



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of

MĀKENA RESORT CORP.

To Amend The Land Use District Boundary Of Certain Land Situated At Mākena, Island Of Maui, State Of Hawai'i, Consisting Of Approximately 146.209 Acres From The Agricultural To The Urban District, Tax Map Keys: 2-1-05: 83, 84, 85, Por. 108; 2-1-07: 4; And 2-1-8: Por. 90

DOCKET NO. A97-721

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; CERTIFICATE OF SERVICE

2012 AUG 27 A 11:48

LAND USE COMMISSION
STATE OF HAWAII

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

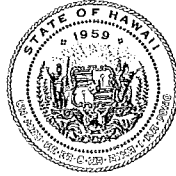
AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE COMMISSION, HONOLULU, HAWAII.

8/27/12 BY
Date

Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2012 AUG 27 A 7:45
LAND USE COMMISSION
STATE OF HAWAII

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DECISION AND ORDER, FILED ON FEBRUARY 19, 1998 AND FOR RELEASE OF
CERTAIN CONDITIONS

On May 2, 2012, 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 U1 LLC, ATC
Makena Land B1 LLC, ATC Makena Land MF4 LLC, ATC Makena Land SF2 LLC, and
ATC Makena Land AH1 LLC, all Delaware limited liability companies (collectively
"Movant")¹ filed a Motion For Sixth Amendment To The Findings Of Fact, Conclusions

¹ Movant acquired the interest in the Petition Area through a foreclosure action by Commissioner's Deed dated August 27, 2010, recorded as Document Number 2010-125618 and Commissioner's Deed dated

Of Law, And Decision And Order, Filed On February 19, 1998 And For Release Of Certain Conditions (“Motion For Sixth Amendment”) and Exhibits “A” through “E,” pursuant to sections 15-15-70 and 15-15-94, Hawai`i Administrative Rules (“HAR”).

Movant requests that the State of Hawai`i Land Use Commission (“Commission”) (1) amend Condition Number 12 of this Commission's Order Granting Receiver’s Motion For Fifth Amendment To The Findings of Fact, Conclusions Of Law, And Decision And Order, Filed On February 19, 1998, dated May 10, 2010, based on the Movant’s ongoing efforts to formalize an agreement with the State of Hawai`i Department of Transportation (“DOT”) that will satisfy the condition;² and (2) release Condition Numbers 4, 15, 21, and 22 of the Findings Of Fact, Conclusions Of Law, And Decision And Order filed February 19, 1998, based on the Movant’s predecessor-in-interest’s compliance with these conditions.

Condition Number 4 states as follows:

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.

Condition Number 12 states as follows:

12. 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

August 27, 2010, recorded as Document Number 2010-125620 in the Bureau of Conveyances of the State of Hawai`i.

² Condition Number 12 was previously amended in 2000, 2002, 2005, 2008, and 2010.

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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

Petitioner and DOT as to the level of funding and participation shall be obtained within twelve (12) years from June 1, 2000.

Condition Number 15 states as follows:

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

Condition Number 21 states as follows:

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.

Condition Number 22 states as follows:

22. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

On May 18, 2012, the County of Maui Department of Planning ("DP") filed a written statement deferring to the DOT with respect to the proposed amendment to Condition Number 12 and raising no objections to the release of Condition Numbers 4, 15, 21, and 22.

On June 19, 2012, the State of Hawai'i Office of Planning ("OP") filed a response supporting the proposed amendment to Condition Number 12 and the release of Condition Numbers 4, 15, 21, and 22.³

³ OP had no objections to the release of Condition Numbers 21 and 22, provided any amendments to the conditions are also recorded with the Bureau of Conveyances.

The Commission considered the Motion For Sixth Amendment on August 2, 2012, at Kahului, Maui, Hawai`i. B. Martin Luna, Esq., and Stanford Carr appeared on behalf of the Movant. James Giroux, Esq., and Kurt Wollenhaupt appeared on behalf of the DP. Bryan C. Yee, Esq., and Lorene Maki appeared on behalf of OP.

At the meeting, the Movant filed Supplemental Exhibits "F" through "I" and provided a presentation in support of the Motion For Sixth Amendment. Both the DP and OP rested on their respective pleadings in support of the Motion For Sixth Amendment.⁴

After discussion and deliberation by the Commissioners, a motion was made and seconded to grant the Motion For Sixth Amendment. The motion was subsequently amended and seconded to grant (1) the proposed amendment to Condition Number 12; (2) the release of Condition Numbers 4, 15, and 21; and (3) an amendment to Condition Number 22 to require the recordation of the conditions and every amendment thereto with the Bureau of Conveyances. There being a vote tally of 6 ayes, 0 nays, 3 excused, the amended motion carried.

ORDER

This Commission, having duly considered the Motion For Sixth Amendment, the oral and written arguments presented by the parties, and further representations made during the hearing, and an amended motion having been made

⁴ At the beginning of the meeting, Commissioner Inouye disclosed that the Movant's counsel was a family friend. The parties had no objections to Commissioner Inouye's participation in the proceeding.
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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

and seconded at a hearing on August 2, 2012, in Kahului, Maui, Hawai'i, and the amended motion having received the affirmative votes required by section 15-15-13, HAR, and good cause appearing therefrom,

HEREBY ORDERS that Condition Number 12 of this Commission's Order Granting Receiver's Motion For Fifth Amendment To The Findings of Fact, Conclusions of Law, And Decision And Order, Filed On February 19, 1998, dated May 10, 2010, be amended to read as follows:

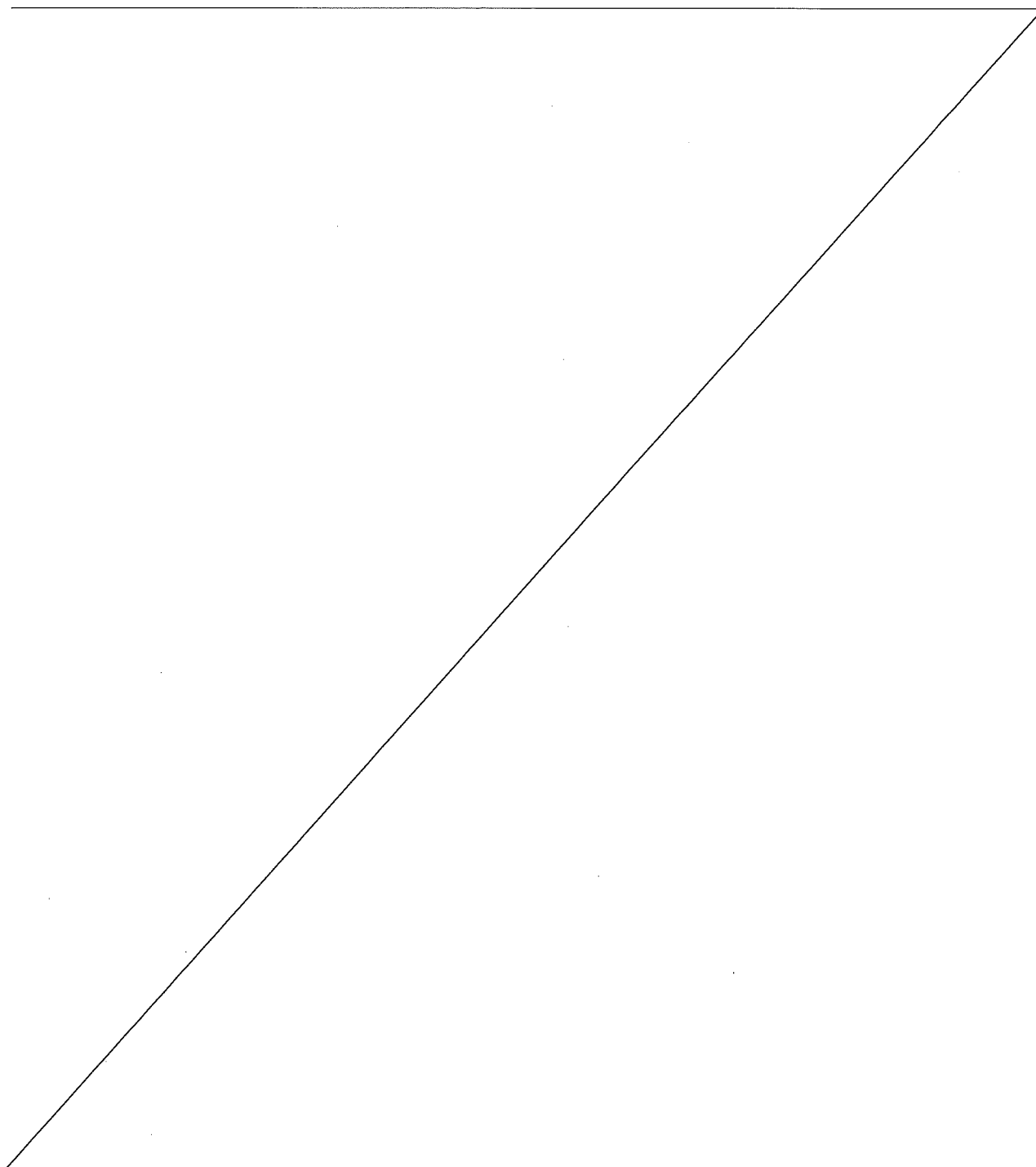
12. Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by the State Department of Transportation ("DOT") and the County of Maui. Agreement between Petitioner and DOT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

IT IS ALSO ORDERED that Condition Number 22 of the Findings Of Fact, Conclusions Of Law, And Decision And Order filed February 19, 1998, shall be amended to read as follows:

22. 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.

IT IS FURTHER ORDERED that Condition Numbers 4, 15, and 21 of the Findings Of Fact, Conclusions Of Law, And Decision And Order filed February 19, 1998, be and are hereby RELEASED.

All other conditions to the Findings Of Fact, Conclusions Of Law, And Decision And Order filed February 19, 1998, are affirmed and shall continue in full force and effect.



ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 27th day of August, 2012. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu Hawai'i, this 27th day of August, 2012, per motion on August 2, 2012.

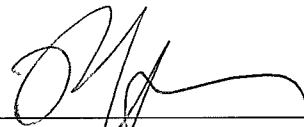
LAND USE COMMISSION

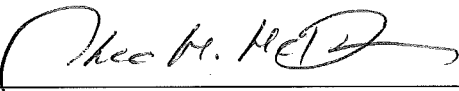
APPROVED AS TO FORM


Deputy Attorney General

STATE OF HAWAII

By (excused)
KYLE CHOCK
Chairperson and Commissioner

By 
RONALD HELLER
Vice- Chairperson and Commissioner

By 
CHAD McDONALD
Vice- Chairperson and Commissioner

By 
SHELDON BIGA
Commissioner

By 
LANCE INOUYE
Commissioner

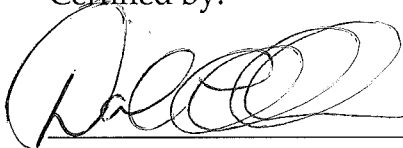
By (excused)
JAYE NAPUA MAKUA
Commissioner

By 
ERNEST MATSUMURA
Commissioner

Filed and effective on:

August 27, 2012

Certified by:



DANIEL ORODENKER
Executive Officer

By (excused)
THOMAS CONTRADES
Commissioner

By 
NICHOLAS W. TEVES JR.
Commissioner



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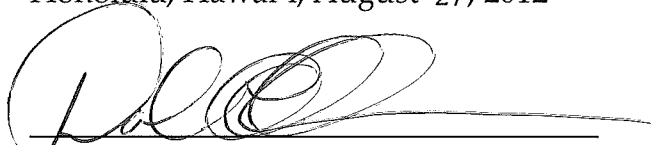
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I hereby certify that a copy of the **ORDER GRANTING WITH MODIFICATION
MOVANT'S MOTION FOR SIXTH AMENDMENT TO THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER, FILED ON FEBRUARY 19,
1998 AND FOR RELEASE OF CERTAIN CONDITIONS** was served upon the following
by either hand delivery or depositing the same in the U. S. Postal Service by regular or
certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
WILLIAM SPENCE, DIRECTOR Department of Planning County of Maui 250 South High Street Wailuku, Hawai'i 96793		X	
JAMES GIROUX, ESQ. Corporation Counsel Department of the Corporation Counsel County of Maui 200 South High Street Wailuku, Hawai'i 96793			X
B. MARTIN LUNA, ESQ. Carlsmith Ball LLP One Main Plaza, Suite 400 2200 Main Street Wailuku, Hawai'i 96793			X

Honolulu, Hawai'i, August 27, 2012



DANIEL ORODENKER
Executive Officer



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Date Executive Officer