

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 )  
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DOCKET NO. A97-721  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER

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

FEB 19 1998 by *[Signature]*  
Date Executive Officer

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

LAND USE COMMISSION  
STATE OF HAWAII  
FEB 19 A. S. 40

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER

MAKENA RESORT CORP., a Hawai'i corporation ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on July 1, 1997; a First Amendment to Makena Resort Corp.'s Petition for Land Use District Boundary Amendment on August 14, 1997; and a Second Amendment to Makena Resort Corp.'s Petition for Land Use District Boundary Amendment on October 17, 1997, pursuant to chapter 205, Hawai'i Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the State land use district boundaries by reclassifying approximately 145.943 acres of land from the State Land Use Agricultural District into the State Land Use Urban District at Makena, Island and County of Maui, State of Hawai'i, identified as Tax Map Key Nos. 2-1-05:83, 84, 85, and portion 108; 2-1-07:4; and 2-1-08: portion 90 ("Petition Areas" or "Property"), to be incorporated in the further development of the existing Makena Resort. The Land Use Commission ("Commission"), having heard and

examined the testimony, evidence and arguments presented during the hearing; Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and the responses of the Office of Planning ("OP") and the County of Maui Planning Department ("Planning Department") to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, does hereby make the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. Petitioner filed a Petition for Land Use District Boundary Amendment on July 1, 1997; a First Amendment to Makena Resort Corp.'s Petition for Land Use District Boundary Amendment on August 14, 1997; and a Second Amendment to Makena Resort Corp.'s Petition for Land Use District Boundary Amendment on October 17, 1997 (collectively "Petition").

2. Petitioner, Makena Resort Corp., is a Hawai'i corporation, whose business and mailing address is 5415 Makena Alanui, Kihei, Maui, Hawai'i 96753. Petitioner is a wholly owned subsidiary of Prince Resorts Hawaii, Inc., a Hawai'i corporation, which is a part of the Seibu Group of Companies of Japan.

3. On October 13, 1997, OP filed a Statement of Position of the Office of Planning in Support of the Petition.

4. On October 17, 1997, the Planning Department filed a Position of the Maui Planning Department recommending conditional approval of the Petition.

5. No petitions to intervene were filed by third parties in this proceeding.

6. On October 21, 1997, the Commission held a prehearing conference which was attended by the parties.

7. On November 13, 1997, the Commission held a hearing on the Petition pursuant to public notices published on September 2, 1997, in the Honolulu Star-Bulletin and the Maui News.

8. At the hearing, Commission Exhibit No. 1, a letter from Michael Wilson of the Department of Land and Natural Resources ("DLNR"), dated October 22, 1997; Commission Exhibit No. 2, a letter from Don Hibbard, State Historic Preservation Division ("SHPD"), DLNR, dated October 24, 1997; and Commission Exhibit No. 3, a letter from Rae M. Loui, Deputy Director of the Commission on Water Resource Management, dated November 4, 1997, were received into evidence.

DESCRIPTION OF THE PETITION AREAS

9. The Makena Resort comprises approximately 1,030 acres at Makena, Maui, Hawai'i. The Petition Areas are comprised of six separate noncontiguous areas, identified as Petition Areas 1 through 6:

<u>PETITION AREA</u>	<u>TAX MAP KEY</u>	<u>ACRES</u>	<u>LAND USE DISTRICT RECLASSIFICATION FROM AND TO</u>
1	2-1-05:portion 108	83.503	Agricultural to Urban
2	2-1-05:portion 108 2-1-08:portion 90	17.484	Agricultural to Urban
3	2-1-08:portion 90	15.745	Agricultural to Urban

4	2-1-08:portion	90	3.065	Agricultural to Urban
5	2-1-05:83,84,85 and portion 108		25.777	Agricultural to Urban
6	2-1-07:4		0.369	Agricultural to Urban
	<u>Total</u>		<u>145.943</u>	

10. The Petition Areas are owned in fee by Makena Aina Corp. and Maui Prince Hotel Corp., affiliates of Petitioner. Petitioner does not have any fee or leasehold interest in the Petition Areas. Petitioner has no written development agreement; however, Petitioner is one of ten Hawai'i corporations, all wholly owned by Prince Resorts Hawaii, Inc., also a Hawai'i corporation. Makena Aina Corp. and Maui Prince Hotel Corp. are in like manner wholly owned subsidiaries of Prince Resort Hawaii, Inc. Petitioner is the development arm of these affiliate companies which own the Petition Areas.

11. A portion of Petition Area 1 is an existing golf course and the remainder is currently vacant. Petition Areas 2, 3, and 4 are also vacant. Petition Area 5 contains an existing 30-stall beach parking lot and a portion of said Petition Area 5 is in existing golf course use. The remainder of Petition Area 5 is vacant. Petition Area 6 is also currently vacant and, until recently, a single-family dwelling occupied that site.

12. The slope of each of the Petition Areas is as follows: Petition Area 1 is approximately 8 percent, Petition Area 2 is approximately 12 percent, Petition Area 3 is approximately 8 percent, Petition Area 4 is approximately 10

percent, Petition Area 5 is approximately 3 percent, and Petition Area 6 is generally level.

13. The Petition Areas are situated in Zone C of the Flood Insurance Rate Map, which is defined as an area of minimal flooding.

14. The soil characteristics of Petition Area 1 consist of Makena loam soil and Oanapuka extremely stony silt loam. Petition Area 2 is characterized by the Oanapuka series, and Petition Areas 3, 4, 5, and 6 are within the Makena loam soil series. Makena loam soil is characterized by slow to medium runoff and slight to moderate erosion hazards. The Oanapuka series is typified by stones covering 3 to 15 percent of the surface, with moderately rapid permeability and a slight to moderate erosion hazard.

15. All the Petition Areas are classified as overall (master) productivity rating class E under the University of Hawai'i Land Study Bureau's Detailed Land Classification system, and all of the Petition Areas are unclassified under the Agricultural Lands of Importance to the State of Hawai'i ("ALISH") system.

#### PROPOSAL FOR RECLASSIFICATION

16. Petitioner is ready to proceed with the next phase of development at the Makena Resort. This Petition would permit for the sequential development of this next phase.

17. A portion of Petition Area 1 is already developed as part of the South Golf Course at the Makena Resort. This use is proposed to remain. The remainder of Petition Area 1 and

Petition Areas 2 through 4 are proposed for multi-family residential use. Petition Area 5 is planned to be developed as a 500-room hotel. Petition Area 6 is proposed to be incorporated into the grounds of the existing Maui Prince Hotel without any further development anticipated.

18. Petitioner is proposing the boundary change amendment at this time for the following reasons:

- a. The amount of additional multi-family and residential acreage being proposed to be reclassified is approximately equal to already zoned apartment and residential lands which are currently in golf course use.
- b. The Petition Areas include portions of properties which are required by affiliated companies of Petitioner after the passage of the Kihei-Makena Community Plan in 1985.
- c. The amendments are consistent with the proposed Kihei-Makena Community Plan update.

19. The decision to proceed with development at this time was prompted by the decision by Petitioner to proceed with the development of a privately-owned wastewater treatment facility at Makena.

20. The first step in the next phase of development of the Makena Resort would be the development of the wastewater treatment facility located outside of the Petition Areas. Petitioner anticipates that construction will start by the second quarter of 1998. This would be followed by the commencement of

the development of infrastructure for the next phase of development of parcels M-5, M-6, S-7, M-4, and M-7 for single-family and multi-family residential development. Portions of parcels M-4 and M-7 are in Petition Area 3. The other parcels are outside of the Petition Areas.

21. Petitioner intends to start development of the 500-room hotel in Petition Area 5 by the end of 1999.

22. The estimated total cost of the development of the hotel, wastewater treatment facility, and infrastructure for the development of parcels M-5, M-6, S-7, M-4, and M-7 is \$303 million, with the development of the wastewater treatment facility costing approximately \$16 million and the hotel costing approximately \$180 million.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

23. The combined balance sheet of Petitioner, along with affiliates Maui Prince Hotel Corp., Makena Aina Corp., and Aina Mua Corp., as of December 31, 1996, indicates total assets of \$133,299,247.00 and total liabilities of \$24,483,074.00. In addition, the balance sheet indicates additional paid in capital of \$166,076,883.00, which was invested in the Makena Resort by the Seibu Group in Japan to date.

24. Petitioner proposes to finance further development at Makena Resort through additional capital investments by the Seibu Group in Japan and also through conventional financing with financial institutions both in Japan and the United States.



STATE AND COUNTY PLANS AND PROGRAMS

25. Petition Areas 1 through 6 are in the State Land Use Agricultural District, as reflected on the Commission's official map, M-9 (Makena).

26. The designations of each of the Petition Areas under the existing Kihei-Makena Community Plan are as follows:

<u>PETITION AREA</u>	
1	Single Family Residential, Multi-Family Residential, Park, and Agriculture
2	Multi-Family Residential and Agriculture
3	Multi-Family Residential and Single-Family Residential
4	Single-Family Residential
5	Hotel
6	Hotel

27. The proposed designations of the Petition Areas under the proposed update to the Kihei-Makena Community Plan are as follows:

<u>PETITION AREA</u>	
1	Multi-Family Residential and Park
2	Multi-Family Residential
3	Multi-Family Residential
4	Multi-Family Residential
5	Hotel
6	Hotel

28. The zoning designations of each of the Petition Areas are as follows:

<u>Petition Area</u>	
1	Interim and Agriculture
2	Interim and Agriculture
3	Interim and Agriculture
4	Interim
5	Interim
6	Interim

29. A portion of Petition Area 1 and all of Petition Areas 5 and 6 are within the County Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

30. In August 1996, KPMG Peat Marwick prepared a market assessment for a 500-room hotel and a 1,500 low-density multi-family development at the Makena Resort.

31. Maui County's capture rate of State visitors increased during the 1990s, with occupancies between 73 and 75 percent since 1994. Further, since 1995 room rates have jumped for the island of Maui by 15 percent, giving Maui the highest room rates in the State.

32. If all of Maui's then planned and zoned hotel rooms were built by the year 2015, there would still be market support for the proposed 500-room hotel at the Makena Resort. There were no hotel developments in the 1990s on Maui and, in fact, the hotel inventory for Maui fell by approximately 250

units since 1994. Further, there were approximately 350 fewer condominium units in this rental pool over the same period.

33. With the anticipated growth in visitors to the island of Maui, it was projected that Maui hotel room demand would amount to approximately 7,400 rooms per day and would increase to over 10,000 rooms per day by the year 2010. This growth would require an additional 700 to 2,000 more hotel rooms on the island of Maui than presently exists or that could possibly be built in all of the already zoned lands on the island by the year 2005, and up to 2000 more by the year 2010.

34. The 500-room hotel would be an important factor in meeting the projected shortfall of hotel rooms on the island.

35. With regard to determining long-range absorption rates for multi-family condominium development, developer sales at those projects averaged 50 units per year.

36. The proposed multi-family sites at the Makena Resort, including those proposed for the Petition Areas, would offer panoramic views, frontage on the golf course, privacy, exclusivity, a quiet environment, and low-density units. New multi-family units sales at the Makena Resort would be approximately 75 to 100 units per year. Further, if Petitioner started marketing multi-family condominium units in the year 2000, it would sell out the 1,500 units planned for the entire Makena Resort by the year 2015.

#### SOCIO - ECONOMIC IMPACTS

37. To date, the Seibu Group of Companies, of which Petitioner is an affiliate, has invested approximately \$1.2

billion in the State of Hawai'i and provides employment opportunities for over 2,300 Hawai'i residents, of which 520 are employed at the Makena Resort.

38. While the development of multi-family and single-family units at the Makena Resort will not generate much long-term employment, as development occurs there will be short-term employment with construction jobs. Further, it is anticipated that the development of the 500-room hotel on Petition Area 5 would generate approximately 1,000 hotel construction jobs for a period of 24 months and long-term employment in excess of 500 additional hotel workers.

#### IMPACT UPON RESOURCES IN THE AREA

##### Agricultural Resources

39. Since all of the Petition Areas are classified as E under the Land Study Bureau and unclassified under the ALISH system, the removal of these lands from the State Land Use Agricultural District should not represent a significant loss of agricultural land for the island of Maui. The conversion of approximately 145 acres out of a total of approximately 248,457 acres in the Agricultural District on the island of Maui represents the removal of 0.06 percent of the total agricultural lands.

##### Flora and Fauna

40. The following endemic and indigenous species may be found on the Petition Areas: the Wiliwili tree which is considered endemic but not rare or endangered and the American golden plover, or Kolea, which is considered indigenous but not

rare or endangered. Further, past studies have noted that the Hawaiian black necked stilt, or Aeo, has been spotted in the area. It is considered endemic and also endangered. The native Aeo has been spotted occasionally at brackish water areas or ponds in the Makena region as well as the water hazards of the Makena golf courses. The Kolea has also been spotted on the fairways of the Makena golf courses.

41. Based upon a field inspection, it does not appear that there are any endangered or threaten species of plants or animals within the Petition Areas.

42. The area offshore of the Petition Areas, from the shoreline to the 100-fathom Isobath, between the islands of Maui, Moloka'i, Lana'i, and Kaho'olawe, are the principal breeding and calving area for the wintering population of endangered North Pacific Humpback Whales. This coastal area has been designated part of the Hawaiian Islands Humpback Whale National Marine Sanctuary.

#### Archaeological and Historical Resources

43. Aki Sinoto Consulting prepared an archaeological inventory survey of each of the six Petition Areas, ranging from inventory level survey to data recovery and monitoring.

44. To date, approximately 50 archaeological surveys have been conducted in the Makena Resort area, 12 of which cover portions of the six Petition Areas.

45. In Petition Area 1, a total of 18 significant sites were found, most of which indicated a traditional Hawaiian agricultural community. Sites consists of enclosures, small

C-shaped structures, and agricultural clearing mounds. Permanent in situ preservation has been recommended for three of these sites and the remaining 15 sites have been recommended for further mitigation work.

46. In Petition Areas 2 and 3, a total of eleven previously unrecorded sites were recovered, nine in Petition Area 2, and two in Petition Area 3. These also indicated traditional Hawaiian agricultural activities. Six of the total sites, five in Petition Area 2 and one in Petition Area 3, have been recommended for further data recovery.

47. Petition Area 4 was covered by three previously completed studies and one recorded site was found which was never further tested. Subsurface testing conducted during this current survey indicated a complete absence of remains, resulting in an evaluation of this site as "no longer significant." This was a natural site that had not been used by prehistoric clients. No further archaeological procedures are recommended in this Petition Area.

48. Petition Area 5 was included in at least four previous studies between 1978 and 1992. During the current survey, no significant remains were present in this Petition Area.

49. In Petition Area 6, archaeological inventory and data recovery procedures were completed in 1994 on a historic habitation complex and archaeological monitoring was conducted during the demolition of existing modern structures, and the

clearing and grading of this parcel. No further significant remains were encountered and the parcel has been cleared by SHPD.

50. Petition Areas 4, 5, and 6 either have no significant historic sites or the sites have already been mitigated, and in Petition Areas 1, 2, and 3, archaeological data recovery of sites significant solely for their information content will be needed prior to any land alteration. Further, in Petition Area 1, several sites are to be preserved. If these mitigation commitments are carried out, impacts to the significant historic sites would be acceptably handled.

51. With regard to native Hawaiian cultural activities, there are no known heiau or other religious sites in any of the Petition Areas.

52. Petitioner has agreed to preserve most of the burial sites in situ. Three known sites are within the existing golf course and there may be several others within the undeveloped areas which will be covered by a preservation plan for Petition Area 1.

#### Groundwater Resources

53. The Commission on Water Resource Management ("CWRM") recommended coordination with the County to incorporate this project into the County's Water Use and Development Plan. CWRM noted that the water supply source for this project was already overpumping the sustainable yield of the 'Iao aquifer, and CWRM was considering designating the aquifer as a water management area. If the aquifer is designated, all groundwater withdrawals to the purveyor would be subject to water use

permits. The service area would be subject to a declaration of a water shortage or a water emergency. If withdrawals are constrained, uses may be subject to allocation to users by the purveyor.

#### Recreational Resources

54. The Petition Areas are located in a master-planned resort area. Recreational opportunities in the Kihei-Makena community are abundant and diverse. In the Makena area, there are two championship golf courses, a tennis center, and open space for jogging and walking. Shoreline resources in the vicinity include Makena State Park's Oneloa Beach, the Ahihi-Kinau Natural Area Reserve, and LaPerouse Bay. To the north of the Petition Areas, there are numerous beaches, municipal parks, golf courses, and other recreational opportunities available. The proposed development will not adversely impact existing recreational facilities.

#### Scenic Resources

55. The proposed development will be in conformance with a consistent design theme throughout the entire Makena Resort. The development will provide open space relief, landscaping, and low-rise building forms to complement existing developed properties and the surrounding environment. Alteration of natural landforms and impacts on public views to and along the shoreline will be minimized.



## ENVIRONMENTAL QUALITY

### Noise, Air, and Water Quality

56. Construction activities are expected to be limited to daylight hours and all normal dust control measures such as watering and sprinkling will be undertaken by Petitioner.

57. The Department of Health has an air quality monitoring site located approximately 5½ miles to the north of the Petition Areas which monitors particulate matter and sulfur dioxide. To date, the ambient air in the Kihei region is significantly below applicable State standards.

58. The United States Department of the Interior, Fish and Wildlife Service, included the following comments regarding the proposed development in their letter dated October 29, 1997:

"The affected land area does not contain any Federally endangered or threatened species. However, the Service is concerned that changes in water quality associated with the boundary change may result in the degradation of water quality and thereby impact fish and wildlife resources and habitats. The Service recommends that the boundary change petition incorporate provisions for long-term nearshore and stream water quality monitoring. Sediments, water, and biotic samples should be tested for organochlorine pesticides associated with past agricultural uses, as well as herbicides, insecticides, and termiticides currently used in residential and resort areas and for metals and petroleum hydrocarbons which are generally present in stormwater runoff. This testing should be done as part of a baseline and then continued periodically until the impacts of the proposed land use changes on aquatic and marine habitats have been fully assessed."

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Highway and Roadway Facilities

59. Access to Makena Resort is provided by Makena Alanui, which is a two-lane undivided roadway through the entire Makena Resort. At its north, Makena Alanui becomes Wailea Alanui

Drive, which is a four-lane divided roadway that runs through the Wailea Resort. The regional accesses are provided by Piilani Highway and South Kihei Road.

60. Makena Alanui presently carries approximately 6,000 vehicles per day.

61. Utilizing generally accepted practices recommended by the Institute of Transportation Engineers, the proposed resort residential development of Petition Areas 1 through 4 would generate peak hour trips ranging from 5 vehicles per hour to 46 vehicles per hour. Petition Area 5 which is planned for a 500-room hotel would generate up to 362 vehicles per hour, and therefore warrant the preparation of a traffic impact analysis report. Except for Petition Area 5, the potential trips generated from the remaining Petition Areas are not considered significant.

62. The traffic distribution system within the Makena Resort proposes three connecting roads leading mauka off of Makena Alanui. The roadways connecting to Makena Alanui would be stopped controlled requiring traffic wanting to enter Makena Alanui to stop and yield the right-of-way. Traffic heading south on Makena Alanui desiring to make a left turn will be provided with left-hand turning lanes.

#### Water Service

63. The average daily demand for potable water for the entire Makena Resort is calculated to be 2.13 million gallons per day ("MGD"). In 1975, the predecessor-in-interest of Petitioner, along with other landowners, entered into the Central Maui Source

Development Agreement. The Joint Venture developed approximately 13.4 MGD additional capacity for the Central Maui System, of which Petitioner is entitled to 4/19ths of said amount.

Petitioner believes that said allocation would be sufficient to meet the average daily demand for the entire Makena Resort.

64. The County of Maui Board of Water Supply had the following comments regarding the proposed development, dated October 15, 1997:

"The applicants are members of the Central Maui Joint Venture project. Source for the project will be deducted from their remaining allocation. Nevertheless, availability of water will be reviewed at the time of application for meter. The applicants should be informed that the project may be subject to delays until new sources are brought on line.

The project requires major system improvements. The upper elevations for four of the six Petition Areas appear to be substandard in regards to the low water pressure available from our water tank, which is located at an elevation of 265'. The applicants are required to provide water for fire and domestic uses according to standards.

The project is served by the Central Maui system. The Department has operating wells in the Iao and Waihee aquifer to serve this system. In addition, the Department has drilled wells in the Paia aquifer, and has built a treatment plant on the Iao Ditch. Although the Paia aquifer wells are experiencing approval delays, the Iao Ditch plan is expected on-line within the next few months.

The Iao aquifer is under scrutiny by the State Commission on Water Resource Management. They will designate if rolling annual average pumpage exceeds 20 MGD. Moving annual average pumpage from the Iao aquifer, as of September 1, 1997 was 19.65 MGD.

We have roughly 430,000 gallons in outstanding water commitments in the form of meter reservations.

The proposed project represents a potential increase in water use of roughly 750,000 gallons per day. Most of this potential use is already reflected in the

community plan. This estimate is based on state per-acre standards. Actual usage can vary widely with the specifics of project development. Fire, domestic and irrigation calculations will be reviewed during the subdivision and building permit process."

65. Presently within the Makena Resort, there is a 1.5 million gallon low level storage reservoir for potable water. The reservoir is serviced by an existing 30-inch transmission line, reducing down to a 20-inch line and then to a 12-inch line. Leading out of the reservoir is an existing 18-inch line, which is then reduced to 16-inch and 12-inch lines that service the Makena Resort.

66. In order to serve the development of the entire Makena Resort, two additional potable water storage reservoirs would be required. A mid-level storage reservoir with a capacity of 1.5 million gallons and a high level storage reservoir with a capacity with approximately 1.0 million gallons would be required. Additional transmission lines would be required to supply water to these reservoirs.

#### Wastewater Reclamation

67. Developed portions in the Makena Resort are presently serviced by a private treatment plant located at the southwest corner of the Maui Prince Hotel site. The design capacity of the plant is 127,000 gallons per day ("gpd"), with daily flows to the plant ranging from 30,000 to 107,000 gpd.

68. The wastewater requirements for the entire Makena Resort will be 700,000 gpd during the initial phase and ultimately 1.5 million gallons for the entire Makena Resort. Petitioner proposes to construct a new wastewater reclamation

facility that will be sized for 700,000 gallons, with expansion capacities to 1.5 million gallons.

69. A collection system with sewage lines installed in the roadways will take the wastewater from development sites to three proposed wastewater pump stations. From these pump stations, a pressure line will extend upward to the wastewater reclamation facility.

#### Drainage

70. Presently, drainage sheet flows through the Makena Resort. There are no major drainways of perennial streams existing in the property.

71. New drainage facilities would be developed along with roadway construction. In addition, with regard to onsite development, the drainage design will take into account County drainage standards. Onsite detention or retention basins will be considered to ensure that there will be no increase in runoff from the Petition Areas that would affect downstream properties.

#### Solid Waste

72. Residential solid waste is collected by County crews and deposited at the County's Central Maui Landfill. The Central Maui Landfill also accepts commercial waste from private collection companies. Solid waste generated by the proposed development is not expected to adversely impact the services or facilities of the County.

#### Schools

73. The State Department of Education ("DOE") operates three schools in the Kihei area. Kihei Elementary School and

Kamalii Elementary School cover Grades K to 6, while Lokelani Intermediate School includes Grades 7 and 8. Public school students in Grades 9 through 12 attend Maui High School in Kahului. The proposed development will not adversely affect the service requirement of DOE, compared to the current amount of land already zoned for residential and apartment use.

#### Police and Fire Protection

74. The County of Maui Police Department, headquartered in Wailuku, services the Kihei-Makena region with its Kihei patrol. Further, fire prevention and protection services are available to the Kihei-Makena area through the Kihei Fire Station located at the corner of South Kihei Road and Waimahaihai Street. Based on the availability of these services, the proposed development will not adversely affect the service requirements of the County Police Department and the Department of Fire Control.

#### Electrical Power and Communications

75. Currently, electric, telephone and cable T.V. services are available within Makena Resort.

#### CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

76. The proposed reclassification of the Petition Areas is in general conformance with the standards of the State Land Use Urban District, as set forth in section 15-15-18, HAR, as follows:

- (1) It shall include lands characterized by "city-like" concentrations of people, structures, urban level of services and other related land uses.

The Petition Areas are within the master-planned Makena Resort. The parcels to be reclassified are designated for urban use in the existing or proposed community plan, and located adjacent to lands already in golf course or hotel uses.

- (2) It shall take into consideration the following specific factors:
- A. Proximity to centers of trading and employment except where the development would generate new centers of trading and employment.

The Petition Areas are in close proximity to the existing Maui Prince Hotel and Makena Golf Courses. As part of a master-planned resort, the Petition Areas will served as a center of economic activity. In a broader regional context, when considered with Wailea, the Petition Areas are a part of a regional resort community which provides significant economic benefit to the County.

- B. Substantiation of economic feasibility by the Petitioner.

Based on the financial capability of Petitioner and the market demand for the proposed development, the development is economically feasible.

- C. Proximity to basic services such as sewers, transportation systems, water, sanitation, schools, parks, and police and fire protection.

Basic infrastructural services such as wastewater collection, transportation systems, and water are located or will be available in close proximity to the Petition Areas. Drainage improvements will be implemented as development occurs for each parcel, and will be in accordance with

applicable County of Maui standards. Schools, parks, and police and fire protection are available to service the Petition Areas.

D. Sufficient reserve areas for urban growth in appropriate locations based on a ten year projection.

The proposed reclassification of the Petition Areas is being requested in the context of improving and enhancing future resort activities and operations. In terms of urban growth, the proposed action will enable Makena Resort to implement land uses as part of its long-range development master plan designed to maintain the Resort's competitiveness over the next 10 to 15 years.

- (3) It shall include lands with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects.

The Petition Areas are located within Zone C, areas of minimal flooding and are gently sloping. The Petition Areas are not subject to tsunami inundation and unstable soil conditions.

- (4) In determining urban growth for the next ten years, or in amending the boundary, land contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans.

The Petition Areas are within the master-planned Makena Resort. All of the Petition Areas abut the existing Urban District boundary. Moreover, most of the Petition Areas are indicated for future urban use in the existing Kihei-Makena Community Plan. All land within the Petition Areas is indicated for urban use on the proposed community plan.



- (5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans.

The Petition areas are appropriate for Urban District classification. Their location within the Makena master-planned Resort establishes the appropriate land use context for Urban classification. The existing Kihei-Makena Community Plan shows most of the Petition Areas in urban use while the proposed version of the plan shows all of the Petition Areas in urban use.

- (6) It may include lands which do not conform to the standards in paragraphs (1) to (5):
- (A) When surrounded by or adjacent to existing urban development; and
  - (B) Only when those lands represent a minor portion of this district.

The Petition Areas are adjacent to existing urban development. The total acreage of the proposed reclassification represents a minor portion of the amount of Urban District lands in the Kihei-Makena region.

- (7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.

The proposed reclassification does not contribute to scattered spot urban development since the Petition Areas are intended to be incorporated as part of the master-planned development of Makena Resort. The proposed action will not necessitate unreasonable public investment in infrastructural facilities or public services.

- (8) It may include lands with a general slope of twenty percent or more which do not provided open space amenities or scenic values if the commission finds that those lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

The Petition Areas contain slopes significantly less than 20 percent.

CONFORMANCE WITH THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAI'I STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

77. The proposed reclassification of the Petition Areas generally conforms to the following goals, objectives, priorities, and policies of the Hawai'i State Plan, as defined in chapter 226, HRS:

§226-4, HRS, State Goals

226-4(1), HRS: A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai'i's present and future generations.

§226-5, HRS, Objective and Policies for Population

226-5(a), HRS: It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.

226-5(b)(1), HRS: Manage population growth statewide in a manner that provides increased opportunities for Hawai'i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.

226-5(b)(2), HRS: Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

The implementation of the Makena Resort Master Plan will provide increased economic activities and employment opportunities in accordance with community desires as

expressed through the Kihei-Makena Community Plan update process.

§226-6, HRS, Objectives and Policies for the Economy - in General

226-6(a)(1), HRS: Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai'i's people.

226-6(b)(8), HRS: Encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility.

The proposed reclassification will provide additional urban lands to facilitate residential and hotel development in the region. With development of the residential and hotel components, construction jobs will be created. In the long-term, hotel-related and residential service employment opportunities will be created.

§226-103, HRS, Economic Priority Guidelines

226-103(1): Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.

A. Encourage investments which:

- (i) Reflect long-term commitments to the State;
- (ii) Rely on economic linkages within the local economy;
- (iii) Diversify the economy;
- (iv) Reinvest in the local economy;
- (v) Are sensitive to community needs and priorities; and
- (vi) Demonstrate a commitment to provide management opportunities to Hawai'i residents.

The proposed reclassification will provide additional urban lands to facilitate implementation of the Makena Resort Master Plan. Investment capital for resort and multi-family

development would generate employment multiplier impacts beneficial to the local economy.

§226-104, HRS, Population Growth and Land Resources Priority Guidelines

226-104(b)(1), HRS: Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

226-104(b)(2), HRS: Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the Agricultural District.

The proposed reclassification is located in close proximity to areas where public facilities are available. Roadway improvements, a new water tank, and a wastewater reclamation facility (private) are also proposed to service the future infrastructure demands in Makena. The Petition Areas are designated "E," or very poorly suited for agricultural use by the Land Study Bureau. Under the ALISH system, all of the Petition Areas are "Unclassified." The reclassification of the Petition Areas will not have a significant impact upon agricultural activities in the County of Maui and the State of Hawai'i.

78. The proposed reclassification of the Petition Areas generally conforms to the objectives and policies of the following State functional plans, as defined in chapter 226, HRS: Agriculture, Energy, Historic Preservation, Recreation, Tourism, and Transportation.

CONFORMANCE WITH THE COUNTY OF MAUI KIHEI-MAKENA  
COMMUNITY PLAN AND GENERAL PLAN

79. The land use designations for the Petition Areas generally conforms with the proposed Kihei-Makena Community Plan. The proposed development also generally conforms with the goals, objectives, and policies of the proposed Kihei-Makena Community Plan. The Kihei-Makena Community Plan update process started in 1992. The plan has been reviewed by the Kihei-Makena Citizens Advisory Committee, the Planning Department, and the Maui Planning Commission. The plan is presently under review by the Maui County Council. The Council held a public hearing on the plan on November 12, 1997.

80. The proposed development of the Petition Areas generally conforms with the General Plan of the County of Maui by addressing the following objectives and policies:

"To preserve for present and future generations existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County."

"Provide and maintain a range of land use districts sufficient to meet the social, physical, environmental and economic needs of the community."

"To encourage exceptional and continuing quality in the development of visitor industry facilities."

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

81. The proposed reclassification of the Petition Areas is in general conformance with the Coastal Zone Management Program, chapter 205A, HRS, in the areas of recreational resources, historical/cultural resources, scenic and open space

resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, and marine resources, since mitigation measures will be undertaken for the historical/cultural resources and coastal water quality issues.

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

#### CONCLUSIONS OF LAW

Pursuant to chapter 205, HRS, and the Hawai'i Land Use Commission Rules under chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Areas, consisting of approximately 145.943 acres of land in the State Land Use Agricultural District at Makena, Island and County of Maui, State of Hawai'i, identified as Tax Map Key Nos. 2-1-05:83, 84, 85, and portion 108; 2-1-07:4; and 2-1-08: portion 90, into the State Land Use Urban District, is reasonable, conforms to the standards for establishing the Urban District boundaries, is non-

violative of section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to sections 205-17 and 205A-2, HRS.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Areas being the subject of this Docket No. A97-721 filed by Petitioner, Makena Resort Corp., consisting of approximately 145.943 acres of land in the State Land Use Agricultural District at Makena, Island and County of Maui, State of Hawai'i, identified as Tax Map Key Nos. 2-1-05:83, 84, 85, and portion 108; 2-1-07:4; and 2-1-08: portion 90, and approximately shown on Exhibit "A", attached hereto and incorporated by reference herein, is hereby reclassified into the State Land Use Urban District, and the State land use district boundaries are amended accordingly, subject to the following conditions:

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.

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 hereinabove or the hotel described in paragraph 21 hereinabove 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.

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.

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.



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 rezoning is not required.

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.

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.

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.

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.

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.

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.

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.

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 Hawai'i and County of Maui agencies.

14. The Petition Areas shall be developed in accordance with the Kihei-Makena Community Plan.

15. Petitioner shall obtain appropriate changes in zoning from the County of Maui for the Petition Areas.

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's Department of Public Works and Waste Management.

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.

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.

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.

20. The Commission may fully or partially release or amend the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

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.

22. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

DOCKET NO. A97-721 - MAKENA RESORT CORPORATION, a Hawaii corporation

Done at Honolulu, Hawai'i, this 19th day of February 1998,  
per motion on February 12, 1998.

LAND USE COMMISSION  
STATE OF HAWAI'I

By *Rupert K. Chun*  
RUPERT K. CHUN  
Chairperson and Commissioner

By (opposed)  
M. CASEY JARMAN  
Vice Chairperson and Commissioner

By (absent)  
LAWRENCE N.C. ING  
Vice Chairperson and Commissioner

By *P. Roy Catalani*  
P. ROY CATALANI  
Commissioner

By *Isaac Fiesta, Jr.*  
ISAAC FIESTA, JR.  
Commissioner

By *Herbert S.K. Kaopua, Sr.*  
HERBERT S.K. KAOPUA, SR.  
Commissioner

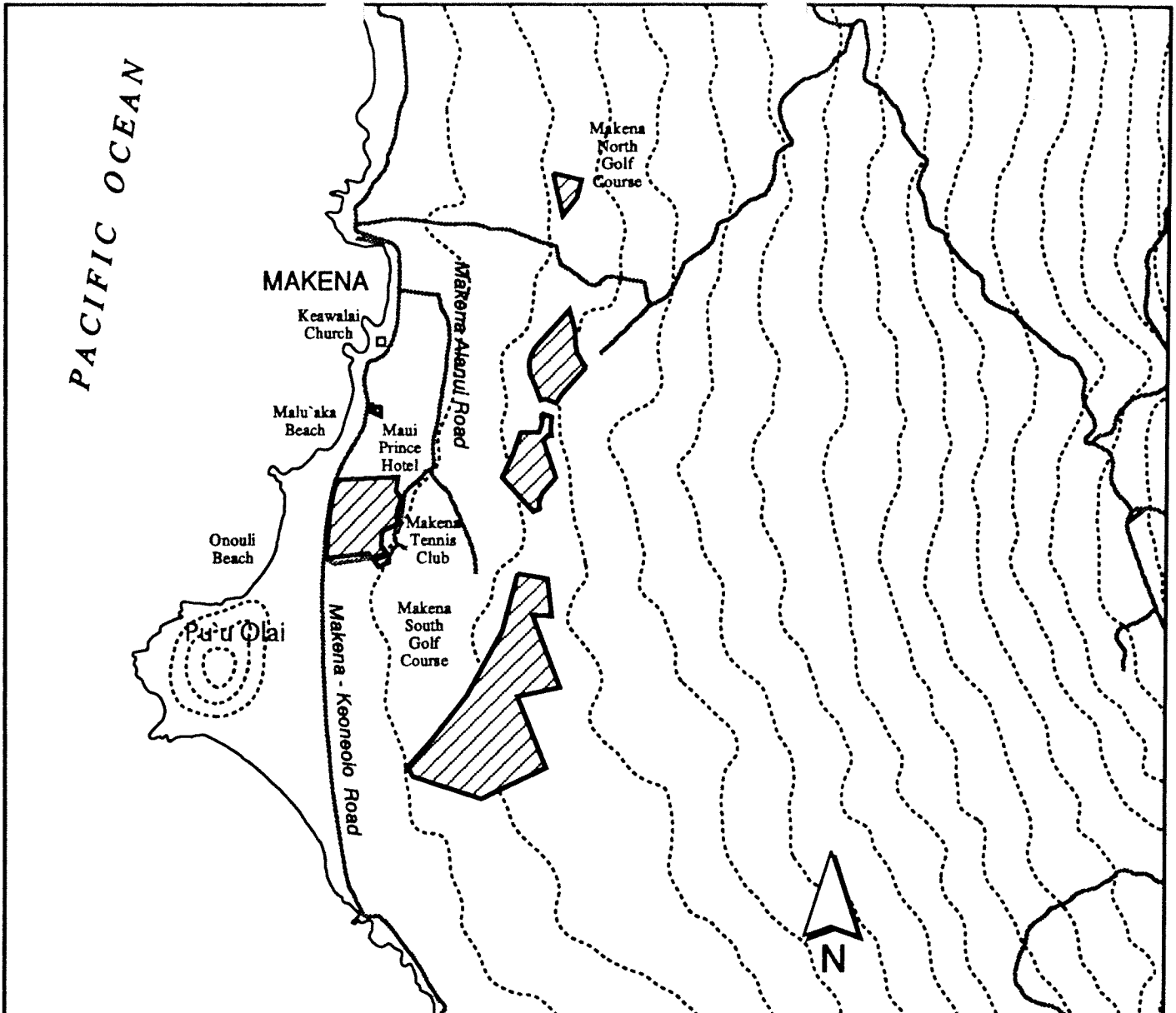
By *Merle A.K. Kelai*  
MERLE A. K. KELAI  
Commissioner

By *Joann N. Mattson*  
JOANN N. MATTSON  
Commissioner

By (absent)  
PETER YUKIMURA  
Commissioner

Filed and effective on  
February 19, 1998

Certified by:  
*[Signature]*  
Executive Officer



A97-721 / MAKENA RESORT  
CORP.,  
A Hawai'i Corporation

LOCATION MAP

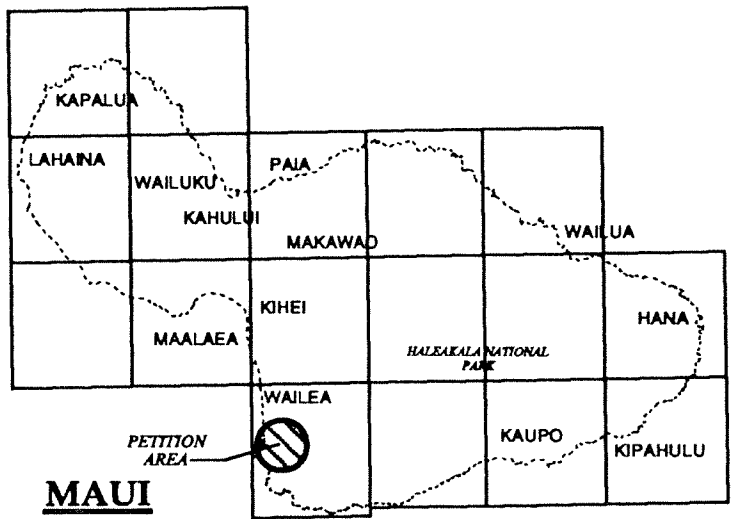
TAX MAP KEY NO.: 2-1-05: 83, 84,  
85, & por. 108; 2-1-07: 4; &  
2-1-08: por. 90

Makena, Maui, Hawai'i



**APPROVED AREA**

**EXHIBIT " A "**



**MAUI**

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

In the Matter of the Petition of ) DOCKET NO. A97-721  
)  
MAKENA RESORT CORP., ) CERTIFICATE OF SERVICE  
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 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

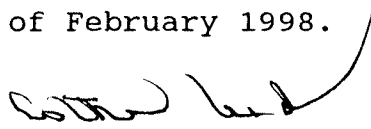
DEL. RICK EGGED, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

CERT. DAVID W. BLANE, Director of Planning  
Planning Department, County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

CERT. JEFFREY SCHMIDT, 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, Suite 2530  
737 Bishop Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 19th day of February 1998.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer