

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS

STATE OF HAWAII

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

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

ON
NIUMALU HALE
380 Papaloa Road
Niumalu, Kauai, Hawaii

REGISTRATION NO. 1631 (CONVERSION)

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: October 26, 1984

Expires: November 26, 1984

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 SUBMITTED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED SEPTEMBER 4, 1984 AND INFORMATION SUBSEQUENTLY FILED AS OF OCTOBER 23, 1984. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. NIUMALU HALE is a proposed fee simple hotel condominium project with a total of 48 units and 25 parking stalls.
2. The Developer of the project has submitted to the Commission for examination all documents deemed

necessary for the issuance of this Preliminary Public Report.

3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Owners and a copy of the Condominium Map) have been submitted to the Commission for examination but have not yet been filed.
4. No advertising or promotional matter has been submitted pursuant to the rules and regulations promulgated by the Commission.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, and the Condominium Rules and Regulations which relate to the Horizontal Property Regime.
6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, October 26, 1984, unless a Final or Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the effective period of this report.
7. This Preliminary Public Report is made a part of the registration of NIUMALU HALE condominium Project. The Developer is responsible for placing a true copy of this Preliminary Public Report (yellow paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed receipt therefor.

NAME OF PROJECT: NIUMALU HALE.

LOCATION: The 30.558 acre property to be committed to the regime as a fee simple condominium project is situated at 380 Papaloa Road, Niumalu, Kauai, Hawaii.

TAX MAP KEY: Fourth Division, 3-2-02:02.

ZONING: Urban - Open.

DEVELOPER: Hawaiian Oceanic Enterprises, Inc., a Hawaii corporation, whose address is Lihue Shopping Center, 3100-9 Kuhio Highway, Lihue, Kauai, Hawaii 96766, Telephone (808) 245-8515.

The Officers are:

<u>Name and Title</u>	<u>Residence Address</u>
Raymond E. Hoe President/Treasurer and Director	Lawai, Kauai, Hawaii
Sherry L. Hoe Vice President/Secretary and Director	Lawai, Kauai, Hawaii

ATTORNEY REPRESENTING DEVELOPER: Hiroshi Sakai, Attorney at Law, A Law Corporation, and Michael H. Sakai, Suite 602, 810 Richards Street, Honolulu, Hawaii 96813, Telephone (808) 531-4171.

DESCRIPTION OF THE PROJECT. The project presently consists of three existing two-story wood frame buildings with no basement and a pitched galvanized iron roof and 25 parking stalls. The building is in existence and the proposed renovations to the building are being certified by David Kealii Hoe, Registered Professional Architect. The site, floor plans and elevations of the Project is to be filed concurrently with the Declaration in the Office of the Assistant Registrar as the Condominium Map.

The Project, the number and location of the apartments (also referred to as "units") which are as set forth in the Condominium Map are described as follows:

A. Building No. 1 consists of a two-story building, with 6 units and a storage area on each floor. There are stairways on both ends of the structures. Each unit consists of 1 bedroom, 1 bath, and 1 dressing room.

Units 1101 to 1106 consist of 305 square feet each. Units 1207 and 1212 consist of 305 square feet. Units 1208 to 1211 consist of 377 square feet.

B. Building No. 2 consists of a two-story building with 12 units and a storage area on each floor. There are stairways on both ends of the structure. Each unit consists of 1 bedroom, 1 bath and 1 dressing room.

Units 2101 to 2112 consist of 247 square feet each. Units 2214 to 2225 consist of 285 square feet each.

C. Building No. 3 consists of a two-story building with 6 units and a storage area on each floor. There are stairways on both ends of the structure. Each unit consists of 1 bedroom, 1 bath, and 1 dressing room.

Units 3101 to 3106 consist of 305 square feet each. Units 3207 and 3212 consist of 305 square feet each. Units 3208 to 3211 consist of 377 square feet each.

D. The floor area of a unit is the net area and is measured from the interior surface of the unit perimeter walls.

E. Each unit has immediate access to the common elements. The first and second floor units open onto the walkways leading to the stairways.

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or load bearing walls. The floors and ceilings surrounding each of them or any pipes, wires, conduits or other utility lines running through them which are utilized for or serve more than one unit are deemed common elements. Each apartment shall be deemed to include all the walls and partitions, floors and ceilings which are not load bearing within its perimeter walls including paint,

wallpaper, or the like, carpeting, floor covering and built-in fixtures. Additionally, the boundary lines of each apartment are the exterior doors and windows and the frames thereof.

4.0 COMMON ELEMENTS. The common elements for the Project include:

- a. The land.
- b. The landscaped areas.
- c. The parking aisles.
- d. The corridors, walkways, stairways and installations for services such as power, light, gas, sewer lines, telephone, radio and television signal distribution and like utilities.
- e. Cavetat equipment, fixture and other installations essential to operate its private sewer disposal system.
- f. The foundations, posts, railings, supports, girders, beams and roofs in the building.
- g. Any parts of the Project existing for the common use and area necessary for the maintenance and safety of the Project.

LIMITED COMMON ELEMENTS. The limited common elements are as follows:

- a. The storage area on each floor in Buildings 1, 2 and 3 shall be limited common elements for the owner of Unit 3106.

INTEREST TO BE CONVEYED TO THE PURCHASER: Each apartment shall have appurtenant thereto the following undivided interest in all the common elements of the project for determination of the common profits, expenses, voting and for all other purposes:

<u>Unit No.</u>	<u>Square Feet Per Unit / Aggregate</u>	<u>Common Interest Per Unit / Aggregate</u>
1101 - 1106	305 / 1,830	2.136% / 12.815%
1207	305	2.136 / 2.136
1208 - 1211	377 / 1,508	2.640 / 10.560
1212	305	2.136 / 2.136
2101 - 2112	247 / 2,964	1.730 / 20.756
2214 - 2225	285 / 3,420	1.996 / 23.950
3101 - 3106	305 / 1,830	2.136 / 12.815
3207	305	2.136 / 2.136
3208 - 3211	377 / 1,508	2.640 / 10.560
3212	305	2.136 / <u>2.136</u>
		100.000%

ALTERATION AND TRANSFER OF INTERESTS IN UNITS. The common interest and easements appurtenant to each unit can be altered, subdivided and/or combined by the unit owner where a unit is combined with other units. Where an owner has acquired a number of units, said owner can from time to time subdivide or recast a unit to its original designation. The person or persons doing the alterations can proceed to do the alteration with the person who is directly affected and the amendment shall be made as provided in Paragraph 18 of the Declaration. Prior to the termination of the common ownership of such adjacent units, the owners of such adjacent units shall be obligated to restore, at its own expense, the units to substantially the same condition in which the units existed prior to such alteration if requested by the Board.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The Project will be for such uses that are permitted under the applicable zoning building codes and may be rented, leased or otherwise transferred by the owners thereof. The present use is motel.

OWNERSHIP OF TITLE: A copy of the Preliminary Report issued by Title Guaranty of Hawaii, Inc. dated August 22, 1984 certifies that KANOA ESTATE, INC., a Hawaii corporation, is the fee owner of the property. The fee owner has entered into an option to exchange and sell and portion of land to the Developer.

ENCUMBRANCES AGAINST TITLE: Said Preliminary Report issued by Title Guaranty of Hawaii, Inc. on August 22, 1984 notes the following encumbrances against the property:

1. As to FIRST (Lot 1-B-3-B) only:

(A) Easement "A" as shown on Maps 1 and 24, filed with Land Court Application No. 957.

(B) Easement "D" (20 feet wide) as shown on Maps 1 and 24, filed with Land Court Application No. 957.

(C) Easement "M" for roadway and utilities, as shown on Maps 11 and 24, as set forth by Land Court Order No. 25291, filed February 18, 1966.

(D) As to Easement "M": Certain rights and a permanent easement and right-of-way in favor of Lot 1-A, as granted in Exchange Deed dated February 14, 1966, filed as Land Court Document No. 382932.

(E) Exclusions 5 and 6, as shown on Maps 1 and 11, are entitled to easement for ingress and egress over said Easement "A".

(F) An easement in favor of the State of Hawaii over said Easement "D".

(G) A perpetual right of uninterrupted flowage of water in Huleia Stream over and across Lot 1-B-3-B, besides other land, as Easement "L", in favor of the State of Hawaii, as set forth by Land Court Order No. 2206, filed March 28, 1935.

(H) Easement "EE" (705 square feet) situate on Lot 1-B-3-B, as shown on Tax Map.

(I) An easement for road purposes only over and across that certain strip of land ten feet wide shown on said Map as Easement "EE" within Lot 1 (now known as Lot 1-B-3-B) of Land Court Application No. 957, second amendment, said strip of land extending five feet on either side of the center line as shown on said Map, as set forth in Exchange Deed dated August 1, 1967, recorded in Liber 5902 at Page 342, in favor of Lot 8 of Land Court Application No. 1087.

(J) Lots A-1, B-1, C-1, D-1 and B-2 shall be permitted access from Road Easement "A", as set forth in Deed dated July 22, 1982, recorded in Liber 16486 at Page 399.

(K) There is no recorded access for lots, L.C. Aw. 3602:3 (TMK 3-2-2-9), L.C. Aw. 3421:2 (TMK 3-2-2-6), L.C. Aw. 3312:2 (TMK 3-2-2-7) and L.C. Aw. 3620:2 (TMK 3-2-2-4) over Lot 1-B-3-B.

2. For real property taxes due and payable, reference is made to Director of Finance, County of Kauai.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated July 11, 1984 certifies Title Guaranty Escrow Services, Inc., as Escrow. On examination, the specimen Reservation Agreement and Sales Contract and Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended.

The provisions of the executed Escrow Agreement as filed with the Commission provides that disbursement from the escrow fund will be made by Escrow Agent after the following have happened:

- i. The Real Estate Commission has issued a Final Public Report on the Project,
- ii. The Purchaser has received a copy and given the Seller a receipt for it,
- iii. Two full working days have gone by since Seller notifies Escrow that he has received the receipt,
- iv. Seller notifies Escrow in writing that all of the requirements of Sections 514A-39 and 514A-63, Hawaii Revised Statutes, then applicable to the Project, have been satisfied, and
- v. Seller notifies Escrow in writing that a refund should be made according to the Sales Contract.

RESERVATION FOR REMOVAL OF PROPERTY: Alteration of the Project can be done by the Developer by the removal of 29.268 acres of land from this Horizontal Property Regime at anytime within the next ten (10) years from the issuance of this Preliminary Public Report which shall be subject to and contingent upon the approval of the subdivision of the property. The Developer can do so without the prior approval and consent of the Board of Directors of the Association and such removal shall be expressed in and by a

duly recorded Amendment to this Declaration which shall comply with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended. There is also reserved unto the Developer, an irrevocable Power of Attorney, coupled with an interest, to act on behalf of the Board of Directors of the Association, to sign, execute and deliver any and all instruments necessary to effectuate said removal of the property and to otherwise deal with the property. Any benefits or proceeds which arise from said removal shall accrue solely to the benefit of the Developer.

MANAGEMENT OF PROJECT: A Management Agreement dated August 13, 1984 has been entered into with Raymond E. Hoe Realtors, Inc. as the initial managing agent for the project.

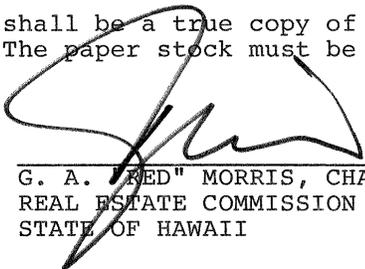
STATUS OF PROJECT: The existing building for the proposed condominium conversion was built in 1966. Investigation by the Planning Department of the County of Kauai shows that the project met the building code requirements when it was originally constructed. On November 20, 1968, the Kauai County granted a variance in the use of the property into hotel use (V-68-29).

The County investigation also noted that this current Kauai Comprehensive Zoning Ordinance does not permit multi-family or hotel use in "open" zone. The present motel use is considered non-conforming (both intensity and use) but "grandfathered". Any alteration or expansion of use or structure is not permitted, and any conversion of motel use to any other use would have to meet the present requirement of the Comprehensive Zoning Ordinance.

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 September 4, 1984 and information subsequently filed as of October 23, 1984.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1631 filed with the Commission on September 4, 1984.

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



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

Distribution:

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

REGISTRATION NO. 1631

OCTOBER 26, 1984