



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

**CONDOMINIUM PUBLIC REPORT**

6500 KAHUNA ROAD CONDOMINIUM

Kahuna Road, Kapaa, Kauai

Registration No. 2551 (Conversion)

Issued: December 17, 1991  
 Expires: January 17, 1993

Report Purpose:

This report is based on information and documents submitted by the developer to the Real Estate Commission as of November 27, 1991, 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. This report also includes information submitted by the Kauai County Planning Department dated Type of Report: November 26, 1991.

       **PRELIMINARY:**      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.  
 (yellow)

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

       **SUPPLEMENTARY:**    Updates information contained in the  
 (pink)  
                                    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.

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 NOTICE:
*
*   THERE ARE COUNTY RESTRICTIONS ON THE NUMBER OF
*   RESIDENTIAL DWELLING UNITS, OR OTHER STRUCTURES,
*   WHICH MAY BE BUILT UPON THE PROPERTY.  THEREFORE,
*   UNLESS THE PURCHASER IS PURCHASING AN EXISTING
*   RESIDENTIAL DWELLING, THERE IS NO ASSURANCE THAT
*   THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL
*   DWELLING UNIT ON THE PROPERTY.  THERE ALSO IS NO
*   ASSURANCE THAT THE PURCHASER WILL BE ABLE TO CONVERT
*   AN EXISTING NON-RESIDENTIAL STRUCTURE TO A RESIDEN-
*   TIAL USE.  THE PURCHASER SHOULD CONSULT WITH THE
*   APPROPRIATE COUNTY AGENCIES TO DETERMINE WHETHER THE
*   PURCHASER MAY BUILD A RESIDENTIAL DWELLING UNIT,
*   OR ANY OTHER TYPE OF STRUCTURE, UPON THE PROPERTY.
*
*   1.  This Public Report does not constitute an
*       approval of the project nor that all County
*       Codes, Ordinances and subdivision requirements
*       have been complied with.
*
*   2.  This project does not involve the sale of
*       individual subdivided lots.  The dotted lines
*       on the Condominium Map (Exhibit A) are for
*       illustration purposes only.
*
*   3.  Facilities and improvements normally associated
*       with County approved subdivisions may not
*       necessarily be provided for and services such as
*       County street maintenance, enhanced water
*       facilities, fire service, related services and
*       trash collection will not be available for
*       interior roads.
*
*   4.  Read Exhibit I (Letter from County of Kauai)
*       with care.
*
*   THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY
*   REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH
*   REGARD TO THE FOREGOING.
*****

```

# TABLE OF CONTENTS

	page
Report Purpose .....	1
Type of Report .....	1
Summary of Changes from Earlier Public Reports .....	2
Table of Contents .....	3
General Information on Condominiums .....	4
Summary of the Condominium Project .....	5
<b>I. PEOPLE CONNECTED WITH THE PROJECT .....</b>	<b>6</b>
Developer	
Real Estate Sales Agent	
Escrow Company	
Managing Agent	
Attorney for Developer	
<b>II. CREATION OF THE CONDOMINIUM; CONDOMINIUM DOCUMENTS</b>	
A. Declaration .....	7
B. Condominium Map (File Plan) .....	7
C. Bylaws .....	7
D. House Rules .....	8
E. Changes to Condominium Documents .....	8
<b>III. THE CONDOMINIUM PROJECT</b>	
A. Interest to be Conveyed to Buyer .....	9
B. Underlying Land .....	10
C. Buildings and Other Improvements .....	10
D. Common Elements, Limited Common Elements, Common Interest .....	14
E. Encumbrances Against Title .....	15
F. Management of the Common Elements .....	15
G. Maintenance Fees .....	16
H. Utility Charges .....	16
I. Construction Warranties .....	16
J. Status of Construction .....	17
K. Project Phases .....	17
L. Sales Documents Filed with the Real Estate Commission .....	17
<b>IV. ADDITIONAL INFORMATION NOT COVERED ABOVE .....</b>	<b>18</b>
Buyer's Right to Cancel Sales Contract .....	19
Signature of Real Estate Commission Chairman .....	20
EXHIBIT A: Condominium Map and Limited Common Element Locations	
EXHIBIT B: Summary of Sales Contract	
EXHIBIT C: Schedule of Apartments and Common Interests	
EXHIBIT D: Summary of Portions of Escrow Agreement	
EXHIBIT E: Common Elements and Limited Common Elements of Project	
EXHIBIT F: Encumbrances Against Title	
EXHIBIT G: Disclosure Abstract	
EXHIBIT H: Estimate of Initial Maintenance Fees and Disbursements	
EXHIBIT I: Letter from County of Kauai Planning Department to the Hawaii Real Estate Commission	

## GENERAL INFORMATION ON COND MINUMS

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.

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.

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.

### 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  Ohana - Unit  
 Mixed Residential and Commercial  Agricultural  
 Other Residential and Agricultural
- 3.  High Rise (5 stories or more)  Low Rise
- 4.  Single or  Multiple Buildings
- 5. Apartment Description

Apt. No.	Quantity	BR/Bath	Net Living Area (sf)	Garage/ Storage Shed(s), Lanai/Patio (sf)
1	1	2; 1 3/4	964	592 (garage), 31 (storage)
2	1	1; 1	392	28 (porch) 84 (storage)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Total Apartments: <u>2</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.*

6. Parking:

	Number of Stalls
Assigned Stalls (Individual Units)	4
Guest Stalls	0
Unassigned Stalls	0
Extra Stalls Available for Purchase	0
Other: _____	_____
Total Parking Stalls	4

7. Recreational amenities:

NONE

I. PEOPLE CONNECTED WITH THE PROJECT

Developer: BARRY T. ARRUDA  
Name  
6500 Kahuna Road  
Business Address  
Kapaa, HI 96746

Phone: (808) 822-9653  
(Business)

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

N/A

Real Estate Broker: FIRST CHOICE REALTY  
Name  
4-356A Kuhio Highway  
Business Address  
Kapaa, HI 96746

Phone: (808) 822-5850  
(Business)

Escrow: TITLE GUARANTY ESCROW SERVICES, INC.  
Name  
4414 Kukui Grove Street, Suite 104  
Business Address  
Lihue, HI 96766

Phone: (808) 245-3381  
(Business)

General Contractor: N/A  
Name  
Business Address

Phone: \_\_\_\_\_  
(Business)

\*\*Upon compliance with applicable condominium management laws.

Condominium Managing Agent: \*\*Self-managed by Association of  
Name Apartment Owners  
Business Address

Phone: \_\_\_\_\_  
(Business)

Attorney for Developer: STEVEN R. LEE  
Name  
2959 Umi Street, Suite 300  
Business Address  
Lihue, HI 96766

Phone: (808) 246-1101  
(Business)

**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 - Document No. 91-137970  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

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. 1563  
 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 - Document No. 91-137971  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court - Document No. \_\_\_\_\_

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>N/A</u>

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

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules





4. Permitted Uses by Zc

	<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>		<u>No. of Apts.</u>	<u>Use Determined By Zoning</u>
[ ] Commercial	_____	_____	[ ] Industrial	_____	_____
[ ] Residential	_____	_____	[X] Agricultural	2	Yes.
[ ] Timeshare/Hotel	_____	_____	[ ] Recreational	_____	_____
[X] Other: <u>Please see page 18 for further explanation.</u>					

Is/Are this/these use(s) specifically permitted by the project's declaration or bylaws?

[ ] Yes                      [X] No

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: \_\_\_\_\_

[ ] Number of Occupants: \_\_\_\_\_

[X] Other: Refer to Declaration of Covenants and Restrictions of Kapaa Highland Estates.

[ ] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators 0                      Stairways 0                      Trash Chutes 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Garage/ Storage Shed(s), Lanai/Patio (sf)</u>
<u>1</u>	<u>1</u>	<u>2; 1 3/4</u>	<u>964</u>	<u>592 (garage) 31 (storage)</u>
<u>2</u>	<u>1</u>	<u>1; 1</u>	<u>392</u>	<u>28 (porch) 84 (storage)</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Total Apartments: 2

*\*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 boundaries of each apartment shall be the outer surface of the entire building on the specific areas set in the project. Wires or conduits, pipes or any utility lines running over, under or through any apartment which are utilized for or serve more than one unit shall not be deemed as part of the apartment, the same being deemed common elements.

The area of land (limited common element) set aside for each unit and the location of each apartment in the project are illustrated on the condominium plot plan attached as Exhibit A.

**Permitted Alterations to Apartments:**

As allowed by Kauai County zoning ordinances and recorded restrictions on the project, if any. Upon construction of each permanent improvement, an amendment to the Declaration of Condominium Property Regime and the Condominium Map (Exhibit A) will be required to disclose actual improvements as a matter of public record.

**7. Parking Stalls:**

Total Parking Stalls: 4

	Regular		Compact		Tandem		TOTAL
	covered	open	covered	open	covered	open	
Assigned (for individual units)	4						4
Guest							
Unassigned							
Extra Available for Purchase							
Other:							
Total Covered & Open	4						

Each apartment will have the exclusive use of at least two (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.

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

Storage Area

Recreation Area

Laundry Area

Tennis Court

Trash Chute

Other: \_\_\_\_\_

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

Unit 2 was constructed in 1985 and is in good condition as to its structural components, mechanical and electrical installations.

It is expected improvements will have useful life in excess of 20 years.

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

Unit 2 is in compliance with all Kauai County building codes and regulations; no variances from any code or ordinance was requested or granted at the time of construction of Unit 2.

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	<u>X</u>	_____	_____
Structures	<u>X</u>	_____	_____
Lot	<u>X</u>	_____	_____

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyers 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 restriction 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     E     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     E    

as follows:

The portion of land set aside for the use of each owner of a unit as set forth in Exhibit A, subject to the roadway and utility easement, if any.

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     C     describes the common interests for each apartment.

As follows:

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

Exhibit   F   describes the encumbrances against the title contained in the title report date   October 15, 1991   and issued by                   T.I. OF HAWAII                  .  
Developer represents that since that date there have been no further encumbrances

**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 apartment 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>
Mortgages	If foreclosed, Buyer's deposit will be refunded and contract will be cancelled.

**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.
- [ ] the Developer or the Developer's affiliate.
- [ x] 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   H   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:

Not applicable

Electricity

Television Cable

Gas

Water & Sewer

Other \_\_\_\_\_

**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:

NONE

2. Appliances:

NONE

J. Status of Construction      Estimated Completion Date:

All construction is complete.      Unit 1 is new, having been completed in October, 1991.      Unit 2 was built in 1985.

K. Project Phases:

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

Summary of Developer's Present Plans for Future Development:

NONE

L. Sales Documents Filed With the Real Estate Commission:

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

Notice to Owner Occupants

Specimen Sales Contract

Exhibit     B     contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated     October 18, 1991    

Exhibit     D     contains a summary of the pertinent provisions of the escrow contract.

Other     Registration Forms

#### IV. ADDITIONAL INFORMATION NOT COVERED ABOVE

This is a condominium project, not a subdivision. Therefore, units purchased are not subdivided lots. If a residence is not already built, you will be required to comply with zoning codes to be allowed to construct a residence on your limited common element. To determine whether your expectations can be realized, you should carefully review this Report.

You should also conduct your own investigations and ascertain the validity of information provided. Please remember that issuance of this Report does not mean the Real Estate Commission has approved the project.

The County of Kauai Planning Department has advised that, in order to process the necessary permits for the construction and the processing of a farm dwelling agreement on agriculturally zoned parcels, authorization from at least 75% of the legal and equitable ownership of the entire project shall be required, consistent with the Declaration of Condominium Property Regime and the Bylaws. Except as limited specifically by the project documents of record, all uses permitted in the Agricultural Zone are permitted. Such uses include, but are not limited to growing crops, raising animals, residence, diversified agriculture, forestry, orchards and nurseries and wildlife management. See Kauai County Comprehensive Zoning Ordinance, Article 8.7. In relation to specifically permitted uses of buildings and other improvements, structures shall only be occupied or used for agriculture, associated residential uses, and/or other uses permitted by law and the recorded project documents. An agricultural residence may not be constructed unless the Unit Owner demonstrates to the County his ability to derive income from his property, established and verified prior to any building permit approval.

Please see the advisory letter from the Kauai County Planning Department attached as Exhibit I.

A buyer should understand that development and use of the properties shall comply with all County Codes and Ordinances. If County of Kauai facilities are not already in place, the prospective purchaser is advised that owners in the project will not necessarily receive the same County benefits as owners of approved subdivided lots; owners who develop their properties later than others may find that land use and zoning changes or insufficient utility capacities may thwart their expectations. Zoning and land use restrictions are subject to change and each purchaser should maintain awareness of such conditions.

SPECIAL DISCLOSURE REGARDING O'HANA UNITS AND LIMITS  
ON CONSTRUCTION OF AN ADDITIONAL DWELLING UNIT ON THIS PROJECT

This project includes one unit that permits residential use currently and one unit that is an O'hana-type unit. Under Kauai County zoning regulations, this means that an "additional dwelling unit" may be constructed for residential use on the property if the provisions of the O'hana ordinance are followed. You should be aware that the O'hana ordinance will expire on December 31, 1991 or sooner upon the passage of a new Comprehensive Zoning Ordinance (known as the "CZO"). A study to determine the provisions of a new CZO for Kauai is now under way, but no public announcements regarding possible changes to the O'hana provisions have been made. This does not mean that the provisions will not change, only that there has been no public announcement. In either case, it will be necessary to obtain building permits for the construction of a residence prior to the expiration of the O'hana ordinance to be assured that a residence may be constructed on the unit with the o'hana status. The purchaser is advised to contact the Kauai County Planning Department to determine whether there is any risk to the prospective purchaser from pending or proposed zoning code changes. A purchaser who does not plan to build in the immediate future may find that passage of time or a change in the CZO will preclude any residential development of the O'hana unit in this project.

## **Buyer's Right to Cancel Sales Contract:**

### **A. Rights Under the Condominium Statute:**

**Preliminary Report:** Sales made by the Developer are not binding on the prospective buyer. Sales made by the Developer may be binding on the Developer unless the Developer clearly states in the sales contract that sales 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 and Restrictions of Kapaa Highland Estates

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, 1010 Richards Street, P. O. Box 541, Honolulu, HI 96809.

This Public Report is a part of Registration No. 2551 filed with the Real Estate Commission on November 20, 1991.

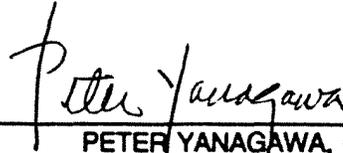
Reproduction of Report. When reproduced, this report must be on:

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.



---

PETER YANAGAWA, Chairman  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Bureau of Conveyances

Department of Finance, County of Kauai

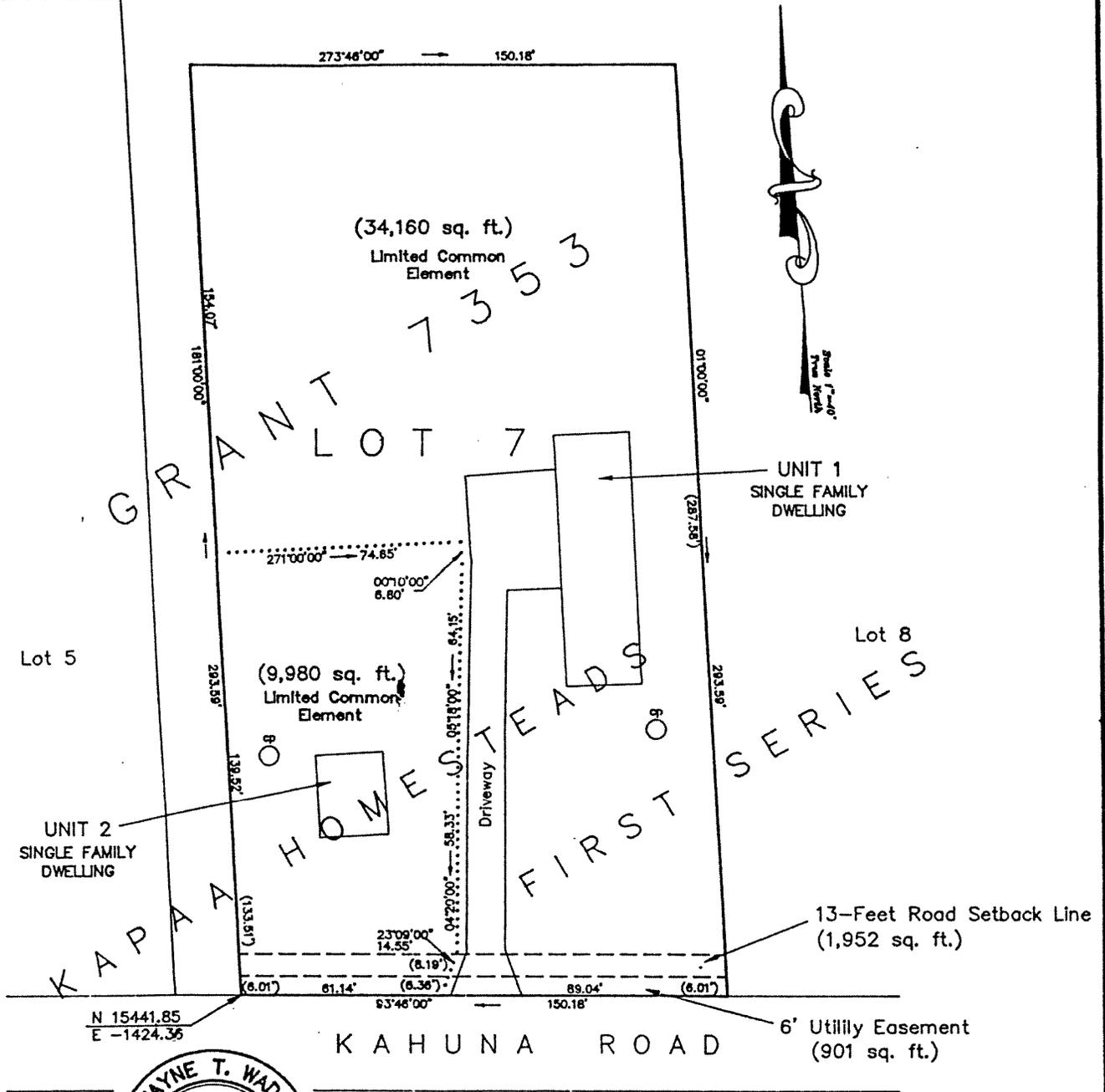
Planning Department, County of Kauai

Federal Housing Administration

Lot 4

Lot 6

**EXHIBIT A**



Lot 5

UNIT 1  
SINGLE FAMILY  
DWELLING

UNIT 2  
SINGLE FAMILY  
DWELLING

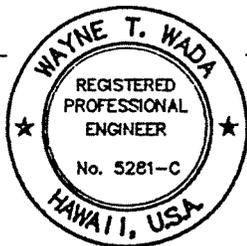
Lot 8

13-Foot Road Setback Line  
(1,952 sq. ft.)

6' Utility Easement  
(901 sq. ft.)

N 15441.85  
E -1424.36

KAHUNA ROAD



THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION

*Wayne T. Wada*  
Signature  
ESAKI SURVEYING & MAPPING, INC.

**6500 KAHUNA ROAD CONDOMINIUM**

MAP SHOWING UNITS 1 AND 2  
BEING LOT 7  
KAPAA HOMESTEADS, FIRST SERIES  
BEING ALSO PORTION OF GRANT 7353

Kapaa, Kauai, Hawaii  
Tax Map Key: 4-6-08: 65  
Owners: Barry Arruda  
Gwen Arruda  
Date: August 15, 1991

**EXHIBIT B**

**SUMMARY OF SALES CONTRACT**

The 6500 KAHUNA ROAD Purchase Agreement, (the "contract") contains, among other provisions, the following (which may be modified or otherwise limited by provisions not summarized):

1. The method of payment of the purchase price to the escrow agent, subject to other terms.

2. The closing date for the purchase.

3. Whether at the time of execution of the contract, a final public report has been issued.

4. The terms and conditions of the sale which include, among other provisions, the following:

(a) That Buyer will receive a copy of the final public report for the project.

(b) Buyer agrees that all payments made will be placed on deposit with escrow pursuant to the terms of the Escrow Agreement.

(c) After issuance of the Final Public Report and Buyer's waiver of its right to cancel under Hawaii Revised Statutes Section 514A-62, Buyer shall have the right to rescind the contract.

(d) Buyer has received a copy of the Escrow Agreement for the Project.

(e) The unit the buyer is purchasing will be shown on a file plan map prior to closing, and the right to cancel if it is different from that shown on the Exhibit A.

(f) That a deed conveying clear title will be given at closing, subject to certain obligations.

(g) The Purchaser agrees to give future easements if reasonably required for the project.

(h) The purchaser will accept the Unit "AS-IS" unless the contract states to the contrary.

(i) The payment of commissions, if any, is set out in the contract.

(j) Time is of the essence of the obligations of Buyer under the contract.

SPECIAL NOTICE

\* \* \* \* \*

THE FOREGOING SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE CONTRACT. WHILE A BUYER CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE BUYER'S RIGHTS AND OBLIGATIONS, THE BUYER MUST REFER TO THE BUYER'S CONTRACT TO DETERMINE THE BUYER'S ACTUAL RIGHTS AND OBLIGATIONS. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE CONTRACT, THE CONTRACT WILL CONTROL NOT THIS SUMMARY.

END OF EXHIBIT B

**EXHIBIT C**

**SCHEDULE OF APARTMENTS AND COMMON INTERESTS  
FOR 6500 KAHUNA ROAD CONDOMINIUM**

Qty.	Apt. No.	Area of Limited Common Element (Sq. Ft.)	No. of BR/BATH	Appx Net Living Area (Sq. Ft.)	Appx Garage/Storage Shed Area (Sq. Ft.)	% of Common Int.
1	1	34,160 SQ.FT.	2; 1 3/4	964	592 (garage) 31 (storage)	50
1	2	9,980 SQ.FT.	1; 1	392	28 (porch) 84 (storage)	50

The common interest appurtenant to each unit shall be permanent. Subject to the zoning requirements and amendments of the Condominium Map and the Declaration of Condominium Property Regime, each unit owner may use his unit, alter or add to it in any manner he deems desirable, so long as it is permitted by law and the Declaration of Protective Covenants and Building Rules. If adjoining unit owners desire to alter and/or transfer portions of their respective units, they can do so by the filing of an amendment to the Condominium Map and the Declaration of Condominium Property Regime together with their respective signatures. See Exhibit I for cautionary comments from the County of Kauai Planning Department.

END OF EXHIBIT C

EXHIBIT D

SUMMARY OF PORTIONS OF ESCROW AGREEMENT

The Escrow Agreement ("Agreement") between Title Guaranty Escrow Services, Inc. (the "Escrow") and BARRY T. ARRUDA, (the "Seller") contains, among other provisions the following (which may be modified or otherwise limited by provisions not summarized):

1. Whenever Seller enters into a sales contract for the sale of an apartment, Seller will require that payments due under the sales contract be made to Escrow and will deliver an executed copy of the sales contract to Escrow.

2. Escrow will receive payments under the sales contracts and sums received from any other source with respect to the project. Funds held under the Agreement will initially be deposited in an account for the project. Interest on all funds will be paid to Seller.

3. Escrow will release Buyer's funds and disburse Buyer's funds at closing. No disbursements will be made from Buyer's fund until all requirements of Hawaii Revised Statutes, have been met.

4. Escrow will return deposited sums to the Buyer without interest if Seller gives Escrow written notice to return the funds to Buyer, or with respect to a Buyer whose funds were obtained before the issuance of a Final Public Report, Escrow receives from the Buyer a written request to cancel the sales contract or after issuance of the Final Public Report and Buyer's waiver of his right to cancel the sales contract in accordance with Section 514A-62, Hawaii Revised Statutes, there shall be any material change in the project which directly, substantially and adversely affects the use or value of the Buyer's apartment or appurtenant common elements or those amenities of the project available for Buyer's use, of a nature entitling the Buyer to cancel his sales contract pursuant to Section 514A-63, Hawaii Revised Statutes. These funds shall be returned to Buyer less Escrow's cancellation fee, if any, any mortgagee's cancellation fee and all other costs incurred in connection with the Escrow, but in the aggregate shall not be less than \$25.00.

5. Escrow will arrange for and supervise the signing of all documents which are to be signed subsequent to and contemplated by the sales contract.

6. As Escrow's compensation for its performance under this Agreement, Escrow will receive \$300.00 for each apartment for which an apartment deed of the project is handled by Escrow and recorded in the Bureau of Conveyances of the State of Hawaii. Escrow will record all applicable documents. Title insurance will also cost an additional \$300.00.

\* \* \* \* \*

THE ABOVE SUMMARY IS NOT INTENDED TO BE A THOROUGH AND EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE AGREEMENT, ONE MUST REFER TO THE ACTUAL AGREEMENT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE AGREEMENT, THE AGREEMENT WILL CONTROL AND NOT THIS SUMMARY.

END OF EXHIBIT D

EXHIBIT E

COMMON ELEMENTS OF THE PROJECT

The common elements of the project are:

- (a) Land in fee simple;
- (b) All future ducts, electrical equipment, wiring and other central and appurtenant installations for common services, if any, including power, light, sewage, irrigation and telephone;
- (c) Any and all other elements and facilities in common use or necessary to the existence, upkeep and safety of the Project.

Limited Common Elements of Project

Certain parts of the common elements, herein referred to as the "limited common elements" are hereby designated and set aside for the exclusive use of one or more units, and such unit(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved as follows:

(a) That certain land area upon and around which Units 1 and 2 are located, shown and designated on the Condominium Map and the table below, are deemed a limited common element appurtenant to and for the exclusive use of each respective unit.

<u>Unit Number</u>	<u>Area of Limited Common Element</u>
1	34,160 square feet
2	9,980 square feet

All costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and improvement, shall be borne solely by the owner of the unit to which said limited common elements are appurtenant.

END OF EXHIBIT E

EXHIBIT F

ENCUMBRANCES AGAINST TITLE

1. Real property taxes. Check with the Kauai County Tax Assessor for further information.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. The terms, provisions, conditions and restrictions as contained in that certain Land Patent (Grant) No. 7353.
4. Declaration of Covenants and Restrictions dated February 22, 1984, recorded in Book 17706 Page 201.
5. Road widening setback, 13-feet wide along the North side of Kahuna Road, as per survey of Dennis M. Esaki, Registered Professional Land Surveyor, Certificate No. 4383, dated February 3, 1984.
6. The terms and provisions of Farm Dwelling Agreement dated February 22, 1985, recorded on March 15, 1985 in Book 18506 Page 431, made by and between BARRY T. ARRUDA and GWEN T. ALBARADO; and the COUNTY OF KAUAI Planning Department.

7. MORTGAGE

Mortgagor : BARRY T. ARRUDA and GWEN T. ARRUDA, formerly known as Gwen T. Albarado, husband and wife

Mortgagee : AMERICAN SAVINGS AND LOAN ASSOCIATION (now known as AMERICAN SAVINGS BANK, F.S.B.)

Dated : February 11, 1986

Recorded : February 18, 1986 in Book 19296 Page 692

Consideration : \$60,000.00

8. SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

Mortgagor : BARRY T. ARRUDA and GWEN T. ARRUDA, formerly  
Gwen T. Albarado, husband and wife

Mortgagee : KAUAI COMMUNITY FEDERAL CREDIT UNION

Dated : December 21, 1990

Recorded : January 4, 1991 as Document No. 91-000992

Consideration : \$50,000.00

9. Condominium Map No. 1563 filed on October 10, 1991.

10. The covenants, agreements, obligations, conditions and other provisions set forth in Declaration of Condominium Property Regime entitled "6500 KAHUNA ROAD CONDOMINIUM" dated September 17, 1991, recorded on October 10, 1991 as Document No. 91-137970, and the By-Laws recorded as Document No. 91-137971, to which reference is hereby made.

11. Any and all easements encumbering the apartment herein identified and described, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, and/or in said Quitclaim Deed, and/or as delineated on said Condominium Map No. 1563.

**END OF EXHIBIT F**

EXHIBIT G

DISCLOSURE ABSTRACT FOR  
6500 KAHUNA ROAD CONDOMINIUM

Pursuant to Hawaii Revised Statutes Section 514(A)-61, the developer of 6500 KAHUNA ROAD Condominium makes the following disclosures:

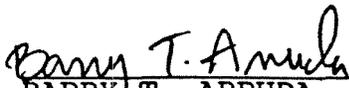
1. The developer of the project is BARRY T. ARRUDA, 6500 Kahuna Road, Kapaa, HI 96746.

2. See Exhibit H for the projected annual maintenance fees. The developer hereby certifies that the estimations have been based on generally accepted accounting principles.

3. No warranty will apply to any individual agricultural unit. There are pre-existing structures on the property and no warranty will be made regarding the agricultural buildings.

4. No condominium units will be used for both hotel and residential use; these are condominium units in which residential use is permitted, but hotel use is not.

5. There will be no commercial use except those activities permitted by the Kauai County Comprehensive Zoning Ordinance.

  
\_\_\_\_\_  
BARRY T. ARRUDA

Dated: September 30 1991

---

RECEIPT

The undersigned has received a copy of the foregoing disclosure abstract with Exhibit H this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Purchaser(s)

---

EXHIBIT     H    

ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

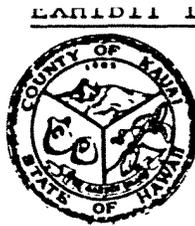
Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months =</u>	<u>Yearly Total</u>
Unit 1	\$96.50	\$1,158.00
Unit 2	\$96.50	\$1,158.00

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



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

November 26, 1991



Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
828 Fort Street Mall, Suite 600  
Honolulu, Hawaii 96813

Subject: Comments on 6500 Kahuna Road Condominium Report  
Tax Map Key: 4-6-08:65  
Kappa Homesteads, Kauai  
LOTR: 11/08/91

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

The amount of limited common elements proposed corresponds to the allowable unit density permitted by the CZO. The subject property is zoned Agriculture District (A) and qualifies for one (1) unit, however, a second dwelling along with the necessary Class I Zoning Permit (Z-1437-90) was approved for this property pursuant to Ord. No. 551, relating to the construction of additional dwelling units.

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 Public Report to be a legal subdivision of land.

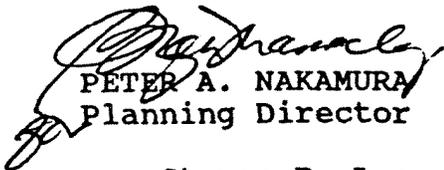
The uses on the limited common elements shall be limited to those listed as permissible within the "A" Agricultural District in the State Land Use Commission Rules and Regulations. Farm dwellings

Mr. Calvin Kimura, Executive Secretary  
Real Estate Commission  
Page 2  
November 26, 1991

on the lot shall mean a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

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 County Codes and Ordinances. It should also be made clear that the Condominium Public Report 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 emergency 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.

  
PETER A. NAKAMURA  
Planning Director

xc: Steven R. Lee

6500KAHU.CPR

END OF EXHIBIT I