

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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 PETITIONER'S
 MOTION FOR SECOND
 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 27 2002

Date

Anthony M. King
 Executive Officer

ORDER GRANTING PETITIONER'S MOTION FOR SECOND AMENDMENT TO THE
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER,
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On May 7, 2002, Makena Resort Corp. ("Petitioner") filed a Motion for Second 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" or "LUC") amend Condition Number 12 of this Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated February 19, 1998 ("Decision and Order").

Condition Number 12 of the Decision and Order, as amended by 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 February 19, 1998 ("Amended Decision and Order") provides the following:

"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."

Petitioner requested that the Commission further amend Condition Number 12 of the Amended Decision and Order 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, 2002."

An Affidavit of Roy Figueiroa, General Manager of Petitioner ("Affidavit") and Petitioner's Exhibit "A", filed in support of the Motion, stated, among other things, that

- i) the State Department of Transportation ("DOT") is close in reaching a pro rata funding agreement with developers in Ewa region on Oahu which would lead to the development of a fair share template that could be applied to the island of Maui;
- ii) Petitioner filed the Motion to accommodate DOT with additional time to develop the fair share template allowing Petitioner to comply with said condition; and iii) Petitioner and DOT have entered into an agreement for interim improvements to Piilani Highway

including the restriping of the highway from two to four lanes and other related improvements.

On June 19, 2002, the County of Maui Planning Department ("County") filed its Response In Support Of The Petitioner's Second Amendment To The Findings of Fact, Conclusions of Law, and Decision and Order, Filed On February 19, 1998. The County stated, among other things: i) its acknowledgement of Petitioner's attempts to comply with said condition through the interim improvements to Piilani Highway; ii) the DOT is not close in developing a fair share template for Maui, hence Petitioner is unable to comply with the June 1, 2002 DOT agreement deadline; and iii) the Maui County Council is continuing to deliberate on Petitioner's request to rezone approximately 603 acres within the Makena Resort project area including the Petition Areas.

The Motion came on hearing before this Commission on June 20, 2002, in Honolulu, Hawai'i, with appearances by Petitioner, County, and the State Office of Planning ("OP"). At the hearing, Petitioner stated that it had expended in excess of \$680,000 for planning and engineering costs for interim improvement to Piilani Highway as agreed to by DOT. DOT will credit Petitioner for these costs when a fair-share for local and regional transportation improvements is determined. OP stated it was not opposed to Petitioner's request and offered to have DOT available for any questions. Upon inquiries from the Commission, DOT stated the following: i) it was close in developing a fair share template for Ewa projects; ii) the template for Maui may not be identical with the Ewa model and may require refinements based upon Maui

transportation issues and updates to the Maui long range transportation plan; iii) regional transportation needs for Maui should be identified at the end of 2003; and iv) DOT was optimistic that it can address regional transportation issues for Maui within two years. The Commission felt that defining a four-year agreement deadline starting from June 1, 2000, was more appropriate than a two-year period starting from June 1, 2002, in consideration of the status of the development of a fair-share template and additional time needed by DOT.

Thereafter, a motion was made and seconded that Condition Number 12 of the Amended Decision and Order dated February 19, 1998, be amended to impose a four-year agreement deadline from June 1, 2000. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion carried.

ORDER

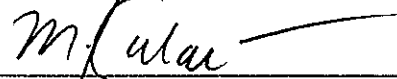
Having duly considered Petitioner's Motion, the supporting Affidavit, Exhibit "A", the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, and a motion having been made at a hearing on June 20, 2002, in Honolulu, Hawai'i, and the motion 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 Amended 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 four (4) years from June 1, 2000."

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

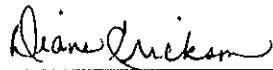
Dated: Honolulu, Hawai'i, June 27, 2002

LAND USE COMMISSION
STATE OF HAWAII



By MERLE A.K. KELAI
Chairperson and Commissioner

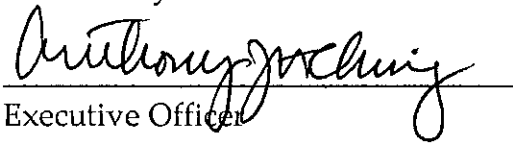
APPROVED AS TO FORM:



Deputy Attorney General

Filed and effective on
June 27, 2002

Certified by:


Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A97-721
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MAKENA RESORT CORP.,) CERTIFICATE OF SERVICE
a Hawai'i corporation)
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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)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Motion for Second 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:

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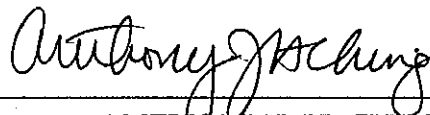
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DATED: Honolulu, Hawaii, this 27th day of June, 2002.



ANTHONY J. H. CHING
Executive Officer