

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Developer: Mark Racine, Bethany Racine, Peter H. Dillingham, and Pamela R. Dillingham
Address: P.O. Box 1356, Kailua-Kona, Hawaii 96745
Project Name(*): MAKAULA RANCH
Address: 73-4185 Mamalahoa Hwy., Kailua-Kona, HI 96740
Registration No. 4793
Effective date: December 13, 2002
Expiration date: September 13, 2003

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.
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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
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
This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request. FORM: RECO-30 1297 / 0298 / 0800

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 Commission.

Changes made are as follows:

SPECIAL ATTENTION

This is a CONDOMINIUM PROJECT, **not** a subdivision. The land area beneath and immediately appurtenant to each unit is designated a LIMITED COMMON ELEMENT and does **not** represent a legally subdivided lot. The dotted lines and metes and bounds descriptions on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustration purposes only and should not be construed to be the property lines of legally subdivided lots.

This public report does not constitute approval of the Project by the Real Estate Commission, or any other governmental agency, nor does it ensure that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.

***Note:** Developer has filed with the County Planning Department the Notice of Intention, proposed condo map and plot plan and public report. To date, there has been no response.

In the event that the County objects to certain aspects of the project, which the Commission deems material, Developer shall file a Supplementary Public Report addressing such concerns.

Prospective purchasers are advised that as of the effective date of this report, no additional comments have been received from the Hawaii County Planning Department. If and when such additional comments are received which are contrary or in addition to the information contained herein, a copy shall be provided to each purchaser or prospective purchaser. If the information represents material facts not already disclosed in this public report, the Commission may require the Developer to prepare a Supplementary public report.

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

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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 owners/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 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 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 the 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 a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is 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: Mark Racine, Bethany Racine, Peter H. Dillingham, and Pamela R. Dillingham
Name* Phone: (808) 331-2979
(Business)
P.O. Box 1356, Kailua-Kona, Hawaii 96745

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):
None

Real Estate Broker*: Clark Realty Corporation Phone: (808) 329-5255
Name (Business)
75-5722 Kuakini Hwy., #103
Business Address
Kailua-Kona, HI 96740

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 329-6666
Name (Business)
75-170 Hualalai Road, Suite C310
Business Address
Kailua-Kona, Hawaii 96740

General Contractor*: HHB & Assoc. LLC Phone: (808) 329-2591
Name (Business)
P.O. Box 1957
Business Address
Kailua-Kona, HI 96740

Condominium Managing Agent*: Project will be self-managed by the Phone: _____
Name (Business)
Association of Apartment Owners
Business Address

Attorney for Developer: Steven S.C. Lim Phone: (808) 935-6644
Name (Business)
Carlsmith Ball LLP
Business Address
121 Waianuenue Ave., Hilo, HI 96740

* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

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, HRS), 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. 2000-181441
Book _____ Page _____
 Filed - Land Court Document No. _____

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

First Amendment to the Declaration of Condominium Property Regime of "Makaula Ranch" dated November 6, 2001 and recorded in the Bureau of Conveyances as Document No. 2001-178800.

- 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 the condominium project is:

Proposed
 Recorded - Bureau of Conveyances Condo Map No. 3201
 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]:

Amendment to Condominium Map No. 3201 dated November 6, 2001 and recorded in the Bureau of Conveyances as Document No. 2001-178802.

- 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. 2000-181442
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]:

First Amendment to the Bylaws of the Association of Apartment Owners of "Makaula Ranch" dated November 6, 2001 and recorded in the Bureau of Conveyances as Document No. 2001-178801.

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>100%</u>
Bylaws	65%	<u>65%</u>
House Rules	----	<u>not applicable</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:

Declaration: At any time prior to the first recording in the Bureau of Conveyances of a conveyance or transfer (other than for security) of a unit and its appurtenances to a party not a signatory hereto, the Declarant may amend this declaration and/or the Condominium File Plan in any manner without approval or consent of any unit purchaser. This paragraph shall not be deemed to limit or restrict the Defendant's right as a unit owner to amend the Declaration as provided herein.

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 purposes 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: 73-4185 Mamalahoa Hwy. Tax Map Key: (3) 7-3-002:024
Kailua-Kona, HI 96740 (TMK)

Address TMK is expected to change because _____

Land Area: 20.797 square feet acre(s) Zoning: A-20A

Fee Owner: Mark Racine, Bethany Racine, Peter H. Dillingham
and Pamela R. Dillingham, as tenants in common
 Name
P.O. Box 1356, Kailua-Kona, Hawaii 96745
 Address

Sublessor: N/A
 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: TWO (2) Floors Per Building ONE (1)/ONE & 1/2 (1.5)
 Exhibit A contains further explanations.

3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other _____

4. Permitted Uses by Zoning:

	<u>No. of Apts.</u>	<u>Use Permitted By Zoning</u>
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<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"/> Hotel	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Agricultural	<u>2</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other (Storage shed)	_____	<input 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:

- Pets: _____
 Number of Occupants: _____
 Other: Only uses allowed by Hawaii County Code and State Land Use laws

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 0 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Lanai/Patio (sf)</u>	<u>Net Storage Area (sf)</u>
<u>1</u>	<u>1</u>	<u>3/4</u>	<u>3,986</u>	<u>1,370</u>	<u>1,156</u>
<u>2</u>	<u>1</u>	<u>5/4.5</u>	<u>4,321</u>	<u>1,584</u>	<u>960</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Apartments: 2

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

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

Boundaries of Each Apartment:

Each Apartment shall be deemed to include the perimeter walls and any doors, windows, floors, roofs, concrete footings, garages or other improvements now existing or hereafter constructed on or within the appurtenant Yards.

Permitted Alterations to Apartments:

Each Apartment Owner shall have the right at his sole option at any time and from time to time, as hereinafter set forth, without the consent and/or approval of the Owner of the other Apartment or any other persons or entity, to improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his Apartment, or portions thereof, or upon the Yard and limited common elements appurtenant to his Apartment.

Apartments Designated for Owner-Occupants Only:

Fifty percent (50%) of **residential** apartments must be so designated; developer has a right to substitute similar apartments for this apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has not elected to provide the information in a published announcement or advertisement.

7. Parking Stalls:

Total Parking Stalls: _____ 8*

	<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>4*</u>	_____	_____	_____	_____	_____	<u>8*</u>
Guest	_____	_____	_____	_____	_____	_____	_____
Unassigned	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	_____	_____	_____	_____	_____	_____	<u>8*</u>

***Unit 1 & 2 have ample area within their limited common area for parking purposes.**

Each residential apartment will have the exclusive use of at least 4* parking stall(s). Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit A 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 use them, as described in the Declaration, are:

described in Exhibit B.

as follows:

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. 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 _____.

as follows:

Unit 1 - 50%

Unit 2 - 50%

The foregoing percentages were calculated to provide each apartment owner with a roughly equal percentage of common interest in the condominium project.

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 C describes the encumbrances against the title contained in the title report dated October 17, 2001 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.

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

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 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>
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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:

Developer makes no express warranties. DEVELOPER DISCLAIMS ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY IMPLIED WARRANTY OF WORKMANSHIP AND ANY OTHER EXPRESS OR ANY IMPLIED WARRANTIES WITH RESPECT TO THE APARTMENTS, THE COMMON ELEMENTS OR THE PROJECT.

Developer disclaims any and all responsibility or liability for any water infiltration, any malfunction, any construction or design defect, or any other problems which a buyer may encounter with respect to the apartments or the project.

2. Appliances:

None.

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

Unit 1 - Completed January 31, 2004

Unit 2 - Completed 2000

H. **Project Phases:**

The developer [] has [X] 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):

None.

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:

- | | |
|---|--|
| <input type="checkbox"/> not affiliated with the Developer | <input type="checkbox"/> the Developer or the Developer's affiliate. |
| <input checked="" type="checkbox"/> self-managed by the Association of Apartment Owners | <input type="checkbox"/> 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, your apartment may be liened and sold through a foreclosure proceeding.

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

Exhibit D 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 _____

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 E contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated October 10, 2000
Exhibit F contains a summary of the pertinent provisions of the escrow agreement.
- 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 buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

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

Contingent Final Report of Supplementary Report to a Contingent Final Report. Sale 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 as 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 Public 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.
- C) Bylaws of the Association of Apartment Owners.
- D) House Rules.
- E) Condominium Map.
- F) 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 _____
 - 1) FARM DWELLING NOTICE. See Page 20.

2) _____

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) 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, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 4793 filed with the Real Estate Commission on December 14, 2001.

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

YELLOW paper stock WHITE paper stock PINK paper stock GREEN paper stock

C. **Additional Information Not Covered Above**

The Property is classified and zoned "Agricultural". County ordinance and the Hawaii Land Use laws allows only the construction of farm dwellings on such lands. A farm dwelling is a single family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling. More than one farm dwelling may be allowed on a parcel of land if (a) a farm dwelling agreement is executed for each additional farm dwelling which requires that the dwelling be used for farm-related purposes and (b) the applicant for the permit submits an agricultural development and use program, farm program or other evidence of the applicant's continual agricultural productivity or farming operations in the County of Hawaii and such plan shows how the farm dwelling will be utilized for farm related purposes.

Buyers are advised that the developer makes no representations or warranties with respect to (i) the improvements that are or will be allowed on the real property, (ii) the uses that are allowed or required for real property located in an "Agricultural" land use classification or (iii) the restrictions, requirements or conditions that may be imposed by any governmental entity with respect to the proposed uses of the real property and/or the apartments or the proposed construction of improvements thereon or therein. Prospective buyers are advised to verify the legality of and the requirements for the buyer's intended use of the apartment and the land with the County of Hawaii.

Residential Dwellings within State Land Use Agricultural District

Purchasers should be aware that the State Land Use Commission issued a Declaratory Ruling in December, 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Hawaii County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

FARM DWELLING NOTICE

To: Applicants for Building Permits on Land in State Land Use Agricultural District.

This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".

Farm Dwelling is defined in Chapter 205.4.5(a)(4) as "a single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."

Penalty for violation of Section 205.4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

I acknowledge that I have read the above
and have been given a copy

Signature of Witness

Signature of Applicant

Additional Information Not Covered Above. continued

Mailboxes. Mailboxes have not been provided for the units, as there is no mail delivery to this area. People in this area customarily maintain a post office box at the local post office.

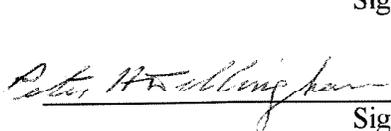
Water. Unit 2 of the Project is serviced by the Department of Water Supply via a 5/8" water meter which is a limited common element of Unit 2. Unit 1 will be serviced by a separate water meter which will be a limited common element of Unit 1. Upon receipt of the necessary easements and governmental approvals, the Unit 1 water line will be connected to the existing county water system. If for any reason the above easements and approvals are not obtained, Unit 1 will be serviced by a private water catchment system approved by the applicable state and county agencies.

- C. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- 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.

Mark Racine, Bethany Racine, Peter H. Dillingham and Pamela R. Dillingham

Printed Name of Developer

 Bethany Racine 12/11/02
Signature Date

 Pamela R. Dillingham 12/11/02
Signature Date

Mark Racine, Bethany Racine, Peter H. Dillingham and Pamela R. Dillingham, Owner/Developer
Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii
Planning Department, County of Hawaii

****Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.***

4083879.4.052261-00001

MAKAULA RANCH

EXHIBIT "A"

DESCRIPTION OF BUILDINGS AND APARTMENTS

1. **Description of the Buildings:** The project is comprised of two (2) units, of which Unit 1 contains a one (1) story single-family dwelling building, with no basement, constructed principally of wood, concrete flooring and related building materials, together with a detached one (1) story garage, with no basement, constructed principally of wood, concrete flooring and related building materials, and a detached one (1) story bunkhouse, with no basement, constructed principally of wood, masonry, concrete flooring, plaster, glass and related building materials, and of which Unit 2 contains a one and one-half (1.5) story single-family dwelling building, with no basement, constructed principally of wood, masonry, concrete flooring, plaster, glass and related building materials, together with a detached one (1) story garage, with no basement, constructed principally of wood, concrete flooring and related building materials, and a detached one (1) story bunkhouse, with no basement, constructed principally of wood, masonry, concrete flooring, plaster, glass and related building materials. If the descriptions and divisions set forth herein conflict with the depictions and divisions shown on the Condominium File Plan, the latter shall control. The Condominium File Plan is intended only to show the layout, location, unit numbers, dimensions and elevations of the units and is not intended and shall not be deemed to contain or make any other representation or warranty.

2. **Description of the Apartments:**

Each unit is located as shown on the Condominium File Plan.

Unit 1 contains an apartment consisting of a one (1) story single family dwelling containing one (1) bedroom, two (2) bathrooms, a kitchen, a pantry area, a laundry area, a dining room, a living room, a media room, closets, hallways and entry area with a net living area of approximately 2,983 square feet, and an open lanai of approximately 1,241 square feet, for a total floor area of approximately 4,224 square feet; a detached garage with a net floor area of approximately 1,156 square feet; a detached bunkhouse containing two (2) bedrooms, two (2) bathrooms, a family room, closets, hallways and entry area with a net living area of approximately 1,003 square feet, and a patio of approximately 129 square feet area, for a total floor area of approximately 1,132 square feet; and other improvements as shown on the Condominium File Plan, together with an appurtenant limited common element consisting of approximately 10.797 acres (see Attachment 1 to Exhibit B of the Declaration).

Unit 2 contains an apartment consisting of a one and one-half (1.5) story single family dwelling containing three (3) bedrooms, three and one-half (3.5) bathrooms, a dressing area, a kitchen, a pantry area, a laundry area, a dining room, a living room, a loft area, closets, hallways and entry area with a net living area of approximately 3,620 square feet, and an open lanai of approximately 1,296 square feet, for a total floor area of approximately 4,916 square feet; a

detached garage with a net floor area of approximately 960 square feet; a detached bunkhouse containing two (2) bedrooms, one (1) bath, a den, closets, hallways and entry area with a net living area of approximately 1,061 square feet, and a patio of approximately 288 square feet area, for a total floor area of approximately 1,349 square feet; and other improvements as shown on the Condominium File Plan, together with an appurtenant limited common element consisting of approximately 10.00 acres (see Attachment 2 to Exhibit B of the Declaration).

Units 1 and 2 have ingress and egress rights directly onto a public street as shown on the Condominium File Plan.

The approximate net floor area of each apartment and unit as set forth above is measured from the interior surface of the apartment and unit perimeter walls and includes all of the walls and partitions within its perimeter walls.

NOTE: THE FLOOR AREAS SHOWN ARE APPROXIMATE ONLY. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT AND UNIT.

UNIT LOCATION AND ACCESS TO COMMON ELEMENTS:

Units 1 and 2 are located as shown on the Condominium File Plan. Each unit has direct access to the common elements of the project.

END OF EXHIBIT "A"

MAKAULA RANCH

EXHIBIT "B"

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

1. **Common Elements:** One freehold estate is designated in all remaining portions of the project, herein called the "Common Elements", including specifically, but not limited to:

- a. The land described in Exhibit "A" of the Declaration, in fee simple.
- b. All yards, grounds, landscaped areas, retaining walls, parking areas and driveways around and between the units, which are not limited common elements appurtenant to and for the exclusive use of particular units.
- c. All central and appurtenant installations for common services, including power, light, water, telephone and sewer.
- d. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.

2. **Limited Common Elements:** Certain parts of the common elements, herein called the "limited common elements", are designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements as set forth hereinbelow and in the Declaration. The costs and expenses of every description pertaining to the limited common elements, including but not limited to the costs of maintenance, repair, replacement, improvement or additions to the limited common elements, shall be charged to the owner of the apartment to which the limited common element is appurtenant, and if the limited common element is appurtenant to both units, then in proportion to the common interest appurtenant to each of the respective apartments except as otherwise provided in the Declaration.

a. Unit 1 shall have Limited Common Element 1 as shown on the Condominium Map appurtenant to it as a Limited Common Element. Unit 2 shall have Limited Common Element 2 as shown on the Condominium Map appurtenant to it as a limited common element. The boundaries of the limited common elements appurtenant to each Apartment are more particularly described in Exhibit "B" attached to the Declaration. *The Limited Common Elements **do not** represent County of Hawaii approved subdivided lots.* Such boundary descriptions serve only to delineate the boundaries of the Limited Common Element appurtenant to each Apartment.

END OF EXHIBIT "B"

MAKAULA RANCH

EXHIBIT "C"

ENCUMBRANCES AGAINST THE TITLE

1. Real property taxes as may be due and owing. Check with the County Tax Assessor.

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

3. GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC. and GTE
HAWAIIAN TELEPHONE COMPANY
INCORPORATED

DATED : October 22, 1991

RECORDED : Document No. 92-026894

GRANTING : a perpetual right and easement for utility purposes over a
20 feet wide poleline easement as shown on map attached
thereto

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

INSTRUMENT : COTENANCY AGREEMENT

DATED : July 6, 1999

RECORDED : Document No. 99-109288

PARTIES : MARK RACINE and BETHANY RACINE, husband and
wife, and PETER H. DILLINGHAM and PAMELA R.
DILLINGHAM

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

INSTRUMENT : ELEVATION AGREEMENT

DATED : April 26, 1999

RECORDED : Document No. 99-125368

PARTIES : DEPARTMENT OF WATER SUPPLY, COUNTY OF
HAWAII and MARK RACINE and BETHANY RACINE

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

INSTRUMENT : AGREEMENT AND DECLARATION OF EASEMENTS
DATED : September 25, 2000
RECORDED : Document No. 2000-136913

7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

-Note:- A current survey, with metes and bounds description, should be made of said premises.

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

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY
REGIME FOR "MAKAULA RANCH" CONDOMINIUM
PROJECT
DATED : September 25, 2000
RECORDED : Document No. 2000-181441
MAP : 3201 and any amendments thereto

The foregoing Declaration was amended by First Amendment to the Declaration of Condominium Property Regime of Makaula Ranch dated November 6, 2001, recorded in said Bureau as Document No. 2001-178800.

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

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT
OWNERS
DATED : September 25, 2000
RECORDED : Document No. 2000-181442

The foregoing Bylaws were amended by First Amendment to the Bylaws of the Association of Apartment Owners of Makaula Ranch dated November 6, 2001 recorded in said Bureau as Document No. 2001-178801.

10. GRANT

TO : HAWAII ELECTRIC LIGHT COMPANY, INC., a
Hawaii corporation and VERIZON HAWAII INC., also a
Hawaii corporation

DATED : July 31, 2001
RECORDED : Document No. 2001-135526
GRANTING : a perpetual right and easement for utility purposes

END OF EXHIBIT "C"

MAKAULA RANCH

EXHIBIT "D"

ESTIMATE OF INITIAL MAINTENANCE FEES AND DISBURSEMENTS

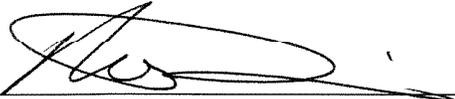
The regular maintenance and repair of each apartment and the limited common elements appurtenant to each apartment is the sole responsibility of each respective apartment owner. The utility facilities which serve more than one apartment will be the only common elements of the Project to require maintenance and repair by the Association. The utility facilities that serve more than one apartment are not expected to require maintenance or repair on a regular basis. The payment for all utility services to each apartment is the sole responsibility of the apartment owner. As a result, Developer anticipates that there will be no annual assessments for maintenance fees. Instead, assessments for maintenance and repair of the common elements will be made as needed and assessments for utilities will be made directly to the apartment by the utility provider for payment by the apartment owner.

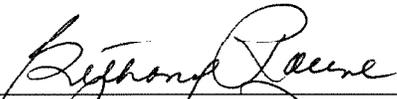
Section 514A-86, HRS, requires fire insurance to be purchased by the Association to cover the improvements of the Project. Pursuant to Article 7 of the Bylaws, the Association will purchase such insurance for the common elements once such common elements are constructed. Pursuant to the Declaration and the Bylaws, the Association will require the individual apartment owners to obtain separate insurance policies for their respective apartments and the appurtenant limited common elements (once constructed), the premiums for which will be the sole responsibility of and be paid by each respective apartment owner, and such policies shall name the Association as an additional insured.

There is no non-exempt Association property requiring the establishment of any replacement reserves pursuant to HRS § 514A-83.6 or Subchapter 6 of Chapter 16-107 of the Hawaii Administrative Rules.

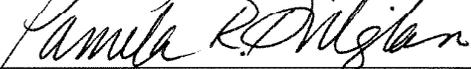
Note: Developer discloses that no reserve study was done in accordance with Chapter 514A-83.6, HRS, and replacement reserve rules, Subchapter 8, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

We, **MARK RACINE, BETHANY RACINE, PETER H DILLINGHAM and PAMELA R. DILLINGHAM**, Developer, hereby certify that the above estimate of initial maintenance fees and disbursements is based on generally accepted accounting principles.


MARK RACINE


BETHANY RACINE


PETER H. DILLINGHAM


PAMELA R. DILLINGHAM

Date: December 11, 2002

END OF EXHIBIT "D"

MAKAULA RANCH

EXHIBIT "E"

SUMMARY OF SALES CONTRACT

The sales contract that will be used will state, in addition to the price, description and location of the apartment, and other terms and conditions under which a buyer will agree to purchase an apartment in the Project, the following:

(a) What a buyer must do to qualify for a loan if the buyer wants a mortgage loan to cover part of the purchase price.

(b) That a buyer's money will be held in escrow, under the terms of the escrow agreement.

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

(d) That in the event buyer fails to perform buyer's obligations under the sales contract (seller not being in default), seller may (1) bring an action for damages for breach of contract, (2) retain the initial deposit and all additional deposits provided for herein as liquidated damages, and (3) buyer shall be responsible for any costs incurred in accordance with the sales contract.

(e) That in the event seller fails to perform seller's obligations under the sales contract (buyer not being in default), buyer may (1) bring an action for damages for breach of contract, (2) seek specific performance of the sales contract, and (3) seller shall be responsible for any costs incurred in accordance with the sales contract.

The sales contract will contain various other provisions which the buyer should become acquainted with.

It is incumbent on the buyer that he read the full text of the Sales Contract.

END OF EXHIBIT "E"

MAKAULA RANCH

EXHIBIT "F"

SUMMARY OF CONDOMINIUM ESCROW AGREEMENT

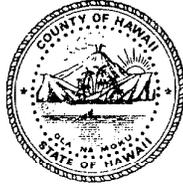
A copy of the executed Condominium Escrow Agreement dated October 10, 2000 between Title Guaranty Escrow Services, Inc., as Escrow Agent, and Developer, has been filed with the Commission. The Escrow Agreement provides for the deposit of buyer's funds pursuant to the Sales Contract and also provides for the retention or disbursement of the funds. The Escrow Agreement provides, in part, that any interest earned on money on deposit may be retained by the Developer unless the Sales Contract directs otherwise. In the event that the Sales Contract and Chapter 514A, Hawaii Revised Statutes entitle a buyer to a refund of buyer's deposits held by the Escrow Agent, then Escrow Agent, upon instruction from Developer, will refund buyer's deposits, without interest earned and less certain cancellation fees and costs (e.g., escrow cancellation fees, loan processing fees, cost of credit reports, etc.) as provided in the Sales Contract and Chapter 514A, Hawaii Revised Statutes, as amended.

By law the total amount of such cancellation fees shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00). Under the Escrow Agreement no disbursement of funds can be made to the Developer until the Sales Contract becomes effective under the provisions of Chapter 514A, Hawaii Revised Statutes.

It is incumbent upon a prospective buyer to read the executed Escrow Agreement with care.

END OF EXHIBIT "F"

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

November 1, 2002

Kevin E. Moore, Esq.
Carlsmith Ball LLP
P.O. Box 1720
Kailua-Kona, Hawaii 96745-9450

Dear Mr. Moore:

Condominium Registration Information

**Project: Makaula Ranch Condominium Project
Mark Racine and Bethany Racine**

Tax Map Key: (3) 7-3-002:024

This is in response to your letter dated, October 4, 2002, in which you requested the issuance of a written statement, pursuant to the requirements of Hawaii Revised Statutes §514A-40(b)(1), regarding the referenced condominium project. Our research has resulted in the following:

1. The subject 21.228-acre property is zoned Agricultural (A-20a) by the County and is situated within the State Land Use Agricultural district;
2. Planning Department records include the following:
 - a. No variances were granted to achieve compliance with zoning or building ordinances and codes;
 - b. No non-conforming uses or structures are identified on the subject property; and
 - c. An Ohana Dwelling Unit Permit (OHD 2291) was approved on August 12, 1991 to allow for the construction of a second dwelling unit on the subject property.

EXHIBIT "C"

Kevin E. Moore, Esq.
Carlsmith Ball LLP
Page 2
November 1, 2002

3. Building Division-Department of Public Works (BD-DPW) records indicate the following development of the subject property:
 - a. BP #915597 was issued on May 16, 1991 to construct a new 2-bedroom/1-bath dwelling. Final inspection for this permit was recorded on June 28, 1999.
 - b. BP #916497 was issued on November 7, 1991 to construct a new 3-bedroom/3½-bathroom ohana dwelling (OHD 2291 approved on August 12, 1991). Final inspection for this permit was recorded on June 28, 1999.
 - c. BP #945950 was issued on December 6, 1994 to construct a new detached garage. Final inspection for this permit was recorded on June 28, 1999.
 - d. BP #991574 was issued on December 23, 1999 to remove the kitchen in an existing dwelling (BP #915597) for conversion of the dwelling to a guesthouse. Final inspection for this permit was recorded on February 25, 2000.

A "guest house" is not a permitted use within the State Land Use (SLU) Agricultural district or within the County of Hawaii Agricultural District.

Per an explanation by Joan Castberg of Carlsmith Ball, as related to Larry Brown of my staff in a telephone conversation on July 11, 2000, the following events account for item (d) above:

- i. At the time the Planning Department approved the application for this building permit the "Remarks" section of the application was blank and contained no reference to a "guest house."
- ii. The contents of the "Remarks" section were added to the application by BD-DPW personnel subsequent to approval by the Planning Department.
- iii. The site plan accompanying the application indicated the existing dwelling was being converted to a "bunkhouse", which is permitted within both the SLU and County Agricultural districts.
- iv. The converted dwelling has been used solely as a "bunkhouse" since it's conversion from a "Farm Dwelling" and is still being used as a "bunkhouse."
- v. A BD-DPW report dated April 10, 2002 stated that Rodney P. Crusat;

Building Inspector had conducted a site inspection, on April 9, 2002. This inspection confirmed that the kitchen sink, refrigerator and range had been removed from the referenced former dwelling unit now being used as a "bunkhouse".

- e. BP #005554 was issued on April 19, 2000 to install a gas furnace in an existing dwelling. Final inspection for this permit was recorded on July 18, 2000.
 - f. BP #015871 was issued on July 16, 2001 to construct a new 3-bedroom/3½-bathroom single story dwelling. No final inspection has been recorded for this permit.
4. Pursuant to §23A-20(a)(3), Ordinance 02-111, the subject CPR project is in compliance with the Hawaii County Subdivision Code;
 5. Chapter 205, HRS does not authorize residential dwellings as a permissible use in the Agricultural District as classified by the State Land Use Commission, unless the dwelling is related to an agricultural activity or is a "farm dwelling." A "farm dwelling" is defined in Section 205-4.5(a)(4) as "a single family dwelling located on and used in conjunction with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling." All property buyers must comply with Chapter 205, HRS.
 6. The Hawaii County Code, Chapter 25, Zoning, Sections 25-5-77(b), (c) and (1) state the following:
 - (a) One (1) single-family dwelling or one (1) farm dwelling shall be permitted on any building site in the "A" district. A farm dwelling is a single-family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling.

Kevin E. Moore, Esq.
Carlsmith Ball LLP
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November 1, 2002

- (b) Additional farm dwellings may be permitted in the "A" district only upon the following conditions:
- (1) A farm dwelling agreement for each additional farm dwelling, on a form prepared by the director, shall be executed between the owner of the building site, any lessee having a lease on the building site with a term exceeding one (1) year from the date of the farm dwelling agreement, and the County. The agreement shall require the dwelling to be used for farm-related purposes.

It should be clearly understood that the mere submittal of an application for an additional farm dwelling agreement does not guarantee approval.

All property buyers must comply with Chapter 25 of the Hawaii County Code.

Should you have questions, please feel free to contact Larry Brown at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Planning Dept. – Kona
Department of Water Supply – Water Resources & Planning Branch
Real Property Tax

END OF EXHIBIT "G"