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**TO:** Honorable Mike White,  
Council Chair  
Maui County Council  
County of Maui  
200 South High Street  
Wailuku, Hawai'i 96793

**DATE:** December 27, 2018

**SUBJECT:** Change in Zoning Annual  
Compliance Report  
for Parcel H-2 (Lot 19)

**Enclosed is/are:**

Copies	Date	Description
1 (HC) + 1 (CD)	December 2018	Change in Zoning Annual Compliance Report for Parcel H-2 (Lot 19)

	For your information For necessary action For your review For your files	For your use As requested For your signature Returning
X		

**REMARKS:** On behalf of H2R, LLC, the owner of Parcel H-2 (Lot 19), we are transmitting the Change in Zoning Annual Compliance Report for your review. This report is in accordance with Condition No. 22 of Ordinance 3613 (Change in Zoning for Makena Resort Area). Condition No. 22 stipulates the following:

*"The developer shall provide timely annual compliance reports to the Planning Director and the Council. The compliance reports shall include:  
(a) the status of the developer's compliance with each of these conditions;  
and (b) a reasonable estimate of the time needed for full compliance."*

Should you have any questions or require additional information, please feel free to call me at (808)983-1233.

Signed:

*Yukino Uchiyama*

Yukino Uchiyama  
Associate

YU:yp

Copy to:

Everett Dowling, Dowling Company, Inc. (w/enclosure)  
Brian Ige, Dowling Company, Inc. (w/enclosure)  
Leilani Pulmano, Pac Rim Land (w/enclosure)

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GENERAL COMMUNICATION NO. 19-1

# **Change in Zoning Annual Compliance Report**

**for**

**PARCEL H-2 (LOT 19)  
(TMK No. (2)2-1-005:085)**

**Prepared by  
H2R, LLC**

**December 27, 2018**

# TABLE OF CONTENTS

I. BACKGROUND AND CONTEXT.....	Page 1
II. REPORT ON COMPLIANCE WITH CONDITIONS OF ZONING.....	Page 2

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## LIST OF EXHIBITS

<b>Exhibit A.</b>	State Historic Preservation Division Acceptance Letters Regarding Archaeological Preservation Plan and Archaeological Monitoring Plan for H2R Parcel
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# I. BACKGROUND AND CONTEXT

As background, Ordinance No. 3613, entitled "A BILL FOR AN ORDINANCE TO AMEND PORTIONS OF LAND ZONING MAP NOS. 5 AND 514 TO ESTABLISH A-2 APARTMENT DISTRICT, B-2 COMMUNITY BUSINESS DISTRICT, B-R RESORT COMMERCIAL DISTRICT, H-M HOTEL DISTRICT, PK-1 NEIGHBORHOOD PARK DISTRICT, PK-4 GOLF COURSE PARK DISTRICT, R-1 AND R-3 RESIDENTIAL DISTRICT ZONING (CONDITIONAL ZONING) FOR LANDS SITUATED AT MAKENA, MAUI, HAWAII", authorized a Change in Zoning for parcels of land located in Makena, Maui, Hawaii. Lands subject to the Change in Zoning action comprised approximately 603.303 acres, and are hereinafter referred to as "Zoned Parcels". Of the Zoned Parcels, H2R, LLC (H2R) has ownership of Parcel H-2 (Lot 19), which is identified as Tax Map Key (TMK) No. (2)2-1-005:085.

The Change in Zoning for the Zoned Parcels was issued subject to 44 conditions. Condition No. 22 stipulates the following:

*The developer shall provide timely annual compliance reports to the Planning Director and the Council. The compliance reports shall include:  
(a) the status of the developer's compliance with each of these conditions;  
and (b) a reasonable estimate of the time needed for full compliance.*

Pursuant to Condition No. 22, this Annual Compliance Report is hereby being submitted by H2R, LLC, as owner of Parcel H-2 (Lot 19) to document compliance with applicable conditions of zoning for Parcel H-2 (Lot 19).

## II. REPORT ON COMPLIANCE WITH CONDITIONS OF ZONING

As required pursuant to Condition No. 22, the following information is provided to report on compliance with the applicable conditions of Ordinance No. 3613 for Lot 19 (hereinafter referred to as the "H2R Parcel"). Specifically, this report includes (a) the status of compliance, with each of the 44 conditions and (b) a reasonable estimate of the time needed for full compliance.

**Condition No. 1.:** *In the R-1, R-2, and R-3 Residential District zoned areas, the density shall not exceed 2.5 single-family dwelling units per acre.*

**Status of Compliance:** The H2R Parcel is not subject to the provisions of this condition.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 2.:** *In the A-2 Apartment District zoned areas, the density shall not exceed eight units per acre, and the building height shall not exceed 45 feet. Height shall be measured from the natural or finish grade, whichever is lower.*

**Status of Compliance:** The H2R Parcel is not subject to the provisions of this condition.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 3.:** *In the B-2 Community Business District zoned areas, the gross floor area of each building shall not exceed 60 percent of the total lot area.*

**Status of Compliance:** The H2R Parcel is not subject to the provisions of this condition.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 4.:** *On Lot 19 (H-M Hotel District), the building height shall not exceed 45 feet and shall be consistent with the Urban Design Standards for Building Form in the Kihei-Makena Community Plan; no more than 89 units shall be developed; and no lockout units shall be allowed. Height shall be measured from the natural or finish grade, whichever is lower.*

**Status of Compliance:** H2R is the owner of Lot 19. H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue throughout the life of the project.

**Condition No. 5.:** *The developer shall preserve Makena's significant views of the Pacific Ocean and the broad vista to the Central Maui and Upcountry regions. The use of walls higher than four feet in front yard setbacks shall be prohibited.*

**Status of Compliance:** H2R will comply with the provisions of said condition.

**Estimate of Time for Compliance:** This condition will continue throughout the life of the project.

**Condition No. 6.:** *In the B-2 Community Business District zoned areas, the following permitted uses shall incorporate acoustical measures into the facility to mitigate potential noise impacts: amusement enterprises, including billiard and pool halls; auditoriums and theaters; baseball and football stadiums and other sport activities and amusements; bowling alleys; dancing and hula studios; gymnasiums; miniature golf courses; music conservatories and music studios; physical-culture studios; and printing, lithography, and publishing shops.*

**Status of Compliance:** The H2R Parcel is not subject to the provisions of this condition.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 7.:** *All exterior lighting shall be shielded from adjacent residential properties and nearshore waters, and shall be fully shielded to prevent uplight. Lighting requirements in force at the time of building permit application shall be applied.*

**Status of Compliance:** H2R will comply with the provisions of said condition.

**Estimate of Time for Compliance:** This condition will continue throughout the life of the project.

**Condition No. 8.:** *In the B-2 Community Business District zoned areas, merchandise, equipment, and supplies shall be stored within enclosed buildings or enclosed areas that are appropriately screened with fencing and landscape planting for the following permitted uses: equipment rental and sales yards; hardware and garden supply stores; parcel delivery stations; and printing, lithography, and publishing shops.*

**Status of Compliance:** The H2R Parcel is not subject to the provisions of this condition.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 9.:** *The developer, its successors and permitted assigns shall pay the Department of Education, \$3,000 per dwelling unit upon issuance of each building permit to be used, to the extent possible, for schools serving the Kihei-Makena Community Plan area; provided that, should the State pass legislation imposing school impact fees that apply to the Makena Resort Area, the developer, its successors and permitted assigns, shall from that point forward comply with the State requirements, or contribute \$3,000 per dwelling unit, whichever is greater. Should a previous agreement exist between the Department of Education and the landowner, this condition shall prevail.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** Upon issuance of each building permit for a new dwelling unit during the life of the project.

**Condition No. 10.:** *The developer shall provide pedestrian and bicycle access ways within the roadways throughout and fronting the Makena Resort Area. A schematic plan for pedestrian and bicycle access ways throughout and fronting the Makena Resort Area shall be submitted to the Department of Planning for consideration by the Maui Planning Commission in conjunction with SMA permit applications.*

**Status of Compliance:** The 2010 Annual Compliance Report submitted by ATC Makena Holdings, LLC (ATC Makena), the owner of the majority of the Zoned Parcels, included the schematic plan prepared by Miyabara & Associates for pedestrian, bicycle, and cart access ways throughout the Makena Resort area.

**Estimate of Time for Compliance:** This condition was satisfied with the submittal of the aforementioned, a Schematic Plan by ATC Makena.

**Condition No. 11.:** *The developer shall make a contribution to the County for traffic improvements in an amount equal to \$5,000 per unit. The contribution shall be paid to the County prior to issuance of the initial building permit. Upon adoption of a traffic impact fee ordinance, the developer shall comply with the ordinance in lieu of this voluntary contribution. Should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the applicable amount shall be the greater of the two. Such contributions or fees shall not be counted towards Condition No. 12 below.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** The contribution will be paid prior to issuance of the initial building permit and will continue with the issuance of additional building permits as the H2R Parcel is developed.

**Condition No. 12.:** *Upon commencement of the first phase of construction, the developer shall pay its pro-rata share to upgrade Pi'ilani Highway from Kilohana Drive to Wailea Ike Drive to four lanes of traffic, and shall cooperate with the State Department of Transportation and other area developers to implement such improvements concurrent with development.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** H2R anticipates having an agreement with the State Department of Transportation (DOT) in place prior to development of the H2R Parcel.

**Condition No. 13.:** *The developer shall provide construction access roads from Pi'ilani Highway to the construction sites. Construction traffic shall be prohibited on Kilohana Drive, Wailea Ike Drive, Wailea Alanui Drive, and Makena Alanui Drive to the extent practicable.*

**Status of Compliance:** H2R does not own the right-of-way for a construction access road from Piilani Highway to the H2R Parcel. H2R will coordinate with adjacent landowners, should construction access for the future development of Parcel H2R be warranted and practicable.



**Estimate of Time for Compliance:** At the time of construction on the H2R Parcel, as applicable.

**Condition No. 14.:** *The developer shall develop and submit a Transportation Management Plan ("TMP"), to be reviewed and approved by the State Department of Transportation, the County Department of Public Works, and the County Department of Transportation. The purpose of the TMP shall be to reduce traffic generated by construction activity related to the Makena Resort Area. The TMP shall provide for programs such as park and ride, shuttles, and/or restrictions on worker access to ongoing construction activity during peak hour traffic. Upon approval, project contractors shall implement the TMP during construction activities. The developer shall submit an annual report to the State Department of Transportation, the County Department of Public Works, the County Department of Transportation, and the Maui County Council to document the success of the TMP in meeting its benchmarks of reducing traffic during project construction.*

*The TMP shall be reviewed and approved by the State Department of Transportation, the County Department of Public Works, and the County Department of Transportation prior to issuance of each SMA permit within the Makena Resort Area.*

**Status of Compliance:** As discussed in the 2018 Annual Compliance Report submitted by ATC Makena, a Construction Transportation Management Plan (CTMP) for the Makena Resort area was submitted to the SDOT, the County Department of Public Works (DPW), and the County Department of Transportation (CDOT) on July 13, 2009. This CTMP was included in the 2010 Annual Compliance Report submitted by ATC Makena. As noted in ATC Makena's 2018 Annual Compliance Report, ATC Makena will work with applicable reviewing agencies to obtain approval of the CTMP.

**Estimate of Time for Compliance:** An approved CTMP will be in place prior to issuance of the first SMA Use Permit for development within the Zoned Parcels.

**Condition No. 15.:** *As part of the first SMA application, the developer shall submit a TMP to reduce the dependency on individual vehicular transportation modes. The TMP shall be reviewed and approved by the State Department of Transportation, the County*

*Department of Public Works, and the County Department of Transportation to address post-construction traffic issues.*

**Status of Compliance:** As discussed in the 2018 Annual Compliance Report submitted by ATC Makena, a Transportation Management Plan (TMP) for post-construction operations for the Makena Resort area was submitted to the SDOT, the DPW, and the CDOT on July 13, 2009. By letter dated August 19, 2009, the SDOT approved the TMP. The TMP was included in ATC Makena's 2010 Annual Compliance Report.

**Estimate of Time for Compliance:** An approved TMP for post-construction operations will be in place prior to construction being completed for the first project within the Zoned Parcels.

**Condition No. 16.:** *The developer shall participate in the pro rata funding and construction of adequate civil defense measures as determined by the State and County civil defense agencies.*

**Status of Compliance:** As discussed in the 2018 Annual Compliance Report submitted by ATC Makena, ATC Makena agreed to the two (2) locations for emergency sirens at the Makena Resort Wastewater Treatment Plant (WWTP) and near Makena State Park. Final Right-Of-Entry and Non-Exclusive License Agreements for two (2) new emergency sirens dated May 25, 2012 between ATC Makena and the State of Hawaii, Department of Defense (DOD) were included in the ATC Makena's 2012 Annual Compliance Report. ATC Makena was informed by DOD in December 2016 that the two (2) sirens would be located at Makena State Park and ATC Makena's WWTP.

**Estimate of Time for Compliance:** Compliance with this condition has been satisfied. The State DOD installed the siren at the Makena Resort WWTP in 2017.

**Condition No. 17.:** *Should any human burials or any historic sites such as artifacts, charcoal deposits, stone platforms, pavings, or walls be found, the developer shall stop construction work in the immediate vicinity and notify the State Historic Preservation Division (SHPD), the Maui/Lanai Island Burial Council (MLIBC), and the Maui County Cultural Resources Commission (CRC).*

**Status of Compliance:** H2R will comply with the provisions of said condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 18.:** *The developer, its successors and permitted assigns, shall provide a comprehensive preservation/mitigation plan pursuant to Chapter 6E, Hawaii Revised Statutes, that has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, and the Office of Hawaiian Affairs prior to any grading within the project area.*

**Status of Compliance:** An Archaeological Preservation Plan (APP) and an Archaeological Monitoring Plan (AMP) for the H2R Parcel were prepared in compliance with the requirements Chapter 6E, HRS, consistent with the findings of Archaeological Inventory Surveys (AIS) for the parcel which were accepted by the State Historic Preservation Division (SHPD) in July 2008. Both APP and AMP were accepted by the SHPD in July 2009, the acceptance letters for which are presented herein as **Exhibit "A"**.

**Estimate of Time for Compliance:** Given the foregoing, it is H2R's understanding that compliance with this condition has been satisfied for the H2R Parcel.

**Condition No. 19.:** *Marine monitoring programs shall be conducted which include monitoring and assessment of coastal water resources (groundwater and surface water) that receive surface water or groundwater discharges from the hydrologic unit where the project is located. Monitoring programs shall include both water quality and ecological monitoring.*

*Water Quality Monitoring shall provide water quality data adequate to assess compliance with applicable State water quality standards at Hawaii Administrative Rules Chapter 11-54. Assessment procedures shall be in accordance with the current Hawaii*

*Department of Health ("HIDOH") methodology for Clean Water Act Section 305(b) water quality assessment, including use of approved analytical methods and quality control/quality assurance measures. The water quality data shall be submitted biannually, or every six months, to HIDOH for use in the State's Integrated Report of Assessed Waters prepared under Clean Water Act Sections 303(d) and 305(b). If this report lists the receiving waters as impaired and requiring a Total Maximum Daily Load ("TMDL") study, then the monitoring program shall be amended to evaluate land-based pollutants, including: (1) monitoring of surface water and groundwater quality for the pollutants identified as the source of the impairment; and (2) providing estimates of total mass discharge of those pollutants on a daily and annual basis from all sources, including infiltration, injection, and runoff. The results of the land-based pollution water quality monitoring and loading estimate shall be submitted to the HIDOH Environmental Planning Office, TMDL Program.*

*The ecological monitoring shall include ecological assessment in accordance with the Coral Reef Assessment and Monitoring Program protocols used by the Department of Land and Natural Resources. The initial assessment shall use the full protocol. Subsequent biannual assessments can use the Rapid Assessment Techniques. Results shall be reported biannually to the Aquatic Resources Division, Department of Land and Natural Resources.*

*The monitoring and assessments shall be conducted by degreed scientists experienced with Clean Water Act programs, water quality monitoring, water quality assessment, water quality-based permitting, water quality modeling, watershed planning, and TMDL. Study design should be made available for both public review and peer review by the State Department of Health, Department of Aquatic Resources, and the University of Hawaii researchers. Results of monitoring shall be published and publicly available online.*

**Status of Compliance:** ATC Makena, as the owner of Makena Resort (and the majority of the Zoned Parcels), conducts the bi-annual marine monitoring program required by this condition. The most recent monitoring reports are submitted each year as part of ATC Makena's Annual Compliance Report. These reports are also transmitted to the State DOH.

**Estimate of Time for Compliance:** Water quality monitoring and assessment for the Zoned Parcels will continue to be conducted twice a year by the ATC Makena in compliance with the provisions of said condition.

**Condition No. 20.:** *The developer shall implement efficient soil-erosion and dust-control measures during and after development to the satisfaction of DOH and the County.*

**Status of Compliance:** H2R will comply with the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 21.:** *The developer shall give notice to the Department of Planning and the Council of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Makena Resort Area, prior to any development.*

**Status of Compliance:** H2R will comply with this condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 22.:** *The developer shall provide timely annual compliance reports to the Planning Director and the Council. The compliance reports shall include: (a) the status of the developer's compliance with each of these conditions; and (b) a reasonable estimate of the time needed for full compliance.*

**Status of Compliance:** In compliance with Condition No. 22, this Annual Compliance Report is being submitted by H2R for the H2R Parcel.

**Estimate of Time for Compliance:** This condition will continue annually in January during the life of the project.

**Condition No. 23.:** *Failure to fulfill any condition may result in a reversion to former or more appropriate zoning or community plan designations or other remedies.*

**Status of Compliance:** H2R acknowledges the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 24.:** *If any of the property subject to this Change in Zoning is consolidated with other property for purposes of an SMA permit application, these conditions shall apply to the entirety of the consolidated property.*

**Status of Compliance:** H2R acknowledges the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 25.:** *The developer shall comply with the County's Residential Workforce Housing Policy as provided in Chapter 2.96, Maui County Code.*

**Status of Compliance:** H2R will comply with the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 26.:** *The developer shall comply with all applicable County water ordinances. The water rates for the residential workforce housing units shall be no higher than the general water consumer rates set by the County in its annual budget, for as long as the units are subject to Chapter 2.96, Maui County Code.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 27.** *The developer shall provide a water conservation plan for the Makena Resort Area, approved by the Department of Water Supply, prior to the issuance of any SMA permits. For each project, the developer shall construct a dual waterline system to accommodate the use of non-potable water for landscaping and irrigation purposes prior to the issuance of any building permits.*

**Status of Compliance:** A Water Conservation Plan (WCP) for the Makena Resort area was approved by the County Department of Water Supply (DWS) on July 27, 2009. This report is included in the 2010 Annual Compliance Report submitted by ATC Makena.

**Estimate of Time for Compliance:**

As discussed above, the WCP for the Makena Resort area was submitted with the ATC Makena's Annual Compliance Report in 2010. H2R will comply with applicable water conservation requirements prior to the issuance of any building permits for development within the H2R Parcel.

**Condition No. 28.:** *All energy systems for all residential, commercial, and hotel units shall be designed and constructed to meet all applicable Energy Star® requirements established by the Climate Protection Division of the United States Environmental Protection Agency in effect at the time of construction. For purposes of this condition, energy systems shall include all hot-water systems, roof and attic areas, outside walls, windows, air-cooling systems, and heating systems.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 29.:** *All residential, commercial, and hotel units shall comply with Chapter 16.16, Maui County Code.*

**Status of Compliance:** H2R will comply with the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 30.:** *All air-cooling systems and all heating systems for laundry facilities, swimming pools, and spa areas shall make maximum use of energy-efficient construction and technology.*

**Status of Compliance:** H2R will comply with the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 31.** *The developer shall construct a minimum of 60 new parking stalls at Maluaka Beach, including at least 10 at the north end, within one year of the issuance to the developer of any SMA permit by the Maui Planning Commission relating to a parcel or a portion thereof that is a subject of this Change in Zoning. Unless necessary to protect public safety or to comply with State or Federal law, the required parking stalls need not be asphalt surfaced. Development costs and land shall not satisfy park dedication requirements.*

**Status of Compliance:** H2R will comply with the provisions of said condition.

**Estimate of Time for Compliance:** Within one year of issuance of any SMA permit relating to the Zoned Parcels. H2R and ATC Makena will cooperate towards satisfying this requirement.

**Condition No. 32.:** *The developer shall develop an expansion of the beach park at the south end of Maluaka Beach, such that the beach park shall comprise at least 1.5 acres of land area for public use and beach access. The developer shall submit the necessary applications required for the expansion within six months of the approval of this Change in Zoning. The land area of the expansion of the existing park shall be applied as credit toward satisfying a portion of any applicable park dedication requirements.*

**Status of Compliance:** This condition has been satisfied. As discussed in ATC Makena's 2018 Annual Compliance Report, ATC Makena, in coordinating with Discovery Land Company, the Makena Cultural Focus Group, the Makena Community Advisory Group, and the Department of Parks and Recreation, implemented an expansion location acceptable to all parties to the south end of the existing Maluaka Beach Park. The expansion area is approximately 0.66 acres in size bringing the combined existing and proposed park up to 1.5 acres. ATC Makena formalized and documented the expansion in compliance with all County, State and Federal rules and regulations through the recordation of a Declaration of Restrictive Covenants for Park Purposes with the Bureau of Conveyances. A copy of the declaration and agreement was included in ATC Makena's 2018 Annual Compliance Report.



**Estimate of Time for Compliance:** This condition has been satisfied by ATC Makena.

**Condition No. 33.:** *To the extent practicable, the developer shall provide, in perpetuity, traversable lateral shoreline access in the area between the shoreward boundary and the mauka boundary of the Makena Resort Area. Costs associated with this condition shall not satisfy park dedication requirements.*

**Status of Compliance:** The H2R Parcel is not a shoreline adjacent property and thereby is not subject to this condition. In regards to the remainder of the Zoned Parcels, which are owned by ATC Makena, a schematic plan for pedestrian and bicycle access ways throughout the entire Makena Resort area was submitted as part of ATC Makena's 2010 Annual Compliance Report.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 34.:** *Within one year of the approval of this Change in Zoning, the developer shall initiate and fund a plan for the development of the State Park at Makena for the State Department of Land and Natural Resources and the Department of Parks and Recreation, soliciting and taking into consideration the comments of various user groups, including Surfrider Foundation, Savemakena.org, Maui Tomorrow, the Kihei Community Association, and the Makena Homeowner's Association. The plan shall incorporate recreational, landscaping, parking, and facility concepts as a guide for future development of the park. Costs associated with this condition shall not satisfy park dedication requirements.*

**Status of Compliance:** Compliance with this condition has been satisfied. As discussed in ATC Makena's 2018 Annual Compliance Report, ATC Makena submitted the final Makena State Park Plan dated February 2013 to the State Department of Land and Natural Resources, the County Department of Parks and Recreation and the Oneloa Coalition in March 2013. The final plan document and associated transmittals were submitted to the County of Maui Planning Department in March, 2013 in compliance with this condition. The County Department of Planning issued a letter of condition fulfillment dated June 3, 2013. These documents

were included in ATC Makena's 2014 Annual Compliance Report.

**Estimate of Time for Compliance:** Compliance with this condition has been satisfied by ATC Makena.

**Condition No. 35.:** *The developer shall renovate and beautify Makena Landing (TMK: 2-1-007:094), see attached map, in coordination with the Department of Parks and Recreation and the State Department of Land and Natural Resources. Costs associated with this condition shall not satisfy park dedication requirements.*

**Status of Compliance:** As owners of Makena Landing, ATC Makena is responsible for compliance with this condition. As discussed in ATC Makena's 2018 Annual Compliance Report, a Shoreline Setback Determination (SSD) for the Makena Landing beach park property was issued by the Department of Planning on May 20, 2013. In addition, a Special Management Area Minor Permit and Shoreline Setback Approval (SSA) for the proposed renovation and beautification work at the park were issued by the Department of Planning on October 1, 2013. Copies of these approvals were provided in ATC Makena's 2014 Annual Compliance Report.

In coordination with the Department of Parks and Recreation, ATC Makena has made various adjustments to the 2013 site plan to reflect input received from the Makena Community Advisory Group and the Makena Cultural Focus Group. A request to amend the 2013 permits has been granted by the Department of Planning.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 36.:** *The developer shall maintain Makena Landing (TMK: 2-1-007:094), North Maluaka (TMK: 2-1-007:068), and South Maluaka (TMK: 2-1-005:124), see attached map, and all future parklands within the Makena Resort Area.*

**Status of Compliance:** As owners of these three (3) park areas, ATC Makena is responsible for compliance with this condition. As discussed in the 2018 Annual Compliance Report submitted by ATC Makena, a Unilateral Agreement was submitted to County of Maui, Department of Parks and Recreation by ATC Makena for approval on June 26, 2009. After working with the Department of Parks and Recreation to revise the agreement and update the obligations for maintenance to reflect the expansion to Maluaka Beach Park discussed above in Condition No. 32, the Unilateral Maintenance Agreement was finalized and recorded with the Bureau of Conveyances. A copy of the agreement was also included in ATC Makena's 2018 Annual Compliance Report.

H2R's understanding is that ATC Makena will continue to maintain Makena Landing, North Maluaka, and South Maluaka as well as all future parklands within the Makena Resort Area.

**Estimate of Time for Compliance:** Not applicable.

**Condition No. 37.:** *To exhibit respect for the Hawaiian culture and a Hawaiian sense of place, structures within the Makena Resort Area shall be based on or inspired by principles of Hawaiian island architecture in design and construction.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 38.:** *The developer shall provide a baseline study survey of flora and fauna as part of each SMA permit application within the Makena Resort Area; the study shall be conducted by recognized independent experts on Hawaiian flora and fauna and list all endemic, indigenous, and endangered species, their distribution in the Makena Resort Area and adjacent shorelines. This study shall also include a preservation/mitigation plan and comments from the State Department of Land and Natural Resources, the U.S. Fish and Wildlife Service, and the U.S. Corps of Engineers, and the Maui representative of the Hawaii Wildlife Fund and The Nature Conservancy.*

**Status of Compliance:** As discussed in ATC Makena's 2018 Annual Compliance Report, Robert Hobdy prepared a baseline flora and fauna study of Makena's coastal lands. The study was circulated to the State Department of Land and Natural Resources, the U.S. Fish and Wildlife Service, U.S. Corps of Engineers, the Maui representative of the Hawaii Wildlife Fund, and The Nature Conservancy for review and comment. A copy of the flora and fauna study was submitted as part of the ATC Makena's 2010 Annual Report. A biological resources survey for Parcel H2R will be prepared prior to the development of this parcel.

**Estimate of Time for Compliance:** H2R will continue to comply with this condition.

**Condition No. 39.:** *No transient vacation rentals or time shares shall be allowed within this Makena Resort rezoning application area; and further, no special use permit or conditional permit for such accommodations shall be accepted by the Department of Planning.*

**Status of Compliance:** H2R acknowledges the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 40.:** *A second hotel shall not be constructed within the Makena Resort Area.*

**Status of Compliance:** H2R acknowledges the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 41.:** *All buildings constructed within the Makena Resort Area shall be LEED (Leadership in Energy and Environmental Design) certified if they are 500 square feet or larger.*

**Status of Compliance:** H2R will comply with the provisions of the aforementioned condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 42.:** *New dwelling units shall not exceed 800, excluding residential workforce housing.*

**Status of Compliance:** H2R acknowledges the provisions of the above-noted condition.

**Estimate of Time for Compliance:** This condition will continue for the duration of the project.

**Condition No. 43.:** *The developer, its successors and permitted assigns, shall contribute \$1,000 per market-priced unit, collected at issuance of building permit, to the County, for the development and maintenance of a police station in South Maui.*

**Status of Compliance:** H2R will comply with the provisions of the above-noted condition.

**Estimate of Time for Compliance:** Upon issuance of each initial building permit for market-priced units within the H2R Parcel.

**Condition No. 44.:** *The developer shall provide Driveway "D" from Makena Alanui Road to Makena Resort Sewage Treatment Plant and beyond as an emergency evacuation route for the area.*

**Status of Compliance:** The H2R Parcel is not subject to the provisions of this condition.

**Estimate of Time for Compliance:** Not applicable.

**EXHIBIT A.**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

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CHAIRPERSON  
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RUSSELL Y. TSUIJ  
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KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

July 21, 2009

Jeffrey Pantaleo, M.A.  
Archaeological Services Hawai'i, LLC  
1930 A Vineyard Street  
Wailuku, Hawai'i 96793  
[lisa@ashmaui.com](mailto:lisa@ashmaui.com)

LOG NO: 2009.2918  
DOC NO: 0907PC53  
Archaeology

**SUBJECT:** Chapter 6E-42 Historic Preservation Review – REVISED Archaeological Preservation Plan for SIHP #50-50-14-6371, -6373, -6374, -6377, -6378 and -6379 Maluaka Ahupua'a, Makawao District, Island of Maui, Hawai'i  
TMK: (2) 2-1-005:085 and (2) 2-1-005:108 por.

Thank you for the opportunity to again review this plan, which our staff received in PDF format on July 14 of 2009 (Rotunno-Hazuka and Pantaleo 2009): *Archaeological Preservation Plan for Sites 50-50-14-6371, -6373, -6374 Feature 1, -6377, -6378 and -6379*...Archaeological Services Hawai'i, LLC.

The plan was reviewed by SHPD staff on June 17 (SHPD LOG NO: 2008.5257; DOC NO: 0906PC32) and again on July 6 of 2009 (SHPD LOG NO: 2009.2892; DOC NO: 0907PC04), resulting in several requested revisions.

The preservation plan now contains the required information as specified in HAR §13-277-3 regarding the contents of preservation plans in general and is acceptable. An associated monitoring plan, received in July of 2008, was held pending acceptance of the preservation plan and will now be reviewed under separate cover.

Now that the plan has been accepted pursuant to HAR §13-277, please send one hardcopy of the *revised* document clearly marked **FINAL**, along with a copy of this review letter and a text-searchable PDF file on CD to the attention of "SHPD Library" at the Kapolei SHPD office.

If you have any questions or comments regarding this letter, please contact the SHPD's Lead Maui Archaeologist, Ms. Patty Conte ([Patty.J.Conte@hawaii.gov](mailto:Patty.J.Conte@hawaii.gov)).

Aloha,

A handwritten signature in cursive script that reads "Nancy A. McMahon".

Nancy McMahon, Deputy SHPO/State Archaeologist  
State Historic Preservation Division

c: Jeff Hunt, Director, Dept. of Planning, FAX (808) 270-7634  
Maui CRC, Dept. of Planning, 250 S. High Street, Wailuku, Hawai'i 96793



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July 21, 2009

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[lisa@ashmaui.com](mailto:lisa@ashmaui.com)

LOG NO: 2008.3045  
DOC NO: 0907PC54  
Archaeology

**SUBJECT: Chapter 6E-42 Historic Preservation Review –  
Archaeological Monitoring Plan for Parcel H-2  
Maluaka Ahupua'a, Makawao District, Island of Maui, Hawai'i  
TMK: (2) 2-1-005:085; (2) 2-1-005:108; (2) 2-1-005:120 por.**

Thank you for the opportunity to review this plan, which although originally submitted in 2008 was not subject to formal SHPD review until now. The plan (Rotunno-Hazuka and Pantaleo 2008); *Archaeological Monitoring Plan for Parcel H-2*...Archaeological Services Hawai'i, LLC, was received by our staff in hardcopy format on July 23 of 2008 but held pending acceptance of an archaeological inventory survey report and associated site preservation plan.

The plan was proactively prepared by your firm as a result of a long-standing archaeological consultant commitment between your firm and the project developer. Precautionary archaeological monitoring for all ground altering disturbance in the project area was recommended upon completion of at least two prior archaeological inventory surveys within the bounds of the current subject parcels, during which several culturally and historically significant sites have been identified (SHPD LOG NO: 2008.3048; DOC NO: 0807PC41 and SHPD LOG NO: 2008.4506; DOC NO: 0810PC21). Those known to be in the immediate vicinity of the proposed project include SIHP #50-50-14-6366 [post-Contact period walls/wall segments, wooden house remnant, concrete slab foundations, surface 'ili 'ili and refuse scatters, mounds], -6367 [late pre-Contact to early post-Contact L- and U-shaped enclosures], -6371 [pre-Contact habitation platform and five walled pits], -6372 [mid 19<sup>th</sup> century habitation midden scatter and wooden shack], -6373 [pre-Contact habitation enclosures and platform] -6374 [four boundary walls and a modified outcrop wall, all post-Contact in origin], -6376 [pre-Contact to early post-Contact habitation and agricultural features], -6377 [pre-Contact habitation U-shape and circular walled pit probably used for agriculture], -6378 [pre-Contact habitation square enclosure and modified outcrop with constructed pits and a natural cupboard] and -6379 [two rectangular pre-Contact habitation enclosures and platforms].

Feature 1 of -6374 and five other sites (-6371, -6373, -6377, -6378 and -6379) are subject to archaeological site preservation commitments (SHPD LOG NO: 2008.5257/DOC NO: 0906PC32; SHPD LOG NO: 2009.2892/DOC NO: 0907PC04; SHPD LOG NO: 2009.2918/DOC NO: 0907PC53). *Please note, we expect to receive written and photographic verification that short-term preservation measures are in place prior to the onset of ground altering activity within the subject parcels.*

Jeffrey Pantaleo, M.A.  
Page 2 of 2

As specified in the monitoring plan, there will be one archaeological monitor on site for each piece of ground altering machinery in operation during the proposed project. A coordination meeting with the construction crew and all other pertinent parties to explain monitoring procedures and that the monitoring archaeologist has the authority to halt work in the vicinity of a culturally significant find will be undertaken, and should anything of cultural significance be identified, the SHPD will be consulted for mitigation recommendations. The plan further states that in the event human remains are inadvertently exposed, both the SHPD and Maui/Lana'i Islands Burial Council (MLIBC) will be notified and appropriate burial protocol followed once jurisdictional determination has been made. *No human remains will be collected or removed from the project area unless specifically authorized by the SHPD.* A report detailing the findings of the monitoring activity will be prepared and submitted to our office for review within 180 days after the completion of the project.

The plan contains the required information as specified in HAR §13-279-4(a) regarding monitoring plans in general and is acceptable.

Now that the monitoring plan has been accepted pursuant to HAR §13-279, please send one hardcopy, clearly marked **FINAL**, along with a copy of this review letter and a text-searchable PDF file on CD to the attention of "SHPD Library" at the Kapolei SHPD office.

If you have any questions or comments regarding this letter, please contact the SHPD's Lead Maui Archaeologist, Ms. Patty Conte ([Patty.J.Conte@hawaii.gov](mailto:Patty.J.Conte@hawaii.gov)).

Aloha,



Nancy McMahon, Deputy SHPO/State Archaeologist  
State Historic Preservation Division

c: Jeff Hunt, Director, Dept. of Planning, FAX (808) 270-7634  
Maui CRC, Dept. of Planning, 250 S. High Street, Wailuku, Hawai'i 96793