

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

KA'EO KAI
Wyllie Avenue
Princeville, Kauai, Hawaii

REGISTRATION NO. 1059

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: December 21, 1978
Expires: January 21, 1980

SPECIAL ATTENTION

A comprehensive reading of this report 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 NOVEMBER 21, 1978, AND INFORMATION SUBSEQUENTLY SUBMITTED AS OF DECEMBER 14, 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. KA'EO KAI is a proposed fee simple condominium project consisting of five (5) two-story buildings without basements, and twenty (20) apartments and twenty-two (22) unassigned parking stalls.

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, December 21, 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 KA'EO KAI 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: KA'EO KAI

LOCATION: The approximate 1.736 acres of land to be committed to the regime is situated at Wyllie Avenue, Princeville, Kauai, Hawaii.

TAX MAP KEY: FOURTH DIVISION: 5-4-5-4.

ZONING: R-10

DEVELOPER: KA'EO KAI, a California corporation, 8460 Harold Way, Los Angeles, California and 3-3212 Kuhio Highway, Lihue, Kauai, Telephone: (213) 656-8469 and (808) 245-3964. Officers: David E. Walters, President; John F. Smith, Executive Vice President; Jack H. McDonald, Secretary, and Lawrence T. Ashton, Treasurer.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Walter Beh II), 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 fee simple condominium project consisting of twenty (20) apartments contained in five (5) two-story buildings, without basements, constructed principally of wood, with post and beam construction.

The location and description of the various apartments follows:

There are five fourplex structures of this type within the project, without basements. Each fourplex structure is two floors in height and contains four apartments. Each of these twenty (20) apartments is built according to a floor plan, or its mirror image, consisting of approximately 2,327 square feet, including approximately 824 square feet of covered decking, and two (2) bedrooms, two (2) bathrooms, a kitchen, a dining room and a living room; in addition, apartments located on the first floor also have an outdoor hot tub located on their decking. (Note: In accordance with local practice, the approximate gross floor area of each apartment as set forth in this paragraph 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 walls, whether load-bearing or non-loadbearing). Apartment Nos. 1-A and 2-A are located on the first floor of Building XI. Apartment Nos. 1-B and 2-B are located on the second floor of Building XI. Apartment Nos. 3-A and 4-A are located on the first floor of Building XII. Apartment Nos. 3-B and 4-B are located on the second floor of Building XII. Apartment Nos. 5-A and 6-A are located on the first floor of Building XIII. Apartment Nos. 5-B and 6-B are located on the second floor of Building XIII. Apartment Nos. 7-A and 8-A are located on the first floor of Building XIV. Apartment Nos. 7-B and 8-B are located on the second floor of Building XIV. Apartment Nos. 9-A and 10-A are located on the first floor of Building XV. Apartment Nos. 9-B and 10-B are located on the second floor of Building XV.

The apartments have immediate access to a stairway 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 walls or interior load bearing walls, the roofs 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 as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load bearing within its perimeter walls, 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, bearing walls, roofs and entries of said buildings;
3. All yards, grounds, landscaping, refuse facilities, walkways, parking areas, driveways and streets;
4. All ducts, electrical equipment, wiring and other central appurtenant installations, including power, light, water, sewer and telephone;
5. All other parts of the project existing for the common use or necessary to the existence, maintenance and safety of the project.

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 an Apartment Deed conveying an Apartment and an undivided five percentage interest in the common elements 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 the apartments shall be occupied and used only as private apartments or resort dwellings for permanent or transient occupancy and may be leased or rented from time to time on a daily, weekly or monthly period by their respective owners thereof, their tenants, families, domestic servants, and social guests; the owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of the Declaration.

OWNERSHIP OF TITLE: A Preliminary Report issued on September 25, 1978 by Hawaii Escrow & Title, Inc., as submitted to the Commission, indicates that the fee simple owner of the property to be submitted to the regime is CONSOLIDATED OIL & GAS, INC., a Colorado corporation, whose principal place of business and post office address is 1860 Lincoln Street, Denver, Colorado 80203 and P. O. Box 121, Hanalei, Kauai, Hawaii; Telephone No. 826-6561. Officers: Harry A. Trueblood, Jr., President and Chairman of the Board; H. C. Gutjahr, Vice President, Treasurer, Secretary and Director; J. D. Smothermon, Vice President, Operations; David W. Wilson, Vice President, Exploration and Corporate Development; Daniel T. O'Shea, Director; Alfred Gross, Director; Robert F. Chick, Director; Paul W. Fullerton, Director; John L. Larson, Director; Joe C. Richardson, Director.

Developer is purchasing the property under an unrecorded agreement dated May 15, 1978, a copy of which has been supplied to the Commission.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Report issued on September 25, 1978 by Hawaii Escrow & Title, Inc. 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 Fourth Division, County of Kauai, Hawaii.

2. Assessments or charges levied by Municipal or Governmental Authority imposed by any other lawfully constituted body authorized by Statute to assess, levy and collect the same, if any.

3. Title to all minerals and metallic mines reserved to the State of Hawaii.

4. Declaration of Restrictions, Covenants and Conditions by Eagle County Development Corporation, now Consolidated Oil & Gas, Inc., dated March 1, 1971, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7444, Page 93, as amended.

NOTE: All apartment owners are subject to, bound by, and shall comply with the provisions of the Declaration of Restrictions, Covenants and Conditions and to become a member of the Princeville at Hanalei Community Association and subject to a monthly assessment of association dues.

5. Water and Sanitation Assessment and Lien by Kauai County Public Improvement Corporation and Eagle County Development Corporation dated April 7, 1971, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7486, Page 292, as supplemented and amended.

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 September 29, 1978, between Hawaii Escrow & Title, Inc., 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 and 514A-66 thereof.

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

1. "Buyer acknowledges that neither Seller nor any of its representatives has made any representation or reference as to 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 Seller or the Managing Agent of the project will provide, directly or indirectly, any services relating to the rental of the apartment. It is understood and agreed that rental or other disposition of the apartment and the provisions of management services in connection therewith is and shall be the sole responsibility of the Buyer."

2. "The 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."

3. "Reservation Agreement. Notwithstanding any other provisions of this Agreement to the contrary, it is expressly understood and agreed that unless and until Seller: (i) obtains the issuance by the Real Estate Commission of the State of Hawaii of the Final Public Report on the project; and (ii) has received from Buyer a fully executed receipt for the Final Public Report, that this Agreement shall represent only a reservation by the Buyer and shall not be binding upon either party hereto, and until such time, this Agreement may be terminated at the option of either party by written notice of such termination to the other party. In the event of such termination, Seller shall cause Escrow to refund all payments previously made by Buyer, without interest, and neither party shall have any other or further liability hereunder. If this Agreement is entered into after the issuance of the Final Public Report, this paragraph shall be of no force or effect and this Agreement shall be fully binding upon Buyer and Seller upon acceptance of this Agreement by Seller as provided in Paragraph "24" hereof."

4. "Under the terms of this sale, Buyer will be assuming the obligation to pay the balance of the obligation secured by the Water and Sanitation Assessment Lien Agreement against the apartment covered hereby. . . ."

5. "Seller is currently purchasing the lands of the project from Consolidated Oil & Gas, Inc., a Colorado corporation, under an unrecorded agreement dated May 15, 1978. Under the terms of the said purchase agreement, Consolidated is given a period of time to obtain a zoning permit for the project from the County of Kauai; and if it fails to do so, the purchase agreement shall become null and void. If this termination occurs, this contract shall likewise terminate, and Seller shall cause Escrow to refund to Buyer all monies previously paid, without interest, less the cost of any credit reports and all other costs including escrow charges incurred by Seller. Seller shall give written notice of such termination to Buyer and a copy thereof shall be given to Escrow. The provisions of this paragraph shall become void and of no effect upon the earlier of the closing of the purchase of said land by Seller or the issuance of the Final Public Report for the project."

6. "Final closing shall occur on the Date of Closing as defined herein. However, Buyer is hereby advised that Seller intends to preclose, regardless of the status of the construction of the apartments, by having all documents necessary for closing executed prior thereto and deposited with Escrow, and Buyer hereby agrees to execute all necessary documents for such closing, including irrevocable escrow instructions, upon request by Seller."

7. "In the event any payment to be made by Buyer hereunder is not made when due, such late payment shall bear interest at the rate of one percent (1%) per month until paid."

8. "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 December 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."

9. "At the time of the preclosing described in Paragraph "F-18" hereof, Buyer agrees to pay into escrow all sums due from Buyer at closing, including all sums to be paid by Buyer under Paragraphs "C", "D" and "F-11" hereof, excluding only the mortgage proceeds, if applicable, which mortgage proceeds Buyer hereby authorizes Escrow to collect as of the Date of Closing."

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: This project (hereinafter called "Phase 1-B") is the second increment of the Princeville Mauna Kai No. 1-A condominium project (hereinafter called "Phase 1-A"). The proposed Declaration provides that the Developer, together with Consolidated Oil & Gas, Inc. (hereinafter called "CONSOLIDATED") shall have the right at their sole option to amend the Declaration at any time up to but not later than July 1, 1980, by the addition of the project to Phase 1-A. The project described herein is Phase 1-B, which will be added to the previous Phase 1-A of the Princeville Mauna Kai condominium project. The purpose of the merger provisions of the Declaration is to provide for the merger of said phases just as if the two phases involved had been developed as a single project. Merger shall take effect upon the happening of all the following preconditions with respect thereto:

a. Recordation in the Bureau of Conveyances of the State of Hawaii of an amendment to the Declaration pursuant to provisions of Section 514A-12, Hawaii Revised Statutes, as amended, after completion of the buildings described therein by attaching to such amendment a verified statement of a registered architect or professional engineer certifying the final plans of the project theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments of this project as built.

b. Recordation in said Bureau of Conveyances of an amendment to this Declaration and the Declaration for Phase 1-A, in the form attached as Exhibit "C" to the Declaration, subject to such modifications thereof as Developer and Consolidated deem necessary or appropriate to effect said merger.

From and after the date of recordation of the said amendment to both Declarations, the following consequences shall ensue:

a. Use of Common Elements. The apartments in each of the merged phases shall have the right to use the common elements in each phase to the same extent and subject to the same limitations as are imposed upon an apartment in each phase just as though both phases had been developed as one phase.

b. Common Interests. Each apartment of the merged phases shall each have appurtenant thereto an undivided percentage interest in the common elements of the merged phases as follows:

<u>Apartment Type</u>	<u>Units</u>	<u>Percentage Interest of Each Unit</u>	<u>Totals</u>
Fourplex (2,327 sq.ft.) (Phase 1-B)	20	2.8000	56.0000
Tower (Phase 1-A)	4	1.8194	7.2776
Duplex-1164 D (Phase 1-A)	2	1.4001	2.8002
Duplex-1576 D (Phase 1-A)	2	1.8963	3.7926
Duplex-1488 D (Phase 1-A)	2	1.7904	3.5808
Fourplex (1,478 sq.ft.) (Phase 1-A)	8	1.7784	14.2272
Fourplex (1,280 sq.ft.) (Phase 1-A)	8	1.5402	12.3216
			<u>100.0000</u>

c. Board of Directors. The Board of Directors of Phase 1-A immediately prior to the merger of the two phases shall govern the merged project after completion of the merger until the next annual meeting of the Association, at which time a new Board shall be elected in the manner set forth in the By-Laws.

d. The Developer, in conjunction with Consolidated, shall have the right and as the attorney-in-fact of the Association to appoint a common managing agent for this project when this project is added to said Phase 1-A.

e. The "Limited Common Elements" paragraph for the merged project will read as follows:

"4.3 Limited Common Elements. Certain parts of the common elements herein called the 'limited common elements', are hereby designated and set aside for the exclusive use of certain apartments and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

a. One parking space, designated on said plans by the number corresponding to that of each apartment shall be appurtenant to and for the exclusive use of such apartment.

b. The entries of each apartment in Phase 1-A shall be appurtenant to and for the exclusive use of each apartment.

c. The swimming pool and pavilion, depicted as Plot A., Lot 4-A, Princeville at Hanalei, as shown on the Condominium Map (hereinafter referred to as Plot A), are to be owned by all of the apartment owners in this project. Each of the apartments in this project shall have appurtenant thereto a 1/46th fractional interest in and to Plot A."

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.

HOUSE RULES: Among other provisions, the House Rules state: (1) No dogs, cats or other domestic pets are allowed in the premises; (2) No more than seven persons shall be allowed to occupy a two bedroom apartment; no more than nine persons shall be allowed to occupy a three bedroom apartment; and no more than ten persons shall be allowed to occupy a Tower apartment; and (3) Guests may be permitted which exceed what is provided under (2) hereinabove up to a maximum of three days at any one time.

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 specimen Sales Contract provides that the Developer may appoint the initial managing agent for the project. The Developer indicates that it proposes to appoint Aaron M. Chaney, Inc. as the initial managing agent.

✓ STATUS OF PROJECT: The Developer advises that it estimates construction of the project will begin on December 1, 1978.

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 November 21, 1978 and information subsequently submitted as of December 14, 1978.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1059 filed with the Commission on November 21, 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

AH KAU YOUNG, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

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

REGISTRATION NO. 1059

December 21, 1978