

REAL ESTATE COMMISSION
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
STATE OF HAWAII
1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

**SUPPLEMENTARY
HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)
PUBLIC REPORT**

on

MAKENA SURF
(PHASE I)

(Portion thereof consisting of the following 15 units:
B-104, B-107, B-301, E-106, E-202, E-203, F-106, F-107,
F-206, G-101, G-102, G-105, G-201, G-202, and G-205)
Makena, Maui, Hawaii

REGISTRATION NO. 1331

This Report Is Not an Approval or Disapproval of This Condominium Project

It was prepared as a supplement to earlier Reports dated 10/29/80 & 10/4/83, issued by the Real Estate Commission on the above project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project until

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: May 13, 1986
Expires: November 4, 1986

SPECIAL ATTENTION

A comprehensive reading of this Report is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION DATED JUNE 9, 1980, AND ADDITIONAL INFORMATION SUBSEQUENTLY SUBMITTED AS OF APRIL 30, 1986. THE SELLER OF THE PROPERTY, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Public Report, October 29, 1980, and the Final Public Report, October 4, 1983, certain material changes have occurred.

a. On May 8, 1985, American Savings And Loan Association filed an action (the "Action") in the First Circuit Court of the State of Hawaii (the "Court"), Civil No. 85-1772, against MAKENA SURF (a partnership and the "Developer") to foreclose various mortgage liens upon the remaining MAKENA SURF apartments that the Developer owned. On November 12, 1985, the Court appointed John Anderson, Jr., as the Court's Commissioner/Receiver (the "Commissioner") in the Action.

b. On January 29, 1986, the Court entered an order that directed the Commissioner to proceed with the private sale of fifteen of the MAKENA SURF apartments (the "Apartments") owned by the Developer, which are noted under the Title on page 1 of this Report.

c. The Commissioner is proceeding with the private sale of the Apartments as directed by the Court. The Commissioner has requested the issuance of this Supplementary Public Report and in connection therewith has submitted to the Commission 14 Exhibits and letters, all of which are available for public inspection, updating various aspects of the project.

2. This Supplementary Public Report is made a part of the Commission's registration for the MAKENA SURF condominium project. The Commissioner is responsible for placing in the hands of all purchasers and prospective purchasers for subject 15 units, and securing a signed receipt therefor, this Supplementary Public Report (pink paper stock), the Final Public Report (white paper stock), issued October 4, 1983, and the Preliminary Public Report (yellow paper stock), issued October 29, 1980, and a copy of the revised Disclosure Abstract effective February 1, 1986.

3. All documents deemed necessary for the registration of this condominium project and the issuance of this Supplementary Public Report have been submitted to the Commission for examination.

4. The MAKENA SURF Declaration Of Horizontal Property Regime, dated July 25, 1983, has been amended to show the "as built" layout, location, apartment numbers and dimensions of all the MAKENA SURF, Phase I, apartments. The MAKENA SURF Declaration has also been amended to eliminate time-sharing. The MAKENA SURF By-Laws have been amended to increase the number of the members of the Board of Directors to nine, and to provide for the payment of common expenses in monthly installments.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended (known as the "Hawaii Horizontal Property Act"), and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.

6. Additional promotional material has been submitted pursuant to the rules and regulations promulgated by the Commission.

7. This Supplementary Public Report automatically expires on November 4, 1986, unless a Second Supplementary Public Report issues or the Commission, upon review of this registration, issues an order extending the effective period of this Supplementary Public Report and the Final Public Report.

With the exception of information contained under the following topical headings, the material in the Preliminary Public Report and in the Final Public Report is the same. This Report reflects the addition of a new topical heading "ASSOCIATION OF APARTMENT OWNERS."

DEVELOPER:

MAKENA SURF, an Oregon general partnership, whose principal place of business and post office address is 16th Floor, Lloyd Center Building, 700 NE Multnomah, Portland, Oregon 97208, is not making the private sale of the subject 15 units in the project.

As noted above, the Court appointed John W. Anderson, Jr., Suite 1460, Central Pacific Plaza, 220 South King Street, Honolulu, Hawaii 96813 (Phone No. (808) 528-4828), as Commissioner for purposes of proceeding with the private sale of subject 15 units in the project. Thus, inquiries that would normally be directed to Developer regarding sale of these units should now be directed to the Commissioner.

The Court appointed the Commissioner to sell the Apartments. Developer is responsible for the construction of the Apartments. Commissioner is not an agent of the Developer. Commissioner is not responsible for the construction of the Apartments. Commissioner is not responsible for the condition of the Apartments.

Commissioner makes no warranties to any purchaser as to the construction or the present condition of any Apartment. A purchaser will take possession and title to an Apartment "as is" and "with all faults."

The Developer installed certain appliances in each Apartment. A purchaser will take possession and title to any such installed appliance "as is" and "with all faults."

ATTORNEY REPRESENTING COMMISSIONER:

Crockett and Nakamura (William F. Crockett), 38 South Market Street, Wailuku, Maui, Hawaii 96793 (Phone No. (808) 244-3796), formerly represented MAKENA SURF, the Developer. Such attorneys no longer represent the Developer. Such attorneys only represent the Commissioner with respect to the private sale of subject 15 units in the project.

PUBLIC PARKING AND PUBLIC BEACH ACCESS OVER THE PROPERTY:

As noted under number 4(e) and (f) of ENCUMBRANCES AGAINST TITLE, the Developer has granted the County of Maui perpetual nonexclusive easements over the MAKENA SURF Property for public beach access and public parking.

PHASED DEVELOPMENT:

Hewlett, Jamison, Atkinson and Luey, A.I.A. Architects, whose address is 3223 S.W. Front Avenue, Portland, Oregon 97201, have issued certificates that show the substantial completion of the MAKENA SURF, Phase I, improvements. The Apartments are a part of the MAKENA SURF Phase I Improvements.

Developer has not commenced the construction of the MAKENA SURF Phase II Improvements or the Phase III Improvements. There is no specified time for the commencement of the construction of the Phase II Improvements or the Phase III Improvements.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE:

The MAKENA SURF Declaration has been amended to prohibit the creation of a "time-share plan" for any MAKENA SURF apartment.

The Association of Apartment Owners has adopted a set of House Rules. Among other things, it prohibits the keeping of pets and the use of open flame barbecuing equipment on the premises. It also establishes rules for use of the tennis courts and swimming pools. Prospective purchasers should examine these House Rules before purchasing so that personal requirements and expectations to be derived from the property can be ascertained.

CLOSING CONTRACT OF SALE:

The Commissioner has submitted to the Commission a specimen copy of the Contract of Sale that the Commissioner will use for the sale of the Apartments. This supersedes the form used by the Developer and referred to in the Final Public Report. Each purchaser and prospective purchaser should carefully review the terms of the Contract of Sale. The Contract of Sale complies with the Hawaii Horizontal Property Act.

The Commissioner must obtain Court confirmation of each private sale of an Apartment. If the Court should fail or refuse to confirm the private sale of an Apartment, the Commissioner will cancel that Contract of Sale.

The Commissioner has submitted to the Commission a specimen of the apartment deed that the Commissioner will use to convey title to each Apartment at the time each Contract of Sale closes. The Commissioner's apartment deed is not a warranty deed. Each apartment purchaser will be required to execute the Commissioner's apartment deed. The Commissioner's apartment deed will reserve to the Developer various rights with respect to the Developer's construction of the MAKENA SURF Phase II Improvements and the Phase III Improvements.

ENCUMBRANCES AGAINST TITLE:

First American Title Insurance Company has issued Commitments For Title Insurance, dated February 25, 1986, for each of subject apartments that show the following liens and encumbrances:

1. For any taxes that may be due and owing and a lien on the land, reference is hereby made to the Office of the Tax Assessor of the Second Division.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Shoreline setback lines as they may be established by the State Land Use Commission or by the County pursuant to Sections 205-31 and 37 inclusive of the Planning and Economic Development Code.
4. (a) The restrictions, covenants and conditions as contained in that certain Declaration of Covenants, Conditions and Restrictions (Tsunami or Storm Wave District) dated December 1, 1980, filed in the Office of the Assistant Registrar as Document No. 1044655.

(b) The following easements are shown on Map 2, Land Court Application No. 1846 (amended), as set forth by Land Court Order No. 63679, filed on September 8, 1982, to wit:
 - (1) Easement 3, area 5,723 square feet, for public parking purposes.
 - (2) Easement 4, area 3,380 square feet, for pedestrian purposes.
 - (3) Easement 5, area 5,358 square feet, for public parking purposes.
 - (4) Easement 6, area 3,010 square feet (10 feet wide), for pedestrian purposes.
 - (5) Easement 7, area 4,429 square feet, for access and utility purposes.

- (6) Easement 8, area 9,522 square feet, for utility purposes.
 - (7) Easement 9, area 1,732 square feet (20 feet wide), for electrical purposes.
 - (8) Easement 10, area 22,614 square feet, for electrical purposes.
 - (9) Easement 11, area 6,363 square feet, for electrical purposes.
 - (10) Easement 12, area 402 square feet (20 feet wide) for electrical purposes.
- (c) Designation of the following easements as shown on Map 3, as set forth by Land Court Order No. 68241, filed December 20, 1983, to wit:
- (1) Easement 13, for utility purposes.
 - (2) Easement 14, for electrical purposes.
 - (3) Easement 15, for electrical purposes.
 - (4) Easement 16, for electrical purposes.
 - (5) Easement 17, for electrical purposes.
 - (6) Easement 18, for drainage purposes.
 - (7) Easement 19, for drainage purposes.
 - (8) Easement 20, for drainage purposes.
 - (9) Easement 21, for water purposes.
- (d) Grant of Easement in favor of Maui Electric Company, Limited, a Hawaii corporation, and Hawaiian Telephone Company, a Hawaii corporation, dated November 21, 1983, filed in the Office of the Assistant Registrar as Document No. 1220710, granting an easement for utility purposes over Easements 13, 14, 15, 16 and 17, as shown on Map 3, Land Court Application No. 1846.
- (e) Grant of Easement in favor of the County of Maui, a body politic and corporate of the State of Hawaii, dated February 13, 1984, filed in the Office of the Assistant Registrar as Document No. 1222193, granting a non-exclusive easement for beach access over Easements 4 and 6.

- (f) Grant of Easement in favor of the County of Maui, a body politic and corporate of the State of Hawaii, dated February 13, 1984, filed in the Office of the Assistant Registrar as Document No. 1222194, granting a non-exclusive easement for public parking over Easements 3 and 5.
- 5. Condominium Map No. 497, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii; and Condominium Map No. 879, filed in the Bureau of Conveyances of the State of Hawaii.
- 6. The restrictions, covenants, agreements, obligations conditions, easements and other provisions set forth in Declaration Of Horizontal Property Regime dated July 25, 1983, filed as Document No. 1187665, and also recorded in Liber 17273, Page 327.

The foregoing Declaration of Horizontal Property Regime was amended by the following:

Document No. 1230471, Liber 17807 Page 148
Document No. 1253367, Liber 18093 Page 653
Document No. 1253368, Liber 18093 Page 660
Document No. 1253369, Liber 18093 Page 667
Document No. 1293397, Liber 18568 Page 633
Document No. 1339480, Liber 19166 Page 154

- 7. The restrictions, covenants, agreements, obligations, conditions, easements and other provisions set forth in By-Laws dated July 25, 1983, filed as Document No. 1187667, and also recorded in Liber 17273, Page 377.
- 8. All exclusive and nonexclusive easements mentioned in said Declaration, By-Laws, and Condominium Maps.
- 9. Mortgage, Security Agreement And Financing Statement by Makena Surf, an Oregon general partnership duly qualified and doing business in the State of Hawaii, as Mortgagor, to American Savings and Loan Association, a Utah corporation, duly qualified and doing business in the State of Hawaii, as Mortgagee, dated September 3, 1982, filed as Document No. 1131418 and recorded in Liber 16571, Page 279.
- 10. Security Agreement And Financing Statement (Assignment Of Sales Agreements And Escrow Deposits) by Makena Surf, an Oregon general partnership, as Assignor, to American Savings and Loan Association, a Utah corporation, as Assignee, dated September 3, 1982, filed as Document No. 1131419, and recorded in Liber 16571, Page 319. Consent thereto filed as Document No. 1131420.

11. Second Mortgage, Security Agreement And Financing Statement by Makena Surf, an Oregon general partnership, as Mortgagor, to American Savings and Loan Association, a Utah corporation, as Mortgagee, dated February 13, 1985, filed as Document No. 1283690, and recorded in Liber 18457, Page 770.
12. Security Agreement And Financing Statement (Assignment Of Sales Agreements And Escrow Deposits) by Makena Surf, an Oregon general partnership, as Assignor, to American Savings and Loan Association, a Utah corporation, as Assignee, dated February 13, 1985, filed as Document No. 1283691, and recorded in Liber 18458, Page 1.
13. Third Mortgage by Makena Surf, an Oregon general partnership, as Mortgagor, to Waipao Joint Venture, a joint venture registered as a Hawaii general partnership, as Mortgagee, dated September 3, 1982, filed as Document No. 1131424, and recorded in Liber 16571, Page 389.

Subordination of foregoing mortgage to items 11 and 12 above; Agreement dated February 15, 1985, filed as Document No. 1283692, and recorded in Liber 18458, Page 25.

14. Application For Mechanic's And Materialmen's Lien, Second Circuit Court, M. L. No. 541, Bob Pezzani Ceramic Tile, Inc., Lienor, Hood Corporation, et al., Defendant, filed on July 10, 1984.
15. Notice Of Lien in favor of The Association Of Apartment Owners Of Makena Surf, dated March 28, 1985, filed as Document No. 1290780, recorded in Liber 18537, Page 103.
16. Notice Of Pendency Of Action, Circuit Court Of The First Circuit, Civil No. 85-1772, American Savings and Loan Association, a Utah corporation, Plaintiff, Makena Surf, an Oregon general partnership, et al., Defendant, dated May 8, 1985, filed as Document No. 1300139, and recorded in Liber 18654, Page 166.
17. Order Granting Claimant's Application For Mechanic's And Materialman's Lien, M. L. No. 85-0007(2), Second Circuit Court, Hewlett Jamison Atkinson & Luey, an Oregon general partnership, Claimant, Makena Surf, an Oregon general partnership, Developer, Hood Corporation, a California Corporation, General Contractor, Respondent, dated September 24, 1985, recorded in Liber 18989, Page 748.
18. (a) Financing Statement - Makena Surf, Debtor, American Savings and Loan Association, Secured Party, recorded September 14, 1982, Liber 16571, Page 311.
 (b) Financing Statement - Makena Surf, Debtor, American Savings and Loan Association, Secured Party, recorded February 19, 1985, Liber 18457, Page 761.

The Commissioner will convey the Apartments subject to the encumbrances shown as items 2 through 8 above. The Commissioner will not convey the Apartments subject to the remaining liens or encumbrances shown above. The Commissioner will have such other liens and encumbrances released or discharged as to each Apartment at the time each Contract of Sale closes.

PURCHASE MONEY HANDLING:

The Commissioner has executed an Escrow Agreement, dated April 4, 1986, with First American Title Company Of Hawaii, Inc., an escrow, to hold and disburse the purchase money received from the sale of the Apartments. It is incumbent upon the purchaser and the prospective purchaser that he read the executed Escrow Agreement with care. The terms of the Escrow Agreement are made a part of the Commissioner's Contract Of Sale for the Apartments. The Escrow Agreement complies with the Hawaii Horizontal Property Act.

MANAGEMENT AND OPERATIONS:

Chaney Brooks and Company, 666 Front Street, Lahaina, Maui, Hawaii 96761 (Phone No. (808) 667-9547), has been appointed the new managing agent.

ASSOCIATION OF APARTMENT OWNERS:

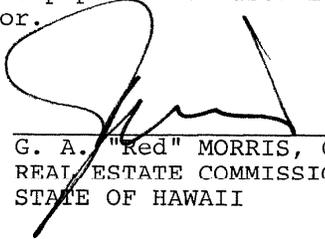
The Makena Surf Association Of Apartment Owners (the "Association"), an unincorporated association organized under the Hawaii Horizontal Property Act, has been formed. Its address and phone number are 96 Makena Road, Kihei, Maui, Hawaii 96753 (Phone No. (808) 667-9547). The members of the Association have elected Association directors and officers. The Association has employed Chaney Brooks and Company as the Association's Managing Agent.

The Association has undertaken and is responsible for the care and administration of the common elements of the MAKENA SURF horizontal property regime. The Association has adopted a common expense budget for the current period pursuant to the MAKENA SURF By-Laws.

Each Apartment is liable for its share of the Association's common expenses.

The purchaser and prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice Of Intention submitted July 9, 1980, and information subsequently submitted by the Commissioner as of April 30, 1986.

This SUPPLEMENTARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 1331 filed with the Commission July 9, 1980. This Supplementary Public Report, when reproduced, shall be a true copy of the Commission's Supplementary Public Report. The paper stock used in making facsimilies must be pink in color.



G. A. "Red" MORRIS, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

DISTRIBUTION:

Department of Finance, County of Maui
Bureau of Conveyances
Planning Commission, County of Maui
Federal Housing Administration
Escrow Agent

Registration No. 1331

May 13, 1986