

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer Kekaha Properties, L.L.C.
Address P.O. Box 1255, Koloa, Kauai, Hawaii 96756

Project Name(*): Kekaha Sunset Five
Address: 4512-A & 4512-B Alae Road, Kekaha, Kauai, Hawaii 96752

Registration No. 3964

Effective date: September 24, 1998
Expiration date: October 24, 1999

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

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

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

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 by the developer when complete information is filed.

CONTINGENT FINAL: (green) The developer has legally created a condominium and has filed information with the Commission for this report which EXPIRES NINE (9) MONTHS after the above effective date. Contingent Final public reports may not be extended or renewed.
[] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with

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

SUPPLEMENTARY: (pink) This report updates information contained in the:
[] Preliminary Public Report dated:
[] Final Public Report dated:
[] Supplementary Public Report dated:
And [] Supersedes all prior public reports
[] Must be read together with
[] This report reactivates the public report(s) which expired on

(*) Exactly as named in the Declaration
FORM: RECO-30 286/986/189/1190/892/0197/12/11/97

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report 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.

No prior reports have been issued by the developer.

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 RESIDENTIAL 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. THERE ARE NO RESIDENTIAL STRUCTURES ON THE PROPERTY AT THIS TIME.

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. They merely represent the appropriate location of the limited common element assigned to each unit.
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.

THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE DOCUMENTS FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

IMPORTANT NOTES:

1. Expansion of Condominium Homes within Private Yard Areas shown on the Condominium Map is permitted but must comply with requirements specified in the Declaration of Condominium Property Regime and Declaration of Use and Design for the Kekaha Sunset Community. The second Condominium Home to be expanded within the project must also secure an Additional Dwelling Unit Clearance from the County of Kauai in connection with the issuance of a building permit. Acquisition of a Condominium Home operates as an owner's consent to another owner's improvement of their respective Private Yard Areas. Purchasers shall be required to execute an appropriate consent concurrently with the purchase of a Condominium Home.
2. The Condominium Homes and Private Yard Areas are situate near to an existing County of Kauai public park facility and the use and future use and expansion of such facility may generate noise, dust, or other nuisances, disturbances, annoyances, hazards and effects which may affect the use and enjoyment of the Condominium Homes and Private Yard Areas. The owner, the owner's family, lessees, tenants, servants, guests, invitees, licensees, employees, or other person who may occupy or otherwise use the Condominium Homes or Private Yard Areas, accept the possibility of the occurrence of the above uses and impacts from the adjacent public park, assume the risk of such occurrence, and expressly waive all claims against the County of Kauai arising out of or in connection with the use and impact of the public park, including the right to seek damages or the abatement or elimination of the use of the public park.

3. A portion of the whole of the Private Yard Area and/or Private Expansion Area as reflected on the Condominium Map has been designated as a flood zone, either Federal Emergency Management Agency Zone X or Zone A, signifying the risk of flooding during a 500-year or 100-year storm, respectively. Location of improvements within a designated flood zone requires adherence to special building requirements. These areas may be subject to flooding.

4. The Private Yard Area is affected by existing drainage or retention facilities, which may not be repaired or altered by owner except as permitted in the Condominium Home Deed. Storm water ponding may occur in these facilities. The owner of a Condominium Home, at his cost, shall be obligated to preserve, maintain, the existing drainage pattern and repair and clean drainage facility on the appurtenant Private Yard Area. Construction or installation of any improvements located within the foregoing drainage or retention areas that may hinder the flow of the storm waters or reduce the capacity of water retention is not allowed.

5. Construction or installation of any improvements immediately adjacent to the retention areas within the Private Yard Area of Condominium Home No. 5B must be elevated so that the finish floor is no less than one (1) foot above the retainment overflow berm. The finish floor elevation requirement for these improvements is 12.7 above mean sea level. Improvements that allow water to flow through may be constructed or installed. Examples of such improvements include hedges, landscaping, fences and similar improvements. Improvements such as solid walls, filling, habitable structures which obstruct the flow of storm retention water may not be constructed or installed. Any and all improvements shall be subject to the provisions contained in the Declaration of Use and Design for the Kekaha Sunset Community and shall comply with all applicable laws, including the ordinances and regulations of the County of Kauai.

6. (a) Owners of Condominium Homes are specifically responsible for the maintenance of the landscaping buffer, if any, along the boundary of the Private Yard Area fronting or facing Kaunualii Highway. The right to plant this area is specifically reserved to the Developer. This landscaping maintenance obligation may be enforced under the Declaration, by the County of Kauai or the State Department of Transportation.

(b) The Private Yard Area is within the County of Kauai's "Open District" zoning designation. The dwelling unit and associated accessory structures constructed within the Private Yard Area, may not exceed a total foot print area of 2,500 square feet, exclusive of joint driveway improvements servicing any two or more of the Private Yard Areas. Further, the standard County of Kauai Comprehensive Zoning Ordinance (CZO) 10-foot setback shall be 20 feet in the location(s) noted on the Condominium Map. No building improvements to the Private Yard Area (other than landscaping improvements and other improvements permitted under the CZO) may be made within the twenty (20) foot wide setback area reflected on the Condominium Map. Any landscaping proposed for the Private Yard Area must be approved in advance of planting by the County of Kauai Planning Department and then may proceed only in accordance with plans therefor approved by the Department.

7. The "Condominium Homes" are not currently habitable; expansion is required before the Condominium Homes may be occupied.

8. Each Private Yard Area (or access easement area) bordering Alae and Elepaio Roads is subject to a two (2) foot wide future road widening reserve. The interior edge of this reserve area serves as the applicable boundary of the Private Yard Area for new construction improvement setbacks. The County of Kauai may utilize this reserve area for roadway expansion purposes.

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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 the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

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/tenants) 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 at the lessee's expense. 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 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 project's 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. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is 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 important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Kekaha Properties, L.L.C. Phone: (808) 742-7902
Name (Business)
P.O. Box 1255
Business Address
Koloa, Hawaii 96756

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

Richard D. Browning, Member
Don F. Holley, Member

Real Estate Broker: Island Pacific Properties Phone: (808) 742-1481
Name (Business)
P.O. Box 1255
Business Address
Koloa, Hawaii 96756

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211
Name (Business)
235 Queen Street
Business Address
Honolulu, Hawaii 96813

General Contractor: Island Renovations Phone: (808) 332-5959
Name (Business)
P.O. Box 580
Business Address
Kalaheo, Hawaii 96741

Condominium Managing Agent: Self-managed by Association of Apartment Owners Phone: _____
Name (Business)

Business Address

Attorney for Developer: Case Bigelow & Lombardi (Dennis M. Lombardi) Phone: (808) 547-5400
Name (Business)
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 2600
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. The Condominium Property Act (Chapter 514A, HR5), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and 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.

- 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. 98-082961
Book _____ Page _____
 Filed - Land Court Document Number _____

The Declaration referred to above has been amended by the following instruments [state name of document, date 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 Conveyances Condo Map No. 2745
 Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date 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 manner in which meetings will be conducted, whether pets are prohibited or allowed 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. 98-082962
Book _____ Page _____
 Filed - Land Court Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. 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 for projects with five or fewer apartments.

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:

A. Upon completion of the Project, the Developer may amend the Declaration and the Condominium Map (if necessary) to file the "as built" verified statement required by Section 514A-12 of the Condominium Property Act.

B. Until all of the apartments have been sold, the Developer may amend the Declaration, the Bylaws and/or the Condominium Map to make such amendments as may be required by law, by the Real Estate Commission, by the title insurance company, by a mortgage lender, or by any governmental agency (including the VA, HUD, FNMA and/or FHLMC), provided that no such amendments change the common interest appurtenant to an apartment or substantially change the design, location or size of an apartment.

C. Until all of the apartments have been sold and the "as built" verified statement is filed, the Developer may amend the Declaration and the Condominium Map to (i) reflect alterations in any apartment which has not been sold; and (ii) reflect minor changes in any apartment or in the common elements which do not affect the physical location, design or size of any apartment which has been sold.

III. THE CONDOMINIUM PROJECT

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

- Fee Simple:** Individual apartments and the common elements, which includes the underlying land, will be in fee simple.
- Leasehold or Subleasehold:** Individual apartments and the common elements, which includes the underlying land will be leasehold.

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

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____

Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

For Subleaseholds:

- Buyer's sublease may be cancelled if the master lease between the sublessor and fee owner is:
 Canceled Foreclosed

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

- Individual Apartments in Fee Simple Common Interest in the Underlying Land in Leasehold or Subleasehold:**

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

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provisions.

Lease Term Expires: _____

Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

[] Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: 4512-A & 4512-B Alae Road
Kekaha, Kauai, Hawaii 96752

Tax Map Key: (Kauai) 1-3-003-por. 022 &
(TMK) 1-3-003-por. 023

[] Address [] TMK is expected to change because _____

Land Area: 20,004 [X] square feet [] acre(s) Zoning: O/SP/T/P

Fee Owner: Kekaha Properties, L.L.C.
Name

P.O. Box 1255
Address

Koloa, Hawaii 96756

Lessor: _____
Name

Address

C. **Buildings and Other Improvements:**

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

2. Number of Buildings: 2 Floors Per Building one

Exhibit A contains further explanations.

3. **Principal Construction Material:**

Concrete Hollow Tile Wood

Other Wood frames, metal, glass and other building materials.

4. **Uses Permitted by Zoning:**

	No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>		No. of <u>Apts.</u>	Use Permitted <u>By Zoning</u>
<input type="checkbox"/> Residential	_____	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Other: <u>Shed</u>	<u>2</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

Yes No

5. Special Use Restrictions:

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

[X] Pets: Reasonable number of common household pets, such as small dogs, cats, aquarium fish and birds. No livestock or poultry, and no animals classified as "pests" or prohibited from importation under state statutes.

[X] Number of Occupants: No more than 2 persons per bedroom, not including children under 5 years old; no more than 3 persons per bedroom including children under 5 years old; and otherwise only in accordance with any limitations imposed by state or municipal law or ordinance.

[X] Other: Condominium Homes shall be used for residential purposes only; no "time-sharing" permitted.

[] There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators:	<u>0</u>	Stairways:	<u>0</u>	Trash Chutes:	<u>0</u>
Apt.		Net		Net	
<u>Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Living Area (sf)*</u>	<u>Other Areas (sf)</u>	<u>Identify</u>
<u>Unit A & B</u>	<u>2</u>	<u>N/A</u>		<u>16</u>	<u>Shed</u>

Total Number of 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 (including the Condominium Map) may give floor area figures which differ from those above because a different method of determining the floor area may have been used.*

Limits of Condominium Homes. Each Condominium Home includes all walls, columns and partitions (both load bearing and not load bearing) which are within the Condominium Home's perimeter walls including without limitation the Condominium Home's perimeter walls, the Condominium Home's foundation, all floors, ceilings, doors, windows, sliding glass doors, screen doors, door frames and window frames, the air space within the Condominium Home, the garage including its floor, foundation, ceiling, doors and perimeter walls, the lanais, if any, shown on the Condominium Map to the exterior edge of the exterior railings or other boundaries of such lanais, all rollers, locks, handles, tracks, and appurtenant hardware associated with all windows, doors and exterior automobile garage doors and all sliding or swinging screen doors and all glass window screens and all fixtures originally installed in the Condominium Home, and all pipes, plumbing (including water heaters), wires, conduits and other utility or service lines and facilities servicing only the Condominium Home. The Condominium Homes shall also include all load-bearing columns, girders, beams, building components and other elements included within each Condominium Home. The Condominium Home shall not include any pipes, shafts, wires, conduits or other utility or service lines running through a Condominium Home which are utilized for or serve more than one Condominium Home, all of which are deemed common elements as provided in the Declaration.

Permitted Alterations to Condominium Homes. Alterations or additions solely within a Condominium Home shall require only the written approval of the owners of such Home, by the holder of a first mortgage lienholder of the Home (if the lienholder requires such approval), by the appropriate agencies of the State of Hawaii and the County of Kauai, if such agencies so require. An owner may expand or add to the limits of his Home within the Private Yard Area appurtenant to the Home; provided the owner obtains the prior written approval of the holder of a first mortgage lien affecting the Home (if the lienholder requires such approval), the appropriate agencies of the State of Hawaii and the County of Kauai, if such Agencies so require, the design review committee appointed by the Board, and by all other owners directly affected (as determined in a reasonable manner by the Board). Construction of second homes within the project requires the County's approval of an ADU application.

7. Parking Stalls:

Total Parking Stalls: 2*

	<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 each unit)	<u>**</u>	<u>1</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u>2</u>
Guest	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Unassigned	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Extra for Purchase	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Other:	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Total Covered & Open	<u>2</u>	<u> </u>	<u>0</u>	<u> </u>	<u>0</u>	<u> </u>	<u>2</u>

* Each apartment will have the exclusive use of at least 1* parking stall(s).

** Open parking is available within the Private Yard Area.

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

There are no violations. Violations will not be cured.

Violations and cost to cure are listed below. Violations will be cured by _____

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

(For conversions of residential apartments in existence for at least five years):

[Not applicable]

11. 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>	<u> </u>	<u> </u>
Structures	<u> X </u>	<u> </u>	<u> </u>
Lot	<u> X </u>	<u> </u>	<u> </u>

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 other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit B .

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, as described in the Declaration are:

described in Exhibit C*.

as follows:

*Note: Land areas referenced herein are not legally subdivided lots.

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 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. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit D.

as follows:

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit E describes the encumbrances against the title contained in the title report dated May 15, 1998 and issued by Title Guaranty of Hawaii, Inc.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien 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.

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

[] 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. The Buyer's interest will be affected only if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit If Developer Defaults or Lien is Foreclosed Prior to Conveyance</u>
NONE	NONE

F. 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:

No expenses or implied warranty is given for improvements. Improvements and Condominium Homes sold in "AS-IS" condition.

2. Appliances:

The Developer makes no warranty as to any appliances or other consumer products that may be installed in any Condominium Home or in the common elements. If there are any applicable manufacturer's or dealer's warranties relating to such appliances or other consumer products, the Developer will endeavor to assign and pass on to each owner the benefit of such warranties.

G. **Status of Construction and Date of Completion or Date of Completion:**

Construction of Unit A and Unit B sheds was completed in May, 1998.

H. **Project Phases:**

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

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

[Not Applicable]

IV. CONDOMINIUM MANAGEMENT

A. **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 condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium 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 condominium managing agent for this project, named on page five (5) of this report, is:

not affiliated with the Developer the Developer or the Developer's affiliate.
 self-managed by the Association of Apartment Owners other _____

B. **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, a lien may be placed on your apartment and the apartment may be 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.

Exhibit G* contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

C. **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:

None Electricity (_____ Common Elements only _____ Common Elements & Apartments)
 Gas (_____ Common Elements only _____ Common Elements & Apartments)
 Water Sewer Television Cable
 Other _____

*Note: Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

V. MISCELLANEOUS

A. 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 H contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated May 1, 1998

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

Other _____

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyers. 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 from \$35.00 up to the amount of the escrow fee.

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

Contingent Final Report or Supplementary Report to a Contingent Final Report: Sales made by the developer are binding if:

A) The Developer delivers to the buyer a copy of:

- 1) Either the Contingent Final Public Report **OR** the Supplementary Public Report which has superseded the Contingent Final Public Report for which an effective date has been issued by the Real Estate Commission: **AND**
- 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded:

B) The buyer is given an opportunity to read the report(s); **AND**

C) One of the following has occurred:

- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
- 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
- 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if:

A) The Developer delivers to the buyer a copy of:

- 1) Either the Final Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
- 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;

B) The buyer is given an opportunity to read the report(s); **AND**

C) One of the following has occurred:

- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
- 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
- 3) 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:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; AND
- B) 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.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
- B) Declaration of Condominium Property Regime, as amended.
- C) Bylaws of the Association of Apartment Owners, as amended.
- D) Condominium Map, as amended.
- E) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other: Declaration of Use and Design.

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 (DCCA). Supporting documents for this registration are on file with the DCCA for a period of ten years and one day from the effective date of the last public report. After that time, the DCCA will destroy the supporting documents except for the last public report. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu, Hawaii 96809, at a nominal cost.

This Public Report is a part of Registration No. 3964 filed with the Real Estate Commission on June 10, 1998.

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

yellow paper stock white paper stock pink paper stock green paper stock

Note: The Developer advises that costs and expenses of maintenance and operation of a condominium community are very difficult to estimate initially and even if such maintenance charges have been accurately estimated, such charges will tend to increase in an inflationary economy and as the improvements age. Maintenance charges can vary depending on services desired by apartment owners and may increase significantly depending on the level of services eventually selected by the Association's Board of Directors. The Buyer should examine the maintenance charges schedule to see what services are included in the schedule and address these issues with its Board upon its formation.

C. Additional Information Not Covered Above

1. This project, along with others situated on fourteen (14) subdivided lots, comprising TMK (4) 1-3-003: 15-18, 20-28 and 73 (Kekaha Sunset Community) is subject to a Declaration of Use and Design which may affect your expectations on the construction and use of Condominium Homes on the properties. Prospective purchasers are urged to examine said Declaration and Exhibit J herein before buying a unit. A copy of said Declaration is on file with the Real Estate Commission or may be obtained from the Developer.

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

KEKAHA PROPERTIES, L.L.C.

Name of Developer

By: 
Duly Authorized Signatory

4/6/98
Date

Don F. Holley, Member

print name & title of person signing above

Distribution:

Department of Finance, County of Kauai
Planning Commission, County of Kauai

EXHIBIT "A"

DESCRIPTION OF BUILDINGS

The Community shall contain two (2) single-family detached Condominium Homes. None of the Condominium Homes have a basement.

A description of the model type(s) is as follows:

Model Type 1 (Unit A & B)

Shed containing 16 square feet with no utilities. The shed shall be constructed principally of wood, concrete and metal.

A separate street address has been assigned to each condominium home.

EXHIBIT "B"

COMMON ELEMENTS

The common elements of the Community shall specifically include, but are not limited to, the following:

1. The land, in fee simple, described in Exhibit "A" attached to the Declaration of Condominium Property Regime.
2. All drainage facilities or swales, pipes, shafts, wires, conduits or other utilities or service lines running through a Condominium Home or Private Yard Area which are utilized for or serve more than one Condominium Home or Private Yard Area or other feature of the Community.
3. All sidewalks, pathways, driveways, roads and curbs.
4. All ducts, electrical equipment, transformers, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the Community or individual Private Yard Areas which are utilized by or serve more than one Condominium Home for services such as power, light, water, gas, sewer, drainage, telephone and radio and television signal distribution, if any.
5. All areas, rooms, spaces, structures, housings, chutes, shafts or facilities of the Community within or outside of the buildings, which are for common use or which serve more than one Condominium Home, such as electrical, maintenance, service, security, machine, mechanical and equipment rooms and the equipment, machinery and facilities therein.
6. All the benefits, if any, inuring to the land or to the Community from all easements, if any, shown on the Condominium Map or listed in Exhibit "A" attached to the Declaration of Condominium Property Regime.
7. Any and all apparatus and installations of common use and all other parts of the Community necessary or convenient to its existence, maintenance and safety, or normally in common use.
8. The private driveways i.e. the Common Driveways servicing groups of Condominium Homes, as identified in the Declaration of Condominium Property Regime of Kekaha Sunset Five ("Declaration") and as shown on the Condominium Map, provided however that the Board of Directors may treat such driveways as limited common elements appurtenant to those Condominium Homes for purposes of assessing costs and expenses associated with it.
9. All other parts of the Community which are not included in the definition of a Condominium Home.

EXHIBIT "C"

LIMITED COMMON ELEMENTS

Certain Condominium Homes shall have appurtenant thereto easements for the exclusive use of certain limited common elements as follows:

1. Private Yard Area:

The land area containing 10,000 square feet, including the Private Expansion Area for each Home, appurtenant to each Condominium Home as described in the Declaration and as shown on the Condominium Map and bearing the same Private Yard Area number as the unit number assigned to the Condominium Home, is a limited common element.

2. Private Expansion Area:

The land area appurtenant to each Condominium Home as described in the Declaration and being the same number as the unit number assigned to the Condominium Home, is a limited common element.

3. Exterior Light Fixtures:

Exterior Lighting Fixtures, electrical service in respect of which is provided by an individual Condominium Home, whether located within or without a Private Yard Area, are limited common element(s) associated with the Condominium Home providing such electrical service.

4. Walls/Fences:

The fences and walls or portion thereof that have been constructed within a Private Yard Area or on the common Lot Area line boundary between Lots as shown on the Condominium Map are limited common elements.

EXHIBIT "D"

COMMON INTERESTS

Each Condominium Home, regardless of future expansion, has an undivided 50% common interest.

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. For real property taxes that may be due and owing, reference is made to the Director of Finance, County and Island of Kauai.

2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: DEED
DATED: May 2, 1997
RECORDED: Document No.: 97-059687

3. Future road widening reserve (2 feet wide), as shown on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor, with Wagner Engineering Services, Inc., dated March 12, 1998.

4. WAIVER AND RELEASE

DATED: November 4, 1997
RECORDED: Document No. 97-157626
BY: KEKAHA PROPERTIES, L.L.C. and the BUILDING DIVISION OF THE DEPARTMENT OF PUBLIC WORKS of the County of Kauai
RE: Building permit without water or water services

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: CONVEYANCE OF WATER SUPPLY
DATED: April 16, 1998
RECORDED: Document No. 98-054744

6. RESTRICTION OF VEHICLE ACCESS RIGHTS

SHOWN : on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor, with Wagner Engineering Services, Inc., dated March 12, 1998

7. SETBACK

PURPOSE : drainage
SHOWN : on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor, with Wagner Engineering Services, Inc., dated March 12, 1998

8. SETBACK (20 feet wide)

PURPOSE : building
SHOWN : on survey map prepared by Ronald J. Wagner, Licensed Professional Land Surveyor, with Wagner Engineering Services, Inc., dated March 12, 1998

9. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in the DECLARATION OF USE AND DESIGN, dated April 10, 1998, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 98-080710.
10. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in the DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KEKAHA SUNSET FIVE, dated April 6, 1998, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 98-082961, Condominium Map No. 2745.
11. Covenants, conditions, restrictions, reservations, agreements, obligations and other provisions as contained in the BYLAWS OF THE ASSOCIATION OF CONDOMINIUM HOME OWNERS OF KEKAHA SUNSET FIVE, dated April 6, 1998, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 98-082962.

END OF EXHIBIT "E"

EXHIBIT "F-1"

BUILDINGS AND COMMON ELEMENTS WARRANTY

[RESERVED]

No express or implied warranty is given for improvements.

EXHIBIT "F-2"

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 Rice Street, Suite 473, Bldg. A,
Lihue, Hawaii 96766

M E M O R A N D U M

DATE: June 29, 1998

TO: Senior Condominium Specialist
Real Estate Commission
P&VLD/DCCA
250 South King Street, Suite 702
Honolulu, Hawaii 96813

FROM: *for* Dee M. Crowell, Planning Director 

Subject: Certification of Inspection of Existing Buildings for

PROJECT NAME: KEKAHA SUNSET FIVE CONDOMINIUM
TAX MAP KEY: (4) 1-3-03:00 Lot 5

The developer of the above-mentioned condominium project has requested that this office, as an agency of the County of Kauai, review the project for compliance with all ordinances, codes, rules, regulations and other requirements of the County of Kauai (Section 514A-40 (b) (1), HRS). Subject to the disclosures and waiver (item "g" below) specified herein, we certify the following:

- a. That the existing buildings on the proposed project referred to as Kekaha Sunset Five, Unit A and Unit B are in compliance with all ordinances, codes, rules, regulations and other requirements in force at the time of its construction, and to that extent, and subject to the conditions of waiver herein, the Planning Department adopts that certification as it pertains to the rules and regulations administered solely by this department.
- b. There are variances approved for the subject property.
- c. The parcel does not contain any outstanding legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
- d. There are no notices of violation of County Building or zoning codes outstanding according to our records.

Senior Condominium Specialist
Page 2
June 29, 1998

- e. The subject property is situated in the Open/Special Treatment Public district.
- f. Kauai Electric and the Department of Water requested that this department inform them of new CPRs so they can make their comments on existing facilities and on additional and future service requirements for the project. Their comments herewith enclosed.
- g. WAIVER
The foregoing certification is not a warranty as to any compliance with all applicable County and State rules and regulations. The sole reason for the execution hereof is to comply with statutory requirements relating to the regulation of condominiums under Subsection a-40 (b)(1), Hawaii revised Statutes.

If you have any questions, please contact Alvin Fukushima of my staff at 241-6697.

cc: Dennis M. Lonbardi

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 Rice Street, Suite 473, Lihue, Hawaii 96766

117 01:14

M E M O R A N D U M

DATE: June 16, 1998

TO: Department of Water
Ernest Y. W. Lau
Manager and Chief engineer

FROM: Alvin Fukushima
Drafting Technician III

SUBJECT: CPR Comments

=====

Pursuant to our agreement, we are submitting the attached CPR application for your comments.

The property being proposed for CPR is identified as TMK 1-3-03:00 Lot 5 and named Kakaha Sunset Five Condominium which is zoned Open/Special Treatment Public, and qualifies for 2 units. The developer is proposing 2 units. A map of the proposed CPR is attached for your reference.

Please submit your comments to our office by June 23, 1998. You may use the portion below to comment on or if you wish, submit a separate letter to us.

If you have questions, please call me at 241-6697.

COMMENTS:

June 19, 1998

Any actual development of this area will be dependent on the adequacy of the source, storage and transmission facilities existing at that time. At the present time, this lot has two(2) water service connections/meters.

If you have any questions, please call Keith Aoki at 245-5418.



Department of Water

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 Rice Street, Suite 473, Lihue, Hawaii 96766

M E M O R A N D U M

DATE: June 16, 1998
TO: Kauai Electric
Attn: Debra L. Santiago
FROM: Alvin Fukushima
Drafting Technician III
SUBJECT: CPR Comments

PLANNING DEPARTMENT
17
98-01-100AU
OS
JK

=====
Pursuant to our agreement, we are submitting the attached CPR application for your comments.

The property being proposed for CPR is identified as TMK 1-3-03:00 Lot 5 and named Kekaha Sunset Five Condominium which is zoned agriculture, and qualifies for 2 units. The developer is proposing 2 units. A map of the proposed CPR is attached for your reference.

Please submit your comments to our office by June 25, 1998. You may use the portion below to comment on or if you wish, submit a separate letter to us.

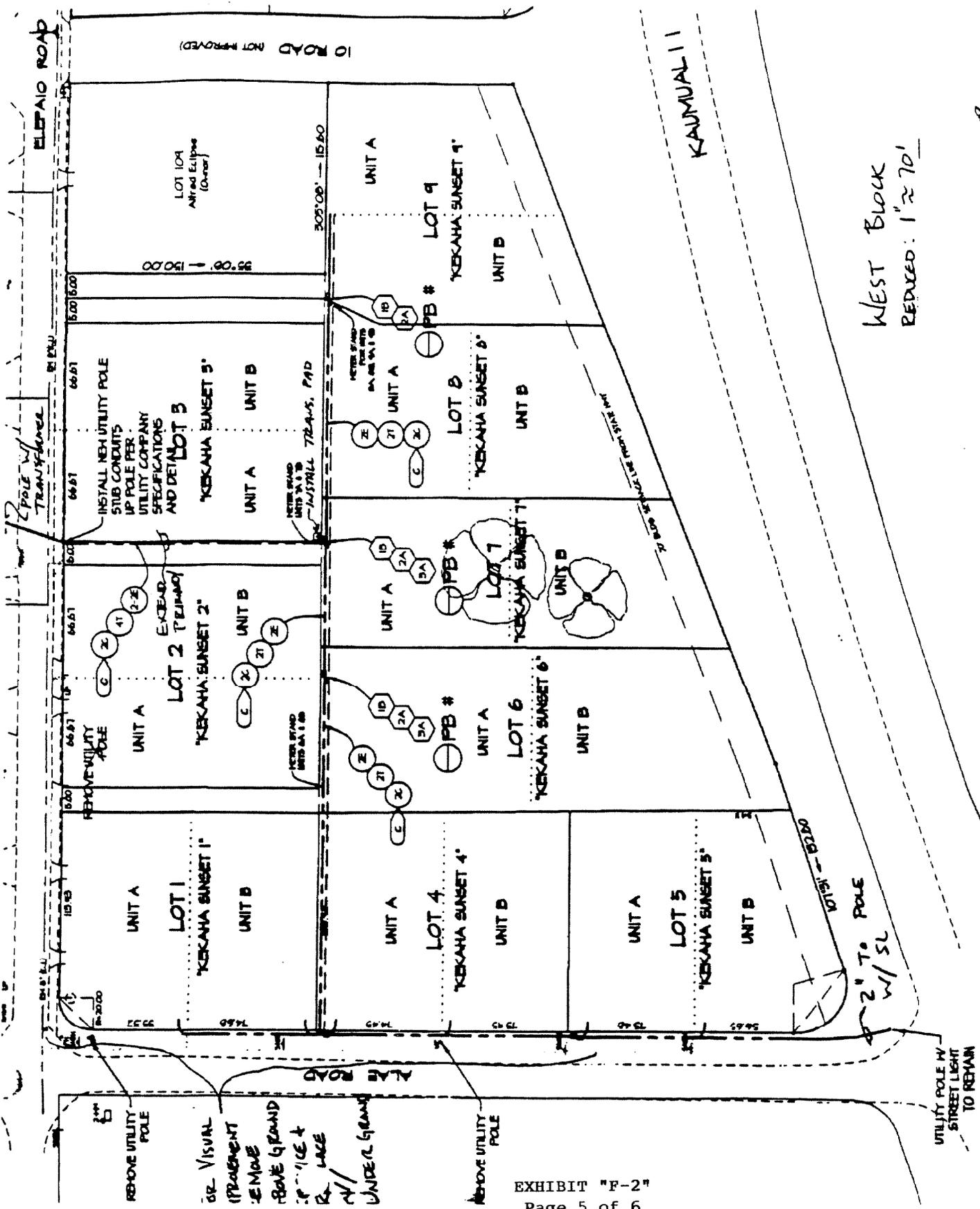
If you have questions, please call me at 241-6697.

COMMENTS: KAUAI ELECTRIC HAS A NEWLY CREATED FILE FOR KEKAHA SUNSET SUBDIVISION - (FILE #98-01-100AU). OUR KE PLANNER WILL BE WORKING WITH BRIAN HENNESSY OF WAGNER ENGINEERING ON THIS PROJECT. ATTACHED IS THE PROPOSED ELECTRICAL UNDERGROUND DISTRIBUTION PLAN DESIGNED BY WAGNER ENGINEERING. THESE PRELIMINARY PLANS IMPLY A PROPOSED UNDERGROUND SUBDIVISION, UTILIZING GROUPED METER PEDESTALS. ALSO ATTACHED IS OUR KE FACILITY MAP SHOWING EXISTING POSSIBLE ELECTRICAL SERVICE SOURCES. WE CURRENTLY HAVE NO RIGHT OF ENTRY OR EASEMENTS ON THE SUBJECT PROPERTY. FOR FURTHER INFORMATION REGARDING EASEMENTS, PLEASE CALL ALICE MIGUEL AT 246-4369 IN THE PROPERTY & RISK MANAGEMENT DEPARTMENT. FOR FURTHER INFORMATION REGARDING THE PROPOSED LINE EXTENSIONS, PLEASE CALL PLANNER, ALVIN UCHIDA @335-6232 IN OUR ELEELE SERVICE ASSURANCE DEPARTMENT.

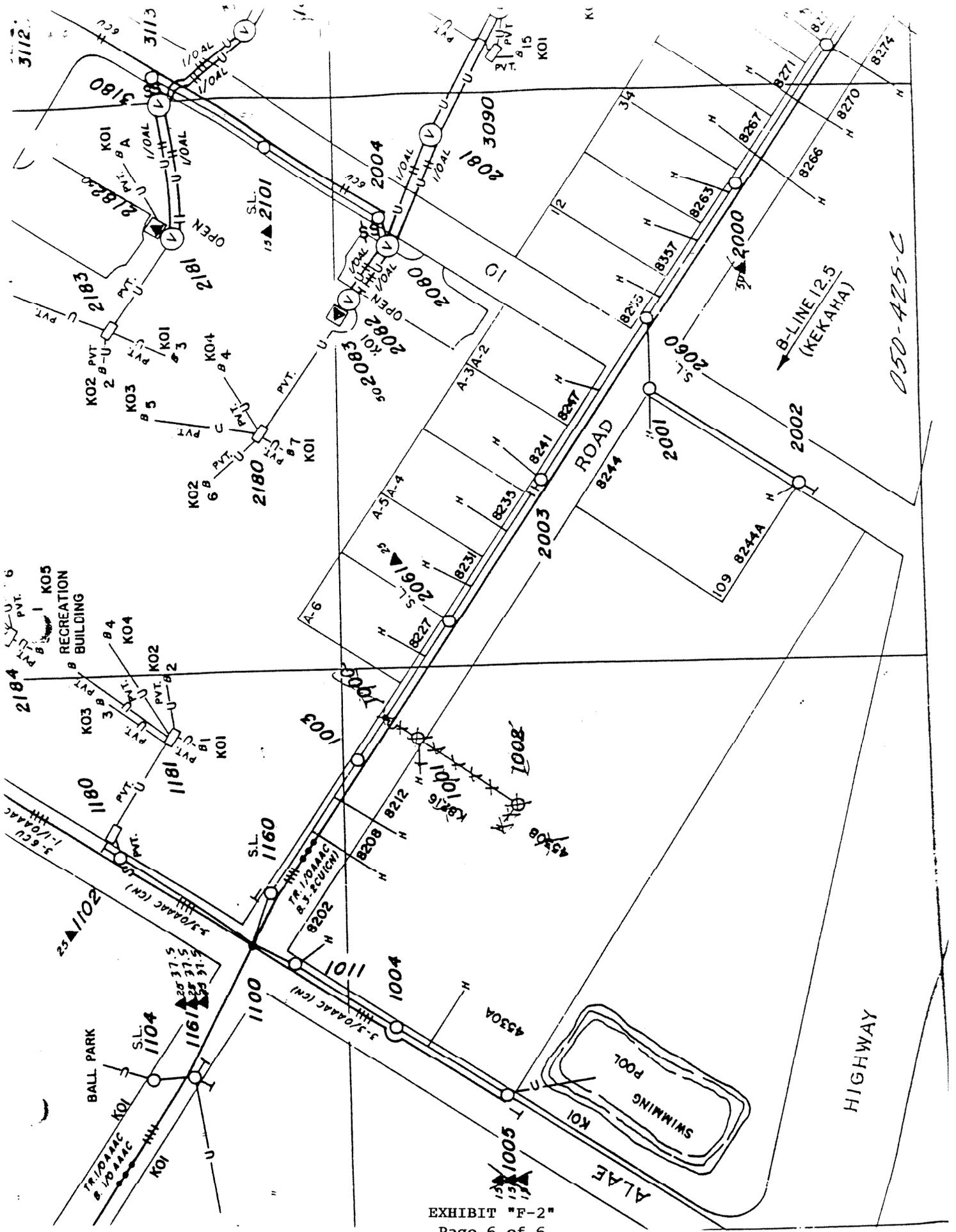
Debra Santiago
Kauai Electric Co.

DISTRIBUTED

JUN 22 1998



WEST BLOCK
REDUCED: 1" = 70'



050-425-C

MARYANNE W. KUSAKA
MAYOR



9/18/98

DEE M. CROWELL
PLANNING DIRECTOR
IAN K. COSTA
DEPUTY PLANNING DIRECTOR
TELEPHONE (808) 241-6677
FAX (808) 241-6699

PLANNING DEPARTMENT

September 17, 1998

Case Bigelow & Lombardi
Grosvenor Center, Mauka Tower
737 Bishop Street, Suite 2600
Honolulu, Hawaii 96713

Mr. Dennis N. Lombardi,

Pursuant to your request for clarification of paragraph "b" for letters dated June 29, 1998 and July 6, 1998 to the Real Estate Commission, our response is as follows: a deviation from lot coverage has been granted for this development pursuant to Section 8-8.5 of the Comprehensive Zoning Ordinance (CZO), Kauai County code. This deviation was granted through a Project Development Use Permit (PDU 97-25) in place of a Variance Permit.

Also enclosed is a approval letter for this project by the Kauai Planning Commission.

If you have any questions, please contact Alvin Fukushima of my staff at 2412-6697

Ian K. Costa
Deputy Planning Director

EXHIBIT "G"
Estimated Maintenance Fees

Generally, the regular maintenance and repair of each home and appurtenant limited common elements shall be the sole responsibility of each respective home owner. However, the following expenses should be anticipated as part of potential common expenses:

	Monthly x 12 months =	Yearly Total
<u>Utilities and Services</u>		
Air Conditioning	\$0	\$0
Electricity		
<input type="checkbox"/> common elements only	\$0	\$0
<input type="checkbox"/> common elements and condominium homes	\$0	\$0
Gas		
<input type="checkbox"/> common elements only	\$0	\$0
<input type="checkbox"/> common elements and condominium homes	\$0	\$0
Refuse Collection	\$0	\$0
Telephone	\$0	\$0
Water and Sewer	\$0	\$0
 <u>Maintenance, Repairs and Supplies</u>		
Building	\$0	\$0
Grounds	\$0	\$0
 <u>Management</u>		
Self-Managed by Association	\$0	\$0
 <u>Insurance</u>		
(Estimated Owner's Cost)	\$ 50.00	\$600.00
 <u>Reserves**</u>		
	\$ 0	\$ 0
 <u>Taxes and Government Assessments</u>		
	\$0	\$0
 <u>Audit Fees</u>		
	\$0	\$0
 <u>Other</u>		
Miscellaneous	\$0	\$0
 TOTAL	 \$ 50.00	 \$600.00

**It is estimated that expenses relating to the maintenance and/or repair of all common elements, including specifically the "common driveways", as shown on the Condominium Map and described in paragraphs H.1.(c) and I.8. of the Declaration, shall be common expenses to be shared equally by all home owners; provided, however, that if damage to the "common driveways" or other common element is caused by the negligence of any home owner or such owner's invitees or guests, then all costs for the repair of such damage shall be charged to and the liability of such home. These expenses are estimated above.

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency. Buyer should be aware that a reserve study has not been conducted for this Project in estimating the reserve funds (if any are indicated) necessary to maintain the common driveways.

The Developer hereby certifies that the above estimates were prepared in accordance with generally accepted accounting principles. The information contained herein is based on the data available at this time.

KEKAHA PROPERTIES, L.L.C.,
a Texas limited liability company



Don F. Holley
Its Member

In addition to the above-indicated expenses, Owners can reasonably expect to incur certain costs to construct, maintain and repair the common driveway serving Condominium Homes A and B. Depending on the level of maintenance as determined by the Owners, the cost is not expected to exceed \$5:00 per month per owner (inclusive of reserves).

EXHIBIT "H"

SUMMARY OF SALES CONTRACT

The Deposit Receipt, Reservation and Sales Agreement (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 states:

(a) The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.

(b) That the purchaser acknowledges having received and read a public report (either preliminary or final) for the Project prior to signing the Sales Contract.

(c) That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefit to be derived from the purchase of an apartment.

(d) That the Sales Contract may be subordinate to the lien of a construction lender.

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

(f) Requirements relating to the purchaser's financing of the purchase of an apartment.

(g) That the apartment and the Project will be subject to various other legal documents which the purchaser should examine, and that the Developer may change these documents under certain circumstances.

(h) That, except to the extent of a limited warranty in form attached as Exhibit "G" to this Public Report, the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.

(i) That the Project will be subject to ongoing construction and sales activities which may result in certain annoyances to the purchaser.

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

(k) That the Developer has reserved certain rights and powers relating to the Project and the purchaser acknowledges and consents to the exercise of such rights and powers.

(l) That except under certain circumstances, as set forth in the Sales Contract, all interest on deposits toward the purchase price shall be the property of the Developer.

(m) If the purchaser defaults, Developer may retain purchaser's deposits and bring on action against purchaser.

The Sales Contract contains various other important provisions relating to the purchase of an apartment in the Project. Purchasers and prospective purchasers should carefully read the specimen Sales Contract on file with the Real Estate Commission.

EXHIBIT "I"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to 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 the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.
- (c) Except under certain circumstances as set forth in the Sales Contract, all deposits toward the purchase price shall be the property of the Developer.
- (d) The purchaser will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract.

The Escrow Agreement also establishes the procedures for the retention and disbursement of a purchaser's funds and says what will happen to the funds upon a default under the Sales Contract. Pertinent portions of the Escrow Agreement describing the details of the terms of refund, disbursement and effect of buyer's default are as follows:

Paragraph 3. Conditions to be Met Prior to Disbursement.

No disbursements of funds held in escrow shall be made unless and until the following conditions have been fulfilled:

- (a) The Real Estate Commission shall have issued an effective date for a Final Report on the Project; provided, however, to the extent any sales contracts are entered into and a purchaser's funds are obtained prior to the issuance of a Final Public Report of the Real Estate Commission, no disbursements shall be made from such purchaser's funds until (i) such Final Public Report shall have been issued; and (ii) the purchaser shall have been given a copy of said Final Report and shall have acknowledged receipt of same or shall have been deemed to have acknowledged receipt of same; and
- (b) Developer or Developer's attorney shall have delivered a written opinion to Escrow that the purchaser's sales contract has become effective; and stating that:
 - (i) the requirements of Sections 514A-62, 514A-63 and Act No. 135 (temporary Section 514A-64.5) Hawaii Revised Statutes, as amended, have been met;
 - (ii) all sales contracts delivered to Escrow are binding upon the purchasers; and
 - (iii) if the project is a conversion project, that requirements of Section 521-38, Hawaii Revised Statutes, as amended, have been complied with; and
- (c) Developer shall have given Escrow a written waiver of any option reserved in any sales contract to cancel such sales contract;
- (d) Developer shall have delivered to Escrow a certificate from Developer's architect stating that the project is in compliance with the Federal Fair Housing Amendments Act of 1988; and

(e) The Affidavit described in subparagraph 1(b) of the Escrow Agreement shall have been personally reaffirmed by all the prospective Owner-Occupants of the residential unit no earlier than their receipt of a final public report but no later than closing of escrow for the unit, and the prospective Owner-Occupants shall have delivered to Escrow the reaffirmed Affidavit and proof of the date of receipt by the prospective Owner-Occupants of the final public report.

Developer or Developer's attorney shall immediately inform Escrow in writing of the development of any event or occurrence which renders the opinion delivered by the Developer or Developer's attorney pursuant to paragraph 3(b) above untrue.

Paragraph 4. Return of Funds and Documents.

(a) A purchaser shall be entitled to a return of purchaser's entire deposit together with all interest earned thereon, and Escrow shall pay such funds to such purchaser under the following circumstances:

- (i) purchaser has entered into the sales contract pursuant to a contingent final public report; and
- (ii) the Real Estate Commission does not issue an effective date for a final public report by the date on which the contingent final public report expires; and
- (iii) the Developer or the purchaser elects to rescind the purchaser's sales contract by giving written notice thereof to the other, with a copy of such notice to Escrow; and
- (iv) Developer shall be responsible to reimburse to purchaser any fees incurred by the purchaser in securing a financing commitment required by the Developer; and
- (v) Developer shall be responsible for payment to Escrow of any escrow fees, including without limitation, any cancellation fees.

Developer understands and acknowledges that in the event of such cancellation, if interest was accruing to the credit of Developer, interest will be report to the IRS as being earned by the Developer.

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

- (i) Developer and the purchaser shall have requested Escrow in writing to return to the purchaser the funds of the purchaser held hereunder by Escrow; or
- (ii) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or
- (iii) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to cancel the contract pursuant to Section 514A-62, Hawaii Revised Statutes, as amended; and
- (iv) The purchaser shall have notified Escrow of purchaser's exercise of purchaser's right to rescind the contract pursuant to Section 514A-63, Hawaii Revised Statutes, as amended.

In any of the foregoing events, Escrow shall, upon the occurrence of the event described in (i) or (ii) above or upon receipt of a written request for a refund from the purchaser upon the occurrence of an event described in (iii) or (iv) above, unless the purchaser has waived or has been deemed to have waived the right to a refund, pay said funds to said purchaser (less a cancellation fee of Escrow of not less than \$25.00 per unit or a cancellation fee commensurate with the work done by Escrow prior to such cancellation, whichever fee is greater, up to a maximum of \$250.00) and thereupon said sales contract shall be deemed cancelled and any partially executed conveyance document theretofore delivered to Escrow shall be returned to Developer; provided, however, that no refund shall be made to a purchaser at the purchaser's request prior to receipt of Developer of written notice from Escrow of Escrow's intent to make such refund.

(c) Notwithstanding any other provision in this Agreement to the contrary, a purchaser shall be entitled to a return of funds and Escrow shall pay such funds to such purchaser, without interest, pursuant to chapter 514A, Part VI, Hawaii Revised Statutes, if Developer or the purchaser shall so request in writing in the event prospective Owner-Occupant has not obtained adequate financing, or a commitment for adequate financing, by a date which is no earlier than fifty calendar days after Developer's execution and acceptance of the sales contract.

(d) The sales contract shall be rescinded pursuant to section 514A-105(c), Hawaii Revised Statutes, if any prospective Owner-Occupant is unable to reaffirm the Affidavit as described in subparagraph 3(e) above. Any partially executed conveyance document theretofore delivered to Escrow shall be returned to Developer. All deposits shall be refunded to the purchaser unless (i) Developer or Developer's attorney shall have delivered a written opinion to Escrow stating that the sales contract has become binding upon the purchaser pursuant to Section 514A-62, Hawaii Revised Statutes, as amended, and (ii) written instructions approved by the Developer and the prospective Owner-Occupant direct Escrow to distribute the deposit otherwise.

Paragraph 9. Purchaser's Default.

Developer shall give notice in writing to Escrow of the occurrence of each event that initiates an obligation of a purchaser to make a payment to Escrow pursuant to the sales contract as well as notice of the amount and due date of such payment. Escrow shall thereupon promptly give the purchaser notice of the amount and due date of such payment. If the purchaser fails to make such payment to Escrow on or before the due date thereof or if the purchaser fails to perform in any matter that is being handled by Escrow, Escrow shall promptly notify Developer of any such failure on the part of the purchaser. If Developer subsequently certifies in writing to Escrow that Developer has terminated the sales contract in accordance with the terms thereof and provides to Escrow copies of all such notices of termination sent to the purchaser, Escrow shall thereafter treat all funds of the purchaser paid on account of such purchaser's sales contract as funds of Developer and not as funds of the purchaser. Thereafter, such funds shall be free of the escrow established by the Escrow Agreement and shall be held by Escrow for the account of Developer. Upon written request by the Developer, Escrow shall pay such sums to Developer, less any escrow cancellation fee, shall return to Developer any partially executed conveyance documents that had been theretofore delivered to Escrow by Developer and shall hold all other documents theretofore delivered to Escrow in connection with the purchase of the unit for the statutory period; and, Escrow shall thereupon be released from any further duties or liability hereunder with respect to such funds and such purchaser.

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. Purchasers and prospective purchasers should carefully read the signed Escrow Agreement on file with the Real Estate Commission.

EXHIBIT "J"
TO APPLICANTS FOR ADDITIONAL DWELLING UNIT (ADU)
-INFORMATION AND INSTRUCTIONS-

1. CHECK YOUR DEED FOR RESTRICTIONS ON DEVELOPMENT before you apply for your ADU permit. Some lots which are eligible for ADU are subject to restrictions or covenants which forbid a second dwelling on the lot. The ADU Ordinance does not supersede these restrictions. COMPLIANCE IS YOUR RESPONSIBILITY. If you violate a deed restriction by building an ADU on your property, your neighbors could take you to court to enforce the restriction, and the court could order you to remove the ADU.
2. A plot plan drawn to scale SHALL be submitted with this clearance form for all government agencies to review. The plot plan SHALL be 8 1/2 x 14 in size and identify the following:
 - a) All legal boundary lines of the lot under application;
 - b) All abutting streets with names;
 - c) All existing structures or improvements including cesspool(s), sewage disposal system(s), driveways, concrete slabs, etc;
 - d) The location of the proposed ADU and its approximate size;
 - e) The roadway(s) being proposed for access IF the property abuts more than one street; and
 - f) The location of the required two (2) additional parking stalls to accompany the ADU, and the existing two (2) parking stalls for the existing residence.
3. The applicant shall start with the Planning Department and return the form to the Planning Department after all the agencies have signed UNLESS an agency has determined that the property does not qualify for ADU.
4. There may be conditions imposed by the reviewing agencies to enable the applicant to qualify. It shall be the applicant's responsibility to resolve these conditions with the respective agency BEFORE proceeding to the next reviewing agency, except Public Works Department.
5. This clearance form is to determine whether a property QUALIFIES for an ADU. THERE MAY BE INSTANCES WHEN A PROPERTY DOES NOT QUALIFY. Due to provisions of the ADU law, government agencies cannot deviate from this law.
6. Copies of the Additional Dwelling Unit Ordinance No. 551 and the Comprehensive Zoning Ordinance No. 164, with amendments, can be obtained at the County Clerk's Office for a fee. It is recommended that a copy of each be obtained in order to familiarize yourself with the ordinance requirements.
7. Upon the successful completion of the Clearance form, and upon application for the building permit for the ADU, the following fees will be collected by the Planning Department:
 - a) Class II Zoning Permit Fee of \$10.00;
 - b) A Park Fee of \$150.00 for the ADU provided the primary residence on the property was built after May 20, 1977. No fee will be assessed if the primary residence was built prior to that date.
 - c) An Environmental Impact Assessment Fee of \$250.00 per ADU provided the primary residence on the property was built after August 11, 1980. No fee will be assessed if the primary residence was constructed prior to that date.
per ADU.

THE ABOVE FEES SHALL BE PAID _____ and made payable to the "Director of Finance, County of Kauai"

9. The ADU shall comply with all Comprehensive Zoning Ordinance No. 164 requirements and standards.
10. If necessary, the Planning Department may conduct a field investigation in order to verify the accuracy of the plot plan. Staking out the structure may be required.
11. When a roadway right-of-way width is less than County Standards, the applicant SHALL BE REQUIRED to either dedicate land OR establish a road widening reserve to widen the roadway. THIS SHOULD NOT BE CONFUSED TO MEAN THAT THE PAVEMENT PORTION of the road is to be widened. Landowners on EACH side of the road will be required to provide their fair share to avoid one landowner being burdened with the road widening. DEDICATION involves conveying a portion of one's property to the County to widen the roadway. Establishing a RESERVE involves designating a portion of one's property for widening in place of dedicating land. The reserve will be recorded with the property and is intended to INFORM the landowner where the roadway may potentially be. No buildings are allowed in the reserve. Fences and walls may be permitted at the owner's choice. An AGREEMENT will be required to be executed and recorded to establish the reserve.

EXHIBIT "J"
COUNTY OF KAUAI
ADDITIONAL DWELLING UNIT FACILITIES CLEARANCE

OWNER: Print _____ Sign _____
 Print _____ Sign _____

TMK: _____ LOT SIZE: _____ PII. NO. _____

PROPOSED: One additional unit
 Two new units
 Convert guest house into Additional Dwelling Unit

STREET SERVING ADDITIONAL DWELLING UNIT: _____

PLANNING DEPARTMENT USE ONLY

ZONING: _____ SLUC: _____ FEES: EIA \$ _____
 Park \$ _____

COMMENTS: _____

 Planning Department Date

REVIEW AGENCIES

P Street Name: _____ Paved: Yes Pavement width: _____
U No _____ ft.
D
L Pavement continuous to major thoroughfare: Yes No
I Pavement condition: Good Fair Poor
C
W Public Sewer Service Available: Yes Flood Zone: Yes
O No No
R If not paved, or pavement not continuous
K to the major thoroughfare, refer
S applicant to the Planning Department

 Signature Date

H Sanitary Sewer System: Private Adequate
E Individual Wastewater Inadequate
A.
L Private Water System: Yes No Adequate Inadequate
T
H Comments: _____

 signature Date

F Fire Protection: Yes No Adequate Inadequate
I
R Comments: _____
E _____

 Signature Date

W Water system: Private Public
A
T Applicable charges must be paid prior to building permit approval. At
E the present time, these charges are:
R
 \$ _____ Facilities Reserve Charge
 \$ _____ Meter Installation (Upon request)

Comments: _____

 Signature Date

P Street Name: _____
L Existing width: _____ Required width: _____
A Dedication: _____ Reserve: _____ MA
N
H Roadwidening provisions: Yes No If yes, specify: _____
I Road improvements required: Yes No If yes, specify: _____
N _____
G _____

Qualify Does not qualify _____
 Signature Date

requirements complied with: Yes No
 Qualify Does not qualify _____
 Signature Date

EXHIBIT "K"

TO: County of Kauai
Planning Department
4444 Rice Street, Suite 473
Lihue, Hawaii 96766

RE: TMK: (4) 1-3-03: _____

UNIT: _____

C.P.R.: _____

I (We), as owner(s) of 50% of the condominium community known as Kekaha Sunset _____, hereby authorize the owner(s) of the other 50% of Kekaha Sunset _____ to secure any necessary government approvals, including but not limited to zoning permits, building permits and Additional Dwelling Unit clearances for any desired improvements within Kekaha Sunset _____. This authorization shall run with the land and shall bind my (our) successors, heirs and assigns.

_____	_____	Owner of CPR Unit _____
_____	_____	Owner of CPR Unit _____
_____	_____	Owner of CPR Unit _____
_____	_____	Owner of CPR Unit _____

EXHIBIT "L"

KAUAI COUNTY CODE
PROJECT DEVELOPMENT USE PERMITS

ARTICLE 18. PROJECT DEVELOPMENT

Sec. 8-18.1 Purpose.

(a) To facilitate, by a use permit process, comprehensive site planning and design productive of optimum adaptation of development of significant land areas under the ownership of one (1) person or cooperatively joined for the purpose of development.

(b) To provide a process that will allow diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, lot sizes, and streets and utility systems in planning and designing use facilities while maintaining the intent of this Chapter.

(c) To assure, in proper cases, that the complete development of a parcel has been planned prior to the development or subdivision of any portion of the parcel so that public service, transport, and utility systems can be effectively anticipated and coordinated. (Ord. No. 164, August 17, 1972; Sec. 8-17.1, R.C.O. 1976)

Sec. 8-18.2 Lands That May Be Included In A Project Development.

(a) Any land area designated as Urban District by the State Land Use Commission may be developed in accordance with a use permit issued pursuant to this Article if the land area is under one (1) ownership or there is an agreement among several owners for the purposes of cooperative or joint development, and the land area is:

(1) in excess of one (1) acre in a Commercial, Resort, or Industrial Use District; or

(2) is large enough to qualify for more than ten (10) dwelling units in any Residential District, Open District, or Agriculture District. (Ord. No. 164, August 17, 1972; Sec. 8-17.2, R.C.O. 1976)

Sec. 8-18.3 Uses, Structures And Development Which May Be Permitted.

Any use, structure or development that is permitted in the Use District in which the land of the applicant is

located, and any other use, structure or development subordinate or in support of, those uses may be allowed if it is demonstrated that the subordinate or supportive use, structure or development is:

(1) compatible and complementary to the generally permitted uses and to public health, safety and welfare; and

(2) compatible and complementary to uses on lands adjacent to the project development site and to uses in the general vicinity; and will not create conditions that overload existing public transport systems, utility systems or other public facilities. (Ord. No. 164, August 17, 1972; Sec. 8-17.3, R.C.O. 1976)

Sec. 8-18.4 Requirements For Project Development Use Permits.

(a) The applicant shall submit drawings and plans comprising a general development plan covering the entire area of the parcel to contain the project development that show: uses, dimensions and locations of proposed structures; widths, alignments and improvements of proposed streets, pedestrian and drainage ways; how the property could be divided for individual parcel sale; parking areas; public uses; landscaping and open spaces; a schedule of development; architectural drawings demonstrating the design and character of the proposed buildings and uses; and any other information or plans deemed necessary by the Planning Director.

(b) The applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall demonstrate that the project development will be completed within the schedule furnished with the application.

(c) The applicant shall demonstrate, and the Planning Commission shall find, that the proposed project development substantially conforms to the intent of the General Plan.

(d) The Planning Commission shall find that the project development will create an environment of sustained desirability and stability, shall be compatible with the character of the surrounding neighborhood, and shall result in an intensity of land coverage and density of dwelling units no higher than are permitted in the Use District in which the project development is to be located. The Planning Commission may approve a project development containing residential uses, at a density higher than permitted in the District in which the project development is to be located, if the residences to be constructed will be leased or sold at prices that will make them available to persons of lower income. In that case, the applicant shall establish that the residential construction is being undertaken under a Federal or State subsidized housing

program designed to produce housing for lower income persons.

(e) A permit may not be granted for any commercial development which will create any substantial traffic congestion, will interfere with any projected public improvements, and which does not include adequate provisions for entrances and exists, internal traffic and parking, or will create adverse effects upon the adjacent and surrounding existing or prospective development.

(f) All industrial developments included in a project development shall be in conformity with performance standards established by the Department of Public Works, shall constitute an efficient and well organized development with adequate provisions for freight service and necessary storage, and will not create adverse effects upon adjacent and surrounding existing or prospective development.

(g) The applicant shall demonstrate and the Planning Commission shall find that the development is of a harmonious, integrated whole and that the contemplated arrangements or uses justify the application or regulations and requirements differing from those ordinarily applicable within the district where the project development is to be located. (Ord. No. 164, August 17, 1972; Sec. 8-17.4, R.C.O. 1976)

Sec. 8-18.5 Permits Required.

A project development may only be undertaken in accordance with a Class IV Zoning Permit. The permit may be issued by the Planning Commission if it determines that the requirements of this Article have been met even though the development thus permitted does not satisfy all the requirements applicable in the Use District in which the project development is to be located. (Ord. No. 164, August 17, 1972; Sec. 8-17.5, R.C.O. 1976)

Sec. 8-18.6 Joint Development Of Two Or More Abutting Lots.

(a) Application. This Section shall be applicable in all zoning districts.

(b) Joint Development; When Prohibited. A joint development is prohibited when the owner of abutting lots is the same person.

(c) Application For Joint Development. An applicant who desires a joint development over abutting lots without consolidating the lots may apply for a Use permit to undertake a joint development. For the purposes of this Section, in the event leasehold interests are involved, the minimum term of the leasehold interests remaining on a lease shall be for forty (40) years.

(d) Accompanying Documents.

(1) Together with the application for a Use permit the applicant shall submit a draft of an agreement describing the joint development and also a

plot plan showing the location of proposed improvements on the lots. The agreement shall contain a covenant of the owners or lessees to maintain the development in conformity with all zoning regulations and that any conflicting claims or differences among the owners, lessees or developers shall not affect the right of the County to enforce all zoning and other County regulations so long as the structures constructed under the agreement are in existence.

(2) In the event the proposed improvements are to be constructed over abutting lots, then the agreement shall contain provisions respecting the removal or continued use of the improvements at the termination of the agreement.

(3) The agreement shall contain a covenant that at the termination of the joint development agreement the uses and improvements within each lot shall be made to be in conformity with all requirements of the Comprehensive Zoning Ordinance.

(4) The covenants mentioned in this subsection shall be covenants which shall run with the land.

(e) Action on Application. If the Planning Commission finds that the joint development is reasonable, logical and consistent with the zoning regulations pertinent to the area, it may issue the Use permit subject to the condition that the agreement mentioned in subsection (d) of this Section be executed in final form, filed with the Planning Department and registered or recorded in the appropriate records office by the applicant. The owner's or lessee's agreement shall be subject to the approval of the County Attorney. No Building permit shall be issued until the Planning Director has certified to the Building Division that the required conditions have been satisfied. The Planning Commission may impose other conditions relating to the proposed development as may be consistent with the Comprehensive Zoning Ordinance. (Ord. No. 318, June 27, 1977; Sec. 8-17.6, 1978 Cumulative Supplement)

EXHIBIT "M"

KAUAI COUNTY CODE
OPEN/SPECIAL TREATMENT DISTRICTS

ARTICLE 8. OPEN DISTRICTS (O)

Sec. 8-8.1 Purpose.

(a) To preserve, maintain or improve the essential characteristics of land and water areas that are:

(1) of significant value to the public as scenic or recreational resources;

(2) important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;

(3) necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.

(b) To preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.

(c) To define and regulate use and development within areas which may be potentially hazardous.

(d) To include areas indicated on the County General Plan as open or as parks.

(e) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public. (Ord. No. 164, August 17, 1972; Sec. 8-8.1, R.C.O. 1976)

Sec. 8-8.2 Generally Permitted Uses And Structures.

- (1) Accessory uses and structures
- (2) Day-use areas
- (3) Diversified agriculture
- (4) Livestock and grazing, except as provided in Sec. 8-8.3

- (5) Outdoor recreation
- (6) Parks and monuments
- (7) Private recreation areas
- (8) Resource management
- (9) Single family detached dwellings
- (10) Undeveloped campgrounds
(Ord. No. 164, August 17, 1972; Sec. 8-8.2,
R.C.O. 1976)

Sec. 8-8.3 Uses And Structures For Which A Use Permit Is Required.

- (1) Communications facilities
- (2) Day care centers
- (3) Developed campgrounds
- (4) Home businesses
- (5) Intensive agriculture
- (6) Livestock and grazing within the Urban District as established by the State Land Use Commission
- (7) Organized recreation camps
- (8) Outdoor recreation concessions
- (9) Police and fire facilities
- (10) Quarries
- (11) Recreation vehicle parks
- (12) Religious facilities
- (13) Utility installations
- (14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.
(Ord. No. 164, August 17, 1972; Sec. 8-8.3,
R.C.O. 1976)

Sec. 8-8.4 Special Standards For Issuance Of Use Permits.

Where a parcel is adjacent to, or within one thousand (1,000) yards of, a Use District or Districts other than an Open District, no use permit shall be issued for uses and structures on parcels which are not generally permitted, or permitted under a use permit, in all adjacent or proximate Districts. (Ord. No. 164, August 17, 1972; Sec. 8-8.4, R.C.O. 1976)

Sec. 8-8.5 Development Standards For Construction And Use Within An Open District.

- (a) Land Coverage:
 - (1) The amount of land coverage created, including buildings and pavement, shall not exceed ten per cent (10%) of the lot or parcel area.
 - (2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the ten per cent (10%) land coverage limitation.

(3) At least three thousand (3,000) square feet of land coverage shall be permissible on any parcel of record existing prior to or on September 1, 1972.

(b) Residential Densities. Except as otherwise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission, and no more than one (1) single family detached dwelling unit per five (5) acres of land shall be permitted when the parcel is located within an area designated as "Agriculture" by the State Land Use Commission, provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.

(1) Where the parcel is located within an area designated "Urban" by the State Land Use Commission, one (1) single family detached dwelling unit per one (1) acre of land shall be permissible if the existing average slope of the parcel is no greater than ten percent (10%).

(c) Subdivision.

(1) No parcel or lot shall be created which is less than three (3) acres in size within an area designated as "Urban" or "Rural" by the State Land Use Commission, or less than five (5) acres in size within an area designated as "Agriculture" by the State Land Use Commission, except within an "Urban" area a lot or parcel may be created which is one (1) acre or more in size if the existing average slope of the lot or parcel thus created is no greater than ten per cent (10%).

(2) No parcel or lot shall be subdivided when the improvements on the parcel meet or exceed the density and land coverage requirements of this Article.

(3) No portion of any parcel previously used as the basis for the calculation of allowable density or subdivision in any other District shall subsequently be subdivided or used as the basis for any other density or land coverage calculation.

(d) Development standards. Subject to the density and subdivision restrictions in Sec. 8-8.5(c), the development requirements for use development or subdivision within an Open District shall be:

(1) The same as the requirements for the District in which the proposed use would be permitted under other provisions of this Chapter.

(2) The same as the requirements of Secs. 8-3.6 and 8-3.7 of the Residential District if no use is indicated or if the use proposed is not readily assignable to any other Use District.

(3) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-8.5, R.C.O. 1976)

Sec. 8-8.6 Calculation Of Densities And Land Coverage.

(a) The area in connection with which the permissible densities shall be calculated shall consist of that lot or lots, or parcel owned or controlled by the applicant designated in the permit application as part of the land development for which the permit is sought.

(b) When an area is included in the Open District because it is within the Constraint District, the precise boundary of the Open District shall be established to reflect the physical or ecological considerations upon which the particular Constraint District is based, regardless of lot or parcel boundaries. In those cases, that portion of the lot or parcel included in Open District may be included in any calculation of permitted densities and land coverage to be carried out on that portion of the parcel that is not within the Open District, provided that the total amount of density and land coverage shall be no more than one and one-half (1-1/2) that which would be permissible if the Open District portion of the lot or parcel was excluded from the calculation. (Ord. No. 164, August 17, 1972; Sec. 8-8.6, R.C.O. 1976)

Sec. 8-8.7 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Open District except in accordance with a valid zoning permit. The requirements for zoning permits shall be the same as those established in Sec. 8-7.7 of this Chapter. Where no definite Class Permit is specified for any use application, Class II Zoning Permit procedure shall apply. (Ord. No. 164, August 17, 1972; Sec. 8.8-7, R.C.O. 1976)

Sec. 8-8.8 Review Of Open District Designations In Particular Cases.

In some cases, lands have been included in the Open District that are designated for Residential or other use in the County General Plan. Such Open District zoning reflects a judgment that such lands are not now needed for the uses indicated in the General Plan. To assure timely consideration of whether such need has arisen, the Planning Commission shall review the status of such lands no later than five (5) years after the effective date of this

Ordinance, and every succeeding five (5) years thereafter.
(Ord. No. 164, August 17, 1972; Sec. 8-8.8, R.C.O. 1976)

ARTICLE 9. SPECIAL TREATMENT DISTRICTS (ST)

Sec. 8-9.1 Purpose.

(a) To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.

(b) To insure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public. (Ord. No. 164, August 17, 1972; Sec. 8-9.1, R.C.O. 1976)

Sec. 8-9.2 Types Of Special Treatment Districts.

(a) There are three (3) Special Treatment Districts as follows:

(1) Public Facilities (ST-P). All public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses.

(2) Cultural/Historic (ST-C). Communities and land or water areas which have a particular and unique value to the general public because of significant historic background, structures, or land forms.

(3) Scenic/Ecologic Resources (ST-R). Land and water areas which have unique natural forms, biologic systems, or aesthetic characteristics which are of particular significance and value to the general public. (Ord. No. 164, August 17, 1972; Sec. 8-9.2, R.C.O. 1976)

Sec. 8-9.3 Generally Permitted Uses, Structures And Development.

All uses, structures, or development shall require a Use Permit, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three (3) dimensional structures or land. In addition, such repairs or modifications do not require a Zoning Permit. (Ord. No. 164, August 17, 1972; Sec. 8-9.3, R.C.O. 1976)

Sec. 8-9.4 Uses, Structures And Development Requiring A Use Permit.

(a) Any use, structure or development permitted with or without a Use Permit in the underlying Use District in which the parcel or lot is located that is consistent with an approved plan for development in accordance with Sec. 8-9.5.

(b) Repairs or modifications of land and existing structures that substantially change the exterior form or appearance of the structures or land in a manner inconsistent with the surrounding area within the Special Treatment District. (Ord. No. 164, August 17, 1972; Sec. 8-9.4, R.C.O. 1976)

Sec. 8-9.5 Applications For Use Permits.

(a) The procedures are in addition to those established in Articles 19 and 20.

(b) Before making an application, the applicant shall be informed of the particular reasons for the establishment of the Special Treatment District in which the applicant's land is located.

(c) Applications shall be accompanied by plans and three (3) dimensional drawings or models which clearly indicate the relation of the proposed development to other uses and structures within the Special Treatment District and the ways in which the proposed development is consistent with the reasons for the establishment of the District. Plans shall indicate the location of all existing and proposed topography, buildings, walks, driveways, and utilities and plant material within the boundaries of the applicant's parcel and the existing or proposed streets, sidewalks, driveways, trees, buildings, and topography on adjacent lands as required by the Planning Director, but no less than two hundred (200) feet from property lines of the parcel which abut a public thoroughfare, park or facility and one hundred (100) feet from the property lines of the parcel which abut privately owned property. Aerial photography may be utilized to meet these requirements if approved by the Planning Director.

(d) In addition to the foregoing, the applicant may be required to provide:

(1) Cross sections, elevations, perspectives or models of any of the areas defined in this Article in order to illustrate the proposed development's three (3) dimensional relationship to surrounding areas;

(2) Information concerning color, form, mass or shape of the structures in the proposed development and concerning the proposed development's impact on environmental characteristics such as sun and shadow, wind, noise, ecology, traffic and visual appearance; and

(3) Information concerning the impact of the proposed development on public services or utilities and social and economic structure or cultural characteristics.

(e) The Planning Director may waive any of the requirements established in this Section for proposals involving parcels of less than one (1) acre in the Residential, Agriculture, or Open Districts, or less than ten thousand (10,000) square feet in the Commercial or Industrial Districts. (Ord. No. 164, August 17, 1972, Sec. 8-9.5, R.C.O. 1976)

Sec. 8-9.6 Special Planning Areas.

(a) The Planning Commission may formulate Development Plans for any Special Treatment District or for any regional or subregional areas which are of particular county, state or federal value because of unique physical, ecologic or cultural characteristics or are determined to be critical areas of concern to the general economic, social or physical development of the County.

(b) The District or areas shall be designated as Special Planning Areas. The boundaries of the areas shall be established by the Planning Commission and recorded on the zoning maps.

(c) Development Plans for Special Planning Areas shall include, whenever appropriate and practical, the following:

(1) A review of existing physical characteristics, including public and private improvements, ownership, use and factors concerning geographic, ecologic, scenic, and resources features;

(2) A review of the social, economic, cultural and historic characteristics of the area;

(3) A statement concerning community goals, values, and objectives and the methods for involving the community in the planning process;

(4) A statement of the goals and objectives of the Development Plan and their relationship to the goals and objectives established in the General Plan, and an analysis of the specific problems inhibiting the accomplishment of the goals and objectives based on an analysis of existing conditions;

(5) A program of specific activities, improvements and modifications necessary to accomplish the stated goals and objectives;

(6) A physical development plan at scale of detail appropriate to the existing conditions and to feasible methods of implementation, that indicates the location and nature of programmed activities and improvements, including:

(A) housing by density and type of dwelling units:

(B) transportation and circulation by type, including pedestrian, bicycle, parking and related facilities;

(C) recreation and open space by activity and function;

(D) agricultural uses and structures;

(E) commercial, industrial and resort uses and structures.

(7) The establishment of specific subdivision and development criteria, including setbacks, heights, permitted uses, and other design standards necessary for the implementation of the physical plan. The criteria may be more detailed than, or may vary from the requirements of the Use, Special Treatment and Constraint Districts within which a Special Planning Area has been located.

(8) A phasing and action priority program in four (4) five (5)-year increments with an Estimated Capital Improvement Program decreasing in detail with each increment.

(d) The Planning Department shall review each Development Plan formulated under this Article no less than every five (5) years after its adoption and shall revise and update all plan elements consistent with the conditions that prevail at the time of the review.

(e) Upon adoption by the Council, the provisions of the Development Plan shall constitute regulations and shall supersede conflicting regulations applicable in the Use, Special Treatment and Constraint Districts within which the Special Planning Area is located. Regulations and requirements not so superseded shall remain in force.

(f) After the Council adopts a Development Plan for a Special Planning Area, no development, use or activity may be undertaken in the area that is contrary to the Development Plan. (Ord. No. 164, August 17, 1972; Sec. 8-9.6, R.C.O. 1976)

Sec. 8-9.7 Scenic Corridors And Points.

(a) Purpose. To preserve, maintain and improve visual access and quality from major public thoroughfares or areas of public value and to define criteria and procedures necessary to achieve those ends.

(b) Land Included. Scenic corridors shall be as indicated on the General Plan and the Zoning maps and shall include by reference all land and water areas visible from the center line of the corridor or the scenic point, or to a lesser distance as the Planning Director shall determine.

(c) Requirements of Development and Structures Within a Scenic Corridor.

(1) The Planning Director may require the applicant to furnish graphic or pictorial material sufficient to indicate the nature of the proposed use,

development or structure and its relation to the view from that portion of the corridor or point which may be affected.

(2) The Planning Director or his designee shall ascertain whether the proposed development, structure, or use proposed will block, disrupt, or significantly change the visual accessibility or quality of the scenic corridor.

(3) The Planning Director may approve, approve with conditions, or refer the application to the Planning Commission with recommendations. Upon reference, the Planning Commission shall, in such case, approve, with conditions, or deny the permit.

(4) The Planning Director and the Planning Commission shall not deny an application if the denial would create undue hardship on the applicant, but shall nevertheless impose constructive and reasonable requirements on the development to protect the scenic quality of the corridor.

(d) The Planning Commission may require that visually disruptive or offensive activities, facilities, or structures that are within three hundred (300) feet of the public right-of-way be screened from view from the thoroughfare by an acceptable structural or plant screen. (Ord. No. 164, August 17, 1972; Sec. 8-9.7, R.C.O. 1976)

ARTICLE 10. CONSTRAINT DISTRICTS (S)

Sec. 8-10.1 Purpose.

(a) To implement the objectives of the six (6) Development Restriction Zones established in the General Plan.

(b) To identify those areas where particular physical, biologic and ecologic characteristics of the land, water and atmosphere indicate that standard requirements for development, modification or use may be inadequate to insure the general health, safety or welfare of the public or the maintenance of established physical, geologic and ecologic forms and systems.

(c) To insure that development, modification or use will not create substantial threats to health, safety and welfare of people, or to the maintenance of established physical, biologic, and ecologic forms and systems.

(d) To permit development, modification or use when it can be shown, within the limits of available knowledge, that ecologic interrelationship will be improved or not significantly depreciated. (Ord. No. 164, August 17, 1972; Sec. 8-10.1, R.C.O. 1976)

Sec. 8-10.2 Types Of Constraint Districts And Application.

(a) There are six (6) Constraint Districts as follows:

- | | |
|------------------------|------|
| (1) Drainage Districts | S-DR |
| (2) Flood Districts | S-FL |
| (3) Shore Districts | S-SH |
| (4) Slope Districts | S-SL |
| (5) Soils Districts | S-SO |
| (6) Tsunami Districts | S-TS |

(b) The standards established in each Constraint District shall apply to all modifications, development or uses which are undertaken on lands within the boundaries of the Districts and shall be in addition to the development standards applicable to lands in the underlying Use and Special Treatment Districts in which the lands are located.

(c) When land is located in more than one (1) Constraint District, the more restrictive standard concerning any subject matter of regulation shall apply.

(d) Applications for Zoning or Use Permits for uses, structures and development in Constraint District shall include the information required by, and shall establish conformity to the standards established for, the Constraint District or Districts in which the lands in question are located. (Ord. No. 164, August 17, 1972; Sec. 8-10.2, R.C.O. 1976)