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LAND USE COMMISSION  
STATE OF HAWAII

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

TELEPHONE:  
(808) 528-5004

FACSIMILE:  
(808) 531-4747

2002 APR 19 A 10:33

April 16, 2002

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

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

As stated in the Third Annual Report, dated April 10, 2001, Petitioner filed an application for change in zoning with the County of Maui 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 included 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 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 it continued deliberations on the application 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 which then held an additional public hearing on January 24, 2002. At this time the zoning application remains at the Council pending the 2002 budget deliberations. It is anticipated that the Council will take this matter up again in June 2002, following the conclusion of the budget deliberations.

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: As set forth in more 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, which letter was attached to said Second Annual Report.

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 it was anticipated that the entire wastewater reclamation system would be completed and operable on or about July 4, 2001. At this time, it is anticipated that the system will be operable by June 2002.

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.

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 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). Following a meeting between representatives of Petitioner and DOH on February 13, 2002, DOH submitted comments to the reports prepared from 1995 through 2000. Petitioner's consultants will respond to said comments. A copy of the DOH comments is attached hereto as Exhibit "A". A report for December 2001 will be sent to DOH and the next scheduled analysis will take place in June 2002. 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: 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.

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 discussions 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. The planning and design work is about 90% complete and the project is scheduled to begin construction in the summer 2002 and completed within one year.

Finally, 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.

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 last paragraph of response no. 12 above and further described in the SMA use permit discussed in response no. 12 set forth in the Second Annual Report, 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 Fourth Annual Report complies with this condition.

20. The Commission may fully or partially release or amend the conditions provided

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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

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Maui Prince Hotel, LLC  
Makena Aina Corp.  
Makena Golf Corp.

BENJAMIN J. CAYETANO  
GOVERNOR



BRUCE S. ANDERSON, Ph.D., M.P.H.  
DIRECTOR OF HEALTH

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P.O. BOX 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
EMD / CWB

February 13, 2002

02045MEA.02

Mr. Roy Figueiroa  
General Manager  
Makena Resort Corporation  
5415 Makena Alanui  
Kihei, Maui, HI 96753

Dear Mr. Figueiroa:

The Department of Health (DOH) has received from Munekiyo & Hiraga, Inc., copies of the Marine Environmental Monitoring Program Reports, prepared annually from 1995 through 2000 by Marine Research Consultants, for the Makena Resort Corporation.

In response to your request, we have reviewed the reports and forward our comments for your information and use. As we discussed at our meeting on February 11, 2002, Dr. Steve Dollar of Marine Research Consultants agreed to respond to the DOH's comments and questions attached with this letter.

Thank you for the opportunity to review the reports, and we look forward to the response to our comments.

Sincerely,

A handwritten signature in cursive script, reading "Thomas E. Arizumi".

THOMAS E. ARIZUMI, P.E., CHIEF  
Environmental Management Division

ETA:rg

Attachment

c: Councilmember Wayne Nishiki (Attn: Michelle), County of Maui (w/Attachment)

EXHIBIT A

## ATTACHMENT

The following comments and questions are forwarded as result of a review of the report entitled, "Makena Water Quality Monitoring, 1995-2000," authored by Marine Research Consultants and prepared for the Makena Resort Corporation.

The reference to the summary pages of the Report Year 2000 is made here and may be applicable to the summaries made in previous reports as well. (NOTE: The selected summary statements of the report are taken verbatim and preceded by the comments and questions.)

- The report summary states that water chemistry constituents in groundwater display distinct horizontal gradients moving seaward. Ground water input was greatest at Sites 1 and 4, but was also evident at Site 2. Site 4 is considered a control site, located a considerable distance away from the golf course.

*The Clean Water Branch review and comparison of silicate (Si), nitrate (NO<sub>3</sub>) to salinity data for Sites No. 1, 2, and 4 is in agreement with the report's summary (Page 12 of Y2000). Site 3 shows no discernible correlation between nutrients and salinity.*

- Distinctly high concentrations of PO<sub>4</sub>, TP, and turbidity were detected in samples collected at Site 2 during December 2000. Site 2 is located at the point where sediment laden storm water runoff entered the ocean following a flash flood in October 1999.

*There are three watersheds in the Makena Resort area that drain into the cove where Site 2 is located. The Clean Water Branch review of the watershed map shows that Site 2 is directly downslope of the coastline with the largest drainage area (946 Acres). The sizes of the remaining two adjacent watersheds are 220 and 110 acres.*

- Most water chemistry constituents that do not occur in high concentrations in groundwater did not display any recognizable horizontal or vertical trends with the exception of constituents at Site 2, as mentioned above.

*Based on review of the data, we are in agreement with the above statement.*

- Comparison of the eight surveys conducted to date reveals some differences in the influx of groundwater to each site with time. However, there does not appear to be any progressive trends of increasing (or decreasing) inputs to the nearshore ocean over time.

*The data review generally confirms the above-stated observations made over time at each site.*

- Scaling nutrient concentrations to salinity indicates that there was a significant subsidy of  $\text{NO}_3$  to the nearshore ocean at Site 1.

*We concur in general with the observation, in that, our comparison of median values of shoreline surface water samples (Years 1995-2000 1-S, 2-S, 3-S) tested for  $\text{NO}_3$  differ significantly between Site 1 vs Site 2, Site 3, Site 4; Site 2 vs 3; and Site 3 vs 4, but no significance between Site 2 vs Site 4.*

*A clarification to the definition of the terms "subsidy" and "unsubsidized" is requested.*

The subsidy appears to nearly triple the concentrations of  $\text{NO}_3$  in unsubsidized groundwater flowing to the ocean from the project site.

*Please explain the method used to make this estimation. Is it based on the equivalent fractions of salinity concentrations?*

The area shoreward of Site 1 includes an overlap of the southern part of the Wailea Gold Course and the northern part of the Makena North Course, as well as residential development. Similar subsidies of  $\text{NO}_3$  were not evident at Sites 2 and 3, off the Makena Courses, or at Site 4, located beyond the influence of the golf course.

*The previous comment made of Site 2 vs Site 3 applies to the foregoing.*

The significant correlation between concentration of  $\text{NO}_3$  and salinity indicates that the additional  $\text{NO}_3$  is entering the ocean as a component of groundwater that is reaching the ocean at the shoreline. There is no subsidy of  $\text{PO}_4$  corresponding to the subsidy of  $\text{NO}_3$  at Site 1.

*We concur with this observation.*

If the subsidy of  $\text{NO}_3$  is a result of construction and operation of the existing golf courses, future monitoring surveys should indicate if the leaching of  $\text{NO}_3$  to the ocean is a temporary phenomenon, which subsidizes with time, or a continuing pattern.

*Did the conservative mixing model already suggest that there is a definite input of fertilizers? Please explain.*

- Comparing water chemistry parameters to the Department of Health standards revealed that numerous measurements of  $\text{NO}_3$ , a few measurements of  $\text{NH}_4$  and TN, and several measurements of Chl *a* exceeded the Department of Health "not to exceed more than 10% of the time" criteria for dry and wet conditions of open coastal waters.

*This interpretation should be clarified or discussed to consider the inherent caveat due to the statistical constraints. For example, the geometric mean is used in the State Standards. Any suggestions as to how your data collection (or data analysis) might be re-designed statistically to be amenable for making comparisons with the State Standard? The inferences about the population characteristics, i.e., parameters that exceeded or not to exceed the standard, is based on a sampling protocol that may not adequately make this determination.*

No samples from Site 3, where groundwater entering the ocean was not detected, exceeded the Department of Health standards during December 2000.

*As this is the case, could Site 3 be used as another reference site that so far has no influence from land?*

It is apparent that the concentrations of  $\text{NO}_3$  in the nearshore marine waters that contain a mixture of seawater and natural groundwater may exceed the Department of Health criteria with no subsidies from human activities on land.

*Please explain further (it appears to be a contradiction) if this also applies to Site 1.*

Numerous values of  $\text{NO}_3$ ,  $\text{NH}_4$ , TN, turbidity, and Chl *a* exceeded specified limits for geometric means.

*To what degree (level of confidence) would this interpretation likely to hold true in view of the statistical constraints cited previously.*

Such exceedances occurred at all survey sites, including the control site which was far from any golf course influence.

*Please explain how this compares with the inferences made by the conservative mixing model.*

- As in past surveys, there appears to be a definite input of fertilizer nutrients (particularly  $\text{NO}_3$ ) to the nearshore ocean at sampling sites downslope from parts of the Makena Golf Courses.

*Is this based on the conservative mixing model? Please explain the statistical procedures (or scientific basis) that arrives to this conclusion.*

However, this input does not appear to be increasing from previous survey and does not appear to be detrimental to the marine community structure.

*We concur that the data do not seem to show a trend in  $\text{NO}_3$  buildups over the years. We have no comments with regards to impairment to the marine community structure, however, allegedly an old time resident below the resort claims otherwise. Any comments to this allegation?*