

H2R, LLC
2005 Main Street
Wailuku, Hawai'i 96793



January 26, 2023

Land Use Commission
State of Hawai'i
P. O. Box 2359
Honolulu, Hawai'i 96804-2359

Dear Executive Officer Orodener:

Subject: Annual Report for Land Use Commission Docket No. A97-721 (Mākena 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 Mākena, Maui, Hawai'i. 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 Hawai'i (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 Mākena, Maui, Hawai'i 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 is owned by ATC Makena Entities ("ATC Makena") to AREG AC Makena Propco, LLC, which is doing business as "Makena Golf & Beach Club Owners" (MG&BC).

It is noted that, on August 27, 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 is committed to meeting its workforce housing obligations for the H-2 Parcel, in full compliance with Maui County's Workforce Housing Policy (Chapter 2.96 of the Maui County Code).

As part of the H-2 Residential (Project), H2R, LLC proposes to construct up to 53 lots on the H-2 Parcel, which would require a total of fourteen (14) affordable housing units to comply with the Residential Workforce Housing Policy as provided in Chapter 2.96. The Project provided eleven (11) affordable housing units in conjunction with the Hale Mahaolu Ehiku project and the Department of Hawaiian Home Lands (DHHL). In 2008, the previous landowner of the H-2 Parcel provided Hale Mahaolu an in lieu fee to assist with construction of the Ehiku project that equated to seven (7) affordable housing units. Additionally, H2R partner, Dowling Company, constructed homes for DHHL that created affordable housing units for native Hawaiians and was issued affordable housing credits for those homes. Four (4) of these credits were assigned to this property. In summary, eleven (11) affordable housing units assigned to this property are homes that families have already been living in for well over 10 years.

The remaining three (3) affordable housing units will be satisfied in compliance with the provisions of Chapter 2.96, MCC.

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. 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 the ATC Makena Holdings, LLC's (now known as MG&BC) 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 Holdings, LLC's (now known as MG&BC) Sixth Annual Report.

In regards to the H-2 Parcel, H2R, LLC 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 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 Mākena regions. Further, in 1985, the Petitioner constructed a 1.5 million gallon water storage tank at the Makena Resort. As mentioned above, H2R, LLC 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 reflecting that the H-2 Parcel will participate in the Department of Education facilities contribution program currently set at \$5,560 per unit. A copy of the amendment was provided in H2R, LLC's 2020 Annual Compliance Report.

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 will comply with this condition. In consultation with Hawai'i Emergency Management Agency (HiEMA), a new outdoor emergency siren may need to be installed either onsite or in the vicinity of the H-2 Parcel.

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.

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.

To control runoff, sedimentation, and erosion during construction and post-construction of the Project, a comprehensive program of Best Management Practices (BMPs) will be implemented in accordance with applicable provisions of the Maui County Code and Drainage Rules of the Department of Public Works. This program includes Low Impact Development (LID) measures such as detention and infiltration basins and swales. All pre- and post-development runoff for the design storm will be retained onsite, which is in exceedance of the County of Maui Drainage Standards. The H-2 Residential Project will secure and comply with the State National Pollutant Discharge Elimination System (NPDES) Permit.

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: MG&BC, as the owner of the majority of the LUC Reclassified Property, funds and conducts the nearshore water quality monitoring program required by this condition. The monitoring reports are submitted each year as part of MG&BC'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 Twenty-First Annual Report submitted by ATC Makena Holdings, LLC (now known as MG&BC), 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 Holdings, LLC's (now known as MG&BC) Third Annual Report.

Furthermore, ATC Makena Holdings, LLC (now known as MG&BC) 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 ATC Makena Holdings, LLC's (now known as MG&BC) Sixth Annual Report.

In regard to the H-2 Parcel, a TIAR assessing traffic impacts related to the Project was prepared in October 2019 and approved by DOT per a letter dated April 14, 2022, as well as by the County of Maui per a letter dated June 30, 2022. **See Exhibit A and Exhibit B.**

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 has complied with this condition. On May 19, 2020, H2R, LLC and DOT entered into a Memorandum of Agreement (MOA) for their pro rata funding of local and regional transportation improvements, which called for funding to install a traffic light at the Pi'ilani Highway/Okolani Drive/Mikioi Place intersection in Wailea. On June 18, 2020, H2R funded their pro rata share as outlined in the MOA. A copy of this MOA was included in H2R, LLC's 2021 Annual Compliance Report. DOT acknowledged compliance with this condition per a letter dated April 14, 2022. **See Exhibit A.**

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 the proposed Project is designed 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

cc: State of Hawai'i, Office of Planning and Sustainable Development
Kathleen Aoki, County of Maui, Department of Planning
Yukino Uchiyama, Munekiyo Hiraga

Exhibit A



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 14, 2022

VIA EMAIL: leilanip@pacificrimland.com

Ms. Leilani Pulmano
Project Manager
Pacific Rim Land, Inc.
1300 North Holopono Street, Suite 201
Kihei, Hawaii 96793

Dear Ms. Pulmano:

Subject: Request Acknowledgment on Fulfillment of Conditions
H-2 Residential Development
Makena, Maui, Hawaii
Tax Map Key Nos. (2) 2-1-005: 085 and 120 (portion)

Thank you for your traffic consultant's email dated January 28, 2022, to request an acknowledgment for the fulfillment of (Docket A97-721) State Land Use Commission Condition Nos. 10 and 11. It states that:

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."

Condition No. 11: "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."

We acknowledge that both Condition Nos. 10 and 11 have been fulfilled. Our record indicates that the submitted TIAR dated October 2019 has been accepted. A Memorandum of Agreement between the Developer and the Department of Transportation was recorded and executed on May 19, 2020. The Developer paid the pro-rata share contributions of \$273,208.00 for regional transportation improvements (the receipt submitted on file was dated June 18, 2020).

Ms. Leilani Pulmano
April 14, 2022
Page 2

HWY-PS 2.8108

If you have any questions, please contact Jeyan Thirugnanam, Systems Planning Engineer, Highways Division, Planning Branch at (808) 587-6336 or by email at Jeyan.Thirugnanam@hawaii.gov. Please reference file review number PS 2022-022.

Sincerely,

A handwritten signature in black ink, appearing to read "Jade T. Butay".

JADE T. BUTAY
Director of Transportation

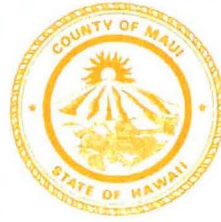
c: Land Use Commission
Tyler Fujiwara (Austin, Tsutsumi & Associates, Inc.)

Exhibit B

MICHAEL P. VICTORINO
Mayor

JORDAN MOLINA
Director

GARY L. I. AMBROSE
Deputy Director



WADE SHIMABUKURO, P.E.
Development Services Administration

RODRIGO "CHICO" RABARA, P.E.
Engineering Division

JOHN R. SMITH, P.E.
Highways Division

Telephone: (808) 270-7745
Fax: (808) 270-6267

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
200 SOUTH HIGH STREET, ROOM 410
WAILUKU, MAUI, HAWAII 96793

June 30, 2022

Mr. Tyler Fujiwara (*via e-mail tfujiwara@atahawaii.com*)
Austin, Tsutsumi & Associates, Inc.
1871 Wili Pa Loop, Suite A
Wailuku, Hawaii 96793

**SUBJECT: PROPOSED H-2 RESIDENTIAL PROJECT AT MAKENA
TRAFFIC IMPACT ANALYSIS REPORT
TMK: (2) 2-1-005:085 AND 120 (POR.)**

Dear Mr. Fujiwara:

The County of Maui, Department of Public Works has reviewed and hereby approves the Traffic Impact Analysis Report submitted for the subject project dated October 4, 2019.

The Department does not have any additional comments. If you have any questions regarding this correspondence please call Kurt Watanabe of our Traffic Section at 808-270-7745.

Sincerely,

Digitally signed by Rodrigo (Chico) Rabara
DN: cn=Rodrigo (Chico) Rabara, o=County
of Maui, ou=DPW Engineering Division,
email=chico.rabara@co.maui.hi.us, c=US
Date: 2022.06.30 21:22:47 -10'00'

RODRIGO "CHICO" R. RABARA
Engineering Division Chief

RR:kw (ED22-0315)

S:\ENG\ENGTRAF\DEVELOPMENTS\2019 Makena - H2 Residential\ED22-0315_H2 Residential_LTR_TIAR Acceptance_DPW
Traffic.docx

cc: Traffic Section (electronic)