



MAKENA RESORT CORP.
March 20, 2007

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

Re: Ninth 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 Ninth 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, Hawai'i, including all of the 145.943 acres of the Petition Area. The majority of the change in zoning application included the zoning of approximately 437.085 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 voted 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 meeting 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 a 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 and in January 2003, the Council referred the application to its new Planning and Land Use Committee. No meetings were held in 2003 by the Planning and Land Use Committee. The zoning application was reviewed by the Planning and Land Use Committee in March and April 2004. On April 14, 2004, the Planning and Land Use Committee recommended approval of the zoning application, subject to certain conditions. Petitioner had anticipated that the application would be reviewed by the County Council in June 2004, however, the

review did not occur. By letter dated August 18, 2004, the Planning and Land Use Committee transmitted a draft bill on the change in zoning (with conditions) and requested that a Unilateral Agreement be executed. See Exhibit "A". A response dated September 17, 2004 was submitted to the Planning and Land Use Committee advising the Makena Resort Corp. in reviewing the draft proposed bill. See Exhibit "B". At the start of the subsequent County Council term (2005-2006), the application was referred to the new Land Use Committee. Although the Petitioner requested that the application be scheduled, no meetings were held in 2005 and 2006 by the Land Use Committee. These requests were submitted by letters dated January 11, 2005 (Exhibit AC"), September 19, 2005 (Exhibit "D"), January 12, 2006 (Exhibit "E"), February 7, 2006 (Exhibit "F"), and April 7, 2006 (Exhibit "G"). At the start of this current County Council term (2007-2008), the application was referred to the new Land Use Committee and remains pending with the 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 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: 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 over pumping 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.

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 as Exhibit "A" and Exhibit "B" to the Sixth 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 Hawai'i and County of Maui civil defense agencies.

Response: Petitioner will comply with this condition. Petitioner has had discussions with the State of Hawai'i and County of Maui civil defense agencies with regard to this condition. Both agencies have indicated to Petitioner that 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, Hawai'i 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 comply with this condition.

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 sampling 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.

A copy of the 2001 report, dated March 2002, was attached as Exhibit "A" to Fifth Annual Report. A copy of the Department of Health's comments on the 2001 report was attached as Exhibit "B" to Fifth Annual Report.

The first 2002 report (Report 1-2002) attached as Exhibit "C" to the Sixth Annual Report was submitted to the Department of Health on February 13, 2003.

The 2003 report (Report 1-2003) attached as Exhibit "D" to the Sixth Annual Report was submitted to the Department of Health on June 25, 2003.

The twelfth increment in the monitoring program (Report 2-2003) attached as Exhibit "E" to the Sixth Annual Report was conducted on August 10, 2003. This report was submitted to the Department of Health on May 10, 2004. A copy of the Department of Health's comments dated February 9, 2005, is attached as Exhibit "A" to the Seventh Annual Report.

The first 2004 report (Report 1-2004), dated June 1, 2004, attached as Exhibit "A" to the Eighth Annual Report, was submitted to the Department of Health on August 24, 2004. The second 2004 report (Report 2-2004) dated January 11, 2005, attached as Exhibit "B" to the Eighth Annual Report, was submitted to the Department of Health on February 17, 2005.

The first 2005 report (Report 1-2005), dated August 4, 2005, attached as Exhibit "C" to the Eighth Annual Report, was submitted to the Department of Health on August 26, 2005.

The first 2004 report (Report I-2004), dated June 1, 2004, the second 2004 report (Report II-2004) dated January 11, 2005 and the first 2005 report (Report I-2005), dated August 4, 2005, were reviewed and accepted by the Department of Health. A copy of the Department of Health's comments dated February 10, 2006, was transmitted to the Commission by letter dated March 1, 2006, and is attached as Exhibit "H" to this Ninth Annual Report.

The second 2005 report (Report II-2005), dated March 6, 2006, and attached as Exhibit "I" to this Ninth Annual Report, was submitted to

the Department of Health on June 5, 2006. A copy of the Department of Health's comments dated July 13 2006, is attached as Exhibit "J" to this ninth Annual Report.

11. 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: 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.

In addition, Petitioner prepared and submitted a Makena Resort Master Traffic Study, dated June 6, 2003 (Revised September 14, 2003), which was submitted to the State Department of Transportation and County of Maui. This Master Traffic Study was attached as Exhibit "F" to the Sixth Annual Report. The County approved the study on September 26, 2003 as noted in Exhibit "G" attached to the Sixth 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, Conclusions 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 ninety percent (90%) complete and the project was scheduled to begin construction in the summer 2002 and completed within one year. The improvements were completed in 2003.

As reported in the Second Annual Report, Petitioner continued 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.

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."

On May 24, 2004, Petitioner filed a motion for third amendment to the Finding of Fact, Conclusions of Law, and Decision and Order requesting that Condition No. 12 be further amended to extend this agreement deadline beyond June 1, 2004. Said Motion was supported by the Affidavit of Roy Figueiroa, Vice-President of Petitioner.

On June 4, 2004 the Motion came on hearing before this Commission with appearances by Petitioner, County of Maui, State Office of Planning and State Department of Transportation. The County of Maui stated no objections to Petitioner's request for an extension of time to satisfy Condition No. 12, however, questioned whether the two additional years would be an adequate amount of time to satisfy the condition. Upon consideration of Petitioner's Motion, supporting affidavit and written and oral 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 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 eight (8) years from June 1, 2000."

The Commission further ordered that the State Department of Transportation file written annual status reports detailing the status of the agreement between Petitioner and DOT as to the level of funding and other participation in constructing local and regional transportation improvements and programs. Petitioner has met with the State Department of Transportation and has agreed to participate in design and construction of the four-lane widening of Piilani Highway from Kilohana Drive to Wailea Ike Drive.

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.

As reported in the Fifth Annual Report the Petitioner was preparing a Drainage Master Plan to be submitted to the County Department of Public Works and Environmental Management and Planning Department. The Master Plan was submitted on July 1, 2003 and approved by the County on August 20, 2003. Improvements to be designed and constructed will be in accordance with the approved Master Plan. Each new project will be consistent 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 previously, Petitioner has submitted a change in zoning application. The Council's Planning and Land Use Committee recommended approval of the application on April 14, 2004. It was anticipated that the application would be reviewed by the County Council in June 2004. However, this did not occur in 2004, as well as in 2005 and 2006. The change in zoning application is currently pending with the current Council's 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: A July 11, 2000 letter from Eric T. Maehara, Esq., attached as Exhibit "H" to the Sixth Annual Report, notified the Commission of name changes to corporations holding property in the Petition Areas.

By letter dated July 29, 2005, attached as Exhibit "D" to the Eighth Annual Report, Petitioner, through its attorney Christopher T. Kobayashi, notified the Commissioner of the sale of certain parcels of real property within the petition area to Keaka LLC, a Delaware limited liability company. Also by letter dated March 7, 2007, attached as Exhibit "K" to this Ninth Annual Report, Petitioner, through its attorney Burt T. Lau, notified the Commissioner of the intent to sell the remainder of the Makena Resort properties to Honua LLC, a Delaware limited liability company.

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 Ninth 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 seven (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

RF

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

Land Use Commission
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