company ("ATC Hotel") acquired a portion of the Petition Area by Commissioner's Deed dated August 27, 2010 and recorded in the Bureau as Document No. 2010-125626 (applies to TMK Nos (2) 2-1-005: 086 (portion of which is within the Petition Area), and 125 (which is not within the Petition Area)). ATC Entities and ATC Hotel shall hereinafter be

referred to collectively as "ATC Makena Entities." The remaining portion of the Petition Area is owned by Hawaii Development, L.L.C., which acquired approximately 27.83 acres within the Petition Area by Warranty Deed dated June 30, 2011.

This Seventeenth Annual Report covers those portions of the LUC Reclassified Property that are owned by the ATC Makena Entities, identified by the following Tax Map Key Nos. 2-1-005: por. 108, 2-1-008: 090 (por.), 2-1-005: por. 86 (formerly TMK 2-1-007:004),, and does not address any properties owned by others, including those owned by Hawaii Development, L.L.C., e.g., the parcels identified by the following Tax Map Key Nos. 2-1-05:83, 84, and 85.

On August 27, 2012, the Commission filed an Order Granting With Modification Movant's Motion for Sixth Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, Filed on February 19, 1998, and for Release of Certain Conditions (the "2012 Amendment"). Pursuant to the 2012 Amendment, the Commission released the ATC Makena Entities from Conditions 4, 15 and 21, and amended Conditions 12 and 22, as further described herein. With the release of the aforementioned conditions, the remaining conditions were renumbered in the 2012 Amendment. An Amended and Restated Declaration of Conditions was recorded on September 7, 2012 with the Bureau of Conveyances as Doc. A-46330782.

## **II. STATUS OF COMPLIANCE WITH LUC CONDITIONS**

The following are the conditions set forth in the **1998 D&O, as amended by the 2012 Amendment**, 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:** ATC Makena Entities acknowledge that the Petitioner is subject to the provisions of said condition.

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 overpumping of the sustainable yield of the Iao aquifer.

**Response:** As provided in Petitioner's Second Annual Report, this condition was complied with as set forth in a letter from David Craddick, Director of the Department of Water Supply, County of Maui, dated February 18, 1999.

Additional letters regarding compliance with this condition, dated October 1, 2003 from Petitioner to the Department of Water Supply and the response from George Tengan, Director of Water Supply, dated October 7, 2003, were attached as Exhibit "A" and Exhibit "B" to the Sixth Annual Report.

ATC Makena Entities understand that this condition has been complied with.

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:** The ATC Makena Entities acknowledge this condition. Furthermore, the ATC Makena Entities understand that, in 1976, the Petitioner participated in the Central Maui Source Development Joint Venture and also the Central Maui Transmission Joint Venture, which developed water sources in Waiehu, Maui and a transmission line from the newly developed water sources down to the Wailea and Makena regions. Further, in 1985, Makena Resort constructed a 1.5 million gallon water storage tank at the Makena Resort.

4. 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:** ATC Makena Entities understand that this condition has been complied with. Pursuant to an Educational Contribution Agreement for Makena Resort between Petitioner and the Department of Education (DOE), dated August 17, 2000, the parties have agreed upon a cash contribution by Petitioner which shall represent a fair share payment for the development, funding and/or construction of school facilities by Petitioner

5. 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:**

ATC Makena Entities have agreed to the two (2) locations for emergency sirens at the Makena Resort Wastewater Treatment Plant and near Big Beach consistent with the representations in the 2010 Annual Report. Final Right-Of-Entry and Non-Exclusive License Agreements dated May 25, 2012 have been fully executed between ATC Makena and the State of Hawaii, Department of Defense (DOD), which were submitted with the Fifteenth Annual Report.

ATC Makena Entities has complied with the provisions of this condition. It is anticipated that the sirens will be installed by the State of Hawaii in 2015.

6. 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:** ATC Makena Entities acknowledge that they are subject to the provisions of said condition and will comply.

7. Petitioner shall follow the State DLNR recommendations for Petition Areas 1, 2 and 3, for archaeological data recovery and preservation. An archaeological data recovery plan (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, 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:** ATC Makena Entities acknowledge that they are subject to the provisions of said condition and will comply.

8. 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:** ATC Makena Entities acknowledge that they are subject to the provisions of said condition and will comply at the appropriate time prior to commencement of construction.

9. 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:** ATC Makena Entities understand that since August 1995, Petitioner (under prior ownership) has implemented and funded a nearshore water quality monitoring program. This program initially collected base line water samples and analyzed the same to determine turbidity, chemical compound contents and biota sampling. This monitoring program continues with semi-annual sampling at four separate nearshore sites.

ATC Makena Entities is providing the two most recent marine water quality monitoring reports dated January 2014, and August 2014, along with copies of their transmittals to State of Hawaii Department of Health dated March 5, 2015, and November 17, 2014, as Exhibits A and B respectively. ATC Makena Entities have contracted for this work with Marine Research Consultants, Inc.

ATC Makena Entities acknowledge that they are subject to the provisions of said condition and will comply with said provisions.

10. 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:** As set forth in the Second Annual Report, a TIAR was prepared and submitted for review by the State Department of Transportation (DOT) and the County of Maui as part of the change in zoning application. Following certain comments by DOT, revisions were made to the TIAR which DOT agreed with as set forth in a letter from Kazu Hayashida, Director of Transportation, dated May 2, 2000, a copy of which was attached to the Third Annual Report.

In addition, as set forth in prior Annual Reports, the Petitioner prepared and submitted a Makena Resort Master Traffic Study, dated June 6, 2003 (Revised September 14, 2003), which was submitted to the SDOT and County of Maui, and approved by the County on September 26, 2003. See Sixth Annual Report.

ATC Makena Entities understand that this condition has been complied with.

11. (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:** ATC Makena Entities acknowledge that they are subject to provisions of said condition.

On May 22, 2014, ATC Makena Entities met with staff at the DOT to discuss a proposed timeframe within which ATC Makena Entities and other landowners can reasonably work together to satisfy the DOT's requirements for traffic improvements. ATC Makena Entities have also been in contact with the County of Maui Planning Department on this issue. Although Condition 11 applies only within the LUC Reclassified Property, the DOT has identified substantial potential roadway improvements, the costs of which would be shared by several landowners who are not subject to LUC Docket No. A97-721. ATC Makena Entities continue to pursue contacts with all landowners of interest so that an appropriate and realistic timeframe for compliance can be established.

12. 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:** ATC Makena Entities acknowledge that they are subject to the provisions of said condition.

As reported in the Fifth Annual Report the Petitioner prepared a Drainage Master Plan, which was submitted to the County Department of Public Works and Environmental Management and Planning Department on July 1, 2003, and approved by the County on August 20, 2003.

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

**Response:** ATC Makena Entities acknowledge that development of the LUC Reclassified Property is to be in accordance with the Kihei-Makena Community Plan.

14. 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:** ATC Makena Entities acknowledge that they are subject to the provisions of said condition.

15. 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:** ATC Makena Entities acknowledges that they are subject to the provisions of said condition.

16. 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:** ATC Makena Entities acknowledges that they are subject to the provisions of said condition.

17. 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:** ATC Makena Entities acknowledges that they are subject to the provisions of said condition. The submittal of this Seventeenth Annual Report by ATC Makena Entities is in compliance with this condition.

18. 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:** ATC Makena Entities acknowledges that they are subject to the provisions of said condition.

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

**Response:** ATC Makena Entities acknowledges that they are subject to the provisions of said condition.

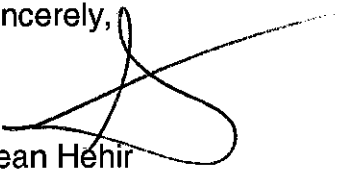
ATC Makena Entities recorded in said Bureau that certain Amended and Restated Declaration of Conditions Applicable To An Amendment to District Boundary From Agricultural to



Urban on September 7, 2012, as Document Number A-46330782, a copy of which was included with the Fifteenth Annual Report.

If you have any questions or require any further information, please contact Sarah Agnew-Miller at (808)547-2276 or sarah@stanfordcarr.com.

Sincerely,



Sean Hehir  
Authorized Signor  
ATC Makena Entities

Sincerely,



Stanford S. Carr  
Authorized Signor  
ATC Makena Entities

SH:bbc

cc: State of Hawaii, Office of Planning  
County of Maui, Department of Planning  
Munekiyo & Hiraga, Inc.

Encl. **Exhibit "A"** Marine Monitoring Report dated January 2014, with transmittal to State of Hawaii Department of Health dated March 5, 2014.,  
**Exhibit "B"** Marine Monitoring Report dated August 2014, with transmittal to State of Hawaii Department of Health dated November 17, 2014.