



LAND USE COMMISSION  
STATE OF HAWAII

2003 MAR -5 A 8:42

## MAKENA RESORT CORP.

February 27, 2003

COPY

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

Re: Fifth 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 Fifth Annual Report on the status of this project.

As stated in the previous Annual Reports, Petitioner filed an application for change in zoning with the County of Maui affecting 603.303 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 included the zoning of approximately 436.866 acres of golf course into a new PK-4 zone that the County has established for golf courses. The change in zoning application was the subject of a public hearing before the Maui Planning Commission on July 25, 2000. Following the public hearing, the Maui Planning Commission acted to recommend to the Maui County Council approval of the change in zoning application subject to ten (10) conditions. The ten (10) conditions were set forth in Exhibit "A" attached to the Third Annual Report. On August 29, 2000, this recommendation by the Maui Planning Commission was sent to the Maui County Council. The application for change in zoning was subsequently referred to the Land Use Committee of the Maui County Council which held a hearing on the same on March 12, 2001, at which time further deliberation on the application was deferred pending the annual deliberations on the County budget. Following the budget deliberations, a review of the pending zoning application continued in June 2001 and consumed an additional eight (8) committee meetings before it was reported out to the full Council in December 2001. The Council then held an additional public hearing on January 24, 2002. Following the public hearing, the Council referred the application to its Land Use Committee and no additional meetings were held in 2002. The Land Use Committee referred the application to the newly elected 2003-2004 County Council in January 2003 and the Council subsequently referred the application to its new

Planning and Land Use Committee. At this time, the zoning application remains pending with the Planning and Land Use Committee.

The following are the conditions set forth in the Decision and Order and description of efforts that are being made to comply with each stated condition:

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:** As set forth in detail in the Second Annual Report, 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. This letter was attached to said Second Annual Report. Petitioner has complied with this condition.

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:** As set forth in detail in the Second Annual Report, Petitioner has commenced the construction of a wastewater system, comprising of collection lines, pump stations and wastewater reclamation plant at Makena. Construction commenced on February 10, 2000, and the entire wastewater reclamation system was completed and operable in October 2002.

Petitioner has complied with this condition.

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 or prior to Petitioner applying for building permits if county zoning is not required.

**Response:** Pursuant to an Educational Contribution Agreement for Makena Resort between Petitioner and the Department of Education (DOE), dated August 17, 2000, the parties have agreed upon a cash contribution by Petitioner which shall represent a fair share payment for the development, funding and/or construction of school facilities by Petitioner. A copy of said agreement was attached to the Third Annual Report.

Petitioner has complied with this condition.

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 this condition. Both agencies have indicated to Petitioner that at this time

no civil defense measures are warranted for the property. A siren warning simulator for civil defense is installed in the 310-room Maui Prince Hotel security department which is manned 24 hours a day. For each new project in the development, Petitioner will contact the state and county civil defense agencies for their comments and requirements.

7. 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, 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 (DOH). A copy of the DOH comments on the reports from 1995 through 2000 was attached as Exhibit "A" in the Fourth Annual Report.

Petitioner continues to implement and fund a nearshore water quality monitoring program. A copy of the 2001 report, dated March 2002, is attached as Exhibit "A" to this report. A copy of the Department of Health's comments on the 2001 report is attached as Exhibit "B" to this report.

The 2002 report was submitted to the Department of Health on February 13, 2003.

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:** As set forth in further detail in the Second Annual Report, a TIAR was prepared and submitted for review by DOT and the County of Maui as part of the above-mentioned change in zoning application. Following certain comments by DOT, revisions were made to the TIAR which DOT agreed with as set forth in a letter from Kazu Hayashida, Director of Transportation, dated May 2, 2000, a copy of which was attached to the Third Annual Report.

Petitioner has complied with this condition.

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:** Following discussion with representatives of DOT relating to revisions to the TIAR as set forth in response to condition no. 11 immediately above, on May 11, 2000, Petitioner filed Petitioner Makena Resort Corp.'s Motion for First Amendment to the Findings of Fact, Conclu-

sions of Law and Decision and Order, filed on February 19, 1998 (D&O), requesting that this Condition No. 12 be amended. Said Motion was supported by the Affidavit of Roy Figueiroa, General Manager of Petitioner. The County of Maui Planning Department filed a Response to Motion wherein it stated that it had no objections to the Motion. The Office of Planning (OP) filed a Response to Motion wherein it stated that DOT was satisfied by the fact that Petitioner had acknowledged responsibility for its pro rata share of the cost of the transportation improvements proposed in the Maui Long Range Land Transportation Plan for the Kihei-Makena region and that OP supported the position of DOT. Upon consideration of Petitioner's Motion, supporting affidavit, and the oral and written arguments presented by the parties, this Commission ordered that Condition No. 12 of the D&O, be amended as follows:

"12. Petitioner shall participate in pro rata funding and the construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by 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."

In complying with Condition No. 12, as amended, Petitioner has and continues to engage in discussions with the DOT relating to improvements to regional transportation infrastructure, specifically, with regard to the implementation of certain interim improvements to the State Piilani Highway from Mokulele Highway to Kilohana Drive. On July 16, 2001, Petitioner entered into an agreement with DOT to fund the planning and design of the restriping and other improvements to Piilani Highway to increase travel lanes from two (2) to four (4) lanes. As noted in the Fourth Annual Report, the planning and design work was 90% complete and the project was scheduled to begin construction in the summer 2002 and completed within one year. The project is under construction and is expected to be completed in May, 2003.

As reported in the Second Annual Report, Petitioner continues in the development of the roadway and utility improvements to portions of Makena Alanui, Honoiki Street and Makena-Keoneoio Road, all within the Makena Resort. Construction commenced on January 10, 2000, and was completed in April, 2001.

Finally, on May 7, 2002, Petitioner filed a Motion for Second Amendment to the Findings of Fact, Conclusions of Law, and Decision and Order, filed on February 19, 1998 requesting that this Condition No.



12 be further amended. Said Motion was supported by the Affidavit of Roy Figueiroa, General Manager of Petitioner. The County of Maui Planning Department filed a Response in Support of the Petitioner's Second Amendment on June 19, 2002. On June 20, 2002, the Motion came on hearing before this commission, with appearances by Petitioner, County and Office of Planning. Upon consideration of Petitioner's Motion, supporting affidavit, and the oral and written argument presented by the parties, this commission ordered that Condition No. 12 of the Amended Decision and Order dated February 19, 1998, be amended to impose a four-year agreement deadline from June 1, 2000, 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."

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 Response No. 12 above and further described in the SMA use permit discussed in Response No. 12 as set forth in the Second Annual Report, Petitioner also proposed certain drainage improvements at the Makena Resort.

Petitioner is preparing a Drainage Master Plan to be submitted to the County Department of Public Works and Environmental Management and Planning Department. Submittal of the Master Plan is expected in March 2003. Improvements to be designed and constructed will be in accordance with the approved Master Plan.

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 shall 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. Said application remains pending with the Council's Planning and Land Use Committee.

16. 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:** Petitioner will comply with this condition.

17. 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:** 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 Fifth 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,



Roy Figueiroa  
General Manager

RF:tn

cc: Office of Planning  
Office of Planning, Land Use Division  
Planning Department, County of Maui  
Planning Commission, County of Maui  
Maui Electric Company, Ltd.  
Verizon Hawaii  
Ulupalakua Ranch  
Department of Water Supply, County of Maui  
Maui Prince Hotel, LLC  
Makena Aina Corp.  
Makena Golf Corp.