

TELEPHONE:  
(808) 528-5004

ERIC T. MAEHARA  
ATTORNEY AT LAW  
A LAW CORPORATION  
GROSVENOR CENTER, MAKAI TOWER  
733 BISHOP STREET, SUITE 2530  
HONOLULU, HAWAII 96813  
E-mail Address: frntfld@gte.net

COPY

FACSIMILE:  
(808) 531-4747

February 24, 2000

Land Use Commission  
State of Hawaii  
235 S. Beretania Street, Suite 406  
P.O. Box 2359  
Honolulu, Hawaii 96804

Re: Second Annual Report for Land Use Commission (LUC) Docket No.A97-721  
Makena Resort Corp.

Ladies and Gentlemen:

Pursuant to Condition 19 in the Decision and Order in the above-referenced docket matter, the following is submitted as the Second Annual Report on the status of this project.

As stated in the First Annual Report, the Maui County Council adopted the Kihei-Makena Community Plan Update on March 20, 1998. The proposed development for the Petition Areas generally conforms with the goals, objectives and policies of the adopted Kihei-Makena Community Plan Update. On November 10, 1999, Petitioner filed an application for change in zoning affecting 755.689 acres of land in Makena, Maui, Hawaii, including all of the 145.943 acres of the Petition Area. The bulk of the change in zoning application includes the zoning of approximately 500 acres of golf course into a new PK-4 zone that the County has established for golf courses. The change in zoning application has not yet been scheduled for a public hearing before the Maui Planning Commission. Once the Planning Commission holds a public hearing, it will then make its recommendations with regard to the change in zoning application to the Maui County Council which must adopt the specific zoning by ordinance.

The following are all of the conditions set forth in the Decision and Order followed in each case by a brief description of efforts that are being made to comply with each stated conditions:

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii 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: Petitioner will comply with this condition.

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 overpumping of the sustainable yield of the Iao aquifer.

Response: On May 4, 1998, representatives of Petitioner met with David Craddick, Director the Department of Water Supply, County of Maui, relating to this condition no. 2. A formal request for response from the Department was made by letter dated June 10, 1998, by Makena Resort Corp. By letter dated February 18, 1999, David Craddick, Director of the Department of Water Supply responded affirmatively to this condition. Copies of both letters are attached hereto as Exhibit "A" for your convenience.

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: In 1976, 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. All necessary transmission lines to service the development at Makena has been developed by Petitioner. Petitioner shall continue to participate in the funding and construction of additional adequate storage and transmission facilities and improvements to accommodate the proposed project.

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.



Response: On July 14, 1998, the Maui Planning Commission granted the approval of a State Special Use Permit (SUP) pursuant to §205-6, Hawaii Revised Statutes, County Special Use Permit and Special Management Area (SMA) Use Permit to permit for the development of three pump stations in the Urban District and a wastewater reclamation plant in the Agricultural District at Makena. On December 8, 1998, Bill No. 111 was adopted on second and final reading by the Maui County Council and approved by the Mayor on December 16, 1998, which granted a Conditional Permit in order to permit the development of the water reclamation facility and related improvements in the County Agricultural District at Makena. The foregoing four permits now allow for the development of the wastewater reclamation system including a collection system and three pump stations, a wastewater reclamation facility and an effluent disposal system. Construction plans for the wastewater reclamation system were completed and submitted for review by the County Department of Public Works. Necessary building permits were approved and construction commenced on January 10, 2000.

5. 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 is not required.

Response: On January 20, 2000, representatives of Petitioner met with the Department of Education (DOE), Facilities Branch, to discuss compliance with this condition. An Educational Contribution Agreement for Makena Resort is presently being drafted for review by DOE.

6. Petitioner shall participate in the pro rata funding and construction of adequate civil defense measures as determined by the State of Hawaii and County of Maui civil defense agencies.

Response: Petitioner has had and continues discussions with the State of Hawaii and County of Maui civil defense agencies with regard to further requirements.

7. Should any human burials or 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, Hawaii Revised Statutes.

Response: Petitioner will comply with this condition.

8. 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: Petitioner will prepare an archaeological data recovery plan and a preservation plan both which will be approved by the State Historic Preservation Division, Department of Land and Natural Resources, prior to any land alteration in the Petition Areas.

9. 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: Petitioner will comply with this condition.

10. 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: Since August 1995, Petitioner has implemented and funded a nearshore water quality monitoring program. This program initially collected base line water samples and analyzed the same to determine turbidity, chemical compound contents and biota sampling. This monitoring program continues with semi annual samplings at four separate nearshore sites. Data analysis is submitted regularly to the State Department of Health. Petitioner will continue to comply with this condition.

11. Petitioner shall submit a Traffic Impact Analysis Report (TIAR) for review and approval of the State Department of Transportation and the County of Maui.

Response: 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 above-mentioned change in zoning application.

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 rezoning is not required.

Response: On June 12, 1998, Petitioner filed an application for a SMA use permit to permit for the development of roadway and utility improvements to portions of Makena Alanui, Honoiki Street and Makena-Keonioio Road, all within the Makena Resort. Because some of the proposed work would be within County of Maui roadway right-of-ways, an environmental assessment was prepared and a finding of no significant impact was issued by the Planning Department and published in the Office of Environmental Quality Control Bulletin on September 23, 1998. On October 27, 1998, the Maui Planning Commission granted the SMA use permit to permit for the roadway and utility improvements. The DOT was consulted as part of the preparation of the environmental assessment and copies of the SMA use permit were submitted to the DOT.

On January 25, 2000, representatives of Petitioner met with DOT, State Wide Transportation Planning Office, to discuss the above-mentioned TIAR. A draft agreement has been prepared and is being reviewed by DOT with regard to the acceptance of the TIAR by DOT and Petitioner's future participation in pro rata funding of improvements to be made to the DOT highway system in the region.

13. 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 Hawaii and County of Maui agencies.

Response: As part of the proposed development described in the SMA use permit discussed in response no. 12, Petitioner also proposed certain drainage improvements at the Makena Resort. Drainage improvements, approved by the Department of Public Works and Waste Management and the Planning Department shall be designed and funded by Petitioner.

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

Response: The Petition Areas shall be developed in accordance with Kihei-Makena Community Plan.

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

Response: As stated above, Petitioner has submitted a change in zoning application.

16. That 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's Department of Public Works and Waste Management.

Response: Petitioner will comply with this condition.

17. That Petitioner shall develop the Property in substantial compliance with 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: Petitioner will comply with this condition.

18. 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: There have been no changes in ownerships of the Petition Areas with the exception of Petition Area 6 which is also referred to on the tax maps of the State of Hawaii as TMK: (2) 2-1-07:04. At the time of the Petition, Petition Area 6 was owned by Makena Aina Corp. and it was then transferred to an affiliate of the same being Maui Prince Hotel Corp. In January 2000, the same was transferred to Maui Prince Hotel, LLC, which is affiliated with both Makena Aina Corp. and Maui Prince Hotel Corp.

19. 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: This Second Annual Report complies with this condition.

20. 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: Petitioner will submit a timely motion to fully or partially release or amend the conditions upon compliance with the same.

21. Within 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.

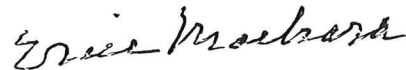
Response: Petitioner has complied with this condition.

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

Response: Petitioner has complied with this condition.

If you have any questions or require any further information, please contact this office.

Very truly yours,



Eric T. Maehara

ETM:lac

cc: Office of Planning  
Attn: Mr. David Blane, Director  
Office of Planning, Land Use Division  
Attn: Mr. Abe Mitsuda, Administrator  
Planning Department, County of Maui  
Attn: Mr. John E. Min, Director  
Planning Commission, County of Maui  
Maui Electric Company, Ltd.  
GTE Hawaiian Telephone Co.  
Ulupalakua Ranch  
Department of Water Supply, County of Maui  
Attn: Mr. David Craddick, Director  
Maui Prince Hotel Corp.  
Makena Aina Corp.