

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by: Developer: ROBERT J. PROSSER, Trustee of the Robert J. Prosser Trust dated
May 26, 1994, and MARIA BURNS PROSSER, Trustee of the
Maria Burns Prosser Trust dated June 18, 1998
Address: 4379 Rice Street, Lihue, Kauai, Hawaii 96766
Project Name(*): Villa Pricilla Condominium
Address: 3650 Anini Beach Road, Hanalei, Kauai, Hawaii 96714

Registration No. 4855
(Partial Conversion)

Effective date: June 25, 2002
Expiration date: July 25, 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, in 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.
- FINAL:
(white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] No prior reports have been issued.
[] This report supersedes all prior public reports.
[] This report must be read together with _____
- SUPPLEMENTARY:
(pink) This report updates information contained in the:
[] Preliminary Public Report dated: _____
[] Final Public Report dated: _____
[] Supplementary Public Report dated: _____
- And [] Supersedes all prior public reports
[] Must be read together with _____
[] This report reactivates the _____
public report(s) which expired on _____

(*) Exactly as named in the Declaration

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-30 286/986/189/1190/892/0197/1098/0800

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 developer.

Changes made are as follows:

SPECIAL ATTENTION

This is a CONDOMINIUM PROJECT, **not** a subdivision. There are County restrictions on the number of residential dwelling units, or other structures, which may be built on the property. Therefore, unless the Purchaser is buying an existing residential dwelling, **THERE IS NO ASSURANCE THAT THE PURCHASER WILL BE ABLE TO BUILD A RESIDENTIAL DWELLING UNIT ON THE PROPERTY. THERE IS ALSO 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, on the property.

1. There are presently one (1) residential structure and one (1) shade shed on the property, both of which may be defined as an "apartment" under the condominium property act.
2. This public report does **not** constitute an approval of the project by the Real Estate Commission or any other governmental agency, nor does it warrant that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.
3. The land area beneath and immediately appurtenant to each unit is designated a **LIMITED COMMON ELEMENT** and is **not** a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.
4. Facilities and improvements normally associated with County-approved subdivisions, such as fire protection devices, County street lighting, electricity, upgraded water facilities, improved access for owners and emergency traffic, drainage facilities, etc., may not be provided, and services such as County street maintenance and trash collection may 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 FURTHER INFORMATION WITH REGARD TO THE FOREGOING.

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: ROBERT J. PROSSER, Trustee Phone: (808) 245-4711
MARIA BURNS PROSSER, Trustee
4379 Rice Street
Lihue, Kauai, Hawaii 96766

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):

N/A

Real Estate Broker: PROSSER REALTY INC. Phone: (808) 245-4711
4379 Rice Street
Lihue, Kauai, Hawaii 96766

Escrow: TITLE GUARANTY ESCROW SERVICES, INC. Phone: (808) 522-6261
235 Queen Street
Honolulu, Hawaii 96803

General Contractor: US GUYS BUILDERS, LLC Phone: (808) 245-7788
4-1070 Kuhio Highway, Suite B
Kapaa, Kauai, Hawaii 96746

Condominium Managing Agent: Self-managed by the Association of Unit Owners Phone:

Attorney for Developer Donald H. Wilson Phone: (808) 245-4705
Belles Graham Proudfoot & Wilson
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766-1388

*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. 2002-050308

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]:

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. 3415

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. 2002-050309

Book _____ Page _____

Filed - Land Court:

Document No. _____

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

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents.** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interests 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>100%</u>
House Rules	-----	<u>N/A</u>

*The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer**

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

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

The Developer reserves the right to change the Declaration and Condominium Map as provided for in Section M. of the Declaration.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

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

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

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

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is:
 Canceled Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

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

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

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

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

[] Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

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

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

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

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

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

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

B. Underlying Land:

Address: 3650 Anini Beach Road
Hanalei, Kauai, Hawaii 96714

Tax Map Key: (TMK): (4) 5-3-4-33

[] Address [X] TMK is expected to change because CPR numbers will be added to the current
TMK number.

Land Area: 1.000 [] square feet [X] acre(s) Zoning: Urban/Open

Fee Owner: ROBERT J. PROSSER, Trustee
 MARIA BURNS PROSSER, Trustee
 4379 Rice Street
 Lihue, Kauai, Hawaii 96766

Lessor: 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: 2 Floors Per Building _____
 Exhibit "A" contains further explanations.
3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other metal fence posts and shade cloth (Unit A)
4. Permitted Uses by Zoning:

	No. of Apts.	<u>Use Permitted by Zoning</u>	
<input checked="" type="checkbox"/> Residential	<u>1</u>	<input checked="" 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 type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Other: Shed	<u>1</u>	<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: No animals or pets other than those allowed pursuant to Section 12 of the Declaration of Covenants, Conditions and Restrictions For Nani O'Kalihikai dated February 25, 1987, recorded in Liber 20558 at Page 150.
- Number of Occupants: _____
- Other: Please refer to said Declaration of Covenants, Conditions and Restrictions For Nani O' Kalihikai, a summary of which is attached hereto as Exhibit "J", the Declaration of Restrictive Covenants dated November 6, 1986 and recorded in Liber 20336 at Page 327, a summary of which is attached hereto as Exhibit "I", and Article G of the Declaration.
- There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 0 Stairways: 1 Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>Identify</u>
<u>Unit A</u>	<u>1</u>	<u>0/0</u>	<u>0/0</u>	<u>16</u>	<u>Shade Structure</u>
<u>Unit B</u>	<u>1</u>	<u>3/3</u>	<u>3,426</u>	<u>2,016</u>	<u>Lanai, entry deck, garage, sundeck, stairs</u>

Total number of Apartments: 2

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

Other documents and maps 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:

See Exhibit "A"

Permitted Alterations to Apartments:

See Exhibit "B"

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 those 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: 4

	<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>2</u>					<u>4</u>
Guest							
Unassigned							
Extra for Purchase							
Other: _____							
Total Covered & Open:	<u>4</u>		<u>0</u>		<u>0</u>		<u>4</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).
Buyers are encouraged to find out which stall(s) will be available for their use.

- Commercial parking garage permitted in condominium project.
- Exhibit _____ contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

- There are no recreational or common facilities.
- Swimming pool Storage Area Recreation Area
- Laundry Area Tennis court Trash Chute/Enclosure(s)
- 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 _____
(Date)

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):

Unit B is in satisfactory condition and has an expected life in excess of approximately 20 years.

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 lawfully at one time but which does not now conform to present zoning requirements:

	Conforming	Non-Conforming	Illegal
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 Interests:

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 "C" .
 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 "D".

as follows:

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

3. Common Interests: Each apartment will have an undivided fractional interests in all of the common elements. This interest is called the "common interests." 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:

Each unit shall have appurtenant thereto an undivided fifty percent (50%) interest in all common elements of the property, and the same proportionate share in all common profits and common expenses of the property (except as may be otherwise provided in the Bylaws) and for all other purposes, including voting. The percentage common interest for each unit is determined by apportioning a fifty percent (50%) interest to each of the two (2) units irrespective of the actual land areas contained in each unit.

- 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 on 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 March 23, 2002 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>
Mortgages	Lender has priority over Buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. Should the lender terminate Buyer's sales contract, Buyer shall be entitled to a refund of all deposits, less escrow cancellation fee.

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:

None: Units are sold "as is".

2. Appliances:

N/A

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

The construction of Unit A was completed in January 2002.
The construction of Unit B was completed in 1989.

H. **Project Phases:**

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

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

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 affiliated is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report is:

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

B. **Estimate of Initial Maintenance Fees:**

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

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

Exhibit "F" 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 "G" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated February 28, 2002.
Exhibit "H" 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.

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 the 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) 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 Declaration of Covenants, Conditions and Restrictions For Nani O'Kalihikai dated February 25, 1987, recorded in Liber 20558 at Page 150, and the Declaration of Restrictive Covenants dated November 6, 1986, recorded in Liber 20336 at Page 327.

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) 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. 4855 filed with the Real Estate Commission on May 21, 2002.

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C. **Additional Information Not Covered Above:**

1. The use of hazardous material is restricted except as provided under Article H of the Declaration and all hazardous materials laws.
2. For the purpose of Exhibit "F" of the Final Condominium Public Report the Developer has not conducted a reserve study in accordance with § 514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.
3. The project, and all uses and improvements on the apartments in the project, are subject to each of the following:
 - (i) Declaration of Restrictive Covenants and Conditions dated November 6, 1986, and recorded in Liber 20336 at Page 327, a summary of which is attached hereto as Exhibit "I".
 - (ii) Declaration of Covenants, Conditions and Restrictions For Nani O' Kalihikai dated February 25, 1987, and recorded in Liber 20558 at Page 150, a summary of which is attached hereto as Exhibit "J".
4. Purchasers should be aware that the Project is located within the Open District under the County of Kauai Comprehensive Zoning Ordinance ("CZO"), and is therefore subject to certain land coverage restrictions as more fully detailed in the CZO. Under CZO provisions in effect at the time of issuance of this Condominium Public Report, land coverage within the Open District portion of the Project is limited to ten percent (10%) of the total size of the Open District area, provided that any parcel of record existing prior to or on September 1, 1972 is allowed 3,000 square feet of land coverage. "Land coverage" is defined under the CZO as

. . . a man-made structure, improvement or covering that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Structures, improvements and covering include roofs, surfaces that are paved with asphalt, stone, or the like such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration, such as parking of cars and heavy and repeated pedestrian traffic.

The Open District area within this Project is approximately 43,560 square feet, and the total land coverage area within the Open District area is therefore approximately 4,356 square feet, since the Property was not a parcel of record prior to or on September 1, 1972. The land coverage of the improvements constructed on Unit B on the date of this Condominium Public Report is approximately 3,610 square feet. The remaining square footage of land coverage available for the Project (approximately 746 square feet) is reserved to Unit A, as stated in Article G of the Declaration.

5. The Project is located within the County of Kauai Special Management Area ("SMA"). While the first dwelling constructed on any lot within the SMA is exempt from the requirement of obtaining an SMA permit for construction of the dwelling, the construction of a second dwelling on a lot normally requires an SMA permit. Therefore, unless otherwise determined by the County of Kauai Planning Department, the construction of a dwelling on Unit A of the Project is subject to SMA Permit requirements, as would be any future renovations, alterations, repairs, or reconstruction of structures on the Property. If the cost of construction exceeds \$125,000, a "major" SMA Permit would be required, and if the cost of construction were less than \$125,000, a "minor" SMA Permit would be required. A "major" SMA Permit requires a public hearing before the Kauai Planning Commission, and a "minor" SMA Permit is an administrative permit processed only by the County of Kauai Planning Department without a public hearing.

Development within the Project is subject to the terms and conditions as contained in Special Management Area Use Permit SMA(U)-86-5. A true and correct copy of the January 31, 1986 Findings of Fact, Conclusions of Law, Decision and Order in Permit SMA(U)-86-5 is attached hereto as Exhibit "K."

Prospective purchasers of any Unit in the Project should consult with the County of Kauai planning authorities regarding SMA and building permit requirements and any amendments to applicable zoning and SMA laws or ordinances that may have been adopted subsequent to the date of this Condominium Public Report.

6. Current County of Kauai ordinances allow the construction on the Project of one single family dwelling and one "Additional Dwelling Unit" ("ADU"). This ADU is authorized to be constructed pursuant to a specific County of Kauai ordinance that may or may not continue to be in effect in the future. Any single family dwelling constructed on Unit A must therefore be constructed pursuant to the County's ADU ordinance. No warranty or representation is made by the Developer as to the continued effectiveness of the ADU ordinance or the ability of the Unit A Owner to construct an ADU on Unit A at any specific time in the future. There is no guarantee that the owner of Unit A in this Project will be able to construct a single family dwelling on that Unit in the event the ADU ordinance expires and is not renewed, or in the event of any amendment to the ADU ordinance that adversely affects current rights regarding the construction of ADUs. Prospective purchasers should consult with the County of Kauai planning authorities regarding ADU requirements.
7. As stated in Article G of the Declaration, the design and location any improvements and landscaping to be constructed or planted on Unit A must first be approved in writing by the owner of Unit B. All improvements and landscaping on Unit A must be compatible with the existing improvements and landscaping located on Unit B.
8. The Project is located within a County of Kauai Flood Constraint District. Pursuant to County of Kauai Comprehensive Zoning Ordinance (Chapter 8, Article 12), certain restrictions on development within the Flood District apply. Prospective purchasers of any Unit in the Project should consult with the County of Kauai planning authorities regarding building requirements due to the Flood District and any amendments to applicable zoning and building ordinances that may have been adopted subsequent to the date of this Condominium Public Report.
9. Unit A is subject to Easement "A-1" for access purposes and Easement "S-1" for septic system purposes, both easements being in favor of Unit B and being shown on the Condominium Map, and also is subject to Easement "1" for shoreline access and parking purposes, also being shown on the Condominium Map.
10. Water service to the Project is provided by the County of Kauai, but the water source serving the property is owned and operated by the privately owned Princeville Utilities Company, Inc. Water service to Unit A is subject to (a) obtaining a water meter from the County of Kauai, (b) Princeville Utilities Company, Inc. having sufficient water supply to feed the water system that serves the Project, and (c) the payment of all related fees and costs. At the time of issuance of this Condominium Public Report, the approximate costs to obtain a water meter are \$2,600 for a "facilities reserve charge" and approximately \$100 installation charge, both payable to the County of Kauai Department of Water; however, County regulations in effect at the time of issuance of this Condominium Public Report restrict the number of water meters to one per lot. The costs to obtain a second water meter (assuming one is available under County regulations) may change in the future, and there is no guarantee as to the future amount of such costs. Prospective purchasers should consult with the County Department of Water to obtain information regarding the availability of water service to Unit A and the costs associated with the same.

- 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-] (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.

ROBERT J. PROSSER, Trustee of the
Robert J. Prosser Trust dated May 26, 1994
and
MARIA BURNS PROSSER, Trustee of the
Maria Burns Prosser Trust dated June 18, 1998
Name of Developer



ROBERT J. PROSSER, Trustee

February 22, 2002
Date



MARIA BURNS PROSSER, Trustee

February 22, 2002
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

***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 "A"

DESCRIPTION OF BUILDINGS

The project consists of one (1) shade shed constructed principally of metal fence posts and shade cloth, without a basement, and one (1) residential unit constructed principally of wood, without a basement, on concrete posts foundation. Each structure (herein called "unit") is shown on the Condominium Map.

Unit A, located as shown on the Condominium Map, is a shade shed with a net area of 16 square feet.

Unit B, located as shown on the Condominium Map, is a two-story residential dwelling and consists of a den/family room, living room, dining room, kitchen, a bathroom, breezeway, and storage on the first floor, and an office, two bedrooms, a master bedroom, storage and two bathrooms on the second floor, all with a net living area of 3,426 square feet, and a garage, lanai/entry deck, stairs, and sundeck with an area of 2,016 square feet, for a total area of 5,442 square feet.

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

EXHIBIT "B"

ALTERATION OF PROJECT

Paragraph K of the Declaration provides that:

1. Provided that the unit owner satisfies the applicable terms and conditions of the Project Documents and obtains all of the necessary governmental permits, each unit 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 any other unit or any other persons or entity, to construct, reconstruct, repair, maintain, improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon or within the Yard Areas or other limited common elements or easements appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit owner who makes such alterations (hereinafter referred to as the "Altering Owner") shall have the right without the consent or joinder of any other person to amend this declaration and the Condominium Map to accomplish any such alterations. If required by the Act, promptly upon completion of such alterations the Altering Owner shall duly record such amendment to this declaration in the Bureau of Conveyances, together with a complete set of the floor plans of such unit as so altered, certified by a registered architect or professional engineer to fully and accurately depict the altered portions of the property as built. All existing unit owners and all future unit owners and their mortgagees, by accepting an interest in a unit, consent to all such alterations and agree to give and shall be deemed to have given the Altering Owner a power of attorney to execute an amendment to the declaration solely for the purpose of describing the alterations to such unit in the declaration so that the Altering Owner shall hereafter have a power of attorney from all the other unit owners to execute such amendment to the declaration. This power of attorney shall be deemed coupled with each owner's interest in his unit (including his common interest) and shall be irrevocable. If, despite the provisions of this paragraph, any governmental agency shall require some or all of the owners of units in the Project (other than the Altering Owner) to sign the necessary governmental permit application or related documents, then all of the other unit owners shall be required to sign any such permit applications or related documents (including authorizations allowing the Altering Owner to sign such governmental permits on behalf of such other owners) as may be necessary to allow the Altering Owner to obtain all such governmental permit necessary to make the alterations authorized by this paragraph. Any such unit owner who wrongfully refuses to sign such permits or provide the Altering Owner with the necessary authorizations: shall be liable to the Altering Owner for all such damages (including costs and attorneys' fees) incurred by the Altering Owner as a result of such refusal; and shall be subject to such other legal and/or equitable remedies as may be available to the Altering Owner.

2. Any alteration of a unit pursuant to this paragraph K shall be subject to the following conditions:

(a) All such alterations shall conform with all applicable governmental regulations, laws and ordinances.

(b) Such alterations may decrease or increase the size of the affected unit, provided that no alteration shall extend or place the unit outside of the limits of the Yard Area appurtenant to such unit.

(c) All such alterations shall be at the sole expense of the unit owner making the change and shall be made within one (1) year of the commencement thereof and in a manner that will not unreasonably interfere with the other unit owner's use of his unit or Yard Area.

(d) The owner of the altered unit, at such owner's sole expense, shall have the right to utilize, relocate, construct, reconstruct, realign and/or develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services. When necessary, the owner of the altered unit may add, delete, relocate, realign, designate and grant easements and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith. Provided, however, that no work done pursuant to this paragraph shall cause any unreasonable interruption in the service of such utilities to any other part of the Project, nor shall it unreasonably interfere with any other unit owner's use or enjoyment of his unit or Yard Area.

3. Under current laws, the Project is not entitled to construct a Guest House. However, if at any time that applicable laws, statutes or ordinances allow the construction of a Guest House on the Property, then the right to construct said Guest House is reserved to the owner of Unit A. Said right may be assigned by the owner of Unit A to any other unit owner within the Project at any time. All provisions of the Comprehensive Zoning Ordinance and any other laws, ordinances or regulations which are applicable shall be observed by the unit owner to which the right to build a Guest House applies. The unit owner shall also consult with the appropriate County and/or State agencies regarding all applicable laws or regulations prior to construction.

4. Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests, limited common elements, and other appurtenances thereto shall be subject to the provisions of this paragraph and any lease of a unit shall reserve to all unit owners the rights set forth in this paragraph.

* SPECIAL NOTATION: When applying for building permits, use permits, zoning permits or any other land use permits with governmental agencies, 75% of the owners of the Project maybe required to sign the permit forms. In such case, all unit owners shall be required to sign such permit applications and related documents as may be necessary for any unit owner to obtain such permits.

The issuance of an effective date for the Condominium Public Report should not be construed to mean that all governmental laws,

ordinances and regulations have been complied with and all subsequent development and use shall comply with applicable governmental laws, ordinances and regulations.

Additionally, the creation of the Condominium Property Regime does not mean that the land has met the subdivision requirements of the County. As such, certain facilities and improvements normally associated with County approved subdivisions may not be necessarily included as part of this Project.

EXHIBIT "C"

COMMON ELEMENTS

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

1. The land described in Exhibit "A", attached to the Declaration, in fee simple.
2. All central and appurtenant installations for common services, including utilities.
3. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, use, maintenance or safety, or normally in common use.

EXHIBIT "D"

LIMITED COMMON ELEMENTS

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

Yard Area A: The Yard Area under and surrounding Unit A, consisting of approximately 0.324 acre as designated on the Condominium Map, is reserved for the exclusive use, possession, occupancy, and control of Unit A for the support of the building and other improvements comprising Unit A, and may be used for all purposes, but subject to all restrictions, described in the Project Documents.

Yard Area B: The Yard Area under and surrounding Unit B, consisting of approximately 0.676 acre as designated on the Condominium Map, is reserved for the exclusive use, possession, occupancy, and control of Unit B for the support of the building and other improvements comprising Unit B, and may be used for all purposes, but subject to all restrictions, described in the Project Documents.

EXHIBIT "E"

ENCUMBRANCES AGAINST TITLE

1. Any taxes that may be due and owing and tax liens that may exist, refer to Director of Finance, Kauai County.
2. 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 its effect, if any, upon the area of the above-described land.
3. Reservation of water rights for Kuleanas as set forth in Land Commission Award 11215, Apana 3.
4. Unrecorded GRAZING LEASE AND LICENSE dated December 19, 1980, by and between PRINCEVILLE DEVELOPMENT CORPORATION, as Lessor, and PRINCEVILLE CATTLE COMPANY, a California general partnership, as Lessee, of which a Memorandum is dated July 1, 1981, recorded in Liber 15679 at Page 314; licensing the property and lease and licensing certain others lands for a term of 25 years commencing January 1, 1979, to an including December 31, 20003.

NOTICE OF WITHDRAWAL AND WAIVER OF RIGHTS dated February 25, 1988, recorded in Liber 21671 at Page 310, by PRINCEVILLE CATTLE COMPANY, a California general partnership.

5. Easement "1" for shoreline access and parking purposes, as shown on survey prepared by Dennis M. Esaki, Registered Land Surveyor, dated September 1986, and being more particularly described as follows:

EASEMENT "1"
(For Shoreline Access & Parking Purposes)

LAND SITUATED AT KALIIHAI, HANAIEI, KAUAI, HAWAII

Being a Portion of Land Commission Award Number 11215
Apana 3 to A. Keliiahonui

Being also Portions of Lots 1 and 2

Beginning at a pipe on the southside of this parcel of land, at the south corner of Lot 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POOKU" being 6,369.52 feet north and 6,952.64 feet east, thence running by azimuths measured clockwise from true South:

1. 99° 18' 25.00 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 8);
2. 193° 42' 13.00 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 1);
3. 283° 42' 20.00 feet along the remainder of L. C. Award 11215, Apana 3 to Keliiahonui (Lot 1);
4. 193° 42' 155.57 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 1);
5. 282° 49' 10.00 feet along highwater mark;
6. 13° 42' 155.72 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 2);
7. 283° 42' 20.00 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 2);
8. 13° 42' 13.00 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 2);
9. 99° 18' 25.00 feet along the remainder of L. C. Award 11215, Apana 3 to A. Keliiahonui (Lot 8) to the point of beginning and containing an area of 0.051 acres more or less.

6. Grant to the County of Kauai dated October 31, 1986, recorded in said Bureau in Liber 20303, Page 589, granting an easement over said Easement "1".
7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Declaration of Restrictive Covenants dated November 6, 1989, recorded in said Bureau in Liber 20336 at Page 327.
8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in that certain Declaration of Covenants, Conditions and Restrictions for Nani O'Kalihikai dated February 25, 1987, recorded in said Bureau in Liber 20558 at Page 150.

9. Claims arising out of customary or traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii Revised Statutes, as amended.
10. Mortgage dated June 5, 2001, in favor of Bank of Hawaii, a Hawaii corporation, recorded in said Bureau as Document No. 2001-087467.
11. Bankoh Home Equityline Mortgage dated June 5, 2001, in favor of Bank of Hawaii, a Hawaii corporation, and recorded in said Bureau as Document No. 2001-087468.
12. Declaration of Condominium Property Regime of Villa Pricilla Condominium dated February 22, 2002, and recorded in said Bureau as Document No. 2002-050308.

Condominium Map No. 3415.
13. Bylaws of the Association of Unit Owners of Villa Pricilla Condominium dated February 22, 2002, and recorded in said Bureau as Document No. 2002-050309.

EXHIBIT "F"

ESTIMATE OF INITIAL MAINTENANCE FEES
AND
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

Estimate of Initial Maintenance Fees:

<u>Apartment</u>	<u>Monthly Fee x 12 months = Yearly Total</u>
Unit A	\$50.00 x 12 = \$600.00
Unit B	\$50.00 x 12 = \$600.00

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

(*) Mandatory reserves assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserves", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting.

End of EXHIBIT "F"

NOTE: Developer discloses that Developer has not conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules.

EXHIBIT "G"

SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT

The Deposit Receipt and Sales Contract, including the terms and conditions attached thereto as Article IV (hereinafter collectively called the "Sales Contract") contain the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the Sales Contract states:

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

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

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

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

(e) Requirements relating to the purchaser's financing of the purchase of a unit.

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

(g) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.

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

(i) That the purchaser will not receive interest on deposits made under the Sales Contract.

(j) If the buyer shall default:

(1) The contract may, at the seller's option, be terminated by written notice to the buyer; and

(2) Any sums paid by the buyer shall belong to the seller as liquidated damages (up to a maximum of 20% of the total purchase price); and

(3) The seller may pursue any other remedy, including specific performance, permitted by law or equity. All costs, including reasonable attorneys' fees, incurred by reason of default by the buyer shall be borne by the buyer.

Further, if the buyer shall default in making any payment when due, a late charge of one percent (1%) per month shall accrue from the due date until such payment, together with such late charge, is paid, or at any time prior to the time that such payment and late charge is paid in full, the seller may, at its option, terminate this contract as provided in paragraphs (1) through (3) above.

The Sales Contract contains various other important provisions relating to the purchase of a unit in the Project. It is incumbent upon purchasers and prospective purchasers to read with care the specimen sales Contract on file with the Real Estate Commission.

EXHIBIT "H"

SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

- (a) Escrow will let the purchaser know when payments are due.
- (b) Escrow will arrange for the purchaser to sign all necessary documents.

(c) The purchaser is entitled to a refund if the purchaser or seller cancels the Sales Contract in accordance with its cancellation provisions, or if the purchaser terminates its reservation before the Sales Contract is binding. However, Escrow may deduct from the refund cancellation fees in accordance with the Sales Contract.

In the event of a default by the purchaser, the funds paid by the purchaser shall belong to the seller as liquidated damages (up to a maximum of twenty percent (20%) of the total purchase price).

The Escrow Agreement contains various other important provisions and establishes certain charges with which a purchaser should be familiar. It is incumbent upon purchasers and prospective purchasers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

(d) The purchaser's funds that are placed in trust prior to closing may be used by the seller after (1) the purchaser has (i) been provided with a final public report; (ii) executed a receipt and notice and has waived his right to cancel or thirty (30) days have elapsed since the purchaser has been provided with the final public report and receipt and notice of right to cancel; and (2) the seller notifies escrow in writing that since (i) and (ii) have happened, the Sales Contract is binding; and (3) the seller's attorney advises escrow that the Sales Contract is binding and the requirements of Hawaii Revised Statutes, Sections 514A-63 and -65 have been met.

(e) Escrow may not disburse any buyer's funds in the construction of the project until completion of the project and the expiration of the mechanic's and materialmen's lien period. Escrow may disburse prior to completion of the project and expiration of the applicable lien period if the Developers would furnish each purchaser an Owners Title Insurance with an endorsement against any future liens placed on the apartments or project as a result of the development, plus providing the Real Estate Commission a release of the General Contractor's lien rights.

EXHIBIT "I"

SUMMARY OF DECLARATION OF RESTRICTIVE COVENANTS

Uses, structures, and development within the Villa Pricilla Condominium ("Project") are subject to the Declaration Of Restrictive Covenants dated November 6, 1986 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 20336 at Page 327 (the "Restrictive Covenants"). Among other things, the Restrictive Covenants provide as follows:

1. That all of the Lots in the Nani O' Kalihikai Subdivision (the "Subdivision") shall be subject to the Restrictive Covenants.
2. That all building locations and designs shall be subject to review and approval of the County of Kauai Planning Department.
3. That there shall be a 40-foot building setback from the certified shoreline.
4. That certain colors and reflective materials shall not be allowed for improvements constructed in the Subdivision.
5. That a landscaping plan shall be submitted for review and approval by the County of Kauai Planning Department at the time of building/zoning permit application.
6. That no structure shall exceed 25 feet in height.
7. That no structure or building shall exceed 50% of the width of the Lot upon which it is located.

The Restrictive Covenants contain other important provisions relating to the uses, development, and buildings allowed within the Subdivision and the Project. It is incumbent upon purchasers and prospective purchasers to read the Restrictive Covenants with care. Prospective purchasers may obtain the Restrictive Covenants by asking the Sales Agent for a copy.

EXHIBIT "J"

SUMMARY OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NANI O' KALIIKAI

Uses of Units in the Villa Pricilla Condominium ("Project") are subject to the Declaration Of Covenants, Conditions and Restrictions For Nani O' Kalihikai (the "Declaration") dated February 25, 1987 and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 20558 at Page 150. Among other things, the Declaration provides as follows:

1. That all Lots located in the Nani O' Kalihikai Subdivision (the "Subdivision") shall be subject to the Declaration.
2. That certain design, construction, building setback, cost and quality restrictions apply to the construction of improvements within the Subdivision.
3. That certain maintenance and landscaping restrictions apply to all Lots in the Subdivision.
4. That no more than three dogs or cats may be kept as pets on any Lot in the Subdivision.
5. That no subdivision or resubdivision of any Lot in the Subdivision shall be allowed, and that no commercial activities shall be allowed on any Lot in the Subdivision.
6. That there shall be a two-member Design Committee to consider and act upon plans submitted by Lot owners for construction of improvements in the Subdivision, subject to the procedures detailed in the Declaration.
7. That certain rights and procedures, including lien rights against the property of any Owner violating the Declaration, are established for violation of the Restrictive Covenants.

It is incumbent upon purchasers and prospective purchasers to read with care the Declaration. Prospective purchasers may obtain a copy of the Declaration by asking the Sales Agent for a copy.

EXHIBIT "K"

THE PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)
OF) FOR SPECIAL MANAGEMENT AREA USE
REBECCA VENTURE) PERMIT SMA(U)-86-5

FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER

The above entitled application came on for hearing before the Planning Commission of the County of Kauai, State of Hawaii, at 4:10 p.m. on the 23rd day of October, 1985, at which hearing the applicant's representative appeared and presented testimony for the proposed request. Action on the subject application was taken by the Planning Commission on December 11, 1985, and January 22, 1986, at which time the Commission considered all the evidence submitted. Pursuant to that action, the Commission hereby makes the following Findings of Fact, Conclusions of Law, Decision and Order:

FINDINGS OF FACT

PARTIES:

1. Rebecca Venture, (hereinafter "Applicant") a California Partnership, is the legal owner of the real property described herein.
2. Lloyd S. Zeiderman is the General Partner of Rebecca Venture
3. Walton D. Y. Hong, Attorney at Law, is the Authorized Representative for Rebecca Venture (hereinafter "Applicant's Representative").

PROCEDURAL REQUIREMENTS & BACKGROUND:

4. The applications herein was submitted in accordance with the requirement of Chapter 205-A of the Hawaii Revised Statutes and the Special Management Area Rules and Regulations of the County of Kauai (hereinafter "SMA Rules").
5. Pursuant to a letter of authorization dated September 29, 1985, Walton D. Y. Hong was authorized to proceed with this Application.
6. An Affidavit of Publication dated October 4, 1985, verifies that Notice of this Public Hearing on this matter was published in the Garden Island newspaper on October 2, 1985. An Affidavit of Publication dated October 2, 1985 verifies that Notice of Public Hearing on this matter was published in the Honolulu Star Bulletin newspaper on October 2, 1985.
7. An Affidavit was submitted on October 2, 1985 by Walton D. Y. Hong indicating that Notice of Public Hearing in this matter was given to adjoining property owners and interested parties in accordance with Section 9.0 of the SMA Rules.
8. The Public hearing for the proposed application was held on October 23, 1985, at the County Council Chambers of the County Building in Lihue, Kauai. Disposition of the matter was deferred.

9. At their meeting of December 11, 1985, the Planning Commission took action on the Application. A motion to approve the Planning Department's recommendation, as amended by the Planning Commission, failed by a vote of 2 to 5. In the absence of any other motion for approval, the Application was deemed by the Planning Commission to be denied.
10. A request from the Applicant for reconsideration was received by the Planning Department on December 27, 1985.
11. On January 8, 1986, the Planning Commission passed a motion to reconsider their decision of December 11, 1985. Action on the reconsidered motion was deferred until the next scheduled meeting.

DESCRIPTION OF REAL PROPERTY:

12. The subject property consists of approximately 8.359 acres of flat, vacant land identified by Kauai Tax Map Key 5-3-06: Por. 15 and 5-3-04: 5, located east of the Anini Beach Park makai of Anini Beach Road.
13. The property is located within the State Land Use Urban District, is classified as "Open" by the Kauai General Plan Update Ordinance (Ordinance No. 461), and is zoned "Open District." The entire property is also within the SMA, as defined by the SMA Rules and the SMA maps incorporated therein, in particular SMA map No. 6 for the Kalihiwai-Haena area.
14. Although private property, the site contains several roadways that have been used traditionally by fishermen and beachgoers as access to the shoreline. In addition, there are no known significant historical resources located on the project site. The property is unimproved and covered by dense vegetation and trees.
15. The subject property is within the Coastal High Hazard Flood area, which means that the area may be subject to high velocity waves and tidal inundation resulting from storm surf or tsunamis.
16. Surrounding: There are a few residences located to the south of the project across Anini Road. The ocean is located immediately north of the property and to the west lies Anini Beach Park.

APPLICANT'S REASONS/JUSTIFICATION:

17. The Applicant is only seeking to do what the law permits, which is to relocate a kuleana and subdivision of the property into one acre lots. The Applicant's proposed subdivision and ultimate use of the lots for single-family residences are in conformity with the County's General Plan, North Shore Development Plan, CZO and Subdivision Ordinance.

Furthermore, the applicant has addressed and met the objectives, policies, and guidelines as are contained in the SMA Rules and has met with the Concerned Citizens of Anini in consideration of the community concerns. (For more detail on applicant's justification, see application.)

APPLICANT'S PROPOSAL:

18. Initially, at time of application, the Applicant proposed to relocate a kuleana and subdivide the remainder of the property into eight one-acre lots. The resulting subdivided lots and relocated

kuleana were to be used for single family residential purposes only. The Applicant also sought to retain its right to construct one guest house per lot. The Applicant also proposed to grant three pedestrian easements to the shoreline and provide land area for road widening purposes.

At the October 23, 1985 public hearing, the Applicant's representative was apprised of the Planning Department's road widening dedication requirement in the State Land Use Urban Districts which would reduce the overall land area of the subject property and subsequently reduce the number of permissible one acre lots to be subdivided. The Applicant's proposal was revised to include the following conditions in lieu of the road widening dedication requirement:

- a. Grant of easement for land area to be reserved for road widening purposes.
- b. Provide the County of Kauai with \$50,000 for the construction of a pavilion on the Anini Beach Park.
- c. Provide 2 parking easements to be used for public parking purposes.

As part of the reconsideration request, the applicant proposed that they still be allowed to subdivide the subject property in eight one-acre lots and a kuleana, subject however to the following conditions:

- a. That except for the kuleana lot, no structure or building shall exceed 50% of the width of the lot.
- b. Guest cottages shall be permitted on only two of the one acre lots. No guest cottages shall be allowed on the kuleana and the remainder of the one acre lots.
- c. The Applicant shall execute a grant of pedestrian easement to the County of Kauai for the three 10 ft. wide pedestrian easements running through the subject property to the shoreline. In addition, the Applicant shall execute a grant of easement to the County of Kauai for two public parking areas, 13 ft. deep and 50 ft. wide, adjacent to two of the three pedestrian easement. The final location of the pedestrian and parking easements shall be determined at time of tentative subdivision approval.
- d. The Applicant shall have the option to execute a grant of easement to the County of Kauai for the 7 ft. strip of land for road widening purposes, as well as grant of easement to the County of Kauai for that area of land situated between the existing Anini Beach Park and to and including the stream within the kuleana lot for recreational purposes. Should the Applicant elect to meet the dedication requirements through grants of easements, the Applicant shall also pay the sum of \$100,000 to the County of Kauai to be used for the sole purpose of constructing a pavilion and related amenities on the 11-acre park site at Anini owned by the County of Kauai. This sum shall be paid to the County of Kauai at the time of final subdivision approval.
- e. The Applicant shall execute a grant of easement of road maintenance purposes over that portion of proposed Lot 8 closest to Kilauea and upon which the Anini Road is situated.

LEGAL REQUIREMENTS:

19. A Special Management Area Use Permit is required since the proposed project is within the Special Management Area of the County of Kauai and because the proposed development may have a significant adverse impact to the Special Management Area. The development must be reviewed and evaluated in terms of the potential adverse effects on the environment, economic or social welfare of the area and compliance to the objections, policies, and guidelines of the SMA Law, the County General Plan, Development Plans, zoning and subdivision ordinances, and all other applicable ordinance, regulations, or requirements of the County or State agencies.
20. The Applicant needs to submit a current certified shoreline survey within 6 months of the application.
21. In accordance with the recently adopted North Shore Development Plan Update Ordinance, the building setback distance for all oceanfront property shall not be less than twice the height of the building or structure measured from the oceanside grade to the highest exterior wall plate line. No building or parking area shall be set back less than 40 feet from the legal shoreline in any case.
22. In accordance with Section 3.065 C-1 of the CZO, a lot or parcel zoned Open District (O) and lies within an area designated as "Urban" by the State Land Use Commission, may be subdivided into lots of one (1) acre or more in size if the existing average slope of the lot or parcel thus created is no greater than ten (10) percent. Because this site is relatively flat, subdivision into lot sizes of one (1) acre or more may be permitted.
23. At the time County first negotiated purchasing lands from Princeville Development Corporation for the expansion of Anini Beach Park, this property, along with the 10.933-acre parcel west of the original beach park, were considered for acquisition. In reviewing the County's resources and considering the balance Princeville Corporation owed for park dedication fees for their Phase I development, only the 10.933-acre parcel could be acquired. Since the agreement between Princeville and the County did not include acquisition of this subject site, it was subsequently sold to the Applicant by Princeville.

STATE AND COUNTY AGENCIES' COMMENTS AND CONSIDERATIONS:

24. The Department of Public Works of the County of Kauai (hereinafter "Public Works") has made the following comments:
 - a. "The subject property is shown by the FIA Flood Map to be in the coastal high hazard flood zone. The flood elevation varies from elevation 10 to 12 feet above mean sea level. Structures in the high coastal flood zone must have the lowest beam supporting the floor elevated above the flood levels. No fills will be allowed to elevate structures. There are two streams which traverses thru the property. No detailed flood study have been made for the streams. However, we recommend studies and provisions be made so that the stream function and capacities will be maintained. Additionally, the provisions should insure that structures will not be flooded by the 100 year flows from the stream.

b. "The parcel will have direct access to Anini Road. Our inventory indicates a 30 feet right-of-way and an 18 feet wide asphaltic surfacing. These geometrics do not meet our standards for a minor collector street. There is narrow shoulders as a result of the narrow right-of-way and terrain. The pavement although narrow would accommodate passenger type vehicle traffic.

"The curvalinear alignment at proposed lot 8 would present vehicle operational problems. We also believe that there would be driveway sight distance problems due to the grades and curvalinear alignment of Anini Road.

"The Department has no plans to upgrade the subject road."

25. The Department of Water of the County of Kauai (hereinafter Water Department") has made the following comments:
- a. "We have no objections to this Special Management Area Use Permit provided the applicant is made aware that any actual subdivision or development of this area will be dependent on the adequacy of the source, storage and transmission facilities existing at that time.
 - b. "At the present time, the source and storage facilities are adequate. However, the transmission facilities for this area are at capacity. A waterline extension, 4-inches in diameter, approximately 2,600 feet in length, will be required prior to any actual development of this area."
26. The Department of Health of the State of Hawaii (hereinafter "DOH") has stated the following:
- a. "Sewage disposal shall satisfy all applicable requirements of Chapter 57, Private Wastewater Treatment Works and Individual Wastewater Systems, Title 11, Administrative Rules or Act 282, Legislative Act, 1985 Session whichever set of rules would apply at time of construction.
 - b. "Proposed dwellings shall satisfy all applicable requirements of Chapter 14, Housing, Title 11, Administrative Rules.
 - c. "Grubbed material shall be disposed of in a manner and at a site approved by the Department of Health. Open burning is prohibited.
 - d. "Effective soil erosion and dust control measures shall be implemented during any and all phases of development.
 - e. "Due to the general nature of plans submitted, we reserve the right to impose further environmental health concerns when more detailed plans are submitted."

PUBLIC TESTIMONY:

27. The majority of the testimony received was against the proposal, expressing concern about the potential threat to the ecosystems, increased traffic and hazards, visual impacts, and the loss of a unique recreational resources for the community and people of Kauai.

SMA CONCERNS:

28. In evaluating the Applicant's proposal relative to the objectives and policies of the SMA Rules, the following are considered:

a. Recreational Resources:

The Anini Beach area has long been recognized for its natural scenic beauty and as a primary recreation resource for island residents and visitors alike. It is one of the island's best location for fishing, diving, and diving for octopus because of the barrier reef. The area also offers an array of other recreational uses such as swimming, windsurfing, camping and picnicking. Because the Anini area offers a multitude of recreational activities, it is considered as one of Kauai's major public resource areas, and any development in the area must be carefully scrutinized to assure that public use and enjoyment of the resource will not be affected.

The utilization of this prime shoreline area as a public resource is of foremost concern and reflects one of the major objectives of the Special Management Area, "to provide coastal recreational opportunities accessible to the public.

The preliminary subdivision map reflects three public access easements to the beach, these of which were secured from Princeville Development Corporation prior to the parcel being sold to the applicant. However, the following requirements should be imposed to improve the access conditions for the public:

- 1) Since the Anini Beach Park already serves as an access point to the shoreline, the proposed access No. 3, as shown on the preliminary map, should be relocated further east in between proposed Lots 2 and 3.
- 2) Parking easements (13' deep and 50' wide) to accommodate at least five cars should be provided at each of the three access points.
- 3) Upon establishing the easements, the applicant must assure that each is traversable, free of trees or obstacles that would block access.

b. Density:

The preliminary subdivision map submitted with the application reflects that the number of permitted lots and lot sizes within the existing Urban-Open Districts are in conformance with the Comprehensive Zoning Ordinance's technical requirements. However, before the final density can be established, further evaluation of the proposed subdivision is necessary due to the following concerns:

- 1) Certified Shoreline Survey - The total land area (8.359 acres) as presented by the applicant, is based on a shoreline survey that was certified by the Chairman of the Board of Land and Natural Resources on February 28, 1985. More than six months have passed since the shoreline survey was certified and a new survey is therefore required. Since the area of the parcel to be subdivided may change as a result of the new shoreline survey, the total number of

one acre lots to be subdivided is uncertain at this time. As such, the applicant will have to submit a current certified shoreline survey to the Planning Department at time of subdivision application in order to verify the parcel area and allowable density.

- 2) Traffic/Roadway Dedication - According to the Public Works Department, Anini Beach Road, which has a right-of-way width of 30 ft., does not meet the standards for a minor street which requires a 44 ft. right-of-way. In addition, the curvilinear alignment of the proposed Lot 8 presents vehicle operational and sight distance problems.

In terms of impact to the area, we anticipate a slight increase in traffic from the proposed subdivision. We also anticipate further traffic increase from the proposed subdivision located immediately mauka of the subject property (relocation of 10 kuleana lots). To minimize traffic hazards relative to the subdivision of lands within the State Urban Land Use Districts, the Planning Department requires the dedication of land for future road widening purposes; in this case, a 7 ft. strip of land abutting Anini Road would have to be dedicated in order to meet the 44 ft. right-of-way width requirement for a minor street. It should be noted that Princeville Development Corporation is required to dedicate a 7 ft. strip also for their subdivision across the road. The dedicated strip would reduce the total parcel area by approximately 0.46 acre which in effect would reduce the total density of the proposed subdivision by one lot, based on the existing shoreline survey. This determination, however, will not be made until a new survey is provided.

In order to prevent the loss of density, the applicant has proposed to grant the County an easement for the 7 feet strip of land instead of dedicating it, and further offered the County an amount not to exceed \$100,000 to be used to construct a restroom/shower facility at the adjacent Anini Beach Park.

Recognizing that the Anini Coastal area is one of Kauai's primary resources, it is our opinion that the monetary contribution is not sufficient to replace the significant recreational resource which would be unavoidably lost once the proposed development takes place. As such, to preserve a portion of the property for public recreational purposes for the people of Kauai would be more important. Although the applicant proposes to execute an easement for road widening purposes, we believe that it would be acceptable and appropriate only if the land required for dedication be exchanged for land adjacent to the Anini Beach Park. This alternative, coupled with the three beach accesses provided, will further assure that public utilization of the resource can still occur.

c. Historical:

To our knowledge, there are no known significant historical resources that exist on the property.

d. Coastal Hazards:

The subject property is within the coastal high hazard area flood zone. In addition, two streams traverse the property of which the Public Works Department has no detailed flood studies nor provisions to assess the streams' function and capacities. To reduce hazard to life or property from tsunamis, storm waves or stream flooding, the applicant should be required to comply with Ordinance No. 416 relating to flood plain management, and further conduct a detailed flood study for both streams to ensure that proposed structures will not be located within the 100-year flood zone.

e. Scenic/Open Space:

Anini has long been recognized for its natural, scenic qualities. The existing trees and vegetation on this site gives the area a special rural character that is worthy of preservation. As such, design criteria should be established that would minimize alteration to the existing vegetation and trees, especially those abutting the shoreline.

The shoreline setback of 40 feet for buildings or structures should not be deviated from, neither should building heights exceed 25 feet, unless permitted by Ordinance No. 416, relating to flood hazard areas.

Building design restrictions should be imposed to include earth-tone colors, non-reflective glass or roof materials, and adequate landscaping.

f. Coastal Ecosystems:

One of the objectives of the SMA Rules and Regulations is to protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems. The valuable coastal ecosystems involved here is the reef formation and the associated marine life which exist in the near coastal waters abutting the subject property. This coastal ecosystem is excellent for fishing, diving, and diving for octopus and should definitely be protected.

The sewage to be generated by each lot in the proposed project will be disposed of in cesspools, which is permitted by the Department of Health. The threat of sewage seeping into the abutting coastal waters can be greatly reduced by limiting the overall density of the subdivision. The allowance of guest cottages on each lot may increase the threat of sewage seeping into the nearby waters and, therefore, each lot created should be limited to one single-family residence only.

g. Should the concerns as evaluated in the foregoing be properly addressed, the subject proposed development should not:

- 1) involve dredging, filling, or otherwise alter any bay, estuary, salt marsh, rivermouth, slough or lagoon;
- 2) reduce the size of any beach;
- 3) reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the SMA and the mean high tide line where there is no beach;

- 4) substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast; or
- 5) adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries or fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction over this application pursuant to Chapter 205-A of the Hawaii Revised Statutes, and the SMA Rules.
2. The procedural requirements of the SMA Rules have been met; all interested persons and parties have been given due notice of the proceedings in this matter, and all parties were afforded an opportunity to present evidence and argument on the issues involved.
3. Based on the foregoing Findings of Fact, the Planning Commission concludes that the proposed development will not have significant adverse effects on the SMA provided the scenic, recreational and environmental concerns are properly addressed.

It is further concluded that should all requirements and concerns raised be addressed, the development would be consistent with the objectives, policies and guidelines of the Special Management Area Rules and Regulations in that:

- a. The development will not have any substantial, adverse environmental or ecological effect. Any adverse environmental or ecological effect that may result will be minimized to the extent practicable and is clearly outweighed by public health, safety and welfare, and other compelling public interests. The development will not have adverse effects by itself or in conjunction with other individual developments, the potential cumulative impacts of which would result in a substantial adverse environmental or ecological effect and the elimination of planning options.
- b. The development is consistent with the County General Plan, the Comprehensive Zoning Ordinance of the County of Kauai, and the North Shore Development Plan.

DECISION AND ORDER

IT IS HEREBY ORDERED that the application by Rebecca Venture for the Special Management Area Use Permit SMA(U)-06-5 to subdivide approximately 8.359 acres of land identified by Tax Map Keys: 5-3-04:5 and 5-3-06:Por. 15, located in Anini, County of Kauai, State of Hawaii, is approved subject to the following conditions:

1. The applicant shall submit a current certified shoreline survey at time of subdivision application to verify the total land area of the subject property and the allowable density. No more than 7 lots and the kuleana shall be permitted at time of subdivision.
2. Due to the visual sensitivity of the site in relation to its scenic location on the North Shore:

- a. Building locations and designs shall be subject to review and approval by the Planning Department at time of building permit application.
 - b. All buildings and structures shall be setback no less than 40 feet from the certified shoreline. All building shoreline setback shall be measured from the current certified shoreline at the time of building/zoning permit application.
 - c. All structures erected on the lots shall be painted or finished in earth-tone colors. Color samples may be required by the Planning Department at time of building/zoning permit application.
 - d. The use of mirrored glass, reflective sun screens or other highly reflective material for exterior windows shall be prohibited.
 - e. A landscaping plan shall be submitted for each lot at time of building/zoning permit application for review and approval by the Planning Department.
 - f. No structure or building shall exceed the 25 feet height limitation of the North Shore Development Plan, except in accordance with Ordinance No. 416 (Flood Plain Management).
 - g. To the maximum extent possible, the grading and clearing of the existing vegetation and mature trees on the property shall be minimized at time of development.
3. The applicant shall dedicate a 7 ft. strip of land along Anini Beach Road for future road widening purposes.
 4. To minimize disruption to coastal ecosystems, only one guest cottage shall be allowed on one of the lots. No guest cottages shall be allowed on any of the remaining lots and this restriction shall be incorporated into the deeds of these lots.
 5. Due to the recreational value of the area:
 - a. The applicant shall execute a grant of easement to the County of Kauai for the three 10 ft. wide pedestrian easements running through the subject property to the shoreline. In addition, the applicant shall execute a grant of easement to the County of Kauai for three public parking areas, 13 ft. deep and 50 ft. wide, adjacent to each beach access. The final location of the access and parking easements shall be determined at time of tentative subdivision approval.
 - b. Any tree or obstacle blocking the use of these easements shall be removed by the applicant.
 - c. Prior to tentative subdivision approval, the applicant shall submit a revised subdivision map indicating the existing roadways and pathways running through the subject property to the shoreline. This will aid the Planning Department in relocating the pedestrian easements to more appropriate locations.
 - d. The applicant shall execute a grant of easement to the County of Kauai for the land area adjacent to Anini Beach Park and up to the stream bank for park expansion purposes.

6. Park (Ordinance No. 304) and Environmental Impact Assessment fees shall be assessed at time of subdivision approval.
7. The applicant shall resolve the following requirements with the Public Works Department:
 - a. Comply with high coastal hazard flood zone requirements.
 - b. Conduct a detailed flood study and submit provisions to ensure that stream functions and capacities will be maintained. In addition, the provisions should insure that structures will not be flooded by the 100-year flows from the streams.
 - c. Resolve curvilinear alignment at proposed Lot 7 which presents vehicle operation problems.
8. Requirements of the State Health Department and County Water Department shall be resolved with the respective agencies.
9. Except for the kulenana lot, no structure or building shall exceed 50% of the width of the lot.
10. The applicant shall construct a recreational facility at the Anini Beach Park equivalent to but not to exceed \$100,000. A building permit for the structure shall be secured prior to subdivision approval.
11. The applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

By Thomas P. Conrades
THOMAS P. CONTRADES, Chairman
Kauai Planning Commission
Date: Jan. 31, 1986