

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 Twelve
Address: 8252-A & 8252-B Elcpaio Road, Kekaha, Kauai, Hawaii 96752

Registration No. 3970

Effective date: May 5, 1999
Expiration date: June 5, 2000

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

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

X SUPPLEMENTARY: (pink) This report updates information contained in the: [ ] Preliminary Public Report dated: [X] Final Public Report dated: April 6, 1998 [ ] Supplementary Public Report dated: And [ ] Supersedes all prior public reports [X] Must be read together with Final Public Report dated April 6, 1998 [ ] 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:

The archaeologically sensitive area referred to in item 4 in the IMPORTANT NOTES section below is larger than that reflected in Exhibit L attached to the Final Public Report. The attached map replaces the map attached as Exhibit L to the Final Public Report and reflects the increased archaeologically sensitive area. SPECIAL ATTENTION SHOULD BE PAID TO ITEM 6, of the IMPORTANT NOTES section below.

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**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 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.

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**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 situated near 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. 12B 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 10.7 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 large portion of the Project contains an Archaeologically Sensitive Area, which means additional burial sites may be discovered and the design and placement of a residence on the Project may be restricted. Subsurface work in the Archaeologically Sensitive Area requires the presence of an archaeologist onsite during the work. The estimated cost of having an archaeologist on site during any ground disturbing work is \$45.00 per hour. Should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical resources shall immediately cease and the owner shall contact the Kauai Planning Department (241-6677) and the Department of Land and Natural Resources-Historic Preservation Division (742-7033). Included in the Archaeologically Sensitive Area, is Io Road, which is adjacent to the Project.**

**The possibility of discovering future burial sites that would require reinterment is unknown. The estimated cost of a reinterment is \$1000.00. If any future burial sites are discovered and are required to remain in place, the owners may have to redesign any proposed residence on the site.**

**The original burial site area reflected on the Condominium Map and on the map attached as Exhibit L may not be disturbed.**

**For more information regarding the rules and standards for Archaeologically Sensitive Areas, the prospective purchaser is referred to the Rules Governing Standards for Archaeological Monitoring Studies and Reports, Chapter 279, Subtitle 13, Hawaii Administrative Rules of the Department of Land and Natural Resources.**

7. (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 Kaumualii 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.

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

9. 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.

10. There are no current electrical easements in place.

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. 3970 filed with the Real Estate Commission on June 12, 1998.

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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:  1/22/09  
Duly Authorized Signatory Date

Don F. Holley, Member  
print name & title of person signing above

Distribution:

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

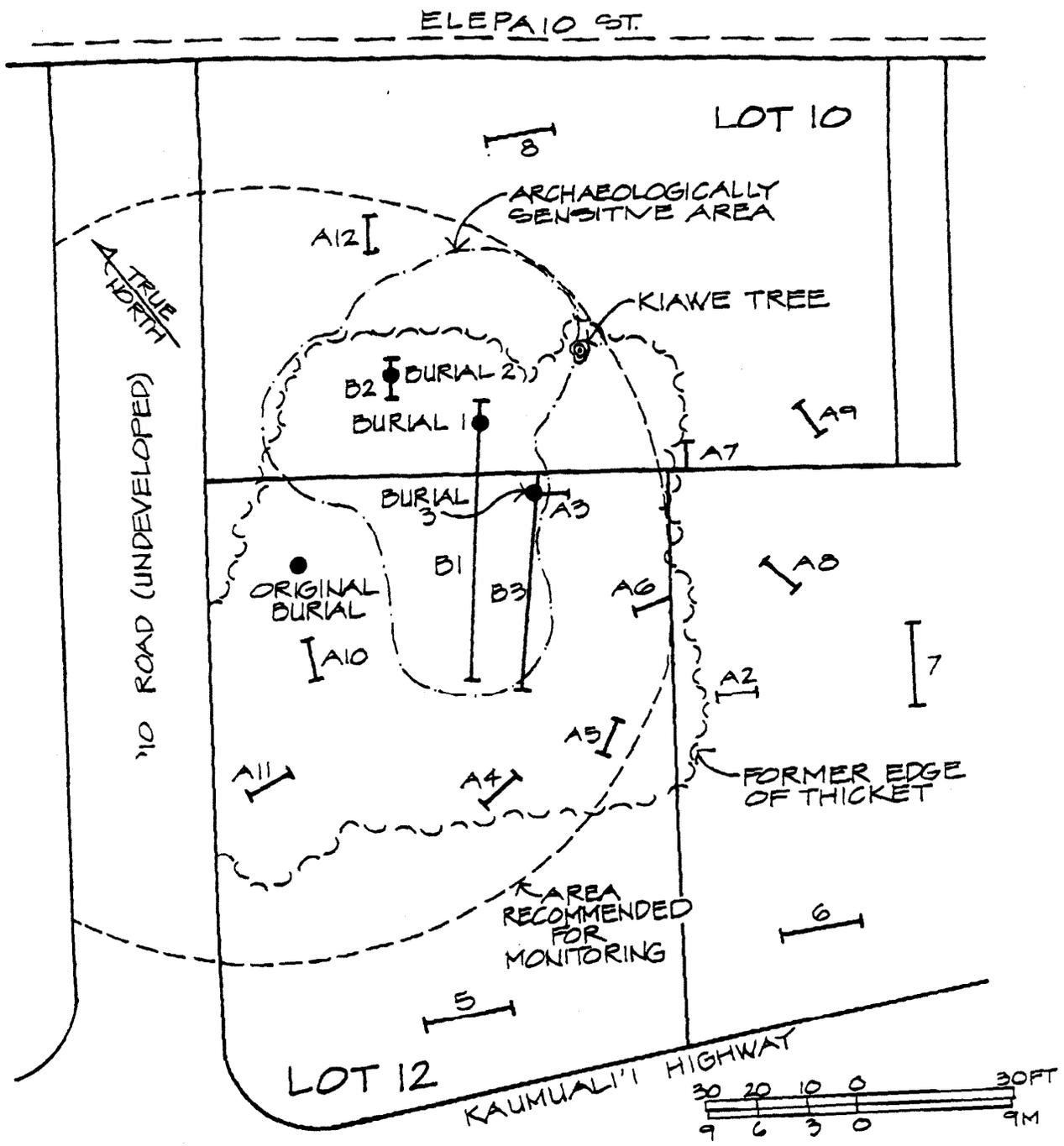


EXHIBIT "L"