

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

on
HALE KAI O'KONA
Alii Drive
Kailua, Kona, Hawaii

REGISTRATION NO. 980

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: April 11, 1978

Expires: May 11, 1979

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:

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED FEBRUARY 17, 1978 AND INFORMATION SUBSEQUENTLY SUBMITTED AS OF APRIL 4, 1978. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES.

1. HALE KAI O'KONA is a proposed fee simple condominium project consisting of eight (8) residential condominium apartments in two story townhouses with no basement. There shall be a total of 11 parking stalls of which 8 are assigned to apartments and the remainder are guest parking stalls.
2. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of this condominium project and issuance of this Preliminary Public Report.

3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of Association of Apartment Owners and a copy of the approved floor plans) have not been filed in the office of the recording officer.
4. No advertising or promotional matter has been submitted 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 Chapter 514A, Hawaii Revised Statutes, and the condominium Rules and Regulations which relate to Horizontal Property Regimes.
6. This Preliminary Public Report automatically expires thirteen months after date of issuance, April 11, 1978 unless a Final or Supplementary Public Report is issued or the Commission, upon review of the registration, issues an order extending the effective period of this report.
7. This Preliminary Public Report is made a part of the registration of the HALE KAI O'KONA condominium project. The Developer has the responsibility of placing a true copy of this Preliminary Public Report (yellow paper stock) in the hands of all purchasers and prospective purchasers and securing signed copy of the receipt for this report.

NAME OF PROJECT: HALE KAI O'KONA.

LOCATION: The 37,681 square feet of fee simple land and improvements thereon to be submitted to the Horizontal Property Regime is located at Alii Drive, Kailua, Kona, County of Hawaii, State of Hawaii.

TAX KEY: 3rd Division, 7-6-16:29; 7-6-17:27 & 29.

ZONING: V-1.25 (hotel resort)

DEVELOPER: Hale Kai Development Corporation, a Hawaii corporation, whose principal place of business is in Kailua, Kona, Hawaii, and whose post office address is P. O. Box 1688, Kailua, Kona, Hawaii, Telephone 324-1613, and whose officers are:

Edward J. Leonelli	P. O. Box 1688 Kailua, Kona, Hawaii	President
Evelyn E. Leonelli	P. O. Box 1688 Kailua, Kona, Hawaii	Vice President
Vyola A. Godfrey	P. O. Box 1688 Kailua, Kona, Hawaii	Secretary-Treasurer

ATTORNEY REPRESENTING DEVELOPER: Hiroshi Sakai, Attorney at Law, A Law Corporation, Suite 602, City Bank Building, Honolulu, Hawaii 96813, Telephone 531-4171.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime reflects that the project consists of eight (8) residential condominium apartments in two story townhouses with no basement. The building will be of wood frame construction with wood and glass, shake roofs and a sea wall. There are parking spaces for 11 cars, landscaped areas and a sewage treatment plant.

1. Description of Units:

(a) Location and Numbering: The eight apartments are numbered from one through eight commencing from Holualoa Bay to Kailua Bay. The parking stalls are numbered 1, 2, 3, 4, 5, 6, 7 and 8 and are located on ground level. In addition there are three guest parking stalls.

(b) Layout and Area:

(i) There are seven three-bedroom apartments numbered 1 through 7 inclusive, each consisting of the following: On the first floor, lanai, living room, dining area, kitchen, utility room, study, bathroom and closet; and on the second floor, lanai, master suite of bedroom, bathroom and walk-in closet and two bedrooms, bathroom and closets. The total floor area is 2,625 square feet including lanais of 210 square feet, each on the first and second floors.

(ii) There is one three-bedroom apartment, numbered 8, consisting of the following: On the first floor, a study room and laundry area; and on the second floor, a living-dining room, kitchen, three bedrooms, two bathrooms and closets. The total floor area is 1,849 square feet including a lanai of 115 square feet on the second floor. Adjacent to the first floor of Apartment 8 is the covered parking stalls for parking stalls numbered 7 and 8.

(iii) The floor area described above is gross floor area measured center line to center line on the horizontal and outside to outside in a transverse direction.

(c) Access to Common Elements: Each apartment has immediate access to the grounds through steps.

(d) Limits of Apartments: The respective apartments shall not be deemed to include the undecorated or unfinished perimeter walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements. Each apartment shall include the adjacent lanai or lanais delineated on the proposed Condominium Map. Each apartment shall be deemed to include all the walls or partitions which are not load bearing within its perimeter walls, and inner decorated or finished surfaces of all walls, floors and ceilings, doors and door frames, windows and window frames, the lanai, air space and all fixtures originally installed therein.

COMMON ELEMENTS: The proposed Declaration reflects that the common elements of the project shall include the limited common elements (defined and described below) and all other portions of the land and improvement in the project other than the apartments, but including both the apartment building and the portions of the land on which the building is located and all elements mentioned in the Act which are actually constructed on the land and specifically shall include but not be limited to:

- (a) The land in fee simple;
- (b) All foundations, wood flooring, sea walls, wood frames, beams, supports, bearing walls, roof, stairs and walkways;
- (c) All yards, grounds, and landscaping;
- (d) All driveways and parking areas, including the three guest stalls;
- (e) All common storage, sewage treatment plant and facilities for utilities including power, lights, cold and hot water and telephone;
- (f) All other devices or installations upon the land and building existing for or rationally of common use to all of the owners of apartments within the project.

LIMITED COMMON ELEMENTS: There are 8 parking stalls as limited common elements assigned with the same number as each apartment. The remaining three stalls are common elements to be used by the apartment owners or their guests. Notwithstanding any provision in the Declaration, the apartment owners with the consent of the Mortgagee, if any, shall have the right to change the designation of parking stalls which are appurtenant to the respective apartments by amendment to the Declaration and the respective apartment deeds or leases involved. The amendment shall be effective upon recording or filing of the same for record with the Bureau and Office.

COMMON INTEREST TO BE CONVEYED TO PURCHASER: The proposed Declaration states the percentage of undivided interest in the common elements for each of the apartments numbered 1 through 7 inclusive is 13 percent interest and apartment numbered 8 is a 9 percent interest.

EASEMENTS: The proposed Declaration states that the apartments and common elements shall also have and be subject to the following easements:

- (a) Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments and limited common elements of the building for support;

(b) If any part of the common elements now or hereafter encroaches upon any unit or limited common element, or if any apartment now or hereafter encroaches upon any other apartment or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event the apartment building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements upon any apartment or of any apartment upon any other apartment or upon any portion of the common elements due to construction shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist;

(c) The Association shall have the right, to be exercised by its Board of Directors or the Managing Agent, to enter each apartment and limited common element from time to time during reasonable hours as may be necessary for the operation of the project or for making emergency repairs necessary to prevent damage to any unit or common elements;

(d) Each apartment owner shall have an easement in common with the owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other apartments and serving his apartment. Each apartment shall be subject to an easement in favor of the owners of all other apartments for its access to any common elements located in such apartment;

(e) The Developer reserves the right in its sole discretion to use and relocate from time to time any apartments that it owns as models, management office and/or sales office until such time that all apartments are sold and to maintain such advertising signs which comply with governmental ordinances which may be placed in any location of the project.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The apartments shall be occupied and used as lodging for residential apartment uses and rental of apartments subject to such limitations as may be contained in the Declaration and By-Laws and House Rules which may be adopted from time to time governing the use of the apartments.

OWNERSHIP OF TITLE: A preliminary report dated February 7, 1978 issued by Hawaii Escrow & Title, Inc., certifies that the fee simple title to the land to be submitted to the horizontal property regime is as follows: Arthur Lee Salisbury, husband of Sarah Salisbury, an undivided 62.96% interest; Duckett Wilson Development Company, a California corporation, an undivided 30.01% interest; Francis Anthony Dolan, husband of Jean Evelyn Dolan, an undivided 4.90% interest; and American Trust Company of Hawaii, Inc., a Hawaii corporation, an undivided 2.13% interest.

Developer has provided the Commission with copy of Agreement of Sale and Purchase and Escrow Instructions dated September 4, 1977

evidencing an agreement by said fee owner to sell their land to Edward J. Leonelli, and a copy of an assignment of said Leonelli's rights to Developer dated February 1, 1978. These documents are unrecorded.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Report reflects the following encumbrances:

1. Reservation in favor of the State of Hawaii as to all mineral and metallic mines.
2. The provisions of the Hawaii Revised Statutes, Sections 205.31 through 205.37, relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County of Hawaii Planning Department.
3. Mortgage in favor of the Bank of Hawaii dated November 16, 1976, filed December 8, 1976, in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. 793012, and also recorded December 8, 1976, in the Bureau of Conveyances, State of Hawaii, in Book 11860, Page 313, to secure the repayment of \$150,000.00.
4. Taxes which may become due and owing. Reference is hereby made to the County Tax Assessor of the Third Division for further information.

PURCHASE MONEY HANDLING: A copy of the Escrow Agreement dated February 14, 1978, by and between Hawaii Escrow & Title, Inc., Escrow, and Hale Kai Development Corporation, Seller, has been submitted to the Commission as part of this registration. On examination, the Escrow Agreement and Sales Contract are found to be in compliance with Chapter 514A, Hawaii Revised Statutes. The provisions of the Sales Contract should be carefully read by the purchasers. The specimen document filed as a part of the registration recites the conditions under which the purchaser acknowledges receipt of the Public Report.

Among other provisions the Escrow Agreement provides 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, in the following instances:

1. Seller has requested Escrow in writing to return to purchaser the funds of such purchaser then held by Escrow; or
2. Prior to the time the Final Report is issued, the purchaser shall request in writing the return of his funds so deposited; or
3. If a purchaser's funds were obtained prior to the issuance of a final public report and if there is any change in the condominium building plans, subsequent to the execution of purchaser's sales contract, requiring the approval of a county officer having jurisdiction over the issuance of permits for construction of buildings, unless the purchaser has given written approval; or

4. If 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

5. If the Final Public Report is not issued within one (1) year from the date of issuance of the Preliminary Public Report.

The Escrow Agreement also provides that the Escrow shall deposit all funds received in a bank or savings and loan institution selected by the Developer and that any interest earned thereon shall be the sole asset of the Developer. The Developer has advised the Commission that pursuant to the terms of the Escrow Agreement, purchasers' escrowed down payments may, under certain circumstances, be used to defray construction and other costs of the project after the issuance of a Final Report.

Among other provisions the specimen Sales Contract provides, (1) that in the event that less than 75% of the 8 residential apartments are sold 360 days from the date of this report, Seller, at its option, may cancel the contract upon written notice to purchaser, in which event all sums paid by purchaser thereunder shall be refunded to purchaser, without interest, and the contract shall be deemed to have been cancelled and both parties shall be released from all obligations and liability thereunder; and (2) the construction mortgage shall be and remain at all times a lien or charge on the project prior to and superior to any and all liens or charges on the project arising under the Sales Contract or any prior reservation agreement.

It is incumbent upon the purchaser that he read with care the Sales Contract and Escrow Agreement. The Escrow Agreement established how the proceeds and the sale of the apartments and all sums of any source are placed in trust as well as the retention, disbursement and refund of said trust fund.

MANAGEMENT AND OPERATION: The proposed Declaration of Horizontal Property Regime provides that the operation of the project shall be conducted for the Association of Apartment Owners by a Managing Agent. The initial Managing Agent shall be designated by the Developer.

The Developer has submitted to the Commission a breakdown of the annual maintenance fees and the monthly estimated cost for each apartment.

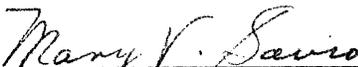
STATUS OF PROJECT: The Developer reports that the construction of the building shall commence as soon as negotiation and financing are completed within the next three months.

The purchaser or prospective purchaser shall be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted February 17, 1978 and information subsequently filed as of April 4, 1978.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 980 filed with the

Commission on February 17, 1978.

The report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock must be yellow in color.

(for) 
AH KAU YOUNG, Chairman
Real Estate Commission
State of Hawaii

Distribution:
DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING DEPARTMENT, COUNTY OF HAWAII
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

Registration No. 980

April 11, 1978