

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
)
MAKENA RESORT CORP.,)
a Hawai'i corporation)
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
145.943 Acres of Land at Makena,)
Island of Maui, State of Hawai'i,)
TMKs 2-1-05: 83, 84, 85, por. 108;)
2-1-07: 4; and 2-1-08: por. 90)
_____)

DOCKET NO. A97-721
ORDER GRANTING IN PART
AND DENYING IN PART
PETITIONER'S MOTION FOR
FIRST AMENDMENT TO THE
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER,
FILED ON FEBRUARY 19,
1998

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

JUN 20 2000 by *Robert Leide*
Date Executive Officer

ORDER GRANTING IN PART AND DENYING IN PART
PETITIONER'S MOTION FOR FIRST AMENDMENT TO THE
FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER, FILED ON FEBRUARY 19, 1998

LAND USE COMMISSION
STATE OF HAWAII
2000 JUN 20 A 8:31

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On May 11, 2000, Makena Resort Corp. ("Petitioner"), filed a Motion For First Amendment To The Findings Of Fact, Conclusions Of Law And Decision And Order, Filed On February 19, 1998 ("Motion"), pursuant to sections 15-15-70 and 15-15-94, Hawai'i Administrative Rules ("HAR"). Petitioner requested that the Land Use Commission ("Commission") amend Condition Number 12 of this Commission's Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") dated February 19, 1998, 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.

An Affidavit of Roy Figueiroa, General Manager of Petitioner ("Affidavit"), filed in support of the Motion, stated,

among other things, that i) Petitioner prepared a Traffic Impact Analysis Report ("TIAR"), dated August 18, 1999, a copy of which was forwarded to the Department of Transportation ("DOT") for review and approval; ii) representatives of the DOT and Petitioner have met on two separate occasions to discuss the contents of the TIAR and Condition Numbers 11 and 12 of the Decision and Order; iii) Petitioner has made revisions to the TIAR which the DOT has found acceptable; and iv) with Petitioner's understanding that it will participate in its pro rata share of local and regional transportation improvements and programs, the DOT did not object to the deletion of the requirement that an agreement as to the level of funding and participation be obtained prior to the acquisition of zoning by Petitioner for the subject property.¹

On May 26, 2000, the Office of Planning ("OP") filed a response to the Motion, which stated that the 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 the DOT.

On May 30, 2000, the County of Maui Planning Department filed a response to the Motion, which stated, among other things, that i) it had no objection to the Motion, and was currently

¹ The Motion included Exhibit "A," a letter from the DOT agreeing to the revisions to the TIAR and acknowledging Petitioner's understanding that it would be responsible for its pro rata share of the costs for transportation improvements. The Motion also included Exhibit "B," the revised TIAR, dated May 8, 2000.

processing a change in zoning application for approximately 755 acres of land in Makena that included the subject property; ii) the Maui Planning Commission ("Planning Commission") was scheduled to review the change in zone application on July 25, 2000; iii) the majority of the 755 acres was located within the Special Management Area ("SMA") Boundary of the County of Maui, and as such was subject to the SMA Rules of the Planning Commission; iv) specific conditions relative to traffic improvements would in all likelihood be included as part of the SMA permits, if approved; and v) as developments were proposed within the Makena region, the Planning Department anticipated the DOT would offer specific requirements for traffic improvements which would be included as conditions of approval to SMA permits.

The Motion came on for hearing before this Commission on June 1, 2000, in Honolulu, Hawai'i, with appearances by the parties as noted in the minutes. At the hearing, the Commission entered into the record a letter received on June 1, 2000, from Mark Sheehan, President of Maui Tomorrow. The OP stated that it had no objections to the Motion. During the discussion, members of the Commission expressed a desire for a date certain for the agreement. Thereafter, based on discussions among OP, DOT and Petitioner, Petitioner represented that it would have a definitive agreement between Petitioner and the DOT as to the level of funding and participation regarding local and regional transportation improvements and programs within two years from June 1, 2000.

Thereafter, a motion was made and seconded that Condition Number 12 of the 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 two (2) years from June 1, 2000.

Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

ORDER

Having duly considered Petitioner's Motion, the supporting Affidavit, Exhibits "A" and "B," the written statement of Maui Tomorrow, the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, and a motion having been made at a hearing conducted on June 1, 2000, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that Condition Number 12 of the Decision and Order dated February 19, 1998, be amended as follows:

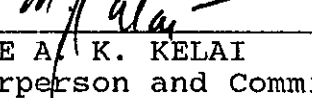
12. Petitioner shall participate in the pro rata funding and construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by the State Department of Transportation (DOT) and the County of Maui. Agreement between Petitioner and DOT as to the level of funding and participation shall be obtained within two (2) years from June 1, 2000.

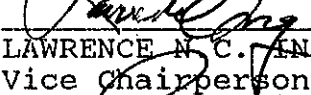
All other conditions to the Decision and Order dated February 19, 1998, are reaffirmed and continue in effect.

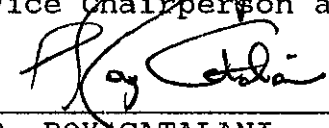
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 15th day of June 2000. The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

LAND USE COMMISSION
STATE OF HAWAII

By 
MERLE A. K. KELAI
Chairperson and Commissioner

By 
LAWRENCE N. C. LING
Vice Chairperson and Commissioner

By 
P. ROY CATALANI
Commissioner

By 
BRUCE A. COPPA
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

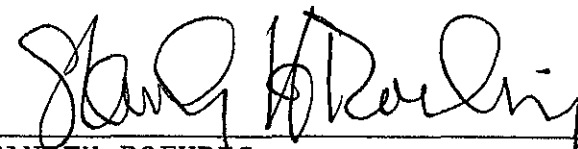
By (absent)
ISAAC FIESTA, JR.
Commissioner

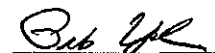
By (absent)
M. CASEY JARMAN
Commissioner

Filed and effective on
June 20, 2000

Certified by:


Executive Officer

By 
STANLEY ROEHRIG
Commissioner

By 
PETER YUKIMURA
Commissioner

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2-1-07: 4; and 2-1-08: por. 90)

DOCKET NO. A97-721
CERTIFICATE OF SERVICE

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I hereby certify that a copy of the Order Granting In Part And Denying In Part Petitioner's Motion For First Amendment To The Findings Of Fact, Conclusions Of Law And Decision And Order, Filed On February 19, 1998 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

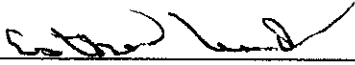
DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

CERT. JOHN E. MIN, Director of Planning
Planning Department, County of Maui
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Wailuku, Hawaii 96793

CERT. JAMES B. TAKAYESU, ESQ.
Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

CERT. ERIC T. MAEHARA, ESQ., Attorney for Petitioner
Grosvenor Center, Makai Tower
733 Bishop Street, Suite 2530
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 20th day of June 2000.


ESTHER UEDA
Executive Officer