

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer KENNETH CHISATO SUGAI and DALE H. SUGAI
Address Post Office Box 807, Kealahou, Hawaii 96750-0807

Project Name(\*): WEST HONALO COURT
Address: 79-7336 Kuakini Highway, Kealahou, Hawaii 96750 (TMK: (3) 7-9-017-020)

Registration No. (conversion) 5618 Effective date: April 27, 2005
Expiration date: May 27, 2006

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 governmental agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

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

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

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

Type of Report:

- PRELIMINARY (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report.
FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission.
[X] 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 586-2643 to submit your request.
FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104

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

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

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

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

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## **General Information on Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged, or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: KENNETH CHISATO SUGAI and DALE H. SUGAI Phone: (808) 322-0709  
Name (Business)

Post Office Box 807

Business Address

Kealahou, Hawaii 96750-807

Names of officers and directors of developers who are corporation; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attached separate sheet if necessary):

N/A

Real Estate Broker\*: None Selected (See page 20) Phone: \_\_\_\_\_  
Name (Business)

Business Address

Escrow: FIRST HAWAII TITLE CORPORATION Phone: (808) 329-8227  
Name (Business)

75-5722 Kuakini Highway, Suite 210

Business Address

Kailua-Kona, Hawaii 96740

General Contractor: N/A Phone: \_\_\_\_\_  
Name (Business)

Business Address

Condominium Managing Agent: Self-managed by the association of unit owners Phone: \_\_\_\_\_  
Name (Business)

Business Address

Attorney for Developer: MATTHEW G. JEWELL (JEWELL & KRUEGER LLLC) Phone: (808) 326-7654  
Name (Business)

75-5722 Kuakini Highway, Suite 208

Business Address

Kailua-Kona, Hawaii 96740

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

**II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed  
 Recorded - Bureau of Conveyances: Document No. 2003-202504  
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. 3645  
 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. 2003-202505  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

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

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

The House Rules for this condominium are:

Proposed                       Adopted                       Developer does not plan to adopt house rules.

E. **Changes to Condominium Documents**

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

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>100%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>N/A</u>

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

2. **Developer:**

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

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

1. At any time prior to the first recording in the Bureau of Conveyances of a conveyance or transfer (other than for security) of a unit and its appurtenances to a party not a signatory hereto, Declarant may amend this Declaration and/or the other project documents in any manner without approval or consent of any unit purchaser. This section shall not be deemed to limit or restrict the Declarant's rights as unit owner to amend the Declaration as provided in the project documents.

2. Any provision of this Section N to the contrary notwithstanding, and until the recording of unit conveyances or agreements of sale with respect to all of the units in the project in favor of persons other than Declarant, Declarant may amend this Declaration, the Bylaws and/or the Condominium Map without the approval, consent or joinder of any person or group of persons, including the association, any unit owner or any mortgagee, lienholder, apartment purchaser or any other person who may have an interest in the project, to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the project or any of the units, by any institutional lender lending funds on the security of the project or any of the units, or by any governmental agency (including without limitation the VA, HUD, FNMA and/or FHLMC); provided, however, that, except as otherwise provided herein, no such amendment which would change the common interest appurtenant to an apartment or substantially change the design, location or size of an unit shall be made without the consent to such amendment by all persons having an interest in such unit.

3. Any provision of this Section N to the contrary notwithstanding, Declarant may amend this Declaration (and when appropriate the Condominium Map) without the approval, consent or joinder of any person or group of persons, including the association, any unit owner or any mortgagee, lienholder, unit purchaser or any other person who may have an interest in the project or in any unit, to file a verified statement of a registered architect or professional engineer certifying that the final recorded Condominium Map fully and accurately depicts the layout, location, unit numbers and dimensions of the units, as built, or that any revised plans being filed simultaneously with the amendment involve only immaterial changes to the layout, location and dimensions of the units as built or any change in any unit number, or such other changes as Declarant is permitted to make pursuant to this Declaration.



[ ] 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: 79-7336 Kuakini Highway, Kealahou, HI 96750 Tax Map Key (TMK): (3) 7-9-017-020

[ ] Address [ ] TMK is expected to change because N/A

Land Area: 19,995 [ X ] square feet [ ] acre(s) Zoning: A-1a

Fee Owner: KENNETH CHISATO SUGAI and DALE H. SUGAI  
 Name  
Post Office Box 807  
 Address  
Kealakekua, Hawaii 96750-0807

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 Unit 1 - 1, Unit 2 - 1

Exhibit \_\_\_\_\_ contains further explanations.

3. Principal Construction Material:

Concrete       Hollow Tile       Wood

Other: Glass and other building materials

4. Permitted Uses by Zoning:

	<u>No. of Apts.</u>	<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 checked="" type="checkbox"/> Ohana	<u>1</u>	<input checked="" 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 type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other _____	_____	<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





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:

Variance Permit No. 1364 (VAR 03-009) dated June 9, 2003 was granted for a variance from minimum front and side yard setback requirements for Unit 2 (See Exhibit "J" attached hereto)

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>X</u>	<u>      </u>	<u>      </u>
Structures	<u>X</u>	<u>      </u>	<u>      </u>
Lot	<u>      </u>	<u>X*</u>	<u>      </u>

\* The Lot is a legal non-conforming parcel of approximately 19,995 square feet located in a zoning district of Agricultural 1-acre minimum parcel size.

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

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

described in Exhibit "A" \_\_\_\_\_.

as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit "B" \_\_\_\_\_  
 as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit \_\_\_\_\_.

as follows:

<u>UNIT NO.</u>	<u>UNDIVIDED COMMON INTEREST</u>
1	.50 (50%)
2	.50 (50%)

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

Exhibit "D" describes the encumbrances against the title contained in the title report dated January 20, 2005, and issued by First Hawaii Title Corporation.

**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.

[X] 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 <b>Prior to Conveyance</b></u>
Mortgage in favor of Bank of America, N.A., dated September 17, 2003, and recorded in said Bureau as Document Number 2003-206571	Buyer's interest will be terminated and Buyer's deposit refunded, less escrow cancellation fees. However, if disbursement of Buyer's deposit has been made by escrow prior to foreclosure but before Conveyance of title to Buyer, Buyer may lose buyer's deposit.
Mortgage in favor of Hawaii Community Fed. Credit Union dated February 20, 2004, and recorded in said Bureau as Document Number 2004-038747	Buyer's interest will be terminated and Buyer's deposit refunded, less escrow cancellation fees. However, if disbursement of Buyer's deposit has been made by escrow prior to foreclosure but before Conveyance of title to Buyer, Buyer may lose buyer's deposit.

**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.

2. Appliances:

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

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

Unit 1 was completed in approximately 1991. Unit 2 was completed in approximately 1990.

**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 for future development (such as additions, mergers or phasing):



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 "F" \_\_\_\_\_ contains a summary of the pertinent provisions of the sales contract.

Escrow Agreement dated \_\_\_\_\_  
Exhibit "G" \_\_\_\_\_ contains a summary of the pertinent provisions of the escrow agreement.

Other Specimen Deed \_\_\_\_\_

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 condominium which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the Developer which have been given an effective date by the Hawaii Real Estate Commission.
  - B) Declaration of Condominium Property Regime, as amended.
  - C) Bylaws of the Association of Apartment Owners, as amended.
  - D) 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: Specimen Deed; County of Hawaii Building Division letter dated October 20, 2003 (Exhibit "H"); County of Hawaii Planning Department letter dated January 10, 2005 (Exhibit "I"); County of Hawaii Planning Department Variance Permit No. 1364 WH (VAR 03-009) dated June 9, 2003 (Exhibit "J").

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541 Honolulu, HI 96809, at a nominal cost.

Website to access official copy of laws: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov)  
 Website to access unofficial copy of laws: [www.hawaii.gov/dcca/hrs](http://www.hawaii.gov/dcca/hrs)  
 Website to access rules: [www.hawaii.gov/dcca/har](http://www.hawaii.gov/dcca/har)

This Public Report is a part of Registration No. 5618 filed with the Real Estate Commission on March 10, 2005.

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

YELLOW paper stock                       WHITE paper stock                       PINK paper stock

C. **Additional Information Not Covered Above**

**Restriction on use of Hazardous Materials**

There are restrictions on the use of hazardous materials within the units and the common elements except in a manner that complies with law. See Section H of the Declaration for additional information.

**Selection of Real Estate Broker**

The Developer has not selected a real estate broker for the sale of either unit in the project at this time.

When the Developer offers either unit for sale, the Developer shall (1) submit to the Real Estate Commission a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, together with a duly executed Disclosure Abstract identifying the designated broker, and (2) provide a copy of the Disclosure Abstract to the purchaser together with a copy of this Public Report.

**Residential Dwellings Within State Land Use Agricultural District**

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

FARM DWELLING NOTICE

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

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

Farm Dwelling is defined in Chapter 205-4.5(a)(4) as "a single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."

Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

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

\_\_\_\_\_  
Signature of Applicant

**Private Water Meter for Unit 1**

Section 6.11 of the Bylaws provides for the installation of a private water meter to measure the water usage of Unit 1 and sets forth the procedure for determining the water usage for each of the units and payment of water bills and other related charges. The Developer further discloses and warrants that this private water meter will be properly installed in compliance with all applicable law prior to or at the time of the sale of Unit 1.

### **Disclosure re Unit No. 1 Limited Common Element Land Area**

The limited common element land area appurtenant to Unit No. 1, described in the Declaration and on the Condominium Map as containing an area of approximately 8,515 square feet, is burdened by a shared access “common area” of approximately 2,281 square feet, effectively reducing Unit No. 1’s limited common element land area to approximately 6,234 square feet, as depicted on the Condominium Map and as described in Exhibit B-1 to the Declaration.

### **Disclosure re Ohana Permit**

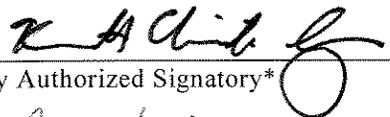
Unit No. 1 was constructed pursuant to Ohana Dwelling Unit Permit No. 1654 approved by the County of Hawaii on February 28, 1990. Hawaii County Ordinance No. 02-111, effective September 25, 2002, may affect a prospective purchaser’s ability to replace, alter or add structures to Unit No. 1 or the limited common element land areas appurtenant thereto.

### **Disclosure re Planning Department Letter and Variance**

The permitting history of the project is set forth in a letter dated January 10, 2005 from the County of Hawaii Planning Department, a copy of which is attached to this Public Report as Exhibit “I”. The project received a variance from the County of Hawaii Planning Department, pursuant to Variance Permit No. 1364 WH (VAR 03-009) dated June 9, 2003, a copy of which is attached to this Public Report as Exhibit “J”. Prospective buyers are encouraged to carefully review Exhibits “I” and “J”.

- D. The developer declares subject to the penalties set forth in Section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The Developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

**KENNETH CHISATO SUGAI and DALE H. SUGAI**  
 Printed Name of Developer

By   
 Duly Authorized Signatory\*

2/14/05  
 Date

By   
 Duly Authorized Signatory\*

2/14/05  
 Date

**KENNETH CHISATO SUGAI and DALE H. SUGAI**  
 Print Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

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

EXHIBIT "A"

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 yards, grounds, landscaped areas, parking areas and driveways around and between the units.
3. All sewer lines, drainage facilities, electrical equipment, wiring, pipes and other central and appurtenant facilities and installations over, under and across the project which serve more than one unit for services such as power, light, water, gas, telephone, sewer and radio and television signal distribution, if any.
4. Any and all apparatus and installations of common use and all other parts of the project necessary or convenient to its existence, maintenance and safety, or normally in common use.
5. The "Common Area" as located and denoted on the condominium map, containing an area of approximately 2,281 square feet, and providing access to both units.

EXHIBIT "B"

**LIMITED COMMON ELEMENTS**

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

1. **PRIVATE LAND AREA OR YARD.** Certain land area of the project, located as shown on the condominium map and designated thereon as limited common element, is appurtenant to and for the exclusive use of each unit as designated on the condominium map.

<u>Unit No.</u>	<u>Private land area (approx. land area)</u>
1	8,515 square feet *
2	11,480 square feet

**NOTE: The boundaries of the private land area or yard appurtenant to each unit, as shown on the condominium map, do not represent County-approved subdivided lots. Such boundaries serve only to delineate the limited common element private land area or yard appurtenant to each unit.**

\* Subject to common element area for access purpose for both units, effectively reducing the limited common element land area to approximately 6,234 square feet.

EXHIBIT "C"

ALTERATION OF PROJECT

The dimensions, area and location of each unit are shown graphically on the Condominium Map. Each unit shall include and contain all space, including but not limited to the residential building(s), if any, and other improvements within the area bounded by the perimeter boundaries of such unit, as follows:

Paragraph L of the declaration provides as follows:

1. 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 the other unit or any other persons or entity, to improve, renovate, remodel, make additions to, enlarge, remove, replace, alter or restore the improvements to or in his unit or portions thereof or upon the yard appurtenant to his unit (collectively, the foregoing are referred to as "alterations"). Each unit 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 owner of the altered unit 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. If required by the Act, the board shall be deemed to approve of all such alterations. 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 owner of the altered unit 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 owner of the altered unit 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.
2. Any alterations to a unit pursuant to this paragraph L shall be subject to the following conditions:
  - (a) All buildings plans for any such alterations shall conform with State and County land use, building and zoning laws and other applicable County ordinances and regulations.
  - (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 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 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.
  - (d) The owner of the altered unit shall have the right to utilize, relocate and realign existing and/or to develop additional, central and appurtenant installations for services to the unit affected by such alteration for electricity, sewer and other utilities and services and when applicable, to add, delete, relocate, realign, designate and grant easement and rights-of-way over, under and on the common elements as necessary or desirable in connection therewith; provided that the same shall not cause any interruption in the service of such utilities to any other part of the project, nor shall it unreasonably interfere with the other unit owner's use or enjoyment of his unit or yard.
  - (e) Each and every conveyance, lease and mortgage or other lien made or created on any unit and all common interests 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.
  - (f) Before commencing or permitting construction on any alteration of a unit pursuant to this paragraph L, the costs of which will exceed \$10,000, the unit owner thereof, at his sole expense, shall obtain and provide the other unit owner with evidence of a bond or certificate, or an irrevocable letter of credit issued by a bank authorized to do business in the State of Hawaii, in an amount of not less than one hundred percent (100%) of the cost of such construction, or, in lieu thereof, a guarantee against mechanics' and materialmen's liens satisfactory to the other unit owner.

EXHIBIT "D"

**ENCUMBRANCES AGAINST TITLE**

1. For real property taxes that may be due and owing, reference is made to the Real Property Tax Office of the Third Division. Also, possible rollback taxes may be assessed by the Real Property Tax Office of the Third Tax Division.
2. Reservation in favor of the State of Hawaii of all minerals and metallic mines.
3. Restriction of rights of vehicle access into Hawaii Belt Road, Federal Aid Project No. F-011-1(4) pursuant to the rights of access, conveyed to the State of Hawaii, by Deed dated April 30, 1963, and recorded in said Bureau in Liber 4539, Page 376..
4. Declaration of Condominium Property Regime of "WEST HONALO COURT", dated August 27, 2003, and recorded in said Bureau as Document Number 2003-202504, as the same may from time to time be amended in accordance with law and said Declaration. (Project covered by Condominium Map No. 3645).
5. The terms, provisions, covenants, conditions, agreements, easements, restrictions and reservations contained in that certain By-Laws of the Association of Unit Owners of "WEST HONALO COURT", dated August 27, 2003, and recorded in said Bureau as Document Number 2003-202505, as the same may be from time to time amended in accordance with law and said By-Laws.
6. MORTGAGE:  
  
Mortgagor: KENNETH CHISATO SUGAI and DALE H. SUGAI, husband and wife  
Mortgagee: BANK OF AMERICA, N.A., a national banking association  
Dated: September 17, 2003  
Document No. 2003-206571  
Principal Sum: \$212,000.00
7. MORTGAGE  
  
Mortgagor: KENNETH CHISATO SUGAI and DALE H. SUGAI, husband and wife  
Mortgagee: HAWAII COMMUNITY FEDERAL CREDIT UNION  
Dated: February 20, 2004  
Document No. 2004-038747  
Principal Sum: \$228,000.00

EXHIBIT "E"

ESTIMATED MAINTENANCE FEES  
and  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS

The regular maintenance and repair of each unit and appurtenant limited common elements shall be the sole responsibility of each respective unit owner. Article 7 of the Bylaws requires that the Association shall purchase and maintain casualty and liability insurance covering the project. The Developer anticipates that the cost of such policies will be the principal, if not the only common expense of the project for which maintenance fees will be assessed. The Developer estimates that the annual premiums for such insurance policies will be approximately \$1,500.00. However, Article 7 of the Bylaws further provides that the Association may elect to satisfy the insurance requirement by obligating each unit owner, at such owner's sole expense, to procure and maintain separate policies covering his or her respective unit and appurtenant limited common elements, with such policies meeting each of the requirements set forth in Article 7.

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

There is no non-exempt Association property requiring the establishment of any replacement reserves pursuant to HRS § 514A-83.6 or Subchapter 6 of Chapter 16-107 of the Hawaii Administrative Rules. Thus, it will not be necessary to assess any maintenance fees for the project.

Estimate of Maintenance Fee Disbursements:

Monthly Fee x 12 months = Yearly Total

Utilities and Services

Air Conditioning

Electricity

[ ]

common elements only

[ ]

common elements and apartments

Elevator

Gas

[ ]

common elements only

[ ]

common elements and apartments

Refuse Collection

Telephone

Water and Sewer

Maintenance, Repairs and Supplies

Buildings

Grounds

Management

Management Fee

Payroll and Payroll Taxes

Office Expenses

Insurance

Reserves(\*)

Taxes and Government Assessments

Audit Fees

Other

TOTAL

We, **KENNETH CHISATO SUGAI** and **DALE H. SUGAI**, Developer for the "WEST HONALO COURT" condominium project, hereby certify that the above estimates of initial maintenance fee assessments and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles, and certify that the above estimate of initial maintenance fees and disbursements are true and accurate to the best of our knowledge.

  
\_\_\_\_\_  
**KENNETH CHISATO SUGAI**  
[Signature]

2/14/05  
\_\_\_\_\_  
[Date]

  
\_\_\_\_\_  
**DALE H. SUGAI**  
[Signature]

2/14/05  
\_\_\_\_\_  
[Date]

(\*) 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. Developer discloses that the reserve study was not done.

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.

EXHIBIT "F"

**SUMMARY OF  
DEPOSIT RECEIPT, OFFER AND ACCEPTANCE CONTRACT**

The Deposit Receipt, Offer and Acceptance Contract (the "DROA") contains the price and other terms and conditions under which a purchaser will agree to buy a unit in the Project. Among other things, the DROA 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 DROA.
- (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.
- (e) Requirements relating to the purchaser's financing of the purchase of a unit.
- (f) That the Developer makes no warranties regarding the unit, the Project or anything installed or contained in the unit or the Project.
- (g) That the purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price.
- (h) Whether the purchaser will receive interest on deposits made under the DROA.
- (i) In the event of a default by the purchaser under the DROA, the Developer may, in addition to other remedies, be entitled to all deposits paid by the purchaser as liquidated damages.

The DROA 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 DROA on file with the Real Estate Commission.

EXHIBIT "G"

**SUMMARY OF ESCROW AGREEMENT**

The Escrow Agreement sets up an arrangement under which the deposits a purchaser makes pursuant to a DROA 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 will be entitled to a refund of his or her funds only under certain circumstances as set forth in the DROA, including:
  - (1) Upon the written request of both parties to Escrow to return the purchaser's funds;
  - (2) Upon the exercise by the Developer of any right to cancel the DROA;
  - (3) Upon the exercise by the purchaser of a right to cancel the DROA if the purchaser's funds were obtained prior to the issuance of a Final Public Report, pursuant to HRS § 514A-62; or
  - (4) Upon the exercise by the purchaser of a right to cancel the DROA pursuant to HRS § 514A-63.
- (d) The purchaser's funds deposited to Escrow may be disbursed to or otherwise used by the Developer only after:
  - (1) The Real Estate Commission has issued a final Public Report (the "Final Report") on the project;
  - (2) The purchaser has been given a copy of the Final Report together with a receipt and notice form which complies with Section 514A-62 of the condominium law;
  - (3) The purchaser has signed the receipt and notice form and waived his right to cancel or thirty days have elapsed since the purchaser received a copy of the Final Report and receipt and notice form;
  - (4) The Developer notifies Escrow in writing that, since the things described in (1), (2) and (3) above have happened, neither the purchaser nor the Developer may back out of the agreements they made in the DROA. In the same written notice, the Developer shall notify Escrow either that the time in which the Developer or the purchaser could back out of the agreements in the DROA has passed, or that the Developer and the purchaser have said that they will not back out of the agreements in the DROA;
  - (5) The Developer's attorney advises Escrow that the DROA has become effective and the requirements of Sections 514A-39.5, 514A-40 and 514A-63 of the condominium law have been met, as provided for in Section 514A-65 of the condominium law;
  - (6) Construction of the unit has been completed and the deed of the unit to the purchaser has been recorded; and
  - (7) If Closing is to occur prior to expiration of the applicable mechanic's lien period, Escrow shall have received satisfactory assurances that the purchaser will be provided an owner's title insurance policy with a mechanics' lien endorsement, protecting the purchaser from mechanics' and materialmen's liens.
- (e) Unless otherwise agreed by the parties and Escrow, the purchaser shall not be entitled to any interest earned on any deposits made to Escrow by the purchaser, which interest will be credited to the Developer.
- (f) In the event of a default by the purchaser under the DROA, the Developer may, in addition to any other remedies provided in the DROA, be entitled to all deposits paid to Escrow by the purchaser.

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.

EXHIBIT "H"



**BUILDING DIVISION**

Department of Public Works – County of Hawaii  
101 Pauahi St., Suite 7 – Hilo, Hawaii 96720

Hilo (808) 961-8331 – Fax (808) 961-8410  
Kona (808) 327-3520 – Fax (808) 327-3509

October 20, 2003

Mr. Matthew G. Jewell  
Ashford & Wriston A Limited Liability Law Partnership LLP  
Kuakini Tower, Suite 208  
75-5722 Kuakini Hwy.  
Kailua-Kona, Hawaii 96740

**SUBJECT: CONDOMINIUM REGISTRATION**

**T.M.K.: 7-9-017:020**

This is to inform you that our records on file, relative to the status of the subject, discloses that:

- No electrical permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
  - Building
  - Electrical
  - Plumbing
  - Sign
- Others:

This status report reflects Building Division records on file only and does not include information from other agencies or departments. You should check directly with any other agencies or departments that may have jurisdictions in this matter.

Should you have any questions regarding matters contained herein, please feel free to contact us.

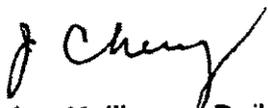
  
( Brian Kajikawa, Building Division Chief

EXHIBIT "I"



Harry Kim  
Mayor

Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

**County of Hawaii**

**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

January 10, 2005

Matthew G. Jewell, Esq.  
Ashford & Wriston  
75-5722 Kuakini Hwy, Suite 208  
Kailua-Kona, Hawaii 96740

Dear Mr. Jewell:

**SUBJECT: Condominium Registration Information**  
**Project: West Honalo Court Condominium Project**  
**Developer: Kenneth Chisato Sugai & Dale H. Sugai**  
**Tax Map Key: (3) 7-9-017:020**

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This is in response to your letter, dated December 15, 2004, requesting that we update our previous response, dated December 3, 2003, regarding the compliance of the subject property with applicable County of Hawaii codes and regulations. The proposed condominium consists of two limited common elements of 8,515 square feet and 11,480 square feet.

Planning Department records do not account for the legal creation of the subject 0.459-acre property. However, the lot appears to have been created as a result of the Kuakini Highway right-of-way acquisition prior to April 19, 1966. The property is zoned Agricultural (A-1a) by the County and is situated within the State Land Use Agricultural district.

The following is our response to your request for the issuance of a written statement, pursuant to the requirements of Hawaii Revised Statutes §514A-40(b)(1), regarding the referenced condominium project.

1. Contrary to the developer's assertion under Item "O" of the referenced Declaration of Condominium Property Regime, the existing buildings on the property were not constructed in compliance with all zoning ordinances and codes applicable to said buildings. The dwelling situated on the proposed CPR Unit 2 was not situated on the lot in compliance with Chapter 25 of the Hawaii County Code (HCC) relating to minimum yard and open space requirements. In addition, certain improvements to

both dwellings located on the subject property appear to have been completed without Building Permits. However, the developer has subsequently secured after-the-fact Building Permits to correct known outstanding deficiencies. A statement of compliance with all building codes should be requested from the Department of Public Works – Building Division.

- a) BP #895731 was issued on June 19, 1989 to construct a new 1-story, 1,496-square foot 3-bedroom/2-bath dwelling with an attached 2-car carport. This permit was closed due to final inspection recorded on February 27, 1990.
  - b) Ohana Dwelling Unit Permit No. 1654 was approved on February 28, 1990 to allow for the construction of a second dwelling unit on the subject property.
  - c) BP #906479 was issued on November 7, 1990 to construct a new 1-story, 864-square foot 2-bedroom/2-bath dwelling with a living room, dining room, kitchen, laundry and 1-car carport. This permit was closed due to final inspection recorded on April 23, 1991.
  - d) BP #B2004-1953K was issued on November 10, 2004 to allow for the addition of two decks. This permit was closed due to final inspection recorded on December 14, 2004.
  - e) BP #B2004-1954K was issued on November 10, 2004 to allow for the removal of a 6x8 portion of an existing shed that was located in the setback area. This permit was closed due to final inspection granted on December 7, 2004.
2. No non-conforming uses or structures have been identified on the subject property.
  3. Variance Permit No. 1364 (VAR 1364) was approved, subject to conditions, on June 9, 2003 to allow portions of dwelling improvements located on the northerly portion of the subject lot "AS-BUILT", according to the variance application's site plan dated January 24, 2003. The variance allows the following encroachments to remain:
    - a) A 9.7-foot side yard setback in lieu of the minimum 10-foot side yard setback;
    - b) A 9.9-foot front yard set back in lieu of the minimum 20-foot front yard setback;
    - c) The wooden deck improvements (constructed without a Department of Public Works (DPW) Building Permit) attached to the dwelling with a minimum 3.0-foot side yard and attendant open yard spaces pursuant to variance and subject to DPW building requirements.

4. Regarding minimum lot size requirements. In that a Declaration of Condominium Property Regime was recorded with the Bureau of Conveyances by Document No. 2003-202504 on September 19, 2003, the subject CPR project is in compliance with the Hawaii County Subdivision Code, pursuant to §23A-20(b), Ordinance 02-111.
5. We note that Section 6.11 of the Bylaws of the Association of Unit Owners specifies that the developer intends to install a private water meter to service Unit 1 and thereby sub-meter off the 5/8" County allotted water meter for the subject lot. Sub-metering is not consistent with Department of Water Supply policy. The developer is urged to contact the Department of Water Supply – Water Resources and Planning Branch at 961-8070.

Chapter 205, HRS does not authorize residential dwellings as a permissible use in the Agricultural District as classified by the State Land Use Commission, unless the dwelling is related to an agricultural activity or is a "farm dwelling." A "farm dwelling" is defined in Section 205-4.5(a)(4) as "a single family dwelling located on and used in conjunction with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling." The requirements of this section apply to dwellings permitted as ohana dwelling units by the County of Hawaii. All property buyers must comply with Chapter 205, HRS.

The Hawaii County Code, Chapter 25, Zoning, Sections 25-5-77(b), (c) and (1) state the following:

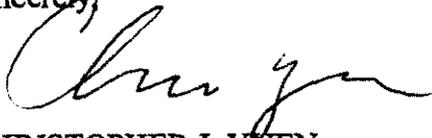
- (b) One (1) single-family dwelling or one (1) farm dwelling shall be permitted on any building site in the "A" district. A farm dwelling is a single-family dwelling that is located on or used in connection with a farm or if the agricultural activity provides income to the family occupying the dwelling.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

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

Matthew G. Jewell, Esq.  
Ashford & Wriston  
Page 4  
January 10, 2005

Should you have questions, please feel welcome to contact Larry Brown or Daryn Arai at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

LMB:mad

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xc: Planning Department – West Hawaii Office  
Department of Water Supply – Water Resources & Planning Branch  
Real Property Tax Office

**EXHIBIT "J"**



Harry Kim  
Mayor

Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

**County of Hawaii**

**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

June 9, 2003

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, HI 96745

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1364 WH (VAR 03-009)**

**Applicant: KLAUS D. CONVENTZ**  
**Owners: KENNETH C. SUGAI, ET AL.**  
**Request: Variance from Minimum Yards,**  
**Chapter 25, the Zoning Code**

**Tax Map Key: 7-9-017:020, Lot B-1**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1364 allows portions of a dwelling improvements located on the northerly portion of the subject property (Lot B-1), "AS-BUILT", according to the variance application's site plan map dated January 24, 2003 (Revised) subject to variance and Department of Public Works (DPW) building requirements. The variance allows the dwelling located on the northerly portion of the subject TMK property to remain with a minimum 9.7 feet side yard and minimum 9.9 feet front yard open space requirements, "AS BUILT". The wooden deck improvements (constructed without a DPW-Building Permit) attached to the dwelling will be permitted with a minimum 3.0 feet side yard and attendant open yard spaces pursuant to variance and subject to DPW building requirements. The variance request is from Lot B-1's minimum yards, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

## **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot B-1 consisting of 19,995 square feet, is a portion of Grant 1594 to Poka, and situated at Hona0, North Kona, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agricultural "A" by the Land Use Commission (LUC).

Ohana Dwelling Permit (OD 90-29) letter dated February 28, 1990 granted a permit to construct a second dwelling unit on the property. It appears that building permits to construct the main dwelling and ohana dwelling unit on Lot B-1 were closed. However, no building permit or construction permits to build the open wooden deck attached to the northerly dwelling was/were issued.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about January 27, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated January 24, 2003 (Revised). The map by Wes Thomas Associates identifies and denotes the building envelope, dwelling and wooden deck improvements, roof eave positions, and other site improvements.

**Note:** The variance request does not address the cesspool or other individual wastewater system (IWS) location or other site improvements straddling property lines or common boundary lines shared with adjoining lots. Any other boundary encroachments, including driveway access to the property, must be addressed and resolved by the applicant or between the current property owner(s) and adjoining property owner(s) or affected agencies.

Furthermore, pursuant to a June 9, 2003 discussion with the applicant, the processing of the subject variance application does not recognize or approve any "CONDOMINIUM PROJECT" or individual lot areas denoted as "UNIT 1" OR "UNIT 2", etc., on the variance site plan map dated January 24, 2003 (Revised).

3. **Agency Comments and Requirements-WH (VAR 03-009):**

- a. The State Department of Health (DOH) memorandum dated March 7, 2003, states:

“The Heath Department found no environmental health concerns with regulatory implications in the submittals.”

- b. “The Department of Public Works (DPW) memorandum dated March 17, 2003, states in part:

“We have reviewed the subject application and offer the following comment:

**Building**

1. Please refer to the attached Building Division comments dated March 12, 2003.”

The attached DPW-Building Division memorandum dated March 12, 2003 states in part:

“Approval of the application shall be conditioned on the comments as noted below.”

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear  
Commercial structures-5ft. side, 5 ft. rear

Others: Unit 2 dwelling Wooden Deck will remain an open deck. No roof covering/structure will be permitted for existing wooden deck.”

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on January 23, 2003 and February 26, 2003 by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments. The following objection letters were received from surrounding property owners (TMK) or public:
- a. Objection letter from Matsue Ikeda (TMK: 7-9-017:019) dated March 7, 2003.
  - b. Objection letter from Rodney and Debra Raymond (TMK: 7-9-017:019) dated March 12, 2003.
  - c. Fax and objection letter from Jasmine H. Henriques (TMK: 7-9-17:012) dated March 12, 2003.

Note: A Fax letter dated March 18, 2003 from the applicant (Baumeister Consulting) acknowledging the objection letters or complaints was received. The deck location, design, and "noise" issues were discussed with the applicant on June 9, 2003. The applicant to agreed to look at the "non-permitted" open wooden deck location and design and incorporate further architectural buffers or features meeting the DPW-Building Codes to mitigate the impact of activity on a "permitted" open wooden deck subject to conditions. (Refer to variance conditions).

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The building encroachment issues were disclosed by a survey map dated January 24, 2003. The applicant, on behalf of the current owners, is trying to resolve building encroachment issues identified by the recent survey map. The variance application's site plan map was prepared by a surveyor and shows the dwelling position and other site improvements, "AS BUILT", on subject TMK property. The variance site plan map and approved site plan drawing in the ohana dwelling permit file (OD 90-29) indicate that portions of the original "northerly" dwelling unit were constructed beyond the lot's building lines or building envelope into respective yards and associated open space requirements pursuant to the Hawaii County Zoning Code. The applicant and current owners became aware of the dwelling encroachment issues after the 2003 survey map was prepared. It appears that the original building improvements were constructed under valid building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises prior to 1990 by the agencies during construction of the original dwelling unit improvements did not disclose any building encroachment issues or building

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
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setback irregularities at that time. It appears that the position of “non-permitted” open wooden deck improvements attached to the original dwelling “northerly” unit after 1990. The position of the “after-the-fact” deck improvements will be allowed subject to variance and requirements of the DPW-Building Division.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the building encroachments or redesigning or relocating the dwelling(s) and attached carport(s) to fit within the correct building envelope prescribed by the Zoning Code. Any non-permitted building improvements and location of the open wooden deck attached to the “northerly” dwelling will be addressed between the applicant and the DPW-Engineering Division (Kona).
2. Consolidation with portions of the adjoining property (R-O-W, TMK: 7-9-017:019) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

It appears that the dwelling encroachments were constructed on the property prior to 1990 within the affected side yards and front yard open yard space requirements are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way and the “wooden deck” was attached and built after 1990. The applicant will secure the “after-the-fact” building permits for the open wooden deck from the DPW-Building Division. It appears that the dwelling improvements and open wood deck encroachments will not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. It is felt that these building encroachments within the affected minimum yards identified on the variance application’s site plan map and associated minimum open space requirements will not detract from the character of the immediate neighborhood or the subdivision. The position, size, and design of the “non-permitted” “AS-BUILT” open wooden deck and deck design will be modified

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to mitigate any impacts to the adjoining agricultural and dwelling uses.

The subject variance application was acknowledged by letter dated February 14, 2003 and additional time to consider building permit history and other DPW building code requirements was deemed necessary. The applicant, on behalf of the current owners, agreed to extend the date to no later than June 15, 2003.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of the "1-Story House" and "Wooden Deck" located on the northerly portion of the subject TMK property will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated January 24, 2003 (Revised). The approval of this variance allows these dwelling and open wooden deck encroachments to remain, "AS BUILT", subject to DPW building codes and building permit requirements.

The applicant shall confer with the DPW-Building Division (Kona) for the "After-the-Fact" DPW Building Permit(s) and other construction permits to construct the Wooden Deck. All building permits and related construction permits for the building improvement issued to the

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dba Baumeister Consulting  
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subject TMK property shall be closed or "finaled" prior to any change in title or sale of the property.

Other non-permitted open "lean-to" building encroachments or non-permitted building structures identified or denoted on the variance site plan map dated January 24, 2003 shall be demolished and removed. A status report and revised site plan drawing showing the approved dwelling improvements and open wooden deck improvements shall be submitted on or before June 15, 2004.

5. Future building improvements and permitted uses on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Real Property Tax - Kona  
Planning Department - Kona  
OD 90-29  
Ms. Matsue Ikeda  
Mr. & Mrs. Rodney Raymond  
Ms. Jasmine H. Henriques