

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100  
1001 BISHOP STREET  
HONOLULU, HAWAII 96813  
TELEPHONE 808.523.2500 FAX 808.523.0842  
WWW.CARLSMITH.COM

LAND USE COMMISSION  
STATE OF HAWAII

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DIRECT DIAL NO.  
808.523.2557

JBENCK@CARLSMITH.COM

June 20, 2014

## Via Hand Delivery

Daniel E. Orodener  
State of Hawaii Land Use Commission  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Room 406  
Honolulu, Hawaii 96813

RE: Docket No. A97-721: In the Matter of the Petition of Makena Resort Corp.

Dear Mr. Orodener:

By Findings of Fact, Conclusions of Law, and Decision and Order dated February 19, 1998, in the above referenced Docket (as amended, the "**Makena D&O**"), the State of Hawaii Land Use Commission reclassified approximately 145.943 acres at Makena, on the Island of Maui from the Agricultural District to the Urban District (the "**Petition Area**").

Ownership of the Petition Area is currently held by several parties. This firm represents ATC Makena Holdings, LLC, a Delaware limited liability company, and its related entities, including 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**"). This firm also represents ATC Makena Hotel LLC, a Delaware limited liability company ("**ATC Hotel**") (the ATC Entities and ATC Hotel shall hereinafter be collectively referred to as "**ATC**").

Successor Petitioner ATC Entities acquired portions of the Petition Area by two Commissioner's Deeds dated August 27, 2010. One was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2010-125618,<sup>1</sup> and the other was recorded in the Bureau as Document No. 2010-125620.<sup>2</sup> 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-

<sup>1</sup> Applies to TMK No. (2) 2-1-005: 108.

<sup>2</sup> Applies to TMK No. (2) 2-1-008: 090.

Daniel E. Orodenker  
June 20, 2014  
Page 2

125626.<sup>3</sup> The public records indicate Hawaii Development, L.L.C., acquired an approximately 27.83 acre portion of the Petition Area on June 30, 2011 (see June 5, 2013 Annual Report from Hawaii Development L.L.C. to the Land Use Commission).<sup>4</sup> However, this firm does not represent Hawaii Development, L.L.C.

Condition 12 (nka Condition 11) of the Makena D&O, as most recently amended by Commission Order of August 27, 2012, currently provides as follows:

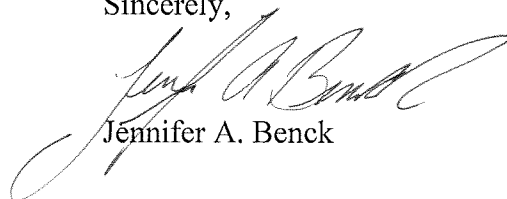
Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by the State Department of Transportation ("DOT") and the County of Maui. Agreement between Petitioner and DOT as to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

The ATC recognizes that the deadline for entering into an agreement with the State Department of Transportation ("**DOT**") was June 1, 2014, and regrets to inform the Commission that no final agreement has been made. In light of this delay, ATC intends to file a Motion to Amend with the Commission to request an amendment to Condition 11.

On May 22, 2014, ATC representatives meet with staff at the DOT to discuss a proposed timeframe within which ATC and other landowners can reasonably work together to satisfy the DOT's requirements. ATC representatives have also been in contact with the County of Maui Planning Department on this issue. Although Condition 11 applies only within the Petition Area, the DOT has identified substantial potential roadway improvements, the costs of which would be shared by several landowners who are not subject to the Makena D&O. ATC is pursuing contacts with all landowners of interest so that an appropriate and realistic timeframe for compliance can be established. In light of these efforts, ATC anticipates filing a Motion to Amend with the Commission to address Condition 11 in the very near future.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



Jennifer A. Benck

JAB/jah  
cc: Mr. Richard Riegels  
Hawaii Development, L.L.C.

4847-6707-1771.1.064927-00001

<sup>3</sup> 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).

<sup>4</sup> Applies to TMK Nos. (2) 2-1-005: 083, 084, 085.