

2020 FEB 14 A 11:59

**TO:** Daniel E. Orodener, Executive Officer  
 State Land Use Commission  
 State Office Tower  
 Leiopapa A Kamehameha  
 235 South Beretania Street, Room 406  
 Honolulu, Hawai'i 96813

**DATE:** February 14, 2020

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

**Enclosed is/are:**

Copies	Date	Description
1 Hard Copy + 1 (CD)	February 2020	Annual Report for Land Use Commission Docket No. A97-721 (Makena Resort), TMK (2)2-1-005:085


X	<b>For your information</b> <b>For necessary action</b> <b>For your review</b> <b>For your files</b>	<b>For your use</b> <b>As requested</b> <b>For your signature</b> <b>Returning</b>
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**REMARKS:** On behalf of H2R, LLC, the owner of Parcel H-2 (TMK (2)2-1-005:085), we are transmitting the Annual Report for Land Use Commission Docket No. A97-721 (Makena Resort) in accordance with Condition No.17 of Docket No. A97-721. Condition No. 17 stipulates the following:

*"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."*

Please note that all the exhibits are included in the CD.

Should you have any questions or require additional information, please do not hesitate to email me at yukino@munekiyohiraga.com or call me at 983-1233. Thank you.

Signed:   
 Yukino Uchiyama, AICP  
 Senior Associate

YU:yp  
 Copy to: Leilani Pulmano, H2R, LLC (w/PDF copy (via Box.com))  
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**H2R, LLC**  
**2005 Main Street**  
**Wailuku, Hawai'i 96793**

LAND USE COMMISSION #  
STATE OF HAWAII

2020 FEB 14 A 11:59

February 13, 2020

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

Dear Executive Officer Orodanker:

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

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 since 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 H-2 Parcel, that is owned by H2R, LLC (TMK (2)2-1-005:085) and does not address any properties owned by others. It is noted that the ownership of the remainder (and majority) of the LUC Reclassified Parcels was recently transferred from ATC Makena Entities ("ATC Makena") to AREG AC Makena Propco, LLC (doing business as "Makena Golf & Beach Club Owners").

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 it is committed to meeting its workforce housing obligations for the H-2 Parcel, in full compliance with the applicable County's Workforce Housing Policy (Chapter 2.96 of the Maui County Code).

### **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 Twenty-First Annual Report submitted by Makena Golf & Beach Club Owners in 2019, 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 Makena Golf & Beach Club Owner's Sixth Annual Report.

In regards to the H-2 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 H-2 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 executed an amendment to the Education Contribution Agreement for Makena Resort reflecting that the H-2 Parcel will participate in the Department of Education facilities contribution program currently set at \$5,560 per unit. See **Exhibit "A"**.

**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 Twenty-First Annual Report submitted by Makena Golf & Beach Club Owners, Makena Golf & Beach Club Owners and Hawaii Emergency Management Agency (HiEMA) agreed to two (2) locations for emergency sirens, one at the Makena Wastewater Treatment Plant (WWTP) and the other near Makena Big Beach (Oneloa) (sirens 157 and 158, respectively). Makena Golf & Beach Club Owners executed Rights of Entry/License Agreements with HiEMA in 2012, however, DOD informed Makena Golf & Beach Club Owners 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 both sirens at the Makena WWTP and the Makena State Park.

#### **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 H-2 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 H-2 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 three (3) Archaeological Monitoring Plans (AMPs) for the H-2 Parcel were prepared in compliance with the requirements of Chapter 6E, HRS, consistent with the findings of Archaeological Inventory Surveys (AIS) for the H-2 Parcel which were accepted by the State Historic Preservation Division (SHPD) in July 2008. Both APP and AMPs were accepted by the SHPD, the acceptance letters for which are included herein as **Exhibit "B"**.

**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 H-2 Parcel is subject to provisions of this condition and will comply at the appropriate time prior to development of the H-2 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:** Makena Golf & Beach Club Owners, 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 Makena Golf & Beach Club Owners' 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 Twenty-First Annual Report submitted by Makena Golf & Beach Club Owners, 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 Makena Golf & Beach Club Owner's Third Annual Report.

Furthermore, Makena Golf & Beach Club Owners 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 Master Traffic Study was included in Makena Golf & Beach Club Owners Sixth Annual Report.

In regards to the H-2 Parcel, a TIAR (assessing traffic impacts related to the proposed project on the H-2 Parcel) was prepared in October 2019 and has been submitted to DOT and the County of Maui for review and approval. See **Exhibit "C"**.

#### **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 H-2 Parcel is subject to provisions of this condition and will comply. H2R, LLC is currently coordinating with DOT regarding compliance with this condition. H2R, LLC has prepared and recently submitted to DOT a Memorandum of Agreement regarding their pro rata funding of local and regional transportation improvements.

#### **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 H-2 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 H-2 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 H-2 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 H-2 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.

**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 H-2 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:** All conditions and amendments have been recorded as required by this condition.

If you have any questions or require any further information, please contact me at (808) 270-5936 or leilanip@pacificrimland.com.

Sincerely,



Leilani Pulmano  
H2R, LLC

Encl.

cc: Mary Alice Evans, State of Hawaii, Office of Planning (w/enclosures)  
Ann Cua, County of Maui, Department of Planning (w/enclosures)  
Yukino Uchiyama, Munekiyo Hiraga (w/enclosures)

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