

# REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF REGULATORY AGENCIES

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

## SUPPLEMENTARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

on  
THE MAKAHUENA  
Weliweli, Koloa  
County of Kauai, Hawaii

Registration No. 1114

**IMPORTANT - Read This Report Before Buying**

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

It was prepared as a supplement to ~~an~~ earlier Reports dated April 26, 1979 and October 30, 1979 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: March 4, 1981  
Expires: November 30, 1981

### 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 FILED WITH THE COMMISSION ON MARCH 30, 1979 AND ADDITIONAL INFORMATION SUBSEQUENTLY FILED AS OF FEBRUARY 27, 1981. THE DEVELOPER BY SUBMITTING ADDITIONAL INFORMATION TO THE COMMISSION IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT SET FORTH IN CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Public Report of April 26, 1979 and Final Public Report of October 30, 1979 (which Final Public Report was extended to May 31, 1981 by the Commission on December 10, 1980), the Developer has submitted additional information regarding changes concerning the Makahuena condominium project. The changes subsequently made are determined by the Real Estate Commission to be a material revision to the information disclosed earlier.

2. This Supplementary Public Report amends the previous public reports and is made part of THE MAKAHUENA registration. The Developer is responsible for placing a true copy of this Supplementary Public Report (pink paper stock) in the hands of all purchasers and prospective purchasers along with a true copy of the Preliminary Public Report (yellow paper stock), Final Public Report (white paper stock), and Disclosure Statement. He is responsible for securing from each purchaser or prospective purchaser a signed receipt therefor.

3. The Developer has submitted to the Commission for examination all documents deemed necessary for the registration of the Project and the issuance of this Supplementary Public Report.

4. The Developer advises that the Declaration of Horizontal Property Regime and Bylaws, previously recorded in the Bureau of Conveyances of the State of Hawaii, has been amended by instrument dated January 29, 1981 and recorded on February 5, 1981 as aforesaid at Liber 15327, page 39; by instrument dated February 19, 1981 and recorded on February 24, 1981 as aforesaid at Liber 15366, Page 237; and by instrument dated February 26, 1981 and recorded on February 27, 1981, as aforesaid at Liber 15378, Page 401.

5. The Developer has submitted certain advertising and promotional materials pursuant to the rules and regulations of the Commission. Those materials include an artist's rendition of the project, copies of individual apartment floor plans as submitted to the Real Estate Commission, and a copy of a Condominium Map Locator showing prospective purchasers the floor plan and approximate location of his apartment and parking stall(s).

6. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A of the Hawaii Revised Statutes, as amended, and the Horizontal Property Regimes (Condominium) Rules and Regulations promulgated by the Commission.

7. The Developer has requested and the Commission has granted an extension of the Final Public Report to expire November 30, 1981.

The information in the topical headings of the Preliminary Public Report of April 26, 1979 and the Final Public

Report of October 30, 1979 has not been disturbed with the exception of the following:

DESCRIPTION OF THE PROJECT. The Developer advises that the Planning Commission of the County of Kauai granted final approval on November 26, 1980 of the File Plan map referred to on page 5 of the Final Public Report, which map was prepared by Masao Fujishige, a registered land surveyor, based upon surveys made by said surveyor in August, 1978 and May, 1979, such approval being conditioned upon recordation of the File Plan map in the Bureau of Conveyances within six (6) months after the final approval date of the Planning Commission, unless an extension of time is granted. The File Plan map has been recorded as File Plan No. 1702 in the Bureau of Conveyances. By the First Amendment to the Declaration of Horizontal Property Regimes of the Makahuena, the description of the property submitted to the Horizontal Property Act (Chapter 514A, Hawaii Revised Statutes, as amended) contained in Exhibit "A" to the Declaration has been deleted and a new description based upon the recorded File Plan has been substituted therefor:

"Lot 1 of the Makahuena Subdivision as shown on File Plan No. 1702 as recorded in the Bureau of Conveyances of the State of Hawaii which Lot 1 is situated at Weliweli, District of Koloa, Island and County of Kauai, State of Hawaii."

Note: Lot 1 of the Makahuena Subdivision as shown on said File Plan is the same property as was formerly described in Exhibit "A" to the Declaration, except for a 7-foot strip along Pee Road which the County of Kauai required to be dedicated as a condition to issuance of permits for the project, all as disclosed in a letter dated January 12, 1979 from the County, a copy of which was previously filed with the Commission in connection with the issuance of the Preliminary Public Report.

1. Description of the Buildings.

By the First Amendment to the Declaration of Horizontal Property Regimes of the Makahuena, the Declaration was amended to correct certain typographical errors and to show that:

(a) Building II-A contains 24 apartments as more particularly described on page 9 of the Declaration and on the Condominium Map, instead of 23 apartments as shown on page 3 of the Declaration. The third paragraph of Section 3 on page 3 now reads in its entirety:

"The name of building II-A will be a four (4) level structure containing twenty-four (24) apartments. Building II-A will contain eighteen (18) two-bedroom units and six (6) three-bedroom units. The name of Building II-A will be Makahuena Elua."

(b) The type of apartment for apartment II-A 312 as set forth in the last line on page 9 of the Declaration and in

the last line of Exhibit "A" to the Preliminary Public Report is type "B" as shown on the Condominium Map instead of type "C".

(c) The approximate square footage for apartment number II-C 310, as set forth on page 10 of the Declaration and on page 2 of Exhibit "A" to the Preliminary Public Report, is "1,299" as shown on the Condominium Map instead of "1,129."

(d) Page 10 of the Declaration was amended to show which of the types of apartments for each of the following apartments in Building III are reverse of the typical floor plan, as designated by the letter "r," and as shown on the Condominium Map:

<u>Apt. No.</u>	<u>Type &amp; No. Bedrooms</u>
III 101	Hr 2
III 102	Jr 2
III 103	J 2
III 104	H 2
III 201	Kr 2
III 202	L 2
III 203	K 2

The Second Amendment to the Declaration of Horizontal Property Regime contains a verified statement by a registered architect that the plans filed as Condominium Map No. 638, as amended by three plan drawings attached to said statement, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments in Buildings II-B, III, IV, and Unit I-106, consisting of the renovated existing dwelling of the Project, as built. The Third Amendment to the Declaration of Horizontal Property Regime amends the aforesaid verified statement by a registered architect by deleting one of the three aforesaid plan drawings and amends page 10 of the Declaration to show the approximate areas of the following apartments, as built, according to the aforesaid verified statement by a registered architect:

<u>Apt. No.</u>	<u>Gross Apt. Area (SF)</u>
II-B-101	1,487
II-B-102	1,473
II-B-201	1,487
II-B-202 *	1,473
III-202	1,438

\* Apartment II-B-202 was erroneously reported as Apartment II-B-200 on the Preliminary Public Report.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE. Under the First Amendment to the Declaration of the Horizontal Property Regime, each residential apartment shall be used and occupied for any residential purpose which may from time to time be permitted by law and no residential apartment owners may lease or rent less than the entire apartment. No time-sharing is permitted.

The House Rules provides in part: (1) the Board of Directors reserve the right to limit the number and type of household pets; and (2) Occupancy is limited to not more than two persons per bedroom contained in each apartment, except that this occupancy may be exceeded by members of the immediate family of the owner, lessee, or tenant.

ENCUMBRANCES AGAINST TITLE: The Preliminary Report dated January 28, 1981 issued by Security Title Corporation reflects the following encumbrances on 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.

2. As to that portion of the land herein described bordering on the Ocean:

The effect of Sections 205-31 to 205-37, inclusive, Hawaii Revised Statutes, as now or hereafter amended pertaining to shoreline setbacks.

Any adverse claim of State of Hawaii based upon (a) a conflict in the determination of the seaward boundary of said land, (b) a conflict in the location of such seaward boundary, or (c) the assertion that any portion of said land is submerged land or is land beneath tidal waters.

3. Reservation in favor of the State of Hawaii of all mineral and metallic mines as reserved in Royal Patent (Grant) No. 1416.

4. Rights of Native Tenants as contained in said Royal Patent (Grant) No. 1416.

5. The terms and provisions of that certain unrecorded DECLARATION OF TRUST FOR THE ZALOPANY CHILDREN AND GRANDCHILDREN TRUST, dated August 21, 1978, a short form of which is dated September 7, 1978, recorded on September 11, 1978 in the Bureau of Conveyances of the State of Hawaii in Book 13131 Page 265, as amended.

6. DECLARATION OF REAL PROPERTY ACQUIRED BY THE ZALOPANY CHILDREN AND GRANDCHILDREN TRUST, dated September 7, 1978, recorded on September 11, 1978 in said Bureau of Conveyances in Book 13131 Page 274.

7. Concrete steps approximately 5.5 feet within the property which is apparently being used by the adjacent "Poipu Makai" condominiums, as mentioned in that certain instrument dated September 7, 1978, recorded on September 11, 1978 in said Bureau of Conveyances in Book 13131 Page 279.

8. The terms and provisions of that certain unrecorded Development Agreement dated December 27, 1978, made by and between WILLIAM LEE BRANDT, as Trustee of the Zalopany Children and Grandchildren Trust, "Owner," and THE MAKAHUENA CORPORATION, a Hawaii corporation, "Developer," a short form of which is dated December 27, 1978, recorded on February 23, 1979 in said Bureau of Conveyances in Book 13504 Page 404; as amended by unrecorded First Amendment to Development Agreement dated April 4, 1980, a short form of which is recorded on April 30, 1980 in said Bureau of Conveyances in Book 14690 Page 712.

Said Agreement is subject to:

(a) Real Property Mortgage and Financing Statement dated June 15, 1979, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13776 Page 52, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the sum of \$13,600,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to (affecting Development Agreement dated December 27, 1978). Consent thereto dated June 15, 1979 recorded in Book 13776 Page 99.

(b) Assignment of Payments and Owner's Interest in Development Agreement dated June 15, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13776 Page 131, WILLIAM LEE BRANDT, Trustee under the Zalopany Children and Grandchildren Trust, as Assignor, assigned all his right, title and interest in and to that certain Development Agreement dated December 27, 1978, to FIRST HAWAIIAN BANK, a Hawaii corporation, as Assignee, as security for the repayment of the sum of \$13,600,000.00.

(c) Additional Charge Mortgage and Financing Statement dated April 20, 1980, recorded on May 2, 1980 in the Bureau of Conveyances of the State of Hawaii in Book 14696 Page 588, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), to LEONARD HOWARD ZALOPANY, JR., Successor Trustee of the Zalopany Children and Grandchildren Trust, "Successor Trustee," to FIRST HAWAIIAN BANK, a Hawaii corporation as Mortgagee(s), to secure the repayment of the additional loan of \$420,000.00 together with interest thereon in accordance with the terms of that certain promissory note therein referred to. This is an additional charge mortgage to the foregoing mortgage. (also affects other mortgages)

9. Easement A, area 0.014 acre and Easement B, area 0.107 acre, for public access purposes over and across Lot 1, as delineated on File Plan No. 1702.

10. The terms and provisions of that certain Master Lease dated June 15, 1979, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13775 Page 733, made by and between WILLIAM LEE BRANDT, as trustee of The Zalopany Children and Grandchildren Trust made by

Leonard H. Zalopany and Alma Zalopany, husband and wife, under that certain unrecorded Declaration of Trust for the Zalopany Children and Grandchildren Trust dated August 21, 1978, a short form of which is dated September 7, 1978 and recorded on September 11, 1978 in the Bureau of Conveyances of the State of Hawaii in Book 13131, at Page 265, as amended, as Lessor, and THE MAKAHUENA CORP., as Lessee(s), for the term of sixty-five (65) years commencing on the execution hereof to and including December 31, 2045.

Said Lease subject to the following:

(a) Real Property Mortgage and Financing Statement dated June 15, 1979, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13776 Page 1, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the sum of \$13,600,000.00, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor(s) therein referred to, (affecting Master Lease). Consent thereto dated June 15, 1979 recorded in Book 13776 Page 47.

(b) Financing Statement dated June 15, 1979 covering certain Agreements and Contracts, etc., given as security by THE MAKAHUENA CORPORATION in favor of FIRST HAWAIIAN BANK, recorded on June 18, 1979 in the Bureau of Conveyances of the State of Hawaii in Book 13776 Page 104.

(c) By Assignment of Rentals and Lessor's Interest in Lease dated June 15, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13776 Page 113, WILLIAM LEE BRANDT, Trustee under the Zalopany Children and Grandchildren Trust, as Assignor, assigned all his right, title and interest in and to that certain Master Lease herein referred to, to FIRST HAWAIIAN BANK, a Hawaii corporation, as Assignee, as security for the repayment of the sum of \$13,600,000.00.

(d) Additional Charge Mortgage and Financing Statement dated April 20, 1980, recorded on May 2, 1980 in the Bureau of Conveyances of the State of Hawaii in Book 14696 Page 588, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), and LEONARD HOWARD ZALOPANY, JR., Successor Trustee of the Zalopany Children and Grandchildren Trust, "Successor Trustee," to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the additional loan of \$420,000.00 together with interest thereon in accordance with the terms of that certain promissory note therein referred to. This is an additional charge mortgage to the foregoing mortgage.

11. By Additional Security Mortgage and Financing Statement dated June 15, 1979, recorded on June 18, 1979 in said Bureau of Conveyances in Book 13775 Page 677, WILLIAM LEE BRANDT, as Trustee of the Zalopany Children and Grandchildren Trust, (the "Trust") under written Declaration of Trust dated August 21, 1978, (the "Declaration of Trust") a short form of which is dated September 7, 1978 and recorded

in the Bureau of Conveyances of the State of Hawaii in Book 13131 Page 265, assigned the fee simple title to the land herein described, to FIRST HAWAIIAN BANK, a Hawaii corporation, as security for the repayment of the sum of \$13,600,000.00.

Additional Charge Mortgage and Financing Statement dated April 20, 1980, recorded on May 2, 1980 in the Bureau of Conveyances of the State of Hawaii in Book 14696 Page 588, made by THE MAKAHUENA CORPORATION, a Hawaii corporation, as Mortgagor(s), and LEONARD HOWARD ZALOPANY, JR., Successor Trustee of the Zalopany Children and Grandchildren Trust, "Successor Trustee," to FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee(s), to secure the repayment of the additional loan of \$420,000.00 together with interest thereon in accordance with the terms of that certain promissory note therein referred to. This is an additional charge mortgage to the foregoing mortgage. (also affects other property)

12. Condominium File Plan No. 638, filed on September 6, 1979.

13. The covenants, agreements, obligations, conditions, and other provisions set forth in that certain DECLARATION OF HORIZONTAL PROPERTY REGIME OF THE MAKAHUENA, dated August 24, 1979, recorded on September 6, 1979 in said Bureau of Conveyances in Book 13973 Page 220.

14. Undated Financing Statement covering certain fixtures located on the real property, given as security by PACIFIC HOME FURNISHINGS, LTD. in favor of THE MAKAHUENA CORPORATION, recorded on April 18, 1980 in said Bureau of Conveyances in Book 14662 Page 422.

By that certain undated instrument recorded on April 18, 1980, in said Bureau of Conveyances in Book 14662 Page 424, the foregoing Financing Statement was assigned to FIRST HAWAIIAN BANK.

15. Grant dated December 26, 1980, recorded on January 2, 1981 in said Bureau of Conveyances in Book 15259 Page 713, in favor of CITIZENS UTILITIES COMPANY, a Delaware corporation, granting a perpetual right and easement to build, etc., pole and wire lines and/or underground lines, etc., for the transmission and distribution of electricity to be used for light and power and/or communications and control circuits, over, under, across and through Easement B, (affecting Lot 1).

NOTE: The Developer advises that Easement "A" for public access purposes over and across Lot 1 which was referred to on page 4 of the Final Public Report is described as Easements "A" and "B" on the File Plan map which has been recorded in the Bureau of Conveyances as File Plan No. 1702. Easements "A" and "B" for pedestrian purposes have been or will shortly be conveyed to the County of Kauai as and was disclosed in a letter dated January 12, 1979 from the County, a copy of which was previously filed

with the Commission in connection with the issuance of the Preliminary Public Report.

The Developer advises that pursuant to paragraph 12.F of the Declaration by which he reserved the right to grant to any public or governmental authority rights of way of whatever kind, an easement for electrical purposes has been granted to Citizens Utilities Company, dba Kauai Electric, by instrument dated December 26, 1980, recorded at the Bureau of Conveyances of the State of Hawaii at Liber 15259, page 713.

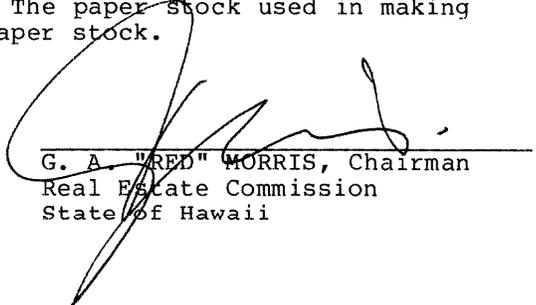
STATUS OF THE PROJECT. On January 9, 1981 the County of Kauai issued Certificates of Occupancy certifying that Buildings III and II-B and the non-residential apartment (Building IV) and the apartment consisting of the renovated existing dwelling are in compliance with the various ordinances of the County regulating building construction or use. Final construction work for the remainder of the project is continuing. On February 6, 1981 the Developer entered into a Construction Contract with Constructors Hawaii Inc. for the completion of Building II-A which was partially damaged by fire on November 1, 1980. The Building is expected to be completed about July 30, 1981.

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The purchaser or prospective purchaser should be cognizant of the fact that this Supplementary Final Public Report represents information disclosed by the Developer in the required Notice of Intention submitted March 30, 1979, and information subsequently filed as of February 27, 1981.

THIS SUPPLEMENTARY FINAL HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 1114 filed with the Commission March 30, 1979.

This Report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be of pink paper stock.



G. A. "RED" MORRIS, Chairman  
Real Estate Commission  
State of Hawaii

Distribution:

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Registration No. 1114

Dated: March 4, 1981