

Makana

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the matter of the Petition)	DOCKET NO. A97-721
)	
of)	ORDER GRANTING
)	PETITIONER'S MOTION FOR
MAKENA RESORT CORP.)	THIRD AMENDMENT TO THE
)	FINDINGS OF FACT,
To Amend the Land Use District)	CONCLUSIONS OF LAW, AND
Boundary into the Urban Land Use)	DECISION AND ORDER, FILED
District for Approximately 145.943 acres)	ON FEBRUARY 19, 1998
of land at Makana, Island of Maui, State)	
of Hawaii, TMKs 2-1-05:83, 84, 85, por.)	
108; 2-1-07: 4, and 2-1-8: por. 90)	
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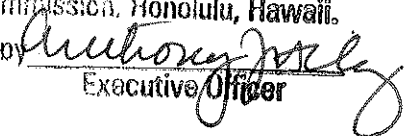
ORDER GRANTING PETITIONER'S MOTION FOR THIRD AMENDMENT
TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER, FILED ON FEBRUARY 19, 1998

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.

JAN 12 2005

Date

Executive Officer



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District for Approximately 145.943 acres)	ON FEBRUARY 19, 1998
of land at Makena, Island of Maui, State)	
of Hawaii, TMKs 2-1-05:83, 84, 85, por.)	
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ORDER GRANTING PETITIONER'S MOTION FOR THIRD AMENDMENT
TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER, FILED ON FEBRUARY 19, 1998

On May 25, 2004, Makena Resort Corp. ("Petitioner") filed a Motion for Third Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, Filed on February 19, 1998 ("Motion for Third Amendment"), pursuant to sections 15-15-70 and 15-15-94, Hawaii Administrative Rules ("HAR"), requesting that the Land Use Commission ("Commission" or "LUC") amend Condition No. 12 of this Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated February 19, 1998 ("Decision and Order").

Condition No. 12 of the Decision and Order originally 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 prior to petitioner acquiring county zoning or prior to Petitioner securing county building permits if county zoning is not required.

On May 11, 2000, Petitioner filed Petitioner's Motion for First Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order filed on February 19, 1998 ("Motion for First Amendment"). The Motion for First Amendment came on for hearing before this Commission on June 1, 2000, in Honolulu, Hawaii. The Decision and Order was amended by Order Granting In Part and Denying in Part Petitioner's Motion for First Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, Filed on February 19, 1998, dated June 20, 2000, ("Amended Order"), and revised Condition No. 12 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 two (2) years from June 1, 2000."

On May 7, 2002, Petitioner filed a Motion for Second Amendment to the

Amended Order ("Motion for Second Amendment"), requesting the Commission to further revise Condition No. 12 of the Amended Order 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 two (2) years from June 1, 2002."

At the June 20, 2002 hearing, the Commission considered Petitioner's Motion for Second Amendment, the oral and written arguments presented by the parties, and further representations made by the Petitioner during the hearing. The Amended Order as amended by Order Granting Petitioner's Motion For Second Amendment To The Findings Of Fact, Conclusions Of Law, And Decision And Order, Filed On February 19, 1998, dated June 27, 2002 , revised Condition No. 12 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 four (4) years from June 1, 2000."

The Motion for Third Amendment came on for hearing before this Commission on June 4, 2004, in Honolulu, Hawaii, with appearances by the

Petitioner; the County of Maui Planning Department ("County"); and the Office of Planning, Department of Business, Economic Development & Tourism ("OP").

The Petitioner's Motion for Third Amendment requested that Condition No. 12 of the Amended Order 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 two (2) years from June 1, 2004."

An Affidavit of Roy Figueiroa, General Manager of Petitioner ("Affidavit") and Petitioner's Exhibit "A", filed in support of the Motion for Third Amendment, stated, among other things, that: i) The Petitioner continues to engage in discussions with the State Department of Transportation ("DOT"), and the current DOT Administration is moving forward with determining a fair-share contribution so that an agreement with Petitioner regarding the level of funding and participation can be executed; and ii) Petitioner has entered into a provisional agreement with DOT to implement interim improvements to Piilani Highway from Mokulele to Kilohana Drive, specifically including the planning and design of the restriping and other improvements to Piilani Highway to increase traffic lanes from two (2) to four (4) lanes. Construction of the interim improvements began in the summer of 2002 and was substantially complete in

July 2003. The total estimated cost to Petitioner pursuant to this provisional agreement for interim improvements is \$400,000.00, which will be credited to Petitioner as partial payment for any agreement as to level of funding and participation which Petitioner and DOT enter into pursuant to Condition No. 12.

The County stated no objections to the Petitioner's request for an extension of time to satisfy Condition No. 12. However, the County questioned whether the additional two years requested by the Petitioner would be an adequate amount of time to satisfy the condition.

OP expressed no objections to Petitioner's Motion for Third Amendment.

After discussion and deliberation by the Commissioners, a motion was made and seconded to (1) grant a four-year time extension of Condition No. 12, and (2) require the State Department of Transportation to provide annual status reports to the Commission regarding this docket. There being a vote tally of 7 ayes, 0 nays, and 2 absent, the motion carried.

ORDER

Having duly considered Petitioner's Motion for Third Amendment, the supporting Affidavit, Exhibit "A", the oral and written arguments presented by the parties, and further representations made during the hearing, and a motion

having been made and seconded at a hearing on June 4, 2004, in Honolulu, Hawaii, and the motion having received the affirmative votes required by section 15-15-13, HAR, this Commission ORDERS that Condition No. 12 of the Amended Decision and Order dated February 19, 1998, be amended to read as follows:

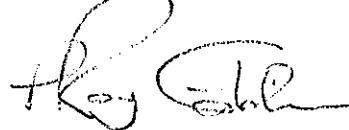
"12. Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by the State Department of Transportation ("DOT") and the County of Maui. Agreement between Petitioner and DOT as to the level of funding and participation shall be obtained within eight (8) years from June 1, 2000."

This Commission further ORDERS that the State Department of Transportation shall file written annual status reports detailing the status of the agreement between Petitioner and DOT as to the level of funding and other participation in constructing local and regional transportation improvements and programs.

All other conditions to the Decision and Order dated February 19, 1998, are affirmed and continue in full force and effect.

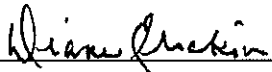
Dated: Honolulu, Hawaii, JAN 12 2005

LAND USE COMMISSION
STATE OF HAWAII



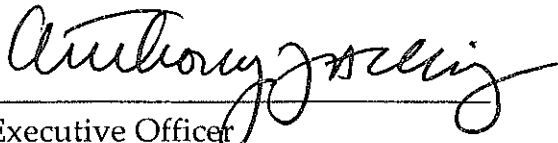
By: P. ROY CATALANI
Chairperson and Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
JAN 12 2005

Certified by:


Executive Officer

BEFORE THE LAND USE COMMISSION

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108; 2-1-07: 4, and 2-1-8: por. 90)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Motion For Third Amendment To The Findings Of Fact, Conclusions Of Law, And Decision And Order, Filed On February 19, 1998 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:

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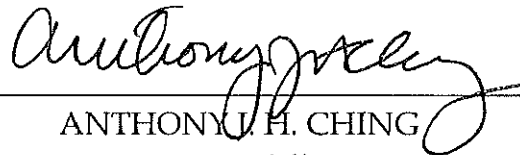
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Dated: Honolulu, Hawaii, JAN 12 2005.



ANTHONY H. CHING
Executive Officer