REAL ESTATE COMMISSION
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
1010 Richards Street - P. O. Box 3469
Honolulu, Hawaii 96801

CONDOMINIUM PUBLIC REPORT

on

POHA KEA POINT, PHASE IV, INCREMENT 1

Located off of Lilipuna Road
Kaneohe, Hawaii

Registration No. 2140

Issued: June 4, 1990
Expires: July 4, 1991

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of May 1, 19 90, and is issued by the Commission for informational purposes only. It represents neither approval nor disapproval of the project. Buyers are encouraged to read this report carefully.

Type of Report:

_____ **PRELIMINARY:** *(yellow)* The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued when complete information is filed.

X **FINAL:** *(white)* The developer has legally created a condominium and has filed complete information with the Commission.
[X] No prior reports have been issued
[ ] Supersedes all prior public reports
[ ] Must be read together with _____

_____ **SUPPLEMENTARY:** *(pink)* Updates information contained in the
[ ] Prelim. Public Report dated _____
[ ] Final Public Report dated _____
[ ] Supp. Public Report dated _____

And [ ] Supersedes all prior public reports
[ ] Must be read together with _____
[ ] This report reactivates the _____ public report(s) which expired on _____

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

[ ] Required [X] Not Required - disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

[X] No prior reports have been issued by the Commission.

[ ] Changes made are as follows:

SPECIAL NOTE: Pohà Kea Point is a continuation of the PuuAlii master project and therefore affected by certain PuuAlii documents. Please read this report with care, particularly Pages 18, 18A, 18B, and Exhibit "J", a letter from the Attorney General's office to the Real Estate Commission concerning interrelationships between Pohà Kea Point and PuuAlii documents. Also, note on Page 18A that there is litigation in process that may affect a purchaser's expectations, so caution is urged and further inquiry suggested before making any final decision to purchase.

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EXHIBIT A: Apartment Description/Type
EXHIBIT B: Apartment Lease Rent
EXHIBIT C: Common Interest and Parking Assignments
EXHIBIT D: Common Elements
EXHIBIT E: Limited Common Elements
EXHIBIT F: Encumbrances Against Title
EXHIBIT G: Estimate of Initial Maintenance Fees
EXHIBIT H: Summary of Sales Contract
EXHIBIT I: Summary of Escrow Agreement
EXHIBIT J: Attorney General's Opinion Regarding Interrelationships between Poha Kea Point and PuuAlii documents

GENERAL INFORMATION ON CONDOMINIUMS

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of Hawaii's *"Condominium Property Act"* (Chapter 514A, Hawaii Revised Statutes) must be followed.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

Common elements are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called limited common elements and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and they may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owner/tenant) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements. The leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without a vote of the owners. Some of these actions may significantly impact the quality of life for all apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is vitally important to all apartment owners that the transition from developer to owner control be accomplished in an orderly manner and in a spirit of cooperation.

SUMMARY OF THE CONDOMINIUM PROJECT

Interest to be Conveyed to Buyer:

[ ] Fee simple interest in an apartment and an undivided fee hold interest in the common elements.
[XX] Leasehold interest in an apartment and an undivided leasehold interest in the common elements.
[ ] Fee simple interest in an apartment and an undivided leasehold interest in the common elements.

Types of Project:

1. [XX] New Building(s) [ ] Conversion
   [ ] Both New Building(s) and Conversion

2. [XX] Residential [ ] Commercial
   [ ] Mixed Residential and Commercial
   [ ] Other _____

3. [XX] High Rise (5 stories or more) [ ] Low Rise

4. [XX] Single or [ ] Multiple Buildings

5. Apartment Description

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Lanai Patio (sf)
	12	2/2	871 to 896	129 to 146
18 types	5	2/1½	1001	123 to 148
	14	3/2	1008 to 1093	146 to 165
See Exhibit "A" attached for further details.				

Total Apartments: 31

**Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.*

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

6. Parking:

	Number of Stalls
Assigned Stalls (Individual Units)	62
Guest Stalls	8
Unassigned Stalls	
Extra Stalls Available for Purchase	
Other: _____	
Total Parking Stalls	70

7. Recreational amenities:

PuuAlii Community facilities in Phases I and II, consisting of a swimming pool, tennis courts, spa, recreational center, will be available for use by Poha Kea apartment owners.

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: Swire Properties (Hawaii) Ltd.
Name

Phone: (808) 235-0950
(Business)

46-005 Kawa Street, Suite 206
Business Address

Kaneohe, Hawaii 96744

Names of officers or general partners of developers who are corporations or partnerships:

Keith G. Kerr - President

David S. Bixby, Richard Tuomey, and Robert K.R. Fullerton - Vice-Presidents

Gregg E. Tolan - Secretary/Treasurer

Real Estate Sales Agent: PuuAlii Realty, Ltd.
Name

Phone: (808) 247-8776
(Business)

46-005 Kawa Street, Suite 206
Business Address

Kaneohe, Hawaii 96744

Escrow: Security Title Corporation
Name

Phone: (808) 521-9511
(Business)

1001 Bishop Street, 1200 Pacific Tower
Business Address

Honolulu, Hawaii 96813

Managing Agent: Certified Management
Name

Phone: (808) 536-0911
(Business)

3179 Koapaka Street, 2nd Floor
Business Address

Honolulu, Hawaii 96819

Attorney for Developer: James A. Stubenberg
Name

1001 Bishop Street, 1250 Pauahi Tower
Business Address

Honolulu, Hawaii 96813

II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

[ ] Proposed
[ ] Recorded - Bureau of Conveyances - Book _____ Page _____
[X] Filed - Land Court - Document Number 1706814

Amendment date(s) and recording/filing information:

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

[ ] Proposed
[ ] Recorded - Bureau of Conveyance Condo Map No. _____
[X] Filed - Land Court Condo Map No. 762

Amendment date(s) and recording/filing information:

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the way in which meetings will be conducted, and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

[ ] Proposed
[ ] Recorded - Bureau of Conveyances - Book _____ Page _____
[X] Filed - Land Court - Document Number 1706815

Amendment date(s) and recording/filing information:

D. Declaration as to Merger of Increments in a Condominium Project. Filed 2/20/90 as Land Court Document No. 1706813.

The Condominium Statute (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

D. **House Rules.** The Board of Directors may adopt house rules to govern the use and operation of the common elements and individual apartments. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais, keeping of pets, and occupancy limits. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial house rules are usually adopted by the developer.

The House Rules for this condominium are:

[X] Proposed [ ] Adopted

[ ] Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. Apartment Owners: Minimum percentage of common interest which must vote for or give written consent to changes:

	Minimum Set by Law	This Condominium
Declaration (and Condo Map)	75%	75%
Bylaws	65%	65%
House Rules	---	Board of Directors

The percentages for individual condominium projects may be more than the minimum set by law.

2. Developer: The developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws, or House Rules:

The Developer may amend the Declaration by filing an "as built" verified statement, so long as this statement is only a verified statement of a registered architect or professional engineer and will state that the final plans that were filed represent the layout, location, apartment numbers and dimensions of the apartments as built, or so long as the plans involve only immaterial changes to the layout, location, apartment numbers, or the dimensions of the apartments as built.

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

[ ] Fee Simple: Individual apartments and the common elements which includes the underlying land will be in fee simple.

[X] Leasehold or Subleasehold: Individual apartments and the common elements which includes the underlying land will be leasehold.

The leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit _____ contains further explanations.

Lease Term Expires: December 31, 2042
Rent Renegotiation Date(s): 30 years after issuance of an Apartment Lease.

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit "B" contains a schedule of the lease rent for each apartment per
[ ] Month [X] Year.

[ ] Individual Apartments in Fee Simple Common Interest in the Underlying Land in Leasehold or Subleasehold:

The leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners - tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit _____ contains further explanations.

Lease Term Expires: _____
Rent Renegotiation Date(s): _____

Lease Rent Payable: [ ] Monthly [ ] Quarterly
[ ] Semi-Annually [ ] Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per
[ ] Month [ ] Year.

[ ] Other:

For Subleaseholds:

[ ] Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is
[ ] Cancelled [ ] Foreclosed

[X] As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is cancelled or foreclosed.

B. **Underlying Land:**

Address: Off Lilipuna Road
Kaneohe, Hawaii

Tax Map Key: (TMK) First Division 4-6-1-2 (por)

[X] Address [ ] TMK is expected to change because No address has been assigned yet.

Land Area: 3.315 [ ] square feet [X] acre(s) Zoning: PD-H Ordinance No. 442

Fee Owner: Trustees of the Estate of Bernice Pauahi Bishop
Name
567 South King Street, Suite 200
Address
Honolulu, Hawaii 96813

Sublessor: T.F. McCormack Trust
Name
1580 Makaloa Street
Address
Honolulu, Hawaii 96814

C **Buildings and Other Improvements:**

1. [X] New Building(s) [ ] Conversion of Existing Building(s)
   [ ] Both New Building(s) and Conversion

2. Buildings: 1 Floors Per Building 7

   [ ] Exhibit _____ contains further explanations.

3. Principal Construction Material:

   [ ] Concrete [X] Hollow Tile [X] Wood

   [ ] Other _____

4. Permitted Uses:

	No. of Apts.		No. of Apts.
[ ] Commercial		[ ] Industrial	
[X] Residential	31	[ ] Agricultural	
[ ] Timeshare/Hotel		[ ] Recreational	
[ ] Other:			

5. Special Use Restrictions:

The Declaration, Bylaws, and House Rules may contain restrictions on the use and occupancy of apartments. Restrictions for this condominium project include but are not limited to:

[X] Pets Dogs, cats or other conventional household pets in reasonable number may be kept by an apartment owner or occupant.

[ ] Number of Occupants: _____

[X] Other: No time-sharing plan permitted, including "vacation" license, "travel club membership" or "time interval ownership"

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 31

Elevators 0 Stairways 0 Trash Chutes 0

Apt. Type	Quantity	BR/Bath	Net Living Area (sf)*	Lanai/Patio (sf)
See Exhibit "A" attached for further details.				
	12	2/2	871-896	129-146
18 types	5	2/1½	1001	123-148
	14	3/2	1008-1093	146-165

Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment:

Spaces within the perimeter walls, floors and ceilings of each of the thirty-one (31) apartment units of the Project. Each apartment includes all the walls and partitions which are not loadbearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors, and ceilings, and the fixtures originally installed in the apartments. These spaces, together with lanais and garden lanais, are referred to as "apartments" and are designated on the Condominium Map.

Permitted Alterations to Apartments;

Any alterations to the interior of an apartment may be made except the type of alterations which would jeopardize the soundness or safety of the common elements, reduce the apartments' value or impair any easement. Any alteration which would affect the exterior appearance of the Project must be approved by the Board of Directors. If the Board determines that the common elements will be affected by a proposed alteration, then the consent of at least seventy-five percent (75%) of the apartment owners in the Project is needed.

7. Parking Stalls:

Total Parking Stalls: 70

	Regular		Compact		Tandem		
	covered	open	covered	open	covered	open	TOTAL
Assigned (for individual units)	31	31					62
Guest		8					8
Unassigned		0					
Extra Available for Purchase		0					
Other:							
Total Covered & Open	70						

Each apartment will have the exclusive use of at least 2 parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

[ ] Commercial parking garage permitted in condominium project.

[X] Exhibit "C" contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities.

[ ] There are no recreational or common facilities.

[ ] Swimming pool

[ ] Recreation Area

[ ] Tennis Court

[ ] Storage Area

[ ] Laundry Area

[ ] Trash Chute

[X] Other: 2 swimming pools, tennis courts, barbecue area, and spa which are located in PuuAlii, Phases I and II. These facilities are available for use by the owners of apartments located in Phase IV. Developer is also constructing recreational facilities within Phase IV. Such recreational facilities include a swimming pool, a spa and a meeting room.

9. Present Condition of Improvements
(For conversions of residential apartments in existence for at least five years):

a. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

Not applicable.

b. Compliance With Building Code and Municipal Regulations; Cost to Cure Violations

Not applicable.

10. Conformance to Present Zoning Code

a. [ ] No variances to zoning code have been granted.

[X] Variance(s) to zoning code was/were granted as follows:

PD-H Ordinance No. 4421

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	Conforming	Non-Conforming	Illegal
Uses	X		
Structures	X		
Lot	X		

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. **Common Elements, Limited Common Elements, Common Interest:**

1. Common Elements: Common Elements are those parts of the condominium project intended to be used by all apartment owners. They are owned jointly by all apartment owners.

   [X] Exhibit "D" describes the common elements.

   [ ] As follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

   [ ] There are no limited common elements in this project.

   [X] The limited common elements and the apartments which may use them are:

   [X] described in Exhibit "E"

   [ ] as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is often used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium. It may also be used for other purposes, including voting on matters requiring action by apartment owners.

   [X] Exhibit "C" describes the common interests for each apartment.

   [ ] As follows:

E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property.

Exhibit "F" describes the encumbrances against the title contained in the title report dated January 11, 1990 and issued by Security Title Corporation.

Developer represents there have been no further encumbrances placed on the property since then, except for condominium documents noted on Page 7 of this Public Report.

Blanket Liens:

A blanket lien is a mortgage on a condominium project that secures a construction loan. It is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[ ] There are no blanket liens affecting title to the individual apartments.

[X] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. Buyer's interest will be affected only if the developer defaults prior to conveying the apartment to buyer.

Type of Lien	Effect on Buyer's Interest If Developer Defaults
Bank of Hawaii mortgage	Buyer entitled to return of deposits without interest.

F. **Management of the Common Elements:** The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a managing agent to assist the Association in managing the condominium project.

Initial Managing Agent: When the developer or the developer's affiliate is the initial managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial managing agent for this condominium is:

[X] not affiliated with the Developer.

[ ] the Developer or the Developer's affiliate.

[ ] self-managed by the Association of Apartment Owners.

[ ] other _____

G. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, your apartment may be liened and sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided to each apartment.

Exhibit "G" contains a schedule of maintenance fees and maintenance fee disbursements.

H. **Utility Charges for Apartments:**

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

[ ] Electricity

[ ] Television Cable

[ ] Gas

[ ] Water & Sewer

[ ] Other _____

[X] Not applicable

I. **Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

The Developer warrants and will repair and remedy any STRUCTURAL, MECHANICAL and/or ELECTRICAL defect(s) in the apartment for a period of 365 days after the closing date of purchase, including materials and labor. The apartment purchaser must notify the Developer in writing of any defect(s) in a timely manner as soon as practicable after discovery. The Developer will not be responsible for any damage, defects, failures, or personal injuries resulting from the abuse, misuse, alteration, tampering, neglect or removal of any appliance, structure or other component of the apartment.

2. Appliances:

The Developer warrants that the appliances contained in each apartment as part of the purchase are in good working condition.

J. **Status of Construction and Estimated Completion Date:**

The Project commenced construction on July 5, 1989. The estimated date of completion is targeted for August 1, 1990.

K. **Project Phases:**

The developer [X] has [ ] has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's Present Plans for Future Development:

The merger will occur when the increments of Phase IV have been completely constructed. At such time, the owners of the apartments in each increment will have the rights to use all the common elements of all increments subject to the same limitations that are imposed on an owner of an apartment in each increment.

L. **Sales Documents Filed With the Real Estate Commission:**

Sales documents on file with the Real Estate Commission include but are not limited to:

[X] Notice to Owner Occupants

[X] Specimen Sales Contract

Exhibit "H" contains a summary of the pertinent provisions of the sales contract.

[X] Escrow Agreement dated September 12, 1989

Exhibit "I" contains a summary of the pertinent provisions of the escrow contract.

[ ] Other _____

IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

The Developer has placed on record a Declaration of Covenants, Conditions and Restrictions for PuuAlii affecting previously developed property. Pohà Kea Point is the continuation of the PuuAlii master project. Prior to issuance of a Final Public Report, the Developer will place on record Supplemental Declaration No. 4 for PuuAlii annexing all phases of the Pohà Kea project to Phases I and II of PuuAlii and subjecting the project to said Declaration of Covenants, Conditions and Restrictions.

Prospective purchasers are advised to carefully examine the form of Declaration of Condominium Property Regime, Declaration as to Merger of Increments in a Condominium Project, Declaration of Covenants, Conditions and Restrictions for PuuAlii, and the Supplemental Declaration No. 4 for PuuAlii, copies of which are available upon request for inspection at the Developer's sales office and which are also filed with the Real Estate Commission, so that they may familiarize themselves with this project, how this increment will be merged into further increments, and what restrictions and obligations will apply to all purchasers in each increment.

NOTE: The Developer shall provide a copy of the Declaration of Condominium Property Regime, By-Laws of the Association of Apartment Owners, Declaration as to Merger of Increments in a Condominium Project, Declaration of Covenants, Conditions and Restrictions for PuuAlii and the Supplemental Declaration No. 4 for PuuAlii to each purchaser, and each purchaser shall sign a receipt for such documents.

Among other things, the Declaration as to Merger explains that (1) it is the intention of the Trustees of the Estate of Bernice Pauahi Bishop and Developer to merge this project with other increments so that, upon completion of all increments, the entire property shall be controlled and administered as a single condominium project; and (2) that while the merger will affect the administration and use of increments and the sharing of common expenses, the ownership of apartments and their appurtenant common interests in each respective increment will not be affected.

IV. ADDITIONAL INFORMATION NOT COVERED ABOVE (Continued)

The Declaration of Covenants, Conditions and Restrictions provides, among other things, for mandatory membership of each purchaser in the PuuAlii Community Association, a non-profit corporation, created primarily to provide for the management, maintenance, protection, preservation, architectural control, all landscaping, roadways, pathways and recreational facilities within any land annexed to PuuAlii.

The Association of Apartment Owners only has the control of the common elements within the building of the project. In other words, the PuuAlii Community Association controls and is responsible for all the landscaping and other matters having to do with the project, except the maintenance of the condominium buildings, and is also the final arbitor of the extent of its duties. If the apartment owners want to make any changes effecting the common elements which are not parts of the building, they must obtain the consent of the PuuAlii Community Association.

Prospective purchasers should also take note of the Disclosure Statement issued by the Developer dated April 19, 1990 concerning a view dispute with adjoining property owners and a lawsuit filed by the Association of Apartment Owners of Pohà Kea Point, Phase III, against the PuuAlii Community Association, the Developer and others. The Commission has received information from the opposing parties concerning the view dispute but is in no position to assess the merits or demerits of their respective cases. Prospective purchasers may wish to conduct their own inquiries on these matters.

IV. ADDITIONAL INFORMATION NOT COVERED ABOVE (Continued)

SPECIAL NOTE:

The PuuAlii Community Association does not consider itself subject to the condominium law of the State of Hawaii, Chapter 514A, Hawaii Revised Statutes. Nor do the bylaws of the PuuAlii Community Association conform to the requirements of that law. Therefore, with respect to the condominium common elements which are subject to the control of the PuuAlii Community Association, apartment owners may be denied many of the basic rights and protections provided by Chapter 514A to all other condominium apartment owners in Hawaii.

The rights and protections denied may include those relating to:

(1) availability of information about the project;

(2) fidelity bonding and financial controls for those handling the funds of aparmtent owners; and

(3) voting and procedures followed at meetings of the board and members of the PuuAlii Community Association.

Prospective purchasers should carefully review Chapter 514A and the documentation for Pohà Kea Point, including the Declaration of Covenants, Conditions and Restrictions for PuuAlii, to determine which basic rights and protections they may be denied. Prospective purchasers should also contact the Developer and the PuuAlii Community Association.

The Real Estate Commission has requested and received an opinion from the Attorney General on the legality of the arrangement and operation of PuuAlii. A copy of that opinion is attached as Exhibit "J". The Real Estate Commission is presently discussing ways to resolve the situation with the PuuAlii Community Association.

Buyer's Right to Cancel Sales Contract:

A. Rights Under the Condominium Statute:

Preliminary Report: Sales made by the Developer are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to $250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Final Report, Supplementary Report to a Final Report: Sales made by the Developer are binding if:

1. The Developer delivers to the buyer a copy of:
   a. Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report;
   AND
   b. Any other public report issued by the Commission prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
2. The buyer is given an opportunity to read the report(s); and
3. One of the following has occurred:
   a. The buyer has signed a receipt for the report(s) and waived the right to cancel; or
   b. Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
   c. The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

1. There is a material change in the condominium which directly, substantially, and adversely affects (a) the use or value of the buyer's apartment or its limited common elements; or (b) the amenities available for buyer's use; and
2. The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

B. Rights Under the Sales Contract:

Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the condominium. These include but are not limited to the:

1. Condominium Public Reports issued by the Hawaii Real Estate Commission.
2. Declaration of Condominium Property Regime and Condominium Map.
3. Bylaws of the Association of Apartment Owners.
4. House Rules.
5. Escrow Agreement.
6. Hawaii's Condominium Law (Chapter 514A, HRS, as amended; Hawaii Administrative Rules, Chapter 16-107, adopted by the Real Estate Commission).
7. Other Declaration of Covenants, Conditions and Restrictions and Supplemental Declaration No. 4 for PuuAlii

If these documents are not in final form, the buyer should ask to see the most recent draft.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Law (Chapter 514A, HRS, and Hawaii Administrative Rules, Chapter 16-107) are available at the Department of Commerce and Consumer Affairs.

This Public Report is a part of Registration No. 2140 filed with the Real Estate Commission on October 11, 1989.

Reproduction of Report. When reproduced. this report must be on:

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Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the date of issuance unless a Supplementary Public Report is issued or unless the Commission issues an order extending the effective period for the report.

PETER N. YANAGAWA, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

Bureau of Conveyances
Department of Finance, City and County of Honolulu
Planning Department, City and County of Honolulu
Federal Housing Administration
Escrow Agent

EXHIBIT "A"

APARTMENT DESCRIPTION/TYPE

Apt. Type	Qty.	BR/Bath	Net Living Area	Lanai/ Garden Lanai
2FS	2	2/2	883	146
2FSR	2	2/2	883	146
2F	2	2/2	871	146
2FR	1	2/2	871	146
2FRE	1	2/2	871	146
2G	1	2/2	960	86/494
2GR	1	2/2	960	86/494
3F	5	3/2	1093	165
3FR	3	3/2	1093	165
3FRE	2	3/2	1093	165
2LA	2	2/1-1/2	1001	123
2LAR	2	2/1-1/2	1001	123
2LAM	1	2/1-1/2	1001	148
2PE	1	2/2	896	129
2PRE	1	2/2	896	129
3P	2	3/2	1008	146
3PR	1	3/2	1008	146
3PRE	1	3/2	1008	146

EXHIBIT "B"

APARTMENT LEASE RENT

ANNUAL

Basic Model Type	First 10-yr. Period	Second 10-yr. Period	Third 10-yr. Period
2G	680	1190	2083
2L	736	1288	2254
3P	750	1313	2298
3F	816	1428	2499
2P	661	1157	2025
2F	642	1124	1967

EXHIBIT "C"

COMMON INTEREST AND PARKING ASSIGNMENTS

Apt. No.	Parking Stall Nos.	% Common Interest
3501	430-C 429-O	2.9744%
3502	415-C 414-O	2.9744%
3511	419-C 418-O	2.9260%
3512	423-C 422-O	3.1961%
3513	421-C 420-O	3.1961%
3514	417-C 416-O	3.2672%
3515	411-C 410-O	3.1961%
3516	409-C 408-O	3.1961%
3517	413-C 412-O	2.9260%
3521	425-C 424-O	2.9260%
3522	407-C 406-O	2.9260%
3531	514-C 685-O	3.2814%
3532	515-C 684-O	3.5773%
3533	516-C 683-O	3.5773%

C - Covered Stall
O - Open Stall

Apt. No.	Parking Stall Nos.	% Common Interest
3534	522-C 679-O	3.5773%
3535	519-C 682-O	3.5773%
3541	512-C 687-O	2.8919%
3542	513-C 686-O	2.8919%
3543	525-C 676-O	2.8919%
3544	524-C 677-O	2.8919%
3551	506-C 693-O	2.9147%
3552	511-C 688-O	3.5773%
3553	510-C 689-O	3.5773%
3554	523-C 678-O	3.5773%
3555	526-C 675-O	3.5773%
3561	507-C 692-O	3.2814%
3562	508-C 691-O	3.2814%
3563	509-C 690-O	3.5773%

C - Covered Stall
O - Open Stall

Apt. No.	Parking Stall Nos.	% Common Interest
3564	521-C 680-O	3.5773%
3565	520-C 681-O	3.2814%
3566	517-C 518-O	2.9147%

Guest Parking Stall Numbers: 670, 671, 672, 673, 674, 426, 427, 428

C - Covered Stall
O - Open Stall

EXHIBIT "D"

COMMON ELEMENTS

Common elements include the following:

(a) Land in fee simple;

(b) All foundations, floor slabs, columns, beams, supports, unfinished perimeter and load-bearing walls, roofs, stairs, stairways, bridges, rails, fire escapes, and walkways around and between the buildings;

(c) All yards, grounds, landscaping, roads, curbs, trash enclosures and like facilities;

(d) All storage areas for the benefit of maintenance personnel, maintenance sheds, fire hoses, and alarm boxes, if any;

(e) All driveways and parking areas including eight (8) guest automobile parking stalls as designated on Exhibit "C" hereof and as shown on the Condominium Map;

(f) All ducts, sewer lines, electrical equipment, pipes, wiring, compressors, tanks, motors, fans, and other central and appurtenant transmission facilities over, under and across the Project which serve more than one apartment for services such as power, light, water, air conditioning, refuse, sewer, telephone and radio and television signal distribution; and

(g) Any and all other apparatus and installations of common use and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

Additional common elements or areas subject to common expenses may be designated upon the approval of ninety percent (90%) of the apartment owners and the filing of an amendment hereto.

EXHIBIT "E"

LIMITED COMMON ELEMENTS

The limited common elements set aside and reserved for the exclusive use of certain apartments are as follows:

(a) The automobile parking stalls for each apartment, as shown on Exhibit "C" hereof, and any storage area within the parking stalls shall be appurtenant to and for the exclusive use of such apartment. The parking stall numbers for the parking stall or stalls appurtenant to each apartment are as set forth in Exhibit "C" and as shown on the Condominium Map.

(b) Any walkway, stairway, or corridor which connects the apartment or apartments adjoining it to the exterior of the Project shall be appurtenant to and for the exclusive use of the apartment and said adjoining apartment or apartments.

(c) The mailbox assigned to each apartment.

(d) All other common elements of the Project which are rationally related to less than all of said apartments shall be limited to the use of such apartments.

EXHIBIT "F"

ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. The terms and provisions of:

LEASE NO. 24,620

Lessor:	Trustees of the Estate of Bernice Pauahi Bishop
Lessee:	Thomas Francis McCormack, husband of Hilda Frances McCormack
Dated:	June 7, 1976
Document No.:	768125
Term:	commencing from the first day of January, 1976 (also affects other property)

The foregoing Lease No. 24,620 was amended by the following:

Dated	Document No.
June 3, 1977	838309
March 6, 1978	872979
August 12, 1980	1035133
March 24, 1983	1175048
January 22, 1986	1352189
February 16, 1989	1626652

The foregoing Lease No. 24,620 was assigned by the following:

ASSIGNMENT OF LEASE

Assignor:	Thomas Francis McCormack, husband of Hilda Frances McCormack
Assignee:	Thomas Francis McCormack, as Trustee of the T.F. McCormack Trust, established by an unrecorded Trust Agreement dated October 24, 1978, made by Thomas Francis McCormack, as the Settlor, as amended by an unrecorded Amendment of Trust Agreement dated June 10, 1982, said Trustee having all powers set forth in said Trust Agreement, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate.

Dated: December 3, 1984
Document No.: 1272570
Consent thereto filed as Document No. 1272571.

3. The terms and provisions of:

BISHOP ESTATE LEASE NO. 24,620A

Lessor:	Trustees of the Estate of Bernice Pauahi Bishop, "Owners", and Thomas Francis McCormack, husband of Hilda Frances McCormack, "Tenant", holder of the master lease dated June 7, 1976, filed in said Office of the Assistant Registrar as Document No. 768125.
Lessee:	Swire-McCormack Ltd., a Hawaii corporation
Dated:	June 7, 1976
Document No.:	768126
Term:	61 years commencing from the first day of January, 1976 (also affects other property)

The foregoing Bishop Estate Lease No. 24,620A was amended by the following:

Dated	Document No.
June 6, 1977	838310
March 6, 1978	872980
August 12, 1980	1035134
December 9, 1982	1175049
January 3, 1986	1352190
February 6, 1989	1626653

All of the Assignor's right, title and interest under the foregoing Bishop Estate Lease No. 24,620A was assigned by the following:

INSTRUMENT

Assignor:	Thomas Francis McCormack, husband of Hilda Frances McCormack
Assignee:	Thomas Francis McCormack, as Trustee of the T.F. McCormack Trust, established by an unrecorded Trust Agreement dated October 24, 1978, made by Thomas Francis McCormack, as the Settlor, as amended by an unrecorded Amendment of Trust Agreement

dated June 10, 1982, said Trustee having all powers set forth in said Trust Agreement, including full power to sell, convey, exchange, mortgage, lease, assign or otherwise deal with and dispose of all lands of the trust estate.

Dated: December 3, 1984
Document No.: 1274508
Consent thereto filed as Document No. 1274509.

SAID BISHOP ESTATE LEASE NO. 24,620A IS SUBJECT TO THE FOLLOWING:

a) **MORTGAGE**

Mortgagor: Swire-McCormack Ltd.
Mortgagee: Bank of Hawaii, a Hawaii banking corporation
Dated: January 13, 1978
Document No.: 861372
To Secure: $2,000,000.00 and 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.

aa) **NOTICE**

Mortgagor: Swire-McCormack Ltd.
Mortgagee: Bank of Hawaii, a Hawaii banking corporation
Dated: July 23, 1978
Document No.: 889090
Re: under a contractural duty to make future advances in said maximum amount of $1,999,000.00 (also affects other property)

bb) **NOTICE**

Mortgagor: Swire-McCormack Ltd., a Hawaii corporation
Mortgagee: Bank of Hawaii, a Hawaii banking corporation
Dated: February 6, 1979
Book: 13484
Page: 763
Re: under a contractural duty to make future

advances in said maximum amount of $1,548,632.00
(also affects other property)

(Said Notice is not noted on Transfer Certificate of Title No. 157,862.)

b) The terms and provisions of that certain Agency Agreement and Power of Attorney dated January 10, 1985, made by and between Thomas Francis McCormack, as Trustee of the T.F. McCormack Trust, and TFM Corp., a Hawaii corporation, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1279349, to which reference is hereby made.

c) **ADDITIONAL CHARGE MORTGAGE**

Mortgagor:	Swire-McCormack Ltd.
Mortgagee:	Bank of Hawaii, a Hawaii banking corporation
Dated:	May 13, 1987
Document No.:	1479587
To Secure:	$4,500,000.00 as additional charge to Mortgage shown as encumbrance a)

7. a) Easement 693, area 24,515 square feet, as shown on Map 218, as set forth by Land Court Order No. 90977, filed on August 29, 1988 (also affects other property).

b) Easement 694, area 25,561 square feet, as shown on Map 218, as set forth by Land Court Order No. 90977, filed on August 29, 1988 (also affects other property).

8. The terms and provisions of that certain Agreement for Issuance of Conditional Use Permit under Section 4.40-21 of the Land Use Ordinance (LUO) dated August 3, 1988, made by and between Swire Properties (Hawaii) Ltd., a Hawaii corporation, "Sublessee and Developer"; Mieko Totoki, Brian L. Sakamaki and Galen C.K. Leong, in their fiduciary and not their individual capacities, as Trustees of the T.F. McCormack Trust, "Master Lessee", and the Trustees of the Estate of Bernice Pauahi Bishop, "Owners", being hereinafter collectively referred to as "Declarant", filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1586219, to which reference is hereby made.

9. **GRANT**

In Favor Of:	Hawaiian Electric Company, Inc., a Hawaii corporation, and GTE Hawaiian Telephone Company Incorporated, a Hawaii corporation
Dated:	November 3, 1988
Document No.:	1600588
Purpose:	Easement for pull boxes, hand holes, transformer vaults and underground power lines, etc., being within Lots 1925 through 1929, inclusive, and Easements 693 and 694.

Consent thereto filed as Document No. 1600589.

10. Real property taxes as may be due and owing. For further information, check with the County tax assessor.

In addition, condominium documents noted on Page 7 of this Public Report were recorded after the title search was made.

EXHIBIT "G"

ASSOCIATION OF APARTMENT OWNERS OF
POHAKEA POINT PHASE IV, INCREMENT 1

PRELIMINARY ESTIMATED MONTHLY CASH OPERATING BUDGET
FOR PERIOD JANUARY 1, 1990 - DECEMBER 31, 1990

	RECEIPTS	MONTHLY BUDGET	ANNUAL BUDGET
4010	MAINTENANCE FEES	1,130	13,560
4300	PCA ASSN DUES COLLECTION	4,914	58,968
	TOTAL CASH RECEIPTS:	6,044	72,528
	DISBURSEMENTS:		
6020	OFFICE & ADMIN EXPENSES	35	420
6030	MANAGEMENT FEE	147	1,764
6040	AUDIT & TAX PREPARATION	40	480
6180	GENERAL MAINTENANCE	100	1,200
6260	SMP/FIRE INSURANCE	350	4,200
6290	TRANSFER TO RESERVES	458	5,496
6310	PCA ASSN DUES TRANSMITTAL	4,914	58,968
	TOTAL DISBURSEMENTS:	6,044	72,528

PRELIMINARY ESTIMATED MONTHLY MAINT. FEES AND MEMBERSHIP DUES

UNIT TYPE	% COMMON INTEREST	NO. OF UNITS	MF	MBRSHP DUES	TTL PYMT
2F, 2FR, 2FRE	2.8919%	4	32.68	158.52	191.20
2PE, 2PRE	2.9147%	2	32.94	158.52	191.46
2FS, 2FSR	2.9260%	4	33.06	158.52	191.58
2G, 2GR	2.9744%	2	33.62	158.52	192.14
2LA, 2LAR	3.1961%	4	36.12	158.52	194.64
2LAM	3.2672%	1	36.92	158.52	195.44
3P, 3PR, 3PRE	3.2814%	4	37.08	158.52	195.60
3F, 3FR, 3FRE	3.5773%	10	40.42	158.52	198.94
		31			

As managing agent for the condominium project, I hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles and converted to a cash basis. The figures contained herein are estimates and are not intended to be nor constitute any representation or warranty as to the accuracy of such estimates.

CERTIFIED MANAGEMENT

BY: _____
Roger Woodbury
Property Manager

March 5, 1990

EXHIBIT "H"

SUMMARY OF SALES CONTRACT

1. Seller has entered into an Escrow Agreement dated 09/12/89, with Security Title Corporation.

2. Seller may terminate Sales Contract and refund to Buyer all money Buyer has paid without interest, if Seller determines that Buyer's ability to make payments or if the financial ability of buyer has decreased at the time the credit report is updated.

3. Risk of loss to the apartment and percentage interest in the common elements will be borne by Seller until the date of final closing at which time risk of loss will be borne by Buyer.

4. The contract will not be assignable without the written consent of Seller and any attempt to assign without this consent will be null and void.

5. Seller reserves the right to modify the Declaration, By-Laws, House Rules, Escrow Agreement and Apartment Lease, provided that these modifications do not increase the Buyer's share of common expenses, reduce the obligations of Seller for common expenses on unsold apartments, reduce the size of the apartments, increase the cost of the apartments, or impair or modify any obligations given or undertaken by Seller. Seller also reserves the right to make minor changes that may improve the apartment.

6. Seller anticipates BUT DOES NOT WARRANT that the construction contract with the general contractor shall contain a warranty clause.

SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, THE PROJECT, OR CONSUMER PRODUCTS OR OTHER THINGS INSTALLED OR CONTAINED IN THE APARTMENT OR THE PROJECT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR USE.

7. Seller may appoint the initial management agent for the project.

8. Seller reserves the right to exercise all of the power of the Association until the election of the Board of Directors and officers of the Association of Apartment Owners and may vote and exercise all the powers of the Board and officers of the Association including voting of owners of apartments remaining unsold.

9. Buyer may have the right to cancel the Sales Contract and obtain a refund of all money paid by Buyer if the Final Public Report is not issued within one (1) year from the date of the issuance of the Preliminary Public Report, or there are any changes in the condominium building plans after the execution of this contract and before the issuance of a Final Public Report, or the Final Public Report differs in any material respect from the Preliminary Report.

10. If the Buyer defaults when a payment is required, the Seller will notify the Buyer by registered mail of such default. If the default is not cured within ten (10) days after mailing the notice, the Sales Contract may be terminated by Seller with written notice to Buyer. If this occurs, the money paid by the Buyer will belong to the Seller as liquidated damages.

11. Seller agrees that it will erect the building containing the apartment within the period of two (2) years from the date of this Preliminary Report.

12. The Project will be subject to ongoing construction and sales activities which may result in certain annoyances to Buyer.

13. Seller has no program to offer a rental service of any kind to the owners of apartments in the Project.

EXHIBIT "I"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits which a purchaser makes under a Sales Contract will be held by neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

1. Seller will require all payments due to be made to Escrow.

2. All money received by Escrow will be deposited in an interest-bearing account in a federally insured bank or savings and loan institution. All interest earned in the account will be credited to the account of the Seller.

3. If the Buyer under a reservation as an owner-occupant is not offered an apartment or if the Buyer refuses to enter into a sales contract, Escrow will promptly refund the deposit made by Buyer without interest. If Buyer enters into Sales Contract but rescinds the Sales contract because of hardship or because the buyer no longer intends to be an owner-occupant, Seller will cancel Sales Contract and Escrow will promptly return all money to Buyer without interest and less the cancellation fee.

4. Escrow will disburse Buyer's funds until Seller has notified Escrow that Buyer's Sales Contract has become effective and a Final Public Report has been issued by the Real Estate Commission and Escrow has received a copy of Buyer's receipt for the Final Public Report.

5. Escrow will from time to time make disbursements from the escrow fund to pay for construction costs, to other persons for architectural, engineering, financing, advertising, legal fees and other expenses, but not for selling expenses or brokerage fees relating to the sales of any apartment.

6. If Buyer is in default under the Sales contract, Escrow will promptly give to Buyer notice of the default.

7. Escrow is relieved from all liability for acting in accordance with the terms of the Escrow Agreement.

8. Escrow will be paid **TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00)** per apartment at the closing of Escrow. One-half (1/2) of this fee will be paid by the Buyer and one-half (1/2) will be paid by the Seller. Escrow will also provide joint protection title policies at the Buyer's expense for each Sales Contract closed at a premium not exceeding **TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00)** for both policies.

9. Escrow will collect **FIFTY AND NO/100 DOLLARS ($50.00)** if a Sales Contract is cancelled before the Buyer has received a commitment for financing. Escrow will collect **TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00)** if a Sales Contract is cancelled after Buyer has received a commitment for financing or after Buyer's receipt of the Final Public Report.

JOHN WAIHEE
GOVERNOR

WARREN PRICE, III
ATTORNEY GENERAL

CORINNE K. A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813
(808) 548-4740
FAX (808) 523-0814

July 13, 1989

RECEIVED
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OFFICE OF CONSUMER PROTECTION AND CONSUMER AFFAIRS

The Honorable Robert A. Alm
Director of Commerce and Consumer Affairs
State of Hawaii
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Alm:

Re: Governance of Condominium Property

This is in response to your letter of March 16, 1989 in which you questioned whether a certain condominium project conformed to the provisions of the Condominium Property Regimes law, chapter 514A, Hawaii Revised Statutes. The central concern of your letter is the control of the common elements of the project. For the reasons stated below, we believe that several aspects of the project are contrary to chapter 514A.

Facts

From your letter and the attached documents, we assume the facts to be as follows. PuuAlii is a condominium project which is subject to chapter 514A. Your letter stated that the project is a townhouse type condominium in three phases, with a fourth phase to be opened soon. Each phase has several increments.

Some of the documents you attached pertain directly to Phase I, Increment 3. The Public Report, issued by the Real Estate Commission, states that the increment is subject to the Declaration of Horizontal Property Regime (Document No. 888714), the bylaws of the Association of Apartment Owners (AOAO) and the floor plans. The Declaration divides the property of the increment into three groups: 1) freehold estates in the living area of each apartment, 2) undivided interest in the common elements, and 3) limited common elements used by one or more apartments such as parking spaces.

EXHIBIT J

It is important to establish what the common elements of the increment include. The Declaration describes the common elements as the portions of the increment not considered the freehold estates in the living area of each apartment. That leaves the question of what is included in the increment. Increment 3 is governed by the following documents:

1) Final Horizontal Property Regimes (Condominium) Public Report. This was issued by the Real Estate Commission on August 21, 1978. It states that the increment is governed by the Declaration of Horiztonal Property Regime.

2) Declaration of Horizontal Property Regime (DHPR), dated May 26, 1978. This governs Increment 3 and defines the common elements. It creates an Association of Apartment Owners (AOAO) to administer and operate the increment. Paragraph P states that the DHPR is subject to and subordinate to the Declaration of Covenants, Conditions and Restrictions (DCCR) and the Declaration as to Merger of Increments in a Condominium Project (DMICP).

3) Declaration as to Merger of Increments in a Condominium Project (DMICP), dated May 12, 1977. This merges all completed and future increments into a single condominium project. The owners of the apartments are granted rights to use all the common elements of the entire merged project. All of the Increment AOAOs are to be merged into a single AOAO, although it appears from the letter of James Stubenberg, attached as Exhibit D, that this has not been done and that there still exist "various condominium associations" in the project.

4) Declaration of Covenants, Conditions and Restrictions (DCCR), dated May 12, 1977. This governs the entire merged project. It creates the PuuAlii Community Association (PCA) to maintain and administer the common elements of the project. The PCA is a corporation with bylaws that are not in accord with the bylaws required of AOAOs by section 514A-82, Hawaii Revised Statutes. Article V, section 2, states that every apartment owner is a member of PCA, and only apartment owners may be members.

The letter from Stubenberg explains the developer's view of the situation. The letter states that each increment has an AOAO which is responsible for operating the residential buildings and the immediately adjacent grounds. PCA is responsible for the recreational areas. The portrait of the project painted by the letter is a group of distinct condominiums that share access to a park run by PCA. The letter does not refer to the DMICP or any merger of the increments.

Discussion

The issue running through the questions presented by your letter is whether the developer may provide that a project be divided so as to allow for operation of the common elements separate from the residential units by defining the condominium as only the residential units.

The law which requires a certain type of property operation is section 514A-81 which states:

> The operation of the property shall be governed by bylaws, a true copy of which shall be recorded in the same manner as the declaration.

Section 514A-82 sets out what the bylaws must contain. There must be a board of directors and an association of apartment owners. The statute contains specific details as to eligibility for office, voting rights, meetings, and other matters. Under the project's scheme, PCA is not an AOAO which conforms to 514A-81, but the increment AOAOs are.

Because section 514A-81 requires operation of the property to conform to chapter 514A, the initial question is "what is the property?" Property is defined by section 514A-3 as:

> "Property" means and includes the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, whether leasehold or in fee simple, to the extent of the interest held therein by the owner or lessee submitting such interest to the condominium property regime, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended

> for use in connection therewith, which have been or are intended to be submitted to the regime established by this chapter.

Stubenberg's letter claims that the property is the increment, consisting of the building and the immediately adjacent grounds. This is based on the theory that the increment is a separate condominium regime.

Section 514A-3 defines property as including all rights and appurtenances belonging to the land. The Declaration of Horizontal Property Regime (DHPR) for Increment 3 sets out the rights of the apartment owners in that increment. Although almost the entire document concerns only the increment buildings and immediately adjacent grounds, paragraph P states that the DCCR and DMICP control. The DCCR grants rights to the common elements controlled by PCA referred to in the DCCR as "recreational property." Article III of the DCCR states:

> The exclusive use of the Recreational Property shall be reserved equally to all the owners, except as herein specifically provided, and every owner shall have a right and easement for enjoyment in and to the Recreational Property, which easement shall be appurtenant to and shall pass with the title to every lot...

Because the DHPR is subject to the DCCR, the rights granted by the DCCR in the recreational property are rights appurtenant to the increment and are intended to be submitted to the condominium regime. Thus, the property is the entire project consisting of all the increments and the recreational property.

This view is also supported by the DMICP. It is not clear, however, whether the DMICP is binding in this matter. The DHPR states that it is subject to the DMICP, but the DMICP at section 1(C) requires as a condition of merger that a certificate be recorded which shall state that the construction of the increment is completed, a Declaration has been filed, and that the merger is in accordance with applicable laws. There is no indication that such a certificate was filed. It appears, however, that the developer intended for a purchaser to rely on the DMICP because it was stated in the DHPR that the DHPR was subject to the DMICP. The DMICP clearly states that the increments are to be merged to form one condminium project. The DMICP states on page 2:

> [U]pon the development and completion of each increment contained therein, and the fulfillment of the conditions hereinafter set forth, it is the desire and intention of the owner, McCormack and developer that each increment be merged with all prior increments so that upon completion of the last increment the entire project shall be controlled and administered as a single condominium project;

In Downey v. Jungle Den Villas Recreation Association, Inc., 525 So. 2d 438 (Fla. App.) review denied 536 So. 2d 536 (Fla. 1988), the court considered a similar issue. In that case there was a condominium development built in seven phases, and each phase had a separate association of apartment owners. The developer created a separate incorporated association to operate the recreational facilities shared by all the phases. Each owner of an apartment was a member of the incorporated recreation association (the corporation). The corporation needed to decide what to do with some vacant land and, based upon a majority vote of the members, it decided to build a swimming pool. Some of the members sued and claimed that the corporation needed to abide by the statutory requirements for associations of apartment owners which required a unanimous approval by apartment owners for capital improvements. The court held that the corporation should be treated as an association of apartment owners for two reasons. First, the court found that the corporation's membership was comprised only of apartment owners and only apartment owners had any rights to the recreational facilities. Second, the court found that the corporation functioned as an association of apartment owners because it operated some of the common elements of the condomium. The court stated that the statutory requirements for associations of apartment owners "should not be vulnerable to circumvention by the simple act of setting up an ostensibly independent corporation empowered to perform some of the functions of a condominium association but without the unit owner protection provided by [the condominium laws]." Downey at 441.

Based on the documents creating and controlling the project, the entire project including all the increments is one single property. As in Downey, PCA is comprised only of apartment owners and performs functions of an association of apartment owners in regards to the recreational facilities. According to the Downey analysis, PCA should be considered an association of apartment owners. It must therefore be operated

according to the bylaws required by section 514A-82. The bylaws required by statute are statutorily incorporated into the bylaws of existing condominium projects pursuant to section 514A-82(b). Thus, an apartment owner could maintain an action to force compliance with the bylaws as provided by section 514A-88, Hawaii Revised Statutes.

Your letter also asked how this situation should be reflected in the public report issued by the Real Estate Commission pursuant to section 514A-36, Hawaii Revised Statutes. The purpose of the public report is to provide disclosure of relevant information about the condominium project to prospective purchases. In Association of Owners of Kukui Plaza v. City and County of Honolulu, 7 Haw. App. ____, 742 P.2d 974 (1987), the court stated that chapter 514A "is designed to ensure that the utmost information is made available to prospective buyers." For this reason, the public report should include in the section listing basic documents the DCCR and the DMICP, and an explanation of the significance of these and all other relevant documents, and those documents' interrelationships.

Please contact us if you have further questions.

Very truly yours,

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GSG:nk

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