

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

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HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT ON

KIHEI BAY SURF
Kihei Road
Kihei, Maui, Hawaii

REGISTRATION NO. 967

IMPORTANT — Read This Report Before Buying

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

It reflects information obtained by the Real Estate Commission in its investigation of the 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 but may only take reservations therefore after

- (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: March 28, 1978
Expires: April 28, 1979

SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED JANUARY 10, 1978 AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED WITH THE COMMISSION AS OF MARCH 20, 1978. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES.

1. KIHEI BAY SURF is a leasehold condominium project consisting of seven (7) two-story buildings without basements, and one hundred eighteen (118) apartments and one hundred fifty-two (152) unassigned parking stalls (135 standard and 17 compact).

2. The Developer of the project has filed all documents and materials deemed necessary by the Commission for the registration of this proposed condominium project and the issuance of this Preliminary Public Report.

3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners and a copy of the approved Floor Plans) have not yet been recorded in the Bureau of Conveyances of the State of Hawaii.

4. No advertising and promotional matter has been filed pursuant to the rules and regulations promulgated by the Commission.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of the Horizontal Property Act, Chapter 514A of the Hawaii Revised Statutes and the Condominium Rules and Regulations which relate to Horizontal Property Regime.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, March 28, 1978, unless a Final or Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

7. This Preliminary Public Report is made a part of registration on KIHEI BAY SURF condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers. Securing a signed copy of the Receipt for the Preliminary Horizontal Property Regime Public Report from each such person is also the responsibility of the Developer.

NAME OF PROJECT: KIHEI BAY SURF

LOCATION: The approximately 2.840 acres of land to be committed to the regime is situated at Kihei Road, Kihei, Maui, Hawaii.

TAX MAP KEY: SECOND DIVISION: 3-9-1-107 (portion).

ZONING: A-1 (Apartment).

DEVELOPER: The Shores of Maui, Inc., a Hawaii corporation, 1026 South King Street, Honolulu, Hawaii 96814, Telephone: 536-7321; Officers: Walter Luckau, President/Treasurer, 309-C Lalo Place, Kahului, Maui, Hawaii 96753, and Jo Paul Rognstad, Vice President/Secretary, 1026 South King Street, Honolulu, Hawaii 96814.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Walter Beh, II and Dwight M. Rush), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, Phone 521-2611.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a leasehold condominium project consisting of one hundred eighteen (118) apartments contained in seven (7) two-story buildings, without basements, constructed principally of wood and concrete block.

The location and description of the various apartments of the project are as set forth in the Exhibit attached to this Preliminary Public Report.

The apartments have immediate access to the grounds of the project or to a deck leading to the stairways, each of which leads to the grounds of the project.

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, the lanai air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein.

COMMON ELEMENTS: One (1) freehold estate is designated in all remaining portions of the project, herein called the "common elements", including specifically but not limited to:

1. The land in fee simple;
2. All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, walkways, entrances and exits of said buildings;
3. All yards, grounds and landscaping;
4. All parking areas;
5. All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across

the project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;

6. Swimming pool, jacuzzi and tennis courts; and

7. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: No part of the common elements, herein called the "limited common elements", are designated or set aside for the exclusive use of certain apartments.

INTEREST TO BE CONVEYED TO PURCHASERS: Documents filed with the Real Estate Commission indicate that the purchaser will secure a Condominium Conveyance Document, consisting of an Apartment Deed conveying an Apartment and an undivided 1/118th fractional interest (a .8474+ percentage interest) in the common elements of the buildings, and a Ground Lease demising the same undivided interest in the lands of the project, and the same proportionate share of all common profits and expenses of the project and shall be used for all other purposes including voting.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, except when a mortgagee has entered into possession of an apartment following (i) a default under a first mortgage, (ii) a foreclosure proceeding, or (iii) a conveyance in lieu of foreclosure, the apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and for no other purpose; except that the apartments may also be rented for transient or hotel purposes. The owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of the Declaration and the By-Laws attached thereto.

OWNERSHIP OF TITLE: A Preliminary Report dated November 23, 1977, issued by Security Title Corporation, as submitted to the Commission, indicates that the fee simple owner of the property to be committed to the regime is vested in Surfside Properties, Inc., a Hawaii corporation, P. O. Box 419, Kihei, Maui, Hawaii 96753, which has entered into an unrecorded sales agreement with Walter G. Luckau, unmarried, for the sale of the property, as disclosed by instrument recorded in the Bureau of Conveyances of the State of Hawaii in Liber 12460, Page 781; Walter G. Luckau has entered into a letter agreement with the Developer agreeing to lease the property to the Developer upon completion of the purchase of the property. Copies of said agreements have been supplied to the Commission.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Report dated November 23, 1977, issued by Security Title Corporation provides that the following are encumbrances against title to the property:

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, County of Maui, Hawaii.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent No. 7447.

3. Mortgage and Security Agreement dated August 12, 1974, recorded as aforesaid in Liber 10094, Page 362, made by SURFSIDE PROPERTIES, INC., a Minnesota corporation (formerly known as Mid-Pacific Systems, Inc.), and ROBERT J. RAUENHORST and MARY ELLEN RAUENHORST, husband and wife, as Mortgagor(s), to BORG-WARNER EQUITIES CORPORATION, a Delaware corporation, as Mortgagee(s).

4. Undated Financing Statement covering certain fixtures located on the real property, given as security by SURFSIDE PROPERTIES, INC. in favor of BORG-WARNER EQUITIES CORPORATION, recorded as aforesaid in Liber 10094, Page 379 (also affects other property).

5. Additional Charge Mortgage and Assignment dated December 30, 1974, recorded as aforesaid in Liber 10458, Page 557, made by SURFSIDE PROPERTIES, INC., a Minnesota corporation (formerly known as Mid-Pacific Systems, Inc.), as Mortgagor(s), to BORG-WARNER EQUITIES CORPORATION, a Delaware corporation, as Mortgagee(s).

6. Undated Financing Statement covering certain fixtures located on the real property, given as security by SURFSIDE PROPERTIES, INC. in favor of BORG-WARNER EQUITIES CORPORATION, recorded as aforesaid in Liber 10458, Page 560 (also affects other property).

7. Mortgage and Security Agreement and Financing Statement dated July 30, 1976, recorded as aforesaid in Liber 11580, Page 568, made by SURFSIDE PROPERTIES, INC., a Minnesota corporation (formerly known as Mid-Pacific Systems, Inc.), as Mortgagor(s), to BORG-WARNER CORPORATION, a Delaware corporation, as Mortgagee(s).

8. Unrecorded Agreement of Sale dated March 17, 1977, made by and between SURFSIDE PROPERTIES, INC., a Minnesota corporation, as Seller, and WALTER G. LUCKAU, no marital status shown, as Purchaser, as disclosed by that certain instrument dated September 26, 1977, recorded as aforesaid in Liber 12460, Page 781 (also affects other property).

NOTE: The Developer advises it plans to grant utility easements over portions of the lands of the project.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated December 28, 1977, between Security Title Corporation, as Escrow, and Developer has been filed with the Commission. On examination, the executed Escrow Agreement filed with the Commission is found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly Sections 514A-39, 514A-63 through 514A-66 thereof.

Among other provisions, the executed Escrow Agreement states that a purchaser shall be entitled to a refund of his funds, and Escrow shall pay said funds to said purchaser, without interest and less Escrow's cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred: (a) Escrow receives a written request from Seller to return to purchaser the funds of such purchaser then held by Escrow; or (b) if purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of purchaser's contract, requiring the approval of the county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change; or (c) if the purchaser's funds were obtained prior to the issuance of a Final Public Report and the Final Public Report differs in any material respect from the Preliminary Public Report, unless the purchaser has given written approval or acceptance of the difference; or (d) if the Final Public Report is not issued within one (1) year from the date of issuance of the Preliminary Public Report.

The specimen Sales Contract filed with the Commission contains, among others, the following provisions:

1. "The proposed Construction Contract for the project will contain an agreement by the Contractor that it will promptly correct any of its work found to be defective or not in conformance with its Construction Contract, for a period of one (1) year after the "Date of Substantial Completion" as defined in the standard form AIA Construction Contract. Seller hereby agrees that if the Buyer informs Seller of any construction within Buyer's Apartment which does not conform to those standards within 330 days after the "Date of Substantial Completion" as defined in said Construction Contract, that Seller will direct and will employ all reasonable efforts to have the Contractor correct any such fault(s) or defect(s) pursuant to its agreement with Seller; provided, however, that written notice thereof shall be given to Seller by Buyer within said 330 day period."

"Except for the agreement set forth above, it is expressly understood and agreed by and between Seller and Buyer that Buyer's apartment described in Paragraph "A" hereof will be conveyed to Buyer "AS IS" and that THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE, involved in this sale."

2. "Buyer hereby agrees for the sole benefit of Seller that until Seller has closed out the sale of all the apartments in the condominium project or until October 31, 1980, whichever shall first occur, that Buyer will not enter into any "rental pool" or similar agreement with any purchaser, lessee or owner of another apartment in the condominium project and/or any third party under which Buyer agrees to share expenses and/or rentals of apartments in the condominium project."

NOTE: PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THE SELLER'S MORTGAGE LOANS (CONSTRUCTION, RENEWALS AND EXTENSIONS) FOR THE PROJECT SHALL BE AND REMAIN AT ALL TIMES A SUPERIOR LIEN ON THE PROJECT, AND PURCHASERS INTENTIONALLY WAIVE AND SUBORDINATE THE PRIORITY OF LIEN UNDER THE SALES CONTRACT IN FAVOR OF THE MORTGAGE LOANS.

NOTE: DEVELOPER ADVISES THAT NO REPRESENTATION OR REFERENCES WILL BE MADE TO EITHER PURCHASERS OR PROSPECTIVE PURCHASERS CONCERNING RENTAL OF THE APARTMENT, INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE RENTAL OF THE APARTMENT, INCLUDING BUT NOT LIMITED TO, ANY REFERENCE OR REPRESENTATION TO THE EFFECT THAT DEVELOPER OR THE MANAGING AGENT OF THE PROJECT WILL PROVIDE, DIRECTLY OR INDIRECTLY, ANY SERVICES RELATING TO THE RENTAL OR SALE OF THE APARTMENT. RENTAL OF THE APARTMENTS AND THE PROVISIONS OF MANAGEMENT SERVICES IN CONNECTION THEREWITH IS AND SHALL BE THE SOLE RESPONSIBILITY OF THE PURCHASER.

It is incumbent upon the purchaser and the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of apartments are placed in trust, as well as the retention and disbursement of said trust funds. The specimen Sales Contract specifically provides that the purchaser approves said Escrow Agreement and assumes the benefits and obligations therein provided.

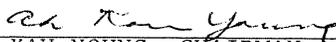
MANAGEMENT OF THE PROJECT: The By-Laws which are incorporated in the Declaration provide that the operation of the project shall be conducted for the Association of Apartment Owners under the direction of the Board of Directors by a responsible managing agent. The Developer indicates that it will appoint as initial managing agent for the project: Pacific Islands Management, Ltd., 483 South Kihei Road, Maui, Hawaii 96753.

STATUS OF PROJECT: The Developer advises that it estimates construction of the project will begin June 30, 1978.

The County of Maui, Department of Public Works, acknowledges by letter of February 23, 1978, that the plans for the project basically conform to the requirements of the County's Comprehensive Zoning Ordinance.

The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted January 10, 1978 and additional information subsequently filed with the Commission as of March 20, 1978.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 967 filed with the Commission on January 10, 1978. This report when reproduced shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be yellow.



AH KAU YOUNG, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING COMMISSION, COUNTY OF MAUI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION NO. 967

March 28, 1978

EXHIBIT

1. Apartment Nos. 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110 are located on the first floor of Building A.
2. Apartment Nos. 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121 and 122 are located on the first floor of Building B.
3. Apartment Nos. 123, 124, 125, 126, 127, 128, 129, 130, 131 and 132 are located on the first floor of Building C.
4. Apartment Nos. 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143 and 144 are located on the first floor of Building D.
5. Apartment Nos. 145, 146 and 147 are located on the first floor of Building E.
6. Apartment Nos. 148, 149, 150 and 151 are located on the first floor of Building F.
7. Apartment Nos. 152, 153, 154, 155, 156, 157, 158 and 159 are located on the first floor of Building G.
8. Apartment Nos. 201, 202, 203, 204, 205, 206, 207, 208, 209 and 210 are located on the second floor of Building A.
9. Apartment Nos. 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221 and 222 are located on the second floor of Building B.
10. Apartment Nos. 223, 224, 225, 226, 227, 228, 229, 230, 231 and 232 are located on the second floor of Building C.
11. Apartment Nos. 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243 and 244 are located on the second floor of Building D.
12. Apartment Nos. 245, 246 and 247 are located on the second floor of Building E.
13. Apartment Nos. 248, 249, 250 and 251 are located on the second floor of Building F.
14. Apartment Nos. 252, 253, 254, 256, 257, 258 and 259 are located on the second floor of Building G.

All one hundred eighteen (118) apartments of the project are built according to one floor plan, or its mirror image. Each apartment consists of four (4) rooms, including a living-sleeping room, a bathroom, a dressing room, a kitchen and a lanai, and contains a floor area of approximately 523 square

feet, including the lanai of approximately 78 square feet. Each apartment shall have an appurtenant common interest of 1/118th fractional interest (a .8474+ percentage interest).

NOTE: IN ACCORDANCE WITH LOCAL PRACTICE, THE APPROXIMATE GROSS FLOOR AREA OF EACH APARTMENT AS SET FORTH ABOVE INCLUDES ALL OF THE WALLS AND PARTITIONS WITHIN ITS PERIMETER WALLS, THE ENTIRETY OF ITS PERIMETER NON-PARTY WALLS AND THE INTERIOR HALF OF ITS PERIMETER PARTY WALLS, WHETHER LOAD BEARING OR NON-LOAD BEARING.