

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

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

FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON
THE WHALE'S TAIL
Puako Beach Drive
Puako, South Kohala, Hawaii
Registration No. 1474

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 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 : April 14, 1982
Expires: May 14, 1983

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 and prospective purchaser is particularly directed to the following:

THE REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED December 18, 1981, and information subsequently filed as of March 24, 1982. 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, AS AMENDED.

1. The proposed Project is a fee simple condominium project consisting of one two-story building containing one apartment and one split-level building containing one apartment, both being without basements. There will be a total of four parking stalls contained within an enclosed garage area that is a part of the split-level building.

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

3. The Developer advises that the Declaration of Horizontal Property Regime, with the By-Laws of the Association of Apartment Owners attached, has been filed in the Bureau of Conveyances of the State of Hawaii in Liber 16181 at Page 436, Condominium Map No. 841 has been designated to the project.

4. Advertising and promotional matter required to be filed pursuant to the rules and regulations promulgated by the Commission will be submitted prior to public dissemination.

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

6. This Final Public Report is made a part of the registration of THE WHALE'S TAIL condominium project. The Developer has the responsibility of placing a true copy of the Final Public Report (white paper stock) and the attached Disclosure Abstract in the hands of all purchasers and prospective purchasers and for securing a signed copy of the receipt therefor.

7. This Final Public Report automatically expires thirteen (13) months from the date of issuance, April 14, 1982, unless a Supplementary Public Report is issued or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: THE WHALE'S TAIL

LOCATION: The project is located on a 13,832 square foot parcel of real property on Puako Beach Drive, in Puako, South Kohala, Island and County of Hawaii, State of Hawaii, to which property there are two appurtenant easements of 4,642 square feet and 1,240 square feet.

TAX MAP KEY: THIRD DIVISION: 6-9-02-12.

ZONING: CV-1.25

DEVELOPER: The Notice of Intention reveals the Developer to be ROBERT T. BEHRENS and JEAN BEHRENS, whose address is [REDACTED]

ATTORNEYS REPRESENTING DEVELOPER: Gallup, Mah, Van Pernis & Ihara, Post Office Box 1837, Kailua-Kona, Hawaii 96740
(Attention: Wallace H. Gallup, Jr.) Telephone (808)329-3551.

DESCRIPTION: The Declaration reflects that the Project consists of two (2) separate condominium apartments contained in one two-story building and in one split level building, without basements. The buildings are constructed principally of concrete, wood, corrugated steel and glass.

The location and description of the two apartments of the project are as follows:

1. Apartment 1 is located in Building 1, consisting of a two-story building, without basement, and containing 14 rooms, including the lanai/dining area. On the first floor there is an entry/garden area, a kitchen, a living room, two bedrooms, three bathrooms, a utility room, a lanai/dining area and a sun deck. On the second floor there is one bedroom, one bathroom, two project rooms, and two deck areas. This apartment contains an enclosed floor area of approximately 3,571 square feet and a lanai/dining area of approximately 416 square feet.

2. Apartment 2 is located in Building 2, consisting of a split-level building, without basement, and containing three (3) rooms. On the bottom level there is one (1) room containing a living room, dining area and a kitchen. On the upper level there are three (3) rooms consisting of a bedroom, bathroom and a utility room. This apartment contains an enclosed floor area of 1,441 square feet and has a deck of 232 square feet.

The apartments have immediate access to the common elements at ground level and the street by walkways and driveways.

The respective apartments shall not be deemed to include 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. Except as to the air space within and the doors and the interior surfaces of the walls, floors and ceilings of the garage areas contained in the building that Apartment 2 is contained as shown on said Condominium Map, each apartment shall be deemed to include the entire building in which the apartment is contained, including all the walls and partitions within the building's perimeter walls, and all walls, floors, ceilings and roofs, doors and door frames, windows and window frames, the lanai air space, and all appliances and fixtures installed therein.

COMMON ELEMENTS: One freehold estate consisting of all remaining portions of the Project, called the "common

elements", includes specifically but is not limited to:

- (a) Said land in fee simple;
- (b) All yards, grounds, landscaping and fences;
- (c) All driveways, garages and other parking areas and walkways;
- (d) 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, television and radio signal distribution, if any; and
- (e) 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.

NOTE: The Developer advises that the project will have two cesspools on the site for the disposal of sewage, and that the project will not be connected to public sewage lines.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, called the "limited common elements" are set aside and reserved for the exclusive use of certain apartments, which apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The common elements so set aside and reserved are as follows:

- (a) Each apartment shall have appurtenant thereto one garage area containing two (2) parking stalls; each such garage area is located as shown on the Condominium Map and bears a number which corresponds with the apartment number of the apartment to which it is appurtenant;
- (b) Each apartment shall have appurtenant thereto the land area upon which each apartment is located and which surrounds each apartment as shown on the condominium map in yellow for Apartment 1 and in orange for Apartment 2.

Each apartment owner shall be responsible for the proper repair and maintenance of the garage area limited common element appurtenant to his apartment, and shall at all times keep the same in good order and condition, and the Board of Directors shall maintain and keep the land upon which the project is situate, including the land which is designated as a limited common element in a neat and attractive condition and all trees, shrubs, grass and other ground cover thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the same of which notice shall be given by an apartment owner within thirty (30) days after the giving of such notice. No apartment owner shall change the external appearance of any apartment or limited common element improvements without the prior written consent thereto by

the Board of Directors, which consent shall not be unreasonably withheld.

COMMON INTERESTS TO BE CONVEYED TO PURCHASER. Apartment 1 shall have appurtenant thereto a 60% undivided interest in the common elements of the Project, and Apartment 2 shall have appurtenant thereto a 40% undivided interest in the common elements of the Project, called the "common interest", and the same proportionate share in all common profits and expenses of the Project, and for all other purposes excluding voting. Each of the two apartments for voting purposes only shall have appurtenant thereto an undivided 50% in all common elements of the project. Each apartment and its appurtenant Common Interest will be deeded to each purchaser by an apartment deed executed by the Developer.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The Declaration provides that 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. The apartments shall not be rented for transient or hotel purposes, which are defined as rental for any period less than twenty-one (21) consecutive days. Except for such transient and hotel purposes, the owners of the respective apartments shall have the absolute right to rent or lease the same subject to all provisions of this Declaration; provided, however, that no apartment owner may lease less than the entire apartment; provided further, that no apartment may be used as a time share unit under a time sharing plan which shall mean any plan or program in which the use, occupancy, or possession of one or more time share units circulate among various persons.

Purchasers and prospective purchasers are advised to note that the By-Laws contain certain "Rules of Conduct" for the Project, which, among other things, provide that no livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project except that dogs, cats and other common household pets in reasonable number, may be kept by apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purposes nor allowed on any common elements except in transit when carried or on leash; provided, however, that any such pet causing a nuisance or unreasonable disturbance, as determined by the Board or Managing Agent, to any other apartment owner or occupant of the project shall be promptly and permanently removed from the project upon written notice given by the Board or Managing Agent.

Additionally, the By-Laws provide that the Board of Directors may adopt, amend or repeal any supplemental house rules and regulations governing details of the operation and use of the common elements and matters relating to the welfare of the project.

OWNERSHIP OF TITLE: A Preliminary Title Report issued on March 11, 1982, by Title Guaranty of Hawaii, Inc., a copy of which was submitted to the Commission, indicates that fee

simple title to the land being submitted to the regime is vested in the Developer.

ENCUMBRANCES AGAINST TITLE: The Preliminary Title Report issued March 11, 1982, and prepared by Title Guaranty of Hawaii, Inc. describes the land as being subject to the following encumbrances:

1. For any taxes that may be due and owing and a lien on the land, reference is made to the Office of the Tax Assessor.

2. Location of the seaward boundary in accordance with the laws of the State of Hawaii, and shoreline setback line in accordance with County regulation and/or ordinance.

3. Patent to be applied for re: Land Commission Award 3758.

4. Terms, covenants and conditions contained in Grant dated October 20, 1978, recorded in Liber 13410 at Page 562, by and between State of Hawaii, "Grantor" and Robert Behrens and Jean Behrens, husband and wife, as Tenants in Common, "Grantees."

5. Terms, covenants and conditions contained in Grant of Easement dated September 3, 1981, recorded in Liber 15821 at Page 640, by and between Albert H. Gersten and Marilyn M. Gersten, husband and wife, as "Grantors" and Robert T. Behrens and Jean Behrens, as Tenants in Common, "Grantees."

6. Mortgage between Robert. T. Behrens and Jean Behrens, husband and wife, as "Mortgagor" and Bancorp Finance of Hawaii, Inc., a Hawaii corporation, as "Mortgagee", dated August 20, 1981, and recorded in the State of Hawaii Bureau of Conveyances in Liber 15775 at Page 415 in the amount of \$200,000.00.

7. Second Mortgage between Robert T. Behrens and Jean Behrens, husband and wife, as "Mortgagor" and Bancorp Finance of Hawaii, Inc., a Hawaii corporation, as "Mortgagee", dated September 4, 1981, and filed in the State of Hawaii Bureau of Conveyances in Liber 15808 at Page 416 in the sum of \$50,000.00

8. The covenants, agreements, obligations, conditions and other provisions set forth in that certain Declaration of Horizontal Property Regime dated November 30, 1981, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 16181 at Page 436, and Condominium Map 841 filed in said Bureau.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated April 25, 1980, between Title Guaranty Escrow Services, Inc., as Escrow Agent, and Developer, and the specimin Deposit Receipt and Sales Contract have been filed with the Commission. On examination, the Specimen Deposit Receipt and Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended.

It is incumbent upon the prospective purchaser that he reads with care the Deposit Receipt and Sales Contract and the executed Escrow Agreement.

The Escrow Agreement establishes how the proceeds from the sale of condominium units are placed in trust as well as the retention and disbursement of said funds. The executed Escrow Agreement provides in part:

A purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such purchaser, without interest, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow to return to purchaser the funds of purchaser held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

In any of the foregoing events, Escrow shall, pay said funds to said purchaser and thereupon said sales contract and any conveyance document theretofore delivered to Escrow shall be returned to Developer and shall be deemed no longer held hereunder; provided, however, that no refund shall be made to a purchaser at purchaser's request prior to receipt by Developer of written notice from Escrow of its intent to make such refund.

The Deposit Receipt and Sales Contract sets forth the terms of the purchase, and contains, among others, the following provisions:

1. "Seller makes no warranties themselves, but Seller agrees that the assignment by Seller to Buyer of any and all warranties given Seller by the General Contractor for the building in which Apartment 2 is contained shall accrue to Buyer on closing without further instruments or documents. There will be no "General Contractor" warranties as to the building in which Apartment 1 is contained since that building was built by the Developer as an Owner-Builder. Seller hereby agrees to cooperate with Buyer during the effective period of such agreement in asserting any claims based thereon. Buyer acknowledges and agrees that Seller is not adopting the contractor's warranty or acting as co-warrantor but is merely attempting to pass through to Buyer the benefit of any such contractor's warranty, if any."

"Seller shall also assign to Buyer the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the apartment. Buyer acknowledges that the Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not undertaking to adopt any such warranties or to act as co-warrantor with respect to any furnishings, fixtures or appliances covered thereby. The terms of the manufacturer's or dealer's written warranties are available for the Buyer's examination at the Seller's sales office."

"Except for the agreements set forth above, it is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, CONSUMER PRODUCTS INSTALLED THEREIN, THE PROJECT OR ANYTHING INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OF FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE."

2. "Buyer agrees that all of the rights of Buyer pursuant to the terms and conditions of this contract are and shall be subject and subordinate to the lien of any mortgage made to finance the cost of construction and other costs during construction and to any and all advances made thereon, and to any and all sums which may become a lien pursuant to the terms of such mortgage or any other agreement relating to such mortgage. The subordination of Buyer's right as herein provided shall be self-operating and no further instrument of subordination shall be required. In confirmation of such subordination, Buyer agrees to promptly execute and deliver any instrument that the holder of such mortgage or its successors in interest may require to evidence such subordination, and Buyer hereby irrevocably appoints Seller the attorney-in-fact of Buyer to execute and deliver any such instrument on behalf of Buyer, should Buyer refuse or fail to do so within five (5) days after request is made."

3. "Buyer hereby acknowledges that Seller intends to preclose by having all documents necessary for closing executed prior thereto and deposited with Escrow. At any time after the date of the sales contract, and within five (5) days after receiving written notice from the Seller, mortgagee or Escrow, Buyer agrees to execute the Apartment Deed and such other documents as are required to effect transfer of title and to complete financing arrangements (if any) including execution of note and mortgage, and hereby authorizes Seller, mortgagee or Escrow to date such documents as of the effective date of transfer of title."

4. "Buyer acknowledges that he has been advised of his obligation to pay on closing prepaid real property taxes, start-up fees, insurance premiums and other common expenses as may be determined by Seller or managing agent to be necessary in order to commence operations of the project as a Horizontal Property Regime. It is understood that any such prepaid expense shall be in addition to the total purchase price for the apartment and any other payments required hereunder."

5. "The Seller and all entities, persons and agents related to or affiliated with the Seller, have no program at this time, nor is any program planned or contemplated, to offer a rental service of any kind to the owners of condominium units, either individually or in any form of pooling arrangement, nor have any representations been made by Seller or its agents as to the feasibility of renting the condominium units. Buyers of condominium units who desire to rent their units must, therefore, make their own rental arrangements."

MANAGEMENT AND OPERATIONS: The By-Laws of the Association of Owners which are incorporated in the Declaration vest the Board of Directors with the powers and duties necessary for the administration of the affairs of the project. The Developer advises that they do not plan to appoint a Managing Agent for the project.

STATUS OF PROJECT: The Developer advises that construction of the project was completed as of October 1, 1981.

The purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted December 18, 1981, and information subsequently filed as of March 24, 1982.

THIS FINAL HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1474 filed with the Commission on December 18, 1981.

The report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimilies must be white.



G. A. "RED" MORRIS, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

DISTRIBUTION:

DEPARTMENT OF FINANCE
BUREAU OF CONVEYANCES
PLANNING DEPARTMENT, COUNTY OF HAWAII
ESCROW AGENT
FEDERAL HOUSING ADMINISTRATION

REGISTRATION No. 1474

DATED: April 14, 1982