

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer PAIGE L. CLEW-DEPONTE, Trustee
Address 23 Wa'a Place, Paia, Maui, Hawaii 96779

Project Name (\*): KUMU LA'AU HALE
Address: 23 Wa'a Place, Paia, Maui, Hawaii 96779

Registration No. 4828 (Conversion)
Effective date: July 16, 2003
Expiration date: August 16, 2004

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.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
X SUPPLEMENTARY: (pink) This report updates information contained in the:
[X] Preliminary Public Report dated:
[X] Final Public Report dated: April 9, 2002
[X] Supplementary Public Report dated:
And
[X] Supersedes all prior public reports.
[X] Must be read together with Final Public Report dated April 9, 2002
[X] This report reactivates the Final Public Report dated April 9, 2002 public report(s) which expired on May 9, 2003

(\* ) 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.

**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:

1. The blanket liens in Exhibits "E" and "J" have changed.
2. The Declaration of Condominium Property Regime, was amended as follows:
  - a. First Amendment of Declaration of Condominium Property Regime of Kumu La'au Hale, dated April 10, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-079933, reclarified the descriptions of the apartments; and
  - b. Second Amendment of Declaration of Condominium Property Regime of Kumu La'au Hale, dated April 10, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-102227, changed the exhibit reference from Exhibit "G" to Exhibit "A" in paragraph "a" found in Section 4.4, Common Elements, of the above-stated First Amendment of Declaration of Condominium Property Regime of Kumu La'au Hale.
3. The project is currently the subject of a foreclosure action in Civil No. 03-1-0163(1) in the Second Circuit Court. The Notice of Pendency of Action filed on April 25, 2003 in said foreclosure action will be dismissed upon satisfying the blanket liens stated in the said Exhibits "E" and "J".
4. Apartment Deeds, dated June 3, 2002, by and between the Developer to herself, as Trustee, were recorded in the Bureau of Conveyances of the State of Hawaii as follows:
  - a. Unit No. 23-A by Apartment Deed recorded as Document No. 2002-109282.
  - b. Unit No. 23-B by Apartment Deed recorded as Document No. 2002-109283.
  - c. Unit No. 23-C by Apartment Deed recorded as Document No. 2002-109284.

**SPECIAL NOTICE**

The Developer's Final Public Report expired on May 9, 2003. Pursuant to Section 16-107-19, Hawaii Administrative Rules, sales contracts executed during the period that the Public Report was not in effect may be rescinded at the option of the purchaser and all monies refunded to the purchaser. The purchaser's right to rescind under this rule shall be void thirty (30) calendar days after receipt of written notification of these rights from the Developer or his real estate agent.

**SPECIAL ATTENTION**

This is a **CONDOMINIUM PROJECT**, not a subdivision. It does not involve the sale of individual subdivided lots. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and not a legally subdivided lot.

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

2. Facilities and improvements normally associated with County approved subdivisions, such as fire protection devices, County street lighting, electricity, *upgraded water facilities, improved access for owner and emergency traffic, drainage facilities, etc.*, may not necessarily be provided for, and services such as County street maintenance and trash collection will not be available for interior roads and driveways.

**THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR THEIR INFORMATION WITH REGARD TO THE FOREGOING.**

**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. 2002-039053  
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 of Declaration of Condominium Property Regime, dated April 10, 2002, recorded as Document No. 2002-079933; and Second Amendment of Declaration of Condominium Property Regime, dated April 10, 2002, recorded as Document No. 2002-102227.

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. 3405  
 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. 2002-039054  
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]:

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 \_\_\_\_\_.

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 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 "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 June 27, 2003 and issued by Title Guaranty of Hawaii, Inc.

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 issued 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) House Rules, if any.
  - E) Condominium Map, as amended.
  - 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 \_\_\_\_\_

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. 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, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 4828 filed with the Real Estate Commission on March 18, 2002.

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

YELLOW paper stock

WHITE paper stock

PINK paper stock

**C. Additional Information Not Covered Above**

It is hereby disclosed as follows:

1. That every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the project. Seller also has no reports or records pertaining to lead-based paint and/or lead-based hazards in the project.
2. That a Special Management Area Permit (SMA) was not required for this project, however, Buyers should be aware that any subsequent improvements within the project may require SMA approval. Buyers may contact the Land Use and Codes Administration of the County of Maui for information on SMA requirements.
3. Buyers should be aware that Units 23-B and 23-C of this project is currently operating as a vacation rental, which is subject to a bread and breakfast permit or conditional permit or variance from the County of Maui. Buyers may contact the Land Use and Codes Administration of the County of Maui for information on bread and breakfast or conditional permits or variance requirements. There are pending bread and breakfast and conditional permit applications with the County of Maui.

- D. 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-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. 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.

PAIGE L. CLEW-DEPONTE, Trustee

Printed Name of Developer

By:  July 11/03  
 Duly Authorized Signatory\* Date

PAIGE L. CLEW-DEPONTE, Trustee

Printed Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Maui

Planning Department, County of Maui

***\*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.***

**EXHIBIT "E"**

**Encumbrances Against Title**

1. Delinquent real property taxes of \$3.37, which is due and owing. Reference is made to the Tax Assessor's Office, County of Maui, for Tax Map Key No. (2) 2-6-011-023.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Surface drainage easement as granted in instrument dated March 22, 1961, recorded in Liber 4043 at Page 122, and being more particularly described as follows:

All that certain parcel of land situate at Kuau, Hamakuapoko, Island and County of Maui, State of Hawaii, said land being a portion of Lot 2, Section 4 of the Second Partition of Hamakuapoko Hui to Alexander & Baldwin more particularly described as follows:

Beginning at a pipe at the southwesterly side of this easement, on the southwesterly boundary of Lot 2, Section 4, Second Partition of Hamakuapoko Hui to Alexander & Baldwin, the coordinates of said point of beginning being 9,604.15 feet north and 8,992.29 feet east, referred to Government Survey Triangulation Station "PUUNENE" and running by azimuths measured clockwise from true South:

- |    |      |     |   |
|----|------|-----|---|
| 1. | 133° | 03' | 195.82 feet along land owned by Peter Holiona, Jr., and by Stanley H. Raymond, being also the southwesterly boundary of said Lot 2, passing over a concrete monument at 156.82 feet, to a pipe at the seashore; |
| 2. | 237° | 00' | 10.30 feet along the seashore to a point;   |
| 3. | 313° | 03' | 343.34 feet over Parcels 2 and 4 of a subdivision of said Lot 2 and owned by Hawaiian Commercial & Sugar Co., Ltd. to a point;  |
| 4. | 43°  | 07' | 10.00 feet along the northerly boundary of the Hana Highway to a pipe;  |
| 5. | 133° | 03' | 150.00 feet along land owned by Peter Holiona, Jr., being also the southwest boundary of Lot 2, Section 4, Second Partition of Hamakuapoko Hui to Alexander & Baldwin to the                                    |

point of beginning and containing an area of 3,445 square feet, more or less.

4. "A perpetual easement and right of way for pedestrian access and egress purposes to and from the ocean reserved in favor of Parcel 2 of said subdivision, said easement being over and across the portion of the said ten-foot wide surface drainage easement which traverses said Parcel 4 granted to the County of Maui."; as set forth in DEED dated December 27, 1981, recorded in Liber 16142 at Page 355.
5. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
6. The restrictions on use and other restrictions and all other of the covenants, agreements, obligations, conditions, reservations, easements and other provisions set forth in Declaration of Condominium Property Regime dated February 13, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-039053, which was amended by instruments dated April 10, 2002, recorded as Document No. 2002-079933 and Document No. 2002-102227, as the same may hereafter be amended in accordance with law or with said Declaration. (Project covered by Condominium Map No. 3405.)
7. Covenants, conditions and reservations, contained in the By-Laws of the Association of Owners of the Condominium Project known as "KUMU LA'AU HALE" dated February 13, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-039054, as the same may hereafter be amended.
8. Notice of Pendency of Action filed in the Second Circuit Court of the State of Hawaii in foreclosure action in Civil No. 03-1-0163(1), on April 25, 2003, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-080328, regarding the foreclosure of Mortgage recorded as Document No. 2002-173574.
9. The effects of, if any, of Apartment Deeds dated June 3, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Documents No. 2002-109282, 2002-109283, and 2002-109284 to Developer herein as Grantee.

Note: The property is subject to the following:

- a. Mortgage dated October 3, 2001, by and between Paige L. Clew-DePonte, wife of Louis De Ponte, Jr., as Mortgagor, and Land Home Financial Services, a California corporation, as Mortgagee, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-161287, to secure the repayment of the sum of \$1,000,000.00 .
- b. Mortgage dated September 22, 2002, by and between Paige L. Clew-DePonte, Trustee under that certain unrecorded Paige L. Clew-DePonte Revocable Living Trust dated June 11, 1997, as Mortgagor, and Praxus, Inc., a Nevada corporation, as Mortgagee, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-173574, to secure the repayment of the sum of \$950,000.00.

**EXHIBIT "J"**

**Blanket Liens**

**Type of Lien:**

- a. Mortgage dated October 3, 2001, by and between Paige L. Clew-DePonte, wife of Louis De Ponte, Jr., as Mortgagor, and Land Home Financial Services, a California corporation, as Mortgagee, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-161287, to secure the repayment of the sum of \$1,000,000.00.
- b. Mortgage dated September 22, 2002, by and between Paige L. Clew-DePonte, Trustee under that certain unrecorded Paige L. Clew-DePonte Revocable Living Trust dated June 11, 1997, as Mortgagor, and Praxus, Inc., a Nevada corporation, as Mortgagee, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-173574, to secure the repayment of the sum of \$950,000.00.

**Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed Prior to Conveyance:**

Present blanket liens will be released and satisfied prior to conveyance of first apartment to Buyer.

If said blanket liens be foreclosed prior to conveyance to Buyer, all of Buyer's deposits will be refunded immediately by escrow, less escrow cancellation fees.