



**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

THE SHEARWATER  
 (Increment 1)  
 Kanahana Road  
 Princeville, Kauai, Hawaii 96722

Registration No. 2277

Issued: December 14, 1990  
 Expires: January 14, 1992

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of November 21, 1990, 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.
- FINAL:** (white) The developer has legally created a condominium and has filed complete information with the Commission.  
 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       Not Required - disclosures covered in this report.



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## 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 feehold interest in the common elements.
- 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.  New Building(s)  Conversion  
 Both New Building(s) and Conversion
2.  Residential  Commercial  
 Mixed Residential and Commercial  
 Other Resort/Time Sharing & Commercial
3.  High Rise (5 stories or more)  Low Rise
4.  Single or  Multiple Buildings
5. Apartment Description

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
2 Bedroom	13	2/2	1260	257/62

Total Apartments: 13

*\*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:**

	<u>Number of Stalls</u>
Assigned Stalls (Individual Units)	<u>13</u>
Guest Stalls	<u>12</u>
Unassigned Stalls	<u>          </u>
Extra Stalls Available for Purchase	<u>          </u>
Other: <u>          </u>	<u>          </u>
<b>Total Parking Stalls</b>	<b><u>25</u></b>

**7. Recreational amenities:**

None at this time.

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: THE SHEARWATER  
**Name**  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai Hawaii 96722

Phone: (808) 826-6549  
**(Business)**

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

David E. Walters, General Partner  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Real Estate Sales Agent: Princeville and Hanalei Interval Ownership, Inc.  
**Name**  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai Hawaii 96722

Phone: (808) 826-6549  
**(Business)**

Escrow: Hawaii Escrow & Title, Inc.  
**Name**  
850 Richards Street, Suite 400  
**Business Address**  
Honolulu, Hawaii 96813

Phone: (808) 521-2977  
**(Business)**

Managing Agent: Owner's Management Corporation (proposed)  
**Name**  
P. O. Box 3099  
**Business Address**  
Princeville, Kauai Hawaii 96722

Phone: (808) 826-6549  
**(Business)**

Attorney for Developer: Michael H. Sakai, Esq.  
**Name**  
201 Merchant Street, Suite 902  
**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 \_\_\_\_\_  
 Filed - Land Court - Document Number \_\_\_\_\_

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. \_\_\_\_\_  
 Filed - Land Court Condo Map No. \_\_\_\_\_

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 \_\_\_\_\_  
 Filed - Land Court - Document Number \_\_\_\_\_

Amendment date(s) and recording/filing information:

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:

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:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	—	<u>                    </u>

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 has retained certain rights in order to allow it to construct additional buildings and apartments in this Project. This means that additional buildings and apartments may be built in the future. The Developer has also retained the right to subdivide that portion of the land area that has not been utilized for a building site and remove it from the Project. In no event shall an existing structure or apartment ever be physically affected.

Your attention is directed to Exhibit "B" which contains further information and details on the rights and obligations of the Developer.



**B. Underlying Land:**

Address: Kahana Road Tax Map Key: 5-4-5-32 (Fourth)  
Princeville, Kauai Hawaii 96722 (TMK)

Address  TMK is expected to change because address will be assigned.

Land Area: ± 3.599  square feet  acre(s) Zoning: R-10

Fee Owner: THE SHEARWATER  
Name  
P . O. Box 3099  
Address  
Princeville, Kauai Hawaii 96722

Sublessor:  
Name  
Address

**C Buildings and Other Improvements:**

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

2. Buildings: 1 in Increment 1 Floors Per Building \_\_\_\_\_

Exhibit A contains further explanations.

3. Principal Construction Material:

Concrete  Hollow Tile  Wood

Other glass and other allied building materials.

4. Permitted Uses:

	<u>No. of Apts.</u>		<u>No. of Apts.</u>
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Industrial	_____
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Agricultural	_____
<input checked="" type="checkbox"/> Timeshare/Hotel	<u>13</u>	<input type="checkbox"/> Recreational	_____
<input type="checkbox"/> 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:

- Pets None without the prior approval of the Board of Directors.
- Number of Occupants: \_\_\_\_\_
- Other: \_\_\_\_\_
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Total Apartments 13 in Increment 1

Elevators 0 Stairways 4 Trash Chutes -0-

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>
<u>2 Bedroom</u>	<u>13</u>	<u>2/2</u>	<u>1260</u>	<u>257/62</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

*\*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:**

The apartments shall not be deemed to include the undecorated or the unfinished surfaces of perimeter walls, ceilings or floors, or interior load bearing walls.

**Permitted Alterations to Apartments:**

None

7. Parking Stalls:

Total Parking Stalls: 25

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	<u>covered</u>	<u>open</u>	
Assigned (for individual units)		13					13
Guest Unassigned		12					12
Extra Available for Purchase							
Other:							
Total Covered & Open		25					

Each apartment will have the exclusive use of at least 1 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.
- Exhibit \_\_\_\_\_ 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
- Other: \_\_\_\_\_
- Storage Area
- Laundry Area
- Trash Chute

\*The developer has reserved the right to construct a swimming pool and landscape the unimproved portions of the Project.

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

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

10. Conformance to Present Zoning Code

a.  No variances to zoning code have been granted.

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

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.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
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.

Exhibit     C     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.

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

described in Exhibit     D    

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.

Exhibit     E     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 April 5, 1990 and issued by Hawaii Escrow & Title, Inc.

**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.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest If Developer Defaults</u>
Mortgage Lien	An apartment cannot be conveyed unless the mortgage lien is released and the apartment can be conveyed free and clear of such lien

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:

[ ] not affiliated with the Developer.

[ X ] 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:

- |   |   |
|---|---|
| <input type="checkbox"/> Electricity    | <input type="checkbox"/> Television Cable |
| <input type="checkbox"/> Gas            | <input type="checkbox"/> Water & Sewer    |
| <input type="checkbox"/> Other _____    |   |
| <input type="checkbox"/> 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:

One Year after completion of the building/apartment

2. Appliances:

All manufacturer's warranties shall be passed over to a purchaser.



#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

COMMON EXPENSES: Paragraph 11.0 of the Declaration provides that the Developer (or its mortgagee) shall be responsible for certain costs in the event that the Project is not completed and the Developer or its first mortgagee exercises its right to remove or subdivide that portion of the land that is not developed.

POWER OF ATTORNEY: Each Purchaser of an apartment by virtue of the project instruments, sales contract, and apartment deed specifically grants a power of attorney to the Developer and/or its mortgagee to construct and develop the Project in phases and in order to exercise any of the Developer's and/or mortgagee's right to withdraw, remove and subdivide the undeveloped land from the Project.

INCREASE IN COMMON EXPENSES: The right of the Developer to develop additional buildings is only effective for 10 years from the recording of the Declaration. In the event the Developer is unable to withdraw the undeveloped Increments or develop future Increments by the end of the 10-year period, each Purchaser will be responsible for his pro-rata share of the cost to maintain and upkeep the undeveloped phases. The additional cost would include but not be limited to insurance, real property taxes, electricity, yard care and landscaping, and water.

The Developer has not and will not provide any assurances as to whether any further increments and apartments will be constructed. This Project may only consist of Thirteen (13) apartments.

"COUNTY REQUIREMENTS: Purchasers should be aware that the issuance of this Preliminary Public Report does not mean that all of the Kauai County Building Codes and Ordinances have been complied with. The actual construction of the buildings and improvements will have to comply with all applicable Building Codes and Ordinances including any requirements imposed by the subdivisions rules and regulations. Your attention is directed to Exhibit "J" attached hereto which contains a statement from the Planning Department, County of Kauai, concerning the foregoing."

**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 \_\_\_\_\_

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. 2277 filed with the Real Estate Commission on July 13, 1990.

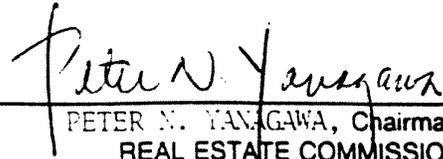
**Reproduction of Report.** When reproduced, this report must be on:

yellow paper stock

white paper stock

pink paper stock

**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.



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

**Distribution:**

Bureau of Conveyances

Department of Finance, County of Kauai

Planning Department, County of Kauai

Federal Housing Administration

Escrow Agent

EXHIBIT "A"

Description of Apartments and Phasing/Increments

I. DESCRIPTION OF APARTMENTS. There is only one type of apartment in the Project as follows:

Two-bedroom Apartment. There are 13 separately designated and described and freehold estates in Increment 1. The building contains three floors with five apartments on the first and second floors, and three apartments on the third floor. Each apartment consists of 2 bedrooms, 2 bathrooms, a kitchen, living room, dining room, foyer, two lanais and a wet bar located within the bedroom closest to the front entry. The total net living area of a 2-bedroom apartment is 1,260 square feet; the entry deck consists of 129 square feet; and the lanais are 257 and 62 square feet.

All units include kitchen with Jenn-Aire ranges, dishwashers, refrigerators, a washer and dryer, microwave, disposal, and a hot water heater.

II. PROJECT. The Project consists of the following:

FIRST INCREMENT:

A. Increment 1. To construct one building situated on Increment 1 in which there would be thirteen (13) apartments, the number and location of which are set forth in the Condominium Map and described as Building 1, Apartments 101 through 105 being on the first floor, Apartments 201 through 205 on the second floor, and Apartments 302 through 304 on the third floor.

II. RESERVATION TO DEVELOP FUTURE INCREMENTS. The Developer has reserved the right to construct and develop additional buildings and apartments in this Project. The reservation allows the Developer to do the following:

A. Increment 2. To construct two buildings situated on Increment 2 in which there would be six (6) apartments and a clubhouse and management office.

B. Increment 3. To construct one building situated on Increment 3 in which there would be fifteen (15) apartments.

C. Other Improvements. The Developer also reserves the right to construct and place within Increments 2 and 3 driveways, parking, landscaping, a swimming pool and recreation area.

EXHIBIT "B"

Reservation By Developer To Construct Additional Apartments And To Withdraw Land

I. PHASED DEVELOPMENT. The Developer at its sole option may develop one or more phases of the Project and obtain financing and separately encumber each apartment and the limited common land area for the phase.

A) POWER OF ATTORNEY - COMPLETION OF PROJECT. There is reserved during the ten year period from the date of the Declaration unto the Developer and its successors and assigns an irrevocable power of attorney, coupled with an interest, to act on behalf of the unit owners of Building 1 to sign any joinder or other agreements and amendments and to execute, acknowledge and deliver such further instruments as may from time to time be required under any rights granted to, accruing to, or reserved by the Developer and the owner of the units of Building 1 under the Declaration or by the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, including the reallocation of percentage interests and voting rights appurtenant to each of the units of Building 1, in the Project and to execute such amendments to the Declaration as may be required from time to time for the purpose of carrying out and exercising its rights under Paragraph 24.0 of the Declaration.

B) DEVELOPER'S EXCEPTIONS, EXCLUSIONS AND RESERVATIONS. During the ten (10) year period from the date of the Declaration it reserves the right to construct and develop additional condominium units, buildings, drives, lanes, roads and all other improvements on the undeveloped increments and in connection therewith reserves the right to use and excavate the surface and subsurface of the ground for the erection, construction and installation of said improvements and foundations, footings, floorings and basements, easements and rights of way. Developer reserves the right to lease and rent such subsequently constructed condominium units and the right to sell, grant and convey title to purchasers of such subsequently constructed condominium units. Developer also reserves the right to locate, install, maintain, repair all utilities and utility lines and sewers necessary for such construction, reconstruction, maintenance and operation. Developer reserves the right to grant to the County of Kauai easements or rights of way for ingress and egress to permit furnishing of municipal services and the right to convey or relinquish control to proper municipal authorities of all sewer mains, water mains and pipelines together with suitable easements or rights of way over the common driveway and Building 1 for the

continued maintenance, repair, replacement and operation thereof and to enter into such agreements filings or plattings with the County of Kauai in the nature of a planned-unit development project, cluster development, or otherwise as the County may require or amendments or changes therein in connection with the construction of this Condominium Project.

II. OPTIONS TO DELETE UNDEVELOPED LAND. In the event that no further development of the Project is undertaken by the Developer, the Developer and/or its mortgagee, as successor in interest to the Developer, may delete the undeveloped phases pursuant to Section 514A-11(12) of the Act in accordance with the limited common area lines as set forth in the Condominium Map subject to boundary adjustments where necessary to meet building setback requirements and where a phase is not located with direct access to the roadway a perpetual easement shall be granted in favor of the inner phase for ingress and egress over the walkways, driveways, and grounds over the Project.

III. POWER OF ATTORNEY - DELETION OF LAND. In furtherance of the rights and powers reserved to the Developer and its successor in interest in the preceding paragraph, each apartment owner and the Association of Apartment Owners hereby designates the Developer and/or its successor in interest as his attorney-in-fact, with power of substitution, to execute any and all applications for subdivision, amendments to the Declaration, the Bylaws, and the Condominium Map, deeds in lieu of foreclosure, easement agreements and any other documents of whatsoever nature necessary or appropriate to effect the withdrawal of any or all of the Undeveloped Land from the Project and any subsequent conveyance or transfer of such Withdrawn Land. The acceptance of ownership of an apartment in the Project shall constitute a grant of such power, and such grant, being coupled with the interest of the Developer and/or its successor in interest as herein reserved, shall be irrevocable so long as the rights reserved to the Developer and/or its successor in interest under the preceding paragraph shall remain unexercised.

IV. DEVELOPER'S EXPENSES: The Developer shall be responsible for the expenses relating to the maintenance of the land areas within the increments that remain undeveloped. The expenses to include gardening and upkeeping of the grounds, water, any electricity associated with the undeveloped increments, the costs of any insurance required to be maintained for the increments, including but not limited to the liability insurance, and real property taxes associated with and allocable to the undeveloped increments. The responsibility of the Developer shall terminate upon the earlier of the development of a particular increment or the exercise of

Developer's right to remove and delete the undeveloped land, more particularly described in Paragraph 5.3 of the Declaration.

If the Developer does not develop or withdraw Increments 2 and 3 of the Project, the Owners of the Apartments will be responsible for the cost of maintaining these areas. In this event, these areas will be common elements of the Project. This will probably result in an increase in maintenance fees.

SW\PR-B

EXHIBIT "C"

Common Elements

The common elements include:

- a. The land in fee simple.
- b. The foundations, floor slabs, columns, girders, beams, supports, bearing walls, roofs, entry landings, and stairways in the buildings not within any of the apartments.
- c. The yards, landscaping, trash areas, including the open parking stalls which are not yet appurtenant or assigned to an apartment, all of the landscaped yards and lawns.
- d. The central and appurtenant installations for utility services used or necessary to the existence, maintenance and safety of the Project.
- e. All licenses, leases, or contractual arrangements that the Association enters into for the purpose of providing parking, recreational amenities, including but not limited to swimming pools, tennis courts, meeting rooms, clubhouses, and management facilities for the use or benefit of the apartment owners, their tenants and/or guest.
- f. Any limited common elements that by the terms hereof shall become common elements.
- g. Any improvements placed on the grounds pursuant to a reservation in favor of Developer such as swimming pools, landscaping and parking.

EXHIBIT "D"

Limited Common Elements

INCREMENT 1:

A. Building 1. The land area delineated as Increment 1 on the Condominium Map is a limited common element for the Apartments contained in Building 1 and is for the exclusive use of the Apartments contained in Building 1.

B. Parking. Each of the two bedroom apartments has one assigned open parking stall. The parking stall assignments and their location is set forth in the Declaration. The parking assignment schedule is attached hereto as Exhibit "E-1".

EXHIBIT "E"

Common Interest

The common interest for each apartment is dependent upon the total number of apartments constructed. Upon construction of each building in each of the respective Phases, 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>Phase Completed</u>	<u>Type</u>	<u>No.</u>	<u>%</u>	<u>Total</u>
1	02 to 05 units	11	7.692%	84.612%
	01 units	2	7.694%	<u>15.388%</u>
				100.000%

FUTURE DEVELOPMENT. In the event Developer exercises its right to construct additional buildings and apartments, the following would be the percentage interest of an apartment after the completion of such additional apartments:

2	2 Bedroom	19	5.263%	100%
3	2 Bedroom	34	2.944%	100%

The percentage undivided interest is calculated by dividing an apartment's net living area by the sum of all the net living areas of all the apartments that have been constructed with minor adjustments to bring the total percentage to 100%. A Phase shall be completed and an apartment shall be considered constructed upon the recording of an Amendment to the Declaration which incorporates an "As Built" architect's or engineer's certificate as to the building and apartment(s) in each respective Phase.

SCHEDULE "E-1"

Parking Assignments

Apartment	Parking Stall No.
101	10
102	12
103	15
104	9
105	6
201	11
202	13
203	16
204	8
205	5
302	14
303	17
304	7

EXHIBIT "F"

Encumbrances

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. The property borders on the ocean and is subject to the provisions of the State of Hawaii regarding shoreline setback and prohibitions on use.
3. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions set forth in the declaration,  
  
Dated: March 1, 1971  
Recorded: March 12, 1971, in Liber 7444, Page 93,  
in the Bureau of Conveyances.  
  
Declaration annexing additional land to Princeville at Hanalei, dated September 19, 1972, recorded September 20, 1972, in Liber 8599, Page 6, in the Bureau of Conveyances.
4. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of: Kassler & Co.  
For: Roadway and utility purposes over, under and across Easement R-2.  
Dated: June 19, 1975.  
Recorded: July 2, 1975, in Liber 10756, Page 267, in the Bureau of Conveyances.
5. Easement S-1, being 10 feet wide, for sanitary sewer purposes, as shown on File Plan 1350.
6. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, in favor of: Kauai County Public Improvement Corp.  
For: Sanitary Sewer purposes under and across said Easement S-1.  
  
Dated: October 29, 1975.  
Recorded: November 13, 1975, in Liber 11034, Page 88, in the Bureau of Conveyances.
7. Reservation in favor of Consolidated Oil & Gas, Inc., a Colorado corporation of easements R-2 and roadway lots in File Plan Nos. 1179, 1350 and 1360 as reserved in Deed dated November 20, 1979, recorded in the Bureau of Conveyances in

Liber 14252, Page 688 and correction Deed dated September 17, 1980, but effective March 12, 1980, recorded in Liber 14995, Page 447.

8. Easement E-2 (10 feet wide) for electrical purposes in favor of Kauai Electric Company, as shown in File Plan No. 1350.
9. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, In favor of: Citizens Utilities Company (Kauai Electric Division).  
For: Electrical purposes over, under and across Easement E-2.  
Dated: December 6, 1976.  
Recorded: December 13, 1979, in Liber 14306, Page 238, in the Bureau of Conveyances.
10. An easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, In favor of: Citizens Utilities Company, a Delaware corporation.  
For: Pole and wire lines.  
Dated: October 27, 1980.  
Recorded: November 14, 1980, in Liber 15138, Page 494, in the Bureau of Conveyances.
11. An Easement affecting a portion of said land and for the purposes stated herein, and incidental purposes, In Favor Of: Citizens Utilities Company, A Delaware Corporation, and Hawaiian Telephone Company, a Hawaii corporation.  
For: Right-of-Entry for Utility Purposes  
Date: March 15, 1984  
Recorded: May 10, 1984, in Liber 17863, Page 593, in the Bureau of Conveyances.
12. Mortgage, to secure an indebtedness of the amount stated herein and any other amounts payable under the terms thereof,  
Dated: September 22, 1982.  
Amount: \$500,000.00  
Mortgagor: POV, Inc., a Hawaii corporation  
Mortgagee: Avanti Investment & Development Corporation, a Hawaii corporation, and Kahana Joint Venture Associates, a Canadian Joint Venture.  
Recorded: September 22, 1982, in Liber 16586, Page 606, In the Bureau of Conveyances.

13. Mortgage, to secure an indebtedness of the amount stated herein and any other amounts payable under the terms thereof,  
 Dated: December 17, 1982.  
 Amount: \$300,000.00  
 Mortgagor: Princeville Oceanside Villas, a duly registered Hawaii limited partnership  
 Mortgagee: American Savings and Loan Association, a Utah corporation.  
 Recorded: December 12, 1982, in Liber 16750, Page 285, In the Bureau of Conveyances.

Said mortgage was assigned to American Savings Bank, F.S.B., a federal savings bank by instrument dated January 30, 1987, recorded in said Bureau in Book 20447, Page 509.

Said Mortgage was amended by the following instruments:

<u>DATED</u>	<u>BOOK</u>	<u>PAGE</u>
March 16, 1987	20555	379
March 1, 1988	22114	488
December 31, 1988	22913	742

14. Mortgage, to secure an indebtedness of the amount stated herein and any other amounts payable under the terms thereof,  
 Dated: March 16, 1987.  
 Amount: \$787,500.00  
 Mortgagor: The Shearwater, a duly registered Hawaii limited partnership  
 Mortgagee: American Savings Bank, F.S.B., a federal savings bank.  
 Recorded: April 13, 1987, in Liber 20555, Page 386, In the Bureau of Conveyances.
15. For real property taxes due and owing, your attention is directed to the Director of Finance, County of Kauai.

EXHIBIT  "G"

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months =</u>	<u>Yearly Total</u>
101	\$ 642.30	\$ 7,707.70
102	642.30	7,707.70
103	642.30	7,707.70
104	642.30	7,707.70
105	642.30	7,707.70
201	642.30	7,707.70
201	642.30	7,707.70
203	642.30	7,707.70
204	642.30	7,707.70
205	642.30	7,707.70
302	642.30	7,707.70
303	642.30	7,707.70
304	<u>642.30</u>	<u>7,707.70</u>
	\$8,350.00	\$100,205.00

\*\*\*\*\*  
 Developers Annual Expenses for reserved increment 2 and 3:

Princeville Association	\$ 2,375.00
Taxes	<u>2,494.00</u>
Maintenance	<u>900.00</u>

(x) Prepared on May 23, 1990

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Estimate of Maintenance Fee Disbursements:

	<u>Monthly</u> x 12 months =	<u>Yearly Total</u>
<b>Utilities and Services</b>		
Electricity [ ] common elements only	\$ 300.00	\$ 3,600.00
Refuse Collection	125.00	1,500.00
Television	562.00	6,740.00
Water and Sewer	346.00	4,160.00
<b>Maintenance, Repairs and Supplies</b>		
Building	1,682.00	20,182.00
Grounds	1,000.00	12,000.00
Appliances	83.00	1,000.00
<b>Management</b>		
Management Fee	417.00	5,000.00
Payroll and Payroll Taxes	1,526.00	18,313.00
Office Expenses	275.00	3,300.00
Insurance	900.00	10,800.00
Reserves	500.00	6,000.00
Vehicle Expense	113.00	1,360.00
Audit Fees	167.00	2,000.00
Princeville Association Dues	333.00	4,000.00
Legal	<u>21.00</u>	<u>250.00</u>
TOTAL	\$ 8,350.00 =====	\$100,205.00 =====

I/We, Owner's Management Corporation, as managing agents for the condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles.

  
Date: May 23, 1990

EXHIBIT "H"

Summary of Sales Contract

The Sales Contract contains the price and other terms and conditions under which a purchaser will agree to buy an apartment in the Project. Among other things, the Sales Contract says:

(a) A buyer must obtain his own financing. Buyer acknowledges that this Sales Contract is contingent on any financing after the issuance of the final public report.

(b) That a purchaser's money will be held in escrow, under the terms of the Escrow Agreement.

(c) That interest on deposits shall belong to the buyer so long as said funds are held in escrow.

(d) That the unit will be subject to various other legal documents which the buyer certifies that he has examined.

(e) That the buyer must close the purchase at a certain date and pay closing costs, in addition to the purchase price.

The Sales Contract contains various other provisions with which the purchaser should become acquainted.

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 a neutral party ("Escrow"). Under the Escrow Agreement these things will or may happen:

- (a) Escrow will let purchasers know when payments are due.
- (b) Escrow will arrange for purchasers to sign all necessary documents.
- (c) The Escrow Agreement says under what conditions a refund will be made to a purchaser.
- (d) The Escrow Agreement says what will happen to a purchaser's funds upon a default under the Sales Contract.

The Escrow Agreement contains various other provisions and establishes certain charges with which the purchaser should become acquainted.

JOANN A. YUKIMURA  
MAYOR



PETER A. NAKAMURA

PLANNING DIRECTOR

ROLAND D. SAGUM, III  
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

August 27, 1990

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
P. O. Box 3469  
Honolulu, Hawaii 96801

Subject: Comments on Shearwater Condominium Report  
Tax Map Key: 5-4-05:32  
Princeville, Kauai, Hawaii

After reviewing the subject document, we have the following comments to offer:

The amount of limited common elements is within the allowable unit density permitted by the CZO. The subject property is zoned Residential District (R-10) and Open District (O) and qualifies for 32 units in accordance with the Kauai Planning Commission's approval of Special Management Area Use Permit SMA(U)-79-22, Project Development Use Permit U-34-79 & Class III Zoning Permit Z-III-79-22.

When applying for Zoning Permits with the Planning Department, the owners must be made aware that 75% of the owners, or their assignee, are required to sign the permit form(s). Should an assignee be designated, such assignee shall present proof of authorization from the 75% of the owners at the time a permit is applied for. This is a requirement because the Planning Department does not recognize the Condominium Report to be a legal subdivision of land.

There should be a disclosure provision written into this and all ensuing condominium reports stating that approval of the report should not be misconstrued to mean that all County Codes and Ordinances have been complied with. Subsequent development and use shall comply with all applicable

EXHIBIT "J"

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Page 2  
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County Codes and Ordinances. It should also be made clear that the Horizontal Property Regime (HPR) does not necessarily mean that all County requirements pertaining to subdivision of lands have been met. Therefore, such facilities/improvements that are normally associated with County-approved subdivisions such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owner and emerging traffic, drainage facilities, etc., may not necessarily be provided for. Further, such services as County street maintenance and trash collection will not be available for interior road/driveways.

Should you have any questions, please feel free to contact Bryan Mamaclay of my staff at 245-3919.

A handwritten signature in black ink, appearing to read "Peter A. Nakamura", with a long horizontal flourish extending to the right.

PETER A. NAKAMURA  
Planning Director

cc: Michael Sakai, Esq.