

# 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

KONA BY THE SEA  
75-6106 Alii Drive  
Kailua-Kona, Hawaii

REGISTRATION NO. 1334

### 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: August 4, 1980

Expires: September 4, 1981

#### SPECIAL ATTENTION

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

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED JULY 15, 1980, AND INFORMATION FILED AS OF JULY 31, 1980. DEVELOPER IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL AND SUBMITTING INFORMATION ON THE PROJECT, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. KONA BY THE SEA is a proposed leasehold condominium project consisting of 86 apartments in two residential wings contained in a single building with staggered heights of three and four stories, common element parking in the basement levels of

both wings, and additional on-site parking including four (4) public parking stalls.

2. The Developer of the Project has submitted to the Commission for its examination all documents deemed necessary for the registration of the condominium project and the issuance of this Preliminary Public Report.
3. The Developer reports that the Declaration of Horizontal Property Regime, the Bylaws of the Association of Apartment Owners and the Condominium Map will be recorded in the Bureau of Conveyances of the State of Hawaii immediately prior to the application for a Final Public Report.
4. No advertising or promotional materials have been submitted to the Commission.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, and the Rules and Regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.
6. This Preliminary Public Report expires thirteen (13) months after issuance, August 4, 1980 unless a Final or Supplementary Public Report issues, or the Commission, upon review of the registration, issues an order extending the effective date of this report.
7. This Preliminary Public Report is part of the registration of KONA BY THE SEA. The Developer has the responsibility of placing a true copy of this Preliminary Public Report (yellow paper stock) together with Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed copy of the receipt therefor from each purchaser and prospective purchasers.

NAME OF PROJECT: KONA BY THE SEA

LOCATION: The Project is located in Kailua-Kona, Island and County of Hawaii, State of Hawaii and has a land area of approximately 3.27 acres.

TAX KEY: Third Division, 7-5-20: 16 and 59.

ZONING: RM-1.5 Multiple Family Residential District under the Ordinances of the County of Hawaii.

DEVELOPER: HASEGAWA KOMUTEN (USA), INC., a Hawaii corporation, 745 Fort Street, Suite 1814, Honolulu, Hawaii 96813, Telephone: (808) 536-2166. The officers of the corporation are: Kohei Goda, President; Seiji Kurasawa, Executive Vice-President; Osamu Kaneko, Vice President; and Makoto Sakaguchi, Secretary-Treasurer.

ATTORNEYS REPRESENTING DEVELOPER: Cades Schutte Fleming & Wright (Attention: Mark A. Hazlett or Cary S. Matsushige), Suite 1200, 1000 Bishop Street, P.O. Box 939, Honolulu, Hawaii 96808, Telephone: (808) 521-9200.

DESCRIPTION OF PROJECT:

Description and Division of Project.

The Project contains 86 apartments in two wings in a single building with staggered heights of three and four stories with basement parking in both wings and additional on-site parking. Recreational facilities include a swimming pool, jacuzzi, sundeck and recreation room. The Project and the apartments are more specifically described in Exhibit "A" attached hereto.

Limits and Inclusions of Apartments:

Each apartment shall be deemed to include: (i) any adjacent lanai to which such apartment has direct, exclusive access (without limiting the foregoing, apartments 402 and 411 in Wing 1 and apartment 417 in Wing 2 include the adjacent roof lanais as shown on the Condominium Map), (ii) all the walls and partitions which are not loadbearing within its perimeter walls, (iii) the inner decorated or finished surfaces of all walls, floors (for apartments 402 and 411 in Wing 1 and apartment 417 in Wing 2, "floors" are deemed to include the finished surfaces of the adjacent roof lanais) and ceilings, (iv) any doors, windows or panels along the perimeters, and (v) all fixtures originally installed therein. The respective apartments shall not be deemed to include: (a) the undecorated or unfinished surfaces of the perimeter walls, the interior loan-bearing walls, or the party walls, (b) the undecorated or unfinished floors and ceilings surrounding each apartment, or (c) any pipes, shafts, 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.

COMMON ELEMENTS:

The common elements will include all portions of the Project, other than the apartments, including, specifically, but not limited to, the common elements mentioned in the Act which are actually constructed on the land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use, and which are not included as part of an apartment, including but not limited to: (a) all on-site parking areas (including

basement level parking in both wings and four (4) on-site public parking stalls as shown on the Condominium Map and described in the "Encumbrance" section of this report); (b) the landscaped recreation area including the recreation room (with its kitchen, wet bar, lounge, restrooms, storage area and lanais), swimming pool, jacuzzi, sundeck, shower area and pool equipment room; (c) all lobbies, walkways and corridors, laundry and trash chutes, stairwells, elevators, elevator machinery rooms, machinery rooms and associated electric panels; (d) all storage rooms, trash rooms, laundry rooms, linen rooms, mechanical and electrical rooms; (e) the telephone equipment room, the generator room, the landscape storage room; (f) all planters and landscaped areas; (g) the office-security room; and (h) the private sewage treatment facility to be constructed and which will be abandoned and reconnected when a public system becomes available.

LIMITED COMMON ELEMENTS:

No portions of the common elements are designated or set aside for the exclusive use of certain apartments as limited common elements.

PERCENTAGE OF UNDIVIDED OWNERSHIP TO BE CONVEYED:

The apartments have the common interests in the common elements of the Project as set forth below. Each apartment shall have such percentage in all common profits and expenses of the project and for all other purposes including voting. Interests in each apartment will be transferred by the Developer to each buyer under a Condominium Conveyance Document, consisting of a lease of an undivided interest in the land included in the Project and a deed of the improvements, exclusive of the land, comprising the particular apartment. The following common interests shall be valid and effective, whether or not the Developer's calculations of such interests are accurate or mathmatically correct:

<u>Apartment Model</u>	<u>Percentage of Common Interest</u>	<u>Number of Apartments</u>	<u>Percentage Total</u>
A,AR	1.0%	41	41.0%
B,BR,C	1.3	44	57.2
D	1.8	1	1.8
			100.0%

The above percentages are based on the ratio of the approximate square footages of apartment living areas (excluding lanais) between the one and two bedroom apartments. The percentage common interest for Apartment Model D which is a three bedroom apartment has been decreased to conform to the legal requirement that the total percentage common interest must equal 100% and in anticipation that its additional bedroom would not create additional common expenses and burdens on the common elements in full proportion to the additional floor area.

NOTE: PRIVATE SEWAGE TREATMENT PLANT

The Developer intends to construct a private sewage treatment plant on the central portion of the property (away from the side property lines) as shown on the Condominium Map. Pursuant to the requirements and the long range plans of the Department of Public Works for the County of Hawaii, the private sewage treatment plant must be abandoned at such time as a public system for the treatment of sewage becomes available to serve the Project. The Association of Apartment Owners of Kona By The Sea as owners of the private sewage treatment plant will at such future date be responsible for all expenses incidental to connecting to the public system which are not assumed by the County of Hawaii. Until such public system is available (at an as yet undetermined future date) Apartment Owners shall be responsible for the maintenance and operation of the private sewage system, including the cost of transporting sludge to a public treatment facility in Kona and the fees imposed by the Bureau of Sewers and Sanitation of the County of Hawaii for use of the public facility.

PURPOSE OF BUILDINGS AND RESTRICTIONS AS TO USE:

Each apartment shall at all times be used as a permanent or temporary residence and for any other purpose permitted by all applicable laws.

OWNERSHIP OF TITLE:

A Preliminary Title Report dated June 23, 1980, issued by Title Guaranty of Hawaii, Inc. states that fee simple title to the land is held by the Developer.

ENCUMBRANCES:

The Preliminary Title Report states that the title to the property is subject to the following encumbrances:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the Seaward boundary in accordance with the laws of the State of Hawaii.
3. For real property taxes, reference is made to Tax Assessor, Third Division.

PURCHASE MONEY HANDLING:

A copy of a specimen Deposit Receipt and Sales Contract (the "Sales Contract") and an executed Escrow Agreement have been submitted as part of the registration. The Escrow Agreement, dated July 15, 1980, identifies Title Guaranty Escrow Services, Inc. as "Escrowee". Upon examination, the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly with Section 514A-37, 39, 40, 63

through 66. A prospective purchaser should carefully examine the form of Sales Contract and the Escrow Agreement to determine the time for and the amount of the installment payments on the purchase price and his obligations to pay the closing costs. It is incumbent upon the purchaser to read and understand the Escrow Agreement before signing the Sales Contract since the Escrow Agreement prescribes the procedure for receiving and disbursing the purchaser's down payments and the Sales Contract provides that the purchaser approves the Escrow Agreement. The Sales Contract, among other things, contains acknowledgments by each buyer: (i) that the Developer will not sponsor, arrange or promote any program for the rental or temporary use and occupancy of apartments in the Project other than apartments owned by the Developer upon completion of the Project, if any; (ii) that the buyer must make any such arrangements for his apartment, if desired, without the involvement or participation of the Developer; (iii) that the Developer has authorized no agents, salesmen or brokers to make any representations as to rental or other income from any apartment or any other economic benefit, including possible advantages from the ownership of an apartment under federal or state tax laws, to be derived from the purchase of an apartment in the Project; (iv) that the buyer acknowledges that no such representations or warranties have been made and that the Developer expressly disclaims and repudiates any representation from any source as to any possible economic benefit arising from ownership of an apartment in the Project; (v) that until the Developer closes the sales of all the apartments in the Project, the buyer shall not enter into any agreement with any purchaser, lessee or owner of another apartment in the Project or any third party under which the buyer agrees to share rental income from apartments in the Project; (vi) that the Buyer acknowledges and agrees that the Seller has not made and will not be legally obligated for any express or implied warranties with respect to Buyer's apartment, the common elements or anything installed therein except that the Seller will cooperate with the Buyer in using its best effort to require the General Contractor of the project to perform under a one (1) year warranty from date of completion for faulty material or workmanship or both. Additionally, the Sales Contract also provides that the buyer's right, title and interest under the Sales Contract shall be subject and subordinate to the liens and security interests of any mortgages or other security instruments made by the Developer in favor of any lending institutions to secure one or more loans for the purpose of constructing the Project.

The Escrow Agreement provides, among others, that:

(a) A Buyer shall be entitled to a return of his funds, and Escrow shall pay such funds to such Buyer, with all interest accrued thereon and without deduction of the cancellation fee imposed by Escrow, promptly after request for return by the Buyer if one of the following has occurred:

(i) The Seller has not completed construction of the Buyer's apartment within the two-year period

from the earlier of the date of the Buyer's Sales Contract or the date of the Buyer's receipt of the Final Public Report;

(ii) The Seller has failed for any other reason to close as required by the Sales Contract; or

(iii) The Seller has requested Escrow in writing to return to the Buyer the funds of the Buyer then being held hereunder by Escrow and has stated in such writing that such return is to be made pursuant to subparagraph 5(a) of the Escrow Agreement.

(b) A Buyer shall be entitled to return of his funds and Escrow shall pay such funds to the Buyer, without interest and less the cancellation fee imposed by Escrow, promptly after request for return by the Buyer if any one of the following has occurred:

(i) The Seller has requested Escrow in writing to return to the Buyer the funds of the Buyer then being held by Escrow and has stated in such writing that such return is to be made pursuant to subparagraph 5(b) of the Escrow Agreement; or

(ii) The Seller has notified Escrow of the Seller's rescission of the Sales Contract pursuant to any right of rescission stated therein or otherwise available to the Seller.

MANAGEMENT AND OPERATION:

Article III, Section 3, of the Bylaws states that the Board of Directors shall at all times employ a responsible managing agent to manage and control the Project, subject at all times to direction by the Board of Directors.

STATUS PROJECT:

Construction of the Project will commence on or about November 10, 1980 and the Developer currently estimates that it will be completed in November or December, 1981.

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The purchaser and prospective purchasers should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted July 15, and information subsequently filed as of July 31, 1980.

This PRELIMINARY HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1334 filed with the Commission of July 15, 1980.

The report, when reproduced, shall be a true copy of the

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Paper stock used in making



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

Distribution:

Department of Taxation  
Bureau of Conveyances  
Planning Department  
County of Hawaii  
Escrow Agent  
Federal Housing Administration

Registration No. 1334

Date: August 4, 1980

## PHYSICAL DESCRIPTION

### A. PROJECT

The Project consists of two residential wings in a single building with staggered heights of three and four stories, parking in the basement levels of both wings, additional on-site parking and various recreational amenities including a recreation room, a swimming pool, jaccuzzi and sundeck. The building is constructed of reinforced concrete, glass and other allied building materials. Wing 1 is located in the center of the property extending north to south parallel to Alii Drive (Kailua Town is to the north; Keauhou to the south) and contains 49 apartments (23 model AR one-bedroom apartments, 23 model BR two-bedroom apartments and 3 model C two-bedroom apartments). Wing 2 is situated lengthwise in an east-west direction (Alii Drive fronts the east boundary; the west boundary fronts the ocean) somewhat perpendicular to Alii Drive along the north boundary of the property and contains 37 apartments (11 model A and 7 model AR one-bedroom apartments, 11 model B and 7 model BR two-bedroom apartments and 1 model D three-bedroom apartment). There are some size variations among similar models due to differences in living and lanai areas.

### B. APARTMENTS

The project contains 86 apartments (41 one-bedroom apartments, 44 two-bedroom apartments and 1 three-bedroom apartment) based on 6 different models. All apartments are furnished with central air conditioning, bathtub/shower, carpeting, drapes, dishwasher, garbage disposal, refrigerator/freezer, electric range/oven, washer/dryer and a water heater. All apartments will have immediate access to one or more corridors which are common elements. Access between floors from the corridors into the outside is provided by elevator and stairwells in each wing. The location of each apartment in the Project may be determined by reference to its apartment number. Each apartment has a 3-digit apartment number. The first digit of each apartment number indicates the floor level (e.g., apartment 101 is on the first floor above the basement parking level and apartment 301 is on the third floor). The last two digits indicate which wing the apartment is located in and its approximate location within the wing. The two wings are "single-loaded", i.e., each apartment fronts both exterior faces of the wing. Those apartments with apartment numbers ending with numbers "01" to "14" are in Wing 1; those with apartment numbers ending with numbers "15" through "23" are in Wing 2. On the first three floors of Wing 1, apartments ending with the numbers "01" are located on the southernmost portion with the apartments numerically running consecutively thereafter (except there are no apartments ending with numbers "13"), and apartments ending with numbers "14" are located on the northernmost portion. On the fourth floor of Wing 1,

EXHIBIT "A"

apartment 402 is located on the southernmost portion and apartment 411 is located on the northernmost portion with apartment numbers running consecutively in between. On the first three floors of Wing 2, apartments with apartment numbers ending with "15" are located on the easternmost portion and those with apartment numbers ending with "24" are located on the westernmost portion with apartment numbers running consecutively in between. On the fourth floor of Wing 2, apartment 417 is located on the easternmost portion and apartment 423 is located on the westernmost portion, with apartment numbers running consecutively in between. The apartment areas (determined from the center line of all party walls and the outside face of all non-party walls) by model and number are as follows:

<u>Model</u>	<u>Apt. No.</u>	<u>Unit Type</u> BR/Bath	<u>Area in Square Feet</u>			<u>Number</u> <u>of Units</u>
			<u>Living</u>	<u>Lanai</u>	<u>Total</u>	
<u>Wing 1</u>						
AR	103,105,107,109, 111,203,205,207, 209,211,303,305, 307,309,311,403, 405,407,409	1/2	919	142	1,061	19
AR	114,214,314	1/2	938	145	1,083	3
AR	411	1/2	938	732	1,670	1
BR	102,104,108,112 202,204,208,212 302,304,308,312 404,408	2/2	1,263	142	1,405	14
BR	110,210,310	2/2	1,264	145	1,409	3
BR	106,206,306,406	2/2	1,267	145	1,412	4
BR	410	2/2	1,263	145	1,408	1
BR	402	2/2	1,282	580	1,862	1
C	101,201,301	2/2	1,282	142	1,424	<u>3</u>
Total Wing 1						49

EXHIBIT "A"

<u>Model</u>	<u>Apt. No.</u>	<u>Unit Type BR/Bath</u>	<u>Area in Square Feet</u>			<u>Number of Units</u>
			<u>Living</u>	<u>Lanai</u>	<u>Total</u>	
<u>Wing 2</u>						
AR	116,118,216,218 316,318,418	1/2	919	142	1,061	7
A	119,121,219,221 319,321,419,421	1/2	922	145	1,067	8
A	123,223,323	1/2	920	145	1,065	3
B	120,122,220,222 320,322,420,422	2/2	1,263	142	1,405	8
BR	117,217,317	2/2	1,266	145	1,411	3
BR	115,215,315	2/2	1,282	145	1,427	3
B	124,224,324	2/2	1,282	145	1,427	3
BR	417	2/2	1,282	685	1,967	1
D	423	3/3 1/2	2,289	287	2,576	<u>1</u>
Total Wing 2						<u>37</u>
Total Wings 1 and 2						86

NOTE: IN ACCORDANCE WITH HAWAII PRACTICE, THE APPROXIMATE TOTAL FLOOR AREA AND LIVING AREA OF EACH APARTMENT AS SET FORTH ABOVE INCLUDES ALL OF THE WALLS AND PARTITIONS, VENTS, SHAFTS, DUCTS AND THE LIKE 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. IN ADDITION, THE TOTAL FLOOR AREAS ABOVE INCLUDE LANAIS AS SHOWN ABOVE. BECAUSE OF THIS METHOD OF MEASUREMENT CERTAIN AREAS INCLUDED IN THE AREA SQUARE FOOTAGES MAY BE COMMON ELEMENT AREAS.

Apartments are described by model as follows:

1. Model A and Model AR Apartments. These apartments consist of one bedroom, 2 bathrooms, a lanai, living/dining area and kitchen. Wing 1 contains 23 Model AR units and Wing 2, 11 Model A and 7 Model AR units. Model AR units differ from Model A units because of variations in entrance, layout and lanais. Model A apartments are slightly larger than Model AR apartments, except for Model AR apartment 411 located in Wing 1 which includes 732 square feet of lanai, consisting of a 145 square foot lanai and a 587 square foot roof lanai.

2. Model B and Model BR Apartments. These apartments consist of 2 bedrooms, 2 bathrooms, lanai, living/dining area, vanity/ dressing area and kitchen. Wing 1 contains 23

EXHIBIT "A"

Model BR units and Wing 2, 11 Model B and 7 Model BR units. Model BR units differ from Model B units due to differences in the entrance area and layout of the apartments. Apartment 402 located in Wing 1 and apartment 417 located in Wing 2 differ significantly from the other apartments because apartment 402 includes 580 square feet of lanai area, consisting of a 142 square foot lanai and a 438 square foot roof lanai, and apartment 417 includes 685 square feet of lanai area, consisting of a 145 square foot lanai and a 540 square foot roof lanai.

3. Model C Apartments. These apartments consist of 2 bedrooms, 2 bathrooms, lanai, living/dining area, vanity/dressing area, kitchen and pass through bar/sink. Wing 1 contains all three of these units (apartments 101, 201 and 301). The apartments each contain a total living area of 1,424 square feet comprised of 1,282 square feet of living area and 142 square feet of lanai.

4. Model D Apartments. This unit in Wing 2 (apartment 423) contains 3 bedrooms, 3 and 1/2 baths, lanai living/dining area, kitchen and den with a bar/sink. This apartment contains 2,576 square feet of total living area comprised of 2,289 square feet of living area and 287 square feet of lanai.

EXHIBIT "A"