

H2R, LLC

January 31, 2019



Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

SUBJECT: Annual Report for Land Use Commission Docket No. A97-721
(Makena Resort), TMK (2)2-1-005:085

Dear Executive Officer Orodener:

H2R, LLC hereby submits this Annual Report for Docket No. A97-721 with respect to the 27.825-acre subject parcel that it currently owns in Makena, Maui Hawaii. It is noted that the parcel was identified in Docket No. A97-721 by TMK (2)2-1-005:083, 084, and 085, but has been consolidated into a single parcel (TMK (2)2-1-005:085).

I. INTRODUCTION AND BACKGROUND

As background, 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").

This Annual Report covers one (1) of the LUC Reclassified Parcels, hereafter referred to as the H2R Parcel, that is owned by H2R, LLC (TMK (2)2-1-005:085) and does not address any properties owned by others including the ATC Makena Entities ("ATC Makena").

It is noted that, on August 27 of 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"). In compliance with the 2012 Amendment, the Commission released the LUC Reclassified Property from Conditions 4, 15, and 21, and amended Conditions 12 and 22 (thereafter renumbered to 11 and 19). An Amended and Restated Declaration of Conditions was recorded on September 7, 2012, in the Bureau of Conveyances as Doc. A-46330782.

II. REPORT ON COMPLIANCE WITH LUC CONDITIONS

Pursuant to Condition No. 17, the following Annual Report presents the conditions set forth in the 1998 D&O (as amended by the 2012 Amendment) and a status of

compliance for each condition:

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to the provisions of this condition and shall comply accordingly.

Condition No. 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: H2R, LLC understands that this condition has been complied with. According to the Twentieth Annual Report submitted by ATC Makena in 2018, 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, which was included in its Second Annual Report.

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 to ATC Makena's Sixth Annual Report.

In regards to the H2R Parcel, H2R, LLC has obtained and installed a water

meter from the Department of Water Supply to serve its parcel.

Condition No. 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: H2R, LLC understands this condition has been satisfied. 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. As mentioned above, H2R, LLC has obtained and installed a water meter from the Department of Water Supply to serve the H2R Parcel.

Condition No. 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: H2R, LLC understands that this condition has been satisfied. As stated in the ATC Makena’s Annual Twentieth Report, an Educational Contribution Agreement for Makena Resort between the Petitioner and Department of Education was made in August 17, 2000. Under this agreement, the parties agreed on a cash contribution by Petitioner, which shall represent a fair-share payment for the development, funding and/or construction of school facilities.

Condition No. 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: H2R, LLC understands that this condition has been complied with. As discussed in the Twentieth Annual Report submitted by ATC

Makena, ATC Makena agreed to allow the State Department of Defense (DOD) to develop two (2) locations for emergency sirens on land owned by ATC Makena. The DOD initially requested to develop the sirens at the Makena Wastewater Treatment Plant (WWTP) and near Makena Big Beach (Oneloa) (sirens 157 and 158, respectively). ATC Makena executed Rights of Entry/License Agreements with DOD in 2012, however, DOD informed ATC Makena that they decided to change the location of one of the sirens from Makena Big Beach (Oneloa) to Makena State Park. In 2017, DOD completed installation of the siren at the Makena WWTP.

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to the provisions of this condition and will comply.

Condition No. 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: The H2R Parcel is located in Petition Area 5, and as such, is not subject to the provisions of this condition. It is noted that an Archaeological Preservation Plan (APP) and an Archaeological Monitoring Plan (AMP) for the H2R Parcel were prepared in compliance with the requirements of Chapter 6E, HRS, consistent with the findings of Archaeological Inventory Surveys (AIS) for the H2R Parcel which were accepted by the State Historic Preservation Division (SHPD) in July 2008.

Both APP and AMP were accepted by the SHPD in July 2009, the acceptance letters for which are presented herein as **Exhibit "A"**.

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to provisions of this condition and will comply at the appropriate time prior to development of the H2R Parcel.

Condition No. 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, as the owner of Makena Resort (and majority of the LUC Reclassified Property), conducts and funds the nearshore water quality monitoring program required by this condition. The most recent monitoring reports are submitted each year as part of ATC Makena's Annual Report. These reports are also transmitted to the State Department of Health (DOH).

Condition No. 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: H2R, LLC understands that this condition has been complied with. As set forth in the Twentieth Annual Report submitted by ATC Makena, a Traffic Impact Analysis Report (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 and resubmitted to DOT. The letter from DOT which confirms and accepts the TIAR was

included in ATC Makena's Third Annual Report.

Furthermore, ATC Makena also prepared and submitted a Makena Resort Master Traffic Study, dated June 6, 2003 (Revised September 14, 2003), which was submitted to the DOT and County of Maui, and approved by the County on September 26, 2003. The Makena Resort Mater Traffic Study was included in ATC Makena's Sixth Annual Report.

In regards to the H2R Parcel, a TIAR (assessing traffic impacts related to the H2R Parcel) will be prepared and submitted to DOT for review and approval prior to development of the parcel.

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to provisions of this condition and will comply.

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to provisions of this condition and will comply.

Condition No. 13

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

Response: H2R, LLC acknowledges that it will develop the H2R Parcel in accordance with the Kihei-Makena Community Plan.

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to the provisions of this condition and will comply.

Condition No. 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: H2R, LLC acknowledges that the H2R Parcel is subject to the provisions of this condition and will comply.

Condition No. 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: H2R, LLC acknowledges that it is subject to the provisions of this condition and will comply. Pursuant to this condition, a letter was submitted to the Commission on October 9, 2018 regarding the transfer of ownership of the H2R Parcel from Hawaii Development LLC to H2R, LLC. See **Exhibit "B"**.

Condition No. 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: In compliance with Condition No. 17, this Annual Report is being submitted by H2R, LLC for the H2R Parcel.

Condition No. 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: H2R, LLC acknowledges the provisions of this condition.

Condition No. 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: H2R, LLC acknowledges that it is subject to the provisions of this condition.

If you have any questions or require any further information, please contact Brian Ige of my office at (808) 244-1500 or brian@dowlingco.com.

Sincerely,
H2R, LLC
By DDC, LLC
Its Member
By Dowling Company, Inc.
Its Member



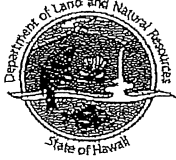
Everett R. Dowling
President

Encl.

cc: Leo R. Asuncion, Jr., State of Hawaii, Office of Planning (w/enclosure)
Ann Cua, County of Maui, Department of Planning (w/enclosure)
Yukino Uchiyama, Munekiyo Hiraga (w/enclosure)

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LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

LAURA H. TRITLEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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RUSSELL Y. TSUJI
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AQUATIC RESOURCES
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BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 21, 2009

Jeffrey Pantaleo, M.A.
Archaeological Services Hawai'i, LLC
1930 A Vineyard Street
Wailuku, Hawai'i 96793
lisa@ashmaui.com

LOG NO: 2009.2918
DOC NO: 0907PC53
Archaeology

SUBJECT: Chapter 6E-42 Historic Preservation Review – REVISED Archaeological Preservation Plan for SIHP #50-50-14-6371, -6373, -6374, -6377, -6378 and -6379 Maluaka Ahupua'a, Makawao District, Island of Maui, Hawai'i
TMK: (2) 2-1-005:085 and (2) 2-1-005:108 por.

Thank you for the opportunity to again review this plan, which our staff received in PDF format on July 14 of 2009 (Rotunno-Hazuka and Pantaleo 2009): *Archaeological Preservation Plan for Sites 50-50-14-6371, -6373, -6374 Feature 1, -6377, -6378 and -6379*...Archaeological Services Hawai'i, LLC.

The plan was reviewed by SHPD staff on June 17 (SHPD LOG NO: 2008.5257; DOC NO: 0906PC32) and again on July 6 of 2009 (SHPD LOG NO: 2009.2892; DOC NO: 0907PC04), resulting in several requested revisions.

The preservation plan now contains the required information as specified in HAR §13-277-3 regarding the contents of preservation plans in general and is acceptable. An associated monitoring plan, received in July of 2008, was held pending acceptance of the preservation plan and will now be reviewed under separate cover.

Now that the plan has been accepted pursuant to HAR §13-277, please send one hardcopy of the *revised* document clearly marked **FINAL**, along with a copy of this review letter and a text-searchable PDF file on CD to the attention of "SHPD Library" at the Kapolei SHPD office.

If you have any questions or comments regarding this letter, please contact the SHPD's Lead Maui Archaeologist, Ms. Patty Conte (Patty.J.Conte@hawaii.gov).

Aloha,

Handwritten signature of Nancy A. McMahon in cursive.

Nancy McMahon, Deputy SHPO/State Archaeologist
State Historic Preservation Division

c: Jeff Hunt, Director, Dept. of Planning, FAX (808) 270-7634
Maui CRC, Dept. of Planning, 250 S. High Street, Wailuku, Hawai'i 96793

EXHIBIT A.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 21, 2009

Jeffrey Pantaleo, M.A.
Archaeological Services Hawai'i, LLC
1930 A Vineyard Street
Wailuku, Hawai'i 96793
lisa@ashmaui.com

LOG NO: 2008.3045
DOC NO: 0907PC54
Archaeology

**SUBJECT: Chapter 6E-42 Historic Preservation Review –
Archaeological Monitoring Plan for Parcel H-2
Maluaka Ahupua'a, Makawao District, Island of Maui, Hawai'i
TMK: (2) 2-1-005:085; (2) 2-1-005:108; (2) 2-1-005:120 por.**

Thank you for the opportunity to review this plan, which although originally submitted in 2008 was not subject to formal SHPD review until now. The plan (Rotunno-Hazuka and Pantaleo 2008); *Archaeological Monitoring Plan for Parcel H-2...* Archaeological Services Hawai'i, LLC, was received by our staff in hardcopy format on July 23 of 2008 but held pending acceptance of an archaeological inventory survey report and associated site preservation plan.

The plan was proactively prepared by your firm as a result of a long-standing archaeological consultant commitment between your firm and the project developer. Precautionary archaeological monitoring for all ground altering disturbance in the project area was recommended upon completion of at least two prior archaeological inventory surveys within the bounds of the current subject parcels, during which several culturally and historically significant sites have been identified (SHPD LOG NO: 2008.3048; DOC NO: 0807PC41 and SHPD LOG NO: 2008.4506; DOC NO: 0810PC21). Those known to be in the immediate vicinity of the proposed project include SIHP #50-50-14-6366 [post-Contact period walls/wall segments, wooden house remnant, concrete slab foundations, surface *'ihi 'ihi* and refuse scatters, mounds], -6367 [late pre-Contact to early post-Contact L- and U-shaped enclosures], -6371 [pre-Contact habitation platform and five walled pits], -6372 [mid 19th century habitation midden scatter and wooden shack], -6373 [pre-Contact habitation enclosures and platform] -6374 [four boundary walls and a modified outcrop wall, all post-Contact in origin], -6376 [pre-Contact to early post-Contact habitation and agricultural features], -6377 [pre-Contact habitation U-shape and circular walled pit probably used for agriculture], -6378 [pre-Contact habitation square enclosure and modified outcrop with constructed pits and a natural cupboard] and -6379 [two rectangular pre-Contact habitation enclosures and platforms].

Feature 1 of -6374 and five other sites (-6371, -6373, -6377, -6378 and -6379) are subject to archaeological site preservation commitments (SHPD LOG NO: 2008.5257/DOC NO: 0906PC32; SHPD LOG NO: 2009.2892/DOC NO: 0907PC04; SHPD LOG NO: 2009.2918/DOC NO: 0907PC53). *Please note, we expect to receive written and photographic verification that short-term preservation measures are in place prior to the onset of ground altering activity within the subject parcels.*

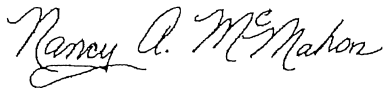
As specified in the monitoring plan, there will be one archaeological monitor on site for each piece of ground altering machinery in operation during the proposed project. A coordination meeting with the construction crew and all other pertinent parties to explain monitoring procedures and that the monitoring archaeologist has the authority to halt work in the vicinity of a culturally significant find will be undertaken, and should anything of cultural significance be identified, the SHPD will be consulted for mitigation recommendations. The plan further states that in the event human remains are inadvertently exposed, both the SHPD and Maui/Lana'i Islands Burial Council (MLIBC) will be notified and appropriate burial protocol followed once jurisdictional determination has been made. *No human remains will be collected or removed from the project area unless specifically authorized by the SHPD.* A report detailing the findings of the monitoring activity will be prepared and submitted to our office for review within 180 days after the completion of the project.

The plan contains the required information as specified in HAR §13-279-4(a) regarding monitoring plans in general and is acceptable.

Now that the monitoring plan has been accepted pursuant to HAR §13-279, please send one hardcopy, clearly marked **FINAL**, along with a copy of this review letter and a text-searchable PDF file on CD to the attention of "SHPD Library" at the Kapolei SHPD office.

If you have any questions or comments regarding this letter, please contact the SHPD's Lead Maui Archaeologist, Ms. Patty Conte (Patty.J.Conte@hawaii.gov).

Aloha,



Nancy McMahon, Deputy SHPO/State Archaeologist
State Historic Preservation Division

c: Jeff Hunt, Director, Dept. of Planning, FAX (808) 270-7634
Maui CRC, Dept. of Planning, 250 S. High Street, Wailuku, Hawai'i 96793

H2R, LLC

October 9, 2018

Daniel E. Orodener, Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Ref: LUC Docket No. A97-721 Makena Resort
Subject: Notice of Sale of Property

Dear Mr. Orodener:

We are writing to inform your office that ownership of property identified as TMK (2)2-1-005:085 (27.825 acres) was recently transferred from Hawaii Development LLC to H2R, LLC as of October 1, 2018. The 27.825-acre property is one of a number of parcels within the Makena Resort area that were included in the subject docket.

This notification is being provided pursuant to Condition No. 16 of the Findings of Fact, Conclusions of Law, and, Decision and Order dated February 19, 1998 as amended by the Land Use Commission on September 7, 2012:

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.*

Should you have any questions or require additional information, please do not hesitate to contact Brian Ige of my office at (808) 244-1500.

Very truly yours,
H2R, LLC


Everett Dowling

cc: County of Maui Department of Planning
Mr. Trent Moore, Hawaii Development LLC
Yukino Uchiyama, Munekiyo Hiraga