

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT on

THE WAILEHUA APARTMENTS
47-116 Wailehua Road
Kaneohe, Hawaii

REGISTRATION NO. 1467 (conversion)

IMPORTANT — Read This Report Before Buying

This Report Is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: January 12, 1982
Expires: February 12, 1983

SPECIAL ATTENTION

A comprehensive reading of this report is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED NOVEMBER 27, 1981, AND INFORMATION SUBSEQUENTLY FILED AS OF JANUARY 7, 1982. DEVELOPER IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY REGIMES ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. THE WAILEHUA APARTMENTS is a proposed fee simple condominium project consisting of eleven (11) residential apartments located on the ground floor and second floor of a two-level building with an open parking area on the ground floor. There are eleven (11) parking spaces.

2. The Developer has submitted to the Commission for examination all documents deemed necessary for the registration of this proposed condominium project and the issuance of this Preliminary Public Report.
3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners, and a copy of the approved floor plans) have not been filed in the office of the recording officer.
4. No advertising or promotional materials have been submitted pursuant to the Rules and Regulations promulgated by the Commission.
5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes and the Condominium Rules and Regulations which relate to Horizontal Property Regimes.
6. This Preliminary Public Report automatically expires thirteen (13) months after date of issuance, January 12, 1982, unless a Final or Supplementary Report issues or the Commission upon review of the registration issues an order extending the effective period of this report.
7. This Preliminary Public Report is made a part of the registration of THE WAILEHUA APARTMENTS. The Developer is responsible for placing a true copy of this Preliminary Public Report (yellow paper stock) and attached Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing from each purchaser or prospective purchaser a signed receipt therefor.
8. The proposed THE WAILEHUA APARTMENTS condominium project was previously registered as "WAILEHUA APARTMENTS". No sale of apartments were made from the registration, and the Developer reports that the "WAILEHUA APARTMENTS" Declaration, By-Laws and Condominium Map registration will be cancelled prior to issuance of the Final Public Report.

NAME OF PROJECT: THE WAILEHUA APARTMENTS

LOCATION: The project is located at 47-116 Wailehua Road, Kaneohe, Hawaii, on a parcel of 8,520 square feet.

TAX MAP KEY: 4-7-58-08 (1st Division).

ZONING: The property is presently zoned I-1 Light Industrial under the Comprehensive Zoning Code of the City and County of Honolulu, State of Hawaii.

DEVELOPER: The Developer is Sam Daily Realty, Inc., a Hawaii corporation, whose business address is 45-1045 Kam Highway, Suite 100, Kaneohe, Hawaii 96744, telephone: 235-6666. The officers are Sammy George Daily, President; Juanita Rose Daily, Vice President; and Margaret Philomena Daily, Secretary-Treasurer.

ATTORNEY REPRESENTING DEVELOPER: Tamotsu Tanaka, Attorney at Law, A Law Corporation, 333 Queen Street, Suite 600, Honolulu, Hawaii 96813, telephone: 523-7581.

DESCRIPTION OF PROJECT: The project consists of a two-level building constructed primarily of reinforced concrete, hollow tile and wood materials, has eleven (11) open parking stalls on the ground level, and contains a total of eleven (11) apartment units.

1. Apartments. Eleven (11) separate freehold estates are hereby designated within the perimeter walls, floors and ceilings of each of the eleven (11) apartment units contained in the project, which spaces, together with appurtenant lanais, if any, defined and referred to herein as "apartments", are designated on said Condominium Map and described as follows:

(a) Apartments 101 through 104, inclusive, are located on the ground floor of the building; Apartments 201 through 207, inclusive are located on the second floor of the building.

(b) The apartments are constructed according to three different floor plans.

Apartment 101 is a Type B apartment consisting of a living/dining room, kitchenette, two bedrooms, one bath, and a net living area of approximately 600 square feet, and a lanai with yard area of approximately 320 square feet.

Apartment 102 is a Type A apartment consisting of a living/dining room, kitchenette, two bedrooms, one bath, and a net living area of approximately 600 square feet, and a lanai with yard area of approximately 316 square feet.

Apartment 103 is a Type B apartment consisting of a living/dining room, kitchenette, two bedrooms, one bath, and a net living area of approximately 600 square feet, and a lanai with yard area of approximately 316 square feet.

Apartment 104 is a Type A apartment consisting of a living/dining room, kitchenette, two bedrooms, one bath, and a net living area of approximately 600 square feet, and a lanai with yard area of approximately 320 square feet.

Apartments 202, 204 and 206 are Type A apartments, each consisting of a living/dining room, kitchenette, two bedrooms, one bath, and a net living area of approximately 600 square feet, and a lanai of approximately 69 square feet.

Apartments 201, 203 and 205 are Type B apartments, each consisting of a living/dining room, kitchenette, two bedrooms, one bath, and a net living area of approximately 600 square feet, and a lanai of approximately 69 square feet.

Apartment 207 is a Type C apartment consisting of a living/dining room, kitchenette, one bedroom, one bath, and a net living area of approximately 510 square feet, and a lanai of approximately 69 square feet.

2. Net Living Area of Apartments. The approximate apartment net living areas set forth above are based on measurements taken

to the interior of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls. All net living areas set forth above have been measured in accordance with local architectural practice and are not exact but are approximations based on the floor plans of each type of apartment.

3. Access of Apartments. Each of the apartments on the second floor has access to stairways leading to the ground floor.

4. Limits of Apartments. Notwithstanding the net living areas set forth above and the manner in which such net living areas have been measured, the respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls or partitions, the foundations, columns, girders, beams, supports, roofs, skylights, ceilings and floors located within or at the perimeter of or surrounding such apartment, or any fire sprinklers or their components and any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning running through or otherwise located within such apartment, which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings, all windows, window frames, door and door frames along the perimeter, the lanai shown on the Condominium Map to the inner decorated or finished surfaces of the exterior perimeter walls, if any, of such lanai or to the exterior of any railings where there is no such wall, and the built-in fixtures, if any, within the apartment.

COMMON ELEMENTS: One freehold estate is hereby designated in all remaining portions of the project, being described and referred to herein as "common elements", including specifically, but not limited to:

- (a) Said land in fee simple;
- (b) All foundations, floor slabs, columns, beams, supports, unfinished perimeter walls and load-bearing walls, roofs, chases, corridors, stairs, stairways, entry halls, walkways, entrances and exits of said building;
- (c) All yards, grounds, landscaping, refuse areas, planter boxes and mailboxes;
- (d) All parking areas, driveways and curbing;
- (e) All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any;
- (f) Laundry area and facilities, if any, located on the ground floor;

- (g) Any and all other 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.

LIMITED COMMON ELEMENTS: A part of the common elements, the eleven parking stalls and mail receptacles shall be limited common elements, which are hereby set aside and reserved for the exclusive use of the following apartments and each apartment shall have appurtenant thereto an exclusive easement for the use of such limited common element:

<u>Apartment</u>	<u>Parking Stall No.</u>	<u>Mail Receptacle No.</u>
101	11	1
102	10	2
103	6	3
104	5	4
201	1	5
202	2	6
203	3	7
204	4	8
205	9	9
206	8	10
207	7	11

In addition, the yard space off the lanais of the apartments on the ground floor is hereby set aside as limited common elements and reserved for the exclusive use of the apartment on the ground floor to which the yard space adjoins.

Notwithstanding the foregoing assignment of parking spaces, the owners of the respective apartments have the right to change their designation of parking spaces which are appurtenant to their respective apartments by amending the Declaration, which amendment shall be executed solely by the respective owners of such apartments, provided that such amendment shall be effective only upon the filing of the same in the Bureau of Conveyances of the State of Hawaii, and provided further that at all times at least one parking space shall be appurtenant to each apartment in the project.

Notwithstanding anything to the contrary, the Declaration and the By-Laws provide that the apartment owner of any parking space shall be responsible for the cost of maintaining the surface of any parking stall, including the cleaning and removing of oil stains; provided that such maintenance by the apartment owner of any parking stall shall not extend to any repair or maintenance of the asphaltic concrete.

EASEMENTS: The apartments and common elements shall have and be subject to the following easements:

1. Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes; and in all other apartments and common elements of the building for support.

2. If any part of the common elements encroaches upon any apartment, or if any apartment now or hereafter encroaches upon any other apartment or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall and does exist. In the event the building of the project shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements or of any apartment due to such construction shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist.
3. The Association of Apartment Owners of the project shall have the right, to be exercised by its Board of Directors or the Managing Agent, to enter each apartment from time to time during reasonable hours as may be necessary for the operation of the project or for making emergency repairs therein necessary to prevent damage to any apartments or common elements or for the inspection, repair, maintenance or replacement of any common elements.
4. Until December 31, 1990, Owner and Purchaser reserve within the common elements the right to grant to any public utility or governmental authority all easements now or hereafter required, and rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and other public services and utilities for the use or benefit of all apartments in the project.

INTEREST TO BE CONVEYED PURCHASERS: Each apartment shall have appurtenant thereto an undivided percentage interest in the common elements of the project, and the same proportionate share in all common profits and expenses of the project and for all other purposes including voting, as follows:

<u>Apartments</u>	<u>Percentage (each apartment)</u>	<u>Percentage (Total)</u>
101, 102, 103, 104, 201, 202, 203, 204, 205, 206	9.21658%	92.1658%
207	7.8342%	<u>7.8342%</u>
		100.0%

PURPOSE OF BUILDING AND USE RESTRICTIONS: The apartments shall be occupied and used as private dwellings by the respective owners thereof, their tenants, families, domestic servants and personal guests and for no other purposes. The apartments shall not be rented for transient or hotel purposes, which are defined as (a) rental for any period less than 30 days, or (b) any rental in which the occupants of the apartment are provided customary hotel services, such as room service for food and beverage, maid service, laundry and linen, or bellboy service. Except for such transient or hotel purposes, the owners of the respective apartments shall have the absolute right to lease or rent the same subject to the limitations, restrictions, covenants and conditions of the Declaration.

The proposed By-Laws attached to the Declaration and the proposed House Rules provide in part:

1. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project except that dogs, cats and other household pets having such diminutive size and weight that they may be comfortably and easily hand-carried by any person over the common elements of the project in reasonable number may be kept by the apartment owners and occupants in their respective apartments;
2. The maximum number of occupants to be permitted to occupy any apartment shall be eight (8) persons for a two-bedroom apartment and five (5) persons for a one-bedroom apartment; provided that the Association, by majority vote of its members at a meeting duly called for such purpose, may increase the number of occupants;
3. No waterbeds are permitted in the apartments.

OWNERSHIP OF TITLE: The Preliminary Report by Aloha Title Co., Inc. dated November 24, 1981, reflects that the ownership of the property is vested in JOSEPH C. HATHAWAY, Trustee under that certain unrecorded Declaration of Revocable Trust of Joseph C. Hathaway, dated October 19, 1978, IN TRUST, and PHYLLIS B. HATHAWAY, Trustee under that certain unrecorded Declaration of Revocable Trust of Phyllis B. Hathaway, dated October 19, 1978, IN TRUST. Fee owners have entered into an Agreement of Sale with FAF Wailehua, Ltd., dated April 21, 1981, and filed in said Registry Office as Document No. 1072912. A Development Agreement dated October 7, 1981, has been entered into between FAF Wailehua, Ltd. and Sam Daily Realty, Inc., a Hawaii corporation, the developer.

The Developer has advised the Commission that the Agreement of Sale will be converted into a deed, note and mortgage transaction and that the Developer will issue agreements of sale to individual purchasers, subject to mortgages which the Developer will pay in full prior to or at the time any purchaser pays his agreement of sale in full.

ENCUMBRANCES: Said Preliminary Report dated November 24, 1981, shows title to the property to be subject to the following encumbrances:

1. "RESERVING AND EXCEPTING unto the Grantor an easement over those portions of the old ditch which crosses the above described parcel of land for the free flowage of water, and ALSO RESERVING all water rights which may be appurtenant to said granted premises.", as reserved in instrument recorded in the Bureau of Conveyances of the State of Hawaii in Liber 2805, Page 55.
2. Easement "E", as shown on Map 5, as set forth by Land Court Order No. 16877, filed January 30, 1959.
3. Reservation as set forth in that certain Deed dated March 8, 1966, filed on March 10, 1966, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 384960, affecting Easement "E", to which reference is hereby made.
4. The covenants, agreements, obligations, conditions, easements and other provisions set forth in that certain Declaration of Horizontal Property Regime of "Wailehua Apartments" dated January 16, 1967, filed in said Office of the Assistant Registrar as Document No. 409337, (Condominium Map No. 41),

and the By-Laws attached thereto, to which reference is hereby made.

5. Mortgage dated September 8, 1972, filed in said Office of the Assistant Registrar as Document No. 597734, in favor of Honolulu Mortgage Co., Ltd., a Hawaii corporation.
6. For any real property taxes due and owing, reference is made to the Office of the Finance Director, City and County of Honolulu.
7. Agreement of Sale dated April 21, 1981, filed on June 22, 1981, as Document No. 1072912, by and between JOSEPH C. HATHAWAY, Trustee, and PHYLLIS B. HATHAWAY, Trustee, as Sellers, and FAF WAILEHUA LTD., as Purchasers.

PURCHASE MONEY HANDLING: The executed escrow agreement dated November 16, 1981, identifies Aloha Title Co., Inc. as the "Escrow" and provides in part that a purchaser shall be entitled to a return of his funds, and Escrow shall pay such funds to such purchaser, without interest, and less \$25.00 cancellation fee promptly after purchaser has requested such return if Escrow shall have received from Developer a written notice that any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser then being held by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission stated therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, there shall have been a change in the building plans, subsequent to the execution of purchaser's sales contract, requiring approval of a county officer having jurisdiction over the issuance of building permits unless such change is specifically authorized in the Declaration of Horizontal Property Regime or by the terms of the sales contract unless a purchaser's written approval or acceptance of the specific change is obtained or ninety days have elapsed since the purchaser has accepted in writing the apartment or the purchaser has first occupied the apartment; or

(d) The Final Report differs in a material respect from the Preliminary Report, and the purchaser's written approval of such change shall not have been obtained; or

(e) The Final Report is issued after one (1) year from the date of issuance of the Preliminary Report and the purchaser has not waived or has not been deemed to have waived his right to a refund.

(f) The Final Report is not issued within one (1) year from the date of issuance of the Preliminary Report.

Upon refund of said funds to purchaser as aforesaid, Escrow shall return to Developer such purchaser's sales contract and any Apartment Deed theretofore delivered to Escrow, and thereupon neither the purchaser nor Developer shall be deemed obligated thereunder.

Among other provisions, the specimen Sales Contract provides: (1) that Developer may terminate all sales contracts if by December 31, 1982, less than 6 apartments have been sold; (2) Purchaser agrees that all rights of Purchaser are subject and subordinate to the lien of any mortgage(s) made to finance the cost of development of the project by Developer and to any and all sums which may become a lien pursuant to the terms of such mortgage(s) or any other agreement relating to such mortgage; (3) Seller makes no warranty, express or implied, as to merchantability, fitness for particular use or habitability as to the project, apartments, furnishings or appliances, and the Purchaser agrees to accept the purchase in an "as is, where is" condition; (4) Seller's liability in Seller's breach of any disclosure laws or regulations (including but not limited to the Horizontal Property Act) shall be limited to Purchaser's refund of the purchase price and closing costs, plus interest at 6% per annum.

Upon examination, the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly with Sections 514A-37, 514A-39 and 514A-63 to 514A-66. A prospective purchaser should carefully examine the form of specimen sales contract and escrow agreement to determine the time for and the amount of the installment payments on the purchase price and the payment of closing costs.

MANAGEMENT AND OPERATION: The Developer entered into an initial property management contract with SAM DAILY REALTY, INC., whose principal place of business and mailing address is 45-1045 Kam Highway, Suite 100, Kaneohe, Hawaii, on November 27, 1981, and has submitted a copy thereof with its Notice of Intention.

STATEMENT OF FINANCING: The Developer has informed the Commission that it intends to cause the issuance of apartment deeds or agreements of sale to purchasers and use proceeds from its sale of the apartments to pay off the mortgage and other liens. Developer has not submitted any institutional financing program for the purchase of individual units.

STATUS OF PROJECT: The project is a conversion of an existing rental apartment. A letter from the Building Department of the City and County of Honolulu confirms that the existing building met all code requirements at the time of construction and no variances or special permits were granted to allow deviations from any applicable codes. The Developer has advised the Commission that since the completion of the building, the units have been rented for residential purposes.

NOTE: The Office of the Building Superintendent, City and County of Honolulu, confirms that the existing use of the structure (residential use in an industrial zone) is legal but classified nonconforming use as defined under the existing Comprehensive Zoning Code of the City and County of Honolulu. Purchasers and prospective purchasers should be cognizant that the nonconforming use of the structure may limit, restrict or prohibit on matters of enlargement, extension, reconstruction, structural alteration, discontinuance of use, change of use, repair and maintenance of the apartments or common elements of the project.

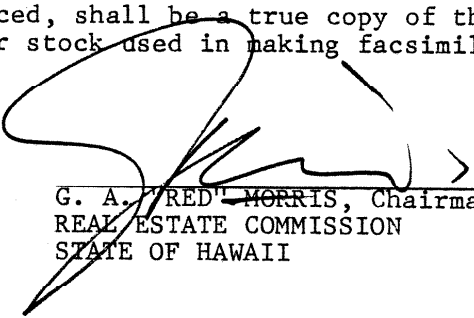
The project is presently undergoing renovations.

The estimated date of completion of improvements to all the apartments in the project is May 15, 1982.

The purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted November 27, 1981, and information subsequently filed as of January 7, 1982.

This PRELIMINARY HORIZONTAL PROPERTY REGIME (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1467 filed with the Commission on November 27, 1981.

The report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be yellow in color.



G. A. FRED MORRIS, Chairman
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:

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City and County of Honolulu
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REGISTRATION NO. 1467

Dated: January 12, 1982