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THE COUNTY ATTORNEY
COUNTY OF KAUAI

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5TH CIRCUIT COURT
STATE OF HAWAII

CLERK CHRISTINE MARTINEZ

Attorney for Plaintiff
COUNTY OF KAUA‘I

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI‘I

COUNTY OF KAUA‘I,	)	CIVIL NO. 18-1-0031
	)	(Environment, Injunctive Relief, Declaratory
Plaintiff,	)	Relief, Other Civil Action)
vs.)	
)	
KAPHA NORTH SHORE, LLC, and	)	FIRST AMENDED COMPLAINT; DEMAND
DOES 1-20,	)	FOR JURY TRIAL; SUMMONS
)	
Defendant.)	
	)	Judge: None
	)	Trial Date: None
)	

COMPLAINT

Plaintiff COUNTY OF KAUA‘I (“County”), by and through its attorney, for causes of action against Defendant KAPHA NORTH SHORE, LLC (“KAPHA LLC”), alleges and avers, as follows:

INTRODUCTION

1. This suit seeks declaratory, injunctive, and other relief to affirm the existence of a public beach access trail easement over and across property owned by Defendant KAPHA LLC, and to require KAPHA LLC to establish and/or permit the establishment of

I do hereby certify that this is a full, true and correct copy of the original on file in this office.


Clerk, Circuit Court, Fifth Circuit

the precise metes and bounds of this trail easement, and to formally record the same with the State of Hawai‘i Bureau of Conveyances.

PARTIES

2. Plaintiff COUNTY OF KAUA‘I (“County”) is and was at all times relevant hereto, a governmental entity duly organized and existing under and by virtue of the laws of the State of Hawai‘i, representative of and composed of the people of the County.

3. Defendant KAPHA NORTH SHORE, LLC (“KAPHA LLC”), is a domestic limited liability company incorporated in the State of Hawai‘i, and the owner of property located in the County of Kaua‘i, which is the subject of this action.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims for relief in this action pursuant to Hawai‘i Revised Statutes (“HRS”) §§ 603-21.5, 603-21.9, 632-1, and 603-23.

5. Venue is proper pursuant to HRS § 603-36 because the County’s claims for relief arose in, and involve property located in, this judicial circuit.

FACTUAL ALLEGATIONS

6. KAPHA LLC is the owner of a parcel of land (being a portion of the land(s) described in and covered by Royal Patent Grant Number 2896 to Charles Titcomb situate, lying, and being at Kilauea, Hanalei, Island and County of Kaua‘i, State of Hawai‘i, being LOT 10-C, bearing Tax Key designation (4) 5-2-004-071, and containing an area of 21.120 acres, more or less, and further described in Bureau of Conveyance Document No. 2011-201400.

7. Royal Patent Grant 2896, encompassing the entire ahupua‘a of Kilauea, and consisting of 3,016 acres more or less, was conveyed to Charles Titcomb by Kamehameha IV in 1863, subject to the reservation of the rights of native tenants.

8. Lot 10-C is more generally located along Kauapea Road in Kilauea, above and adjacent to Kauapea Beach, which is colloquially known as “Secret Beach.”

9. Lot 10-C, primarily zoned conservation with a small portion zoned agricultural, is undeveloped.

10. The portion of Kauapea Beach abutting Lot 10-C lies to the west of the Kilauea Lighthouse is also known as Pa‘aha‘o Beach, or colloquially “Third Beach.”

11. KAPHA LLC purchased Lot 10-C on or about November 25, 2011, from Blazer Enterprises, Inc., a now dissolved Hawai‘i corporation.

12. Lot 10-C, previously identified as Lot 10, is a portion of the Kilauea Gardens Subdivision, an agricultural subdivision consisting of 203 acres more or less divided into fourteen lots.

13. The Kilauea Gardens Subdivision is located within the Special Management Area (“SMA”), and accordingly required a SMA Use Permit, in addition to, final subdivision approval prior to development.

14. As a condition of Special Management Area Use Permit SMA(U)-77-5, granted by the Kaua‘i Planning Commission on March 28, 1977, the owner/developer of the Kilauea Gardens Subdivision was required to, “provide a pedestrian access easement from the proposed new public road to the shoreline, at a location mutually acceptable to the applicant and the County.”

15. The Kilauea Gardens Subdivision was granted final subdivision approval by the Planning Commission of the County of Kaua‘i at its meeting held on March 8, 1978.

16. As a condition of final approval of the Kilauea Gardens Subdivision, the developer guaranteed to convey to the County of Kaua‘i without restrictions a perpetual public trail easement to the shoreline across Lot 10, as shown on the final subdivision map.

17. At the time of the Kilauea Gardens Subdivision approval, the dedication of a public access right-of-way was required under Hawai‘i Revised Statutes § 46-6.5 as a condition precedent to final subdivision approval.

18. The Planning Commission’s specific authority to require the dedication of a public access easement to any publicly owned lands or waters as a condition of subdivision was expressly provided by Kaua‘i County Ordinance 175, section 2.09.

19. The Kilauea Gardens Subdivision final map, further identified as File Plan 1554, clearly shows a “trail easement” running from the planned public road, now known as Kauapea Road, to the shoreline over and across Lot 10.

20. File Plan 1554, showing a public trail easement over and across Lot 10 was recorded with the State of Hawai‘i Bureau of Conveyances on April 26, 1978.

21. This public trail easement is further described in the metes and bounds description of File Plan 1554, which provides that “Lot 10 is also subject to an undefined trail easement.”

22. The metes and bounds description of File Plan 1554, referencing a public trail easement across Lot 10, was recorded with State of Hawai‘i Bureau of Conveyances on April 26, 1978 in liber 12855 on page 230.

23. The current publicly available County of Kaua'i Tax Map of the Kilauea Gardens Subdivision shows a public trail easement substantially identical to the easement designated on File Plan 1554 across what is now designated Lot 10-C.

24. The property description of Lot 10-C attached to the Warranty Deed conveying ownership to KAPHA LLC, also clearly provides that Lot 10-C is subject to an "existing trail easement as shown on File Plan 1554."

25. The Warranty Deed conveying ownership to KAPHA LLC clearly provides that Lot 10-C is subject to claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawai'i Constitution and Hawai'i Revised statutes.

26. The Warranty Deed conveying ownership of Lot 10-C to KAPHA LLC was recorded with the State of Hawai'i Bureau of Conveyances on November 30, 2011, as Document No. 2011-2101400.

27. Prior to the final approval of the Kilauea Gardens Subdivision, members of the public, including, but not limited to, native Hawaiian practitioners of traditional and customary rights, actively utilized a bluff-side trail across what is now Lot 10-C to access Pa'aha'o Beach for fishing, gathering, and other recreational purposes since at least the 1890's if not earlier.

28. The minutes of the Planning Commission's March 23, 1977, public meeting discussion of the Kilauea Gardens Subdivision recognized the ocean area at Pa'aha'o Beach was historically "favored fishing ground" for the people of the Kilauea area.

29. Following the approval of the Kilauea Gardens Subdivision, and notwithstanding the absence of a formally recorded metes and bounds dedication of the public trail easement, members of the public continued to access Pa‘aha‘o Beach by crossing Lot 10-C until sometime in the late 1990’s when KAPHA LLC’s predecessor in title took action to block public access.

30. Members of the public accessed the shoreline across Lot 10-C and down a well-defined bluff-side trail in an open and continuous manner for in excess of twenty (20) years.

COUNT I - EXPRESS DEDICATION/EASEMENT

31. The County realleges and incorporates by reference paragraphs 1 through 30 above, with the same force and effect as fully set out in specific detail here.

32. The condition in SMA(U)-77-5, that the owner/developer of the Kilauea Gardens Subdivision “provide a pedestrian access easement from the proposed new public road to the shoreline” and the owner/developer’s acceptance of SMA(U)-77-5 constitutes an express dedication of said easement to the County of Kaua‘i.

33. The written guarantee of the developer/owner of the Kilauea Gardens Subdivision to provide a perpetual public trail easement without restriction as a condition of subdivision constitutes an express dedication of said easement to the County of Kaua‘i.

34. The inclusion of a designated public trail easement across Lot 10 on File Plan 1554, the reference to said trail easement on the recorded metes and bounds description of Lot 10, and the recordation of each by the owner/developer of the Kilauea Gardens Subdivision with the Bureau of Conveyance constitutes an express dedication of said easement to the County of Kaua‘i.

35. The Warranty Deed conveying ownership to KAPHA LLC, providing that Lot 10-C is subject to an “existing trail easement as shown on File Plan 1554,” constitutes an express dedication of said easement to the County of Kaua‘i.

36. The County of Kaua‘i’s granting of SMA(U)-77-5, the granting of final subdivision approval for the Kilauea Gardens Subdivision, the actual use by residents of the County, and/or the County’s present action in filing this suit constitute the County’s acceptance of the public trail easement over and across what is now Lot 10-C, as indicated on File Plan 1554.

COUNT II - IMPLIED DEDICATION/EASEMENT

37. The County realleges and incorporates by reference paragraphs 1 through 36 above, with the same force and effect as fully set out in specific detail here.

38. The condition in SMA(U)-77-5, that the owner/developer of the Kilauea Gardens Subdivision “provide a pedestrian access easement from the proposed new public road to the shoreline” and the owner/developer’s acceptance of SMA(U)-77-5 constitutes an implied dedication of said easement to the County of Kaua‘i.

39. The written guarantee of the developer/owner of the Kilauea Gardens Subdivision to provide a perpetual public trail easement without restriction as a condition of subdivision constitutes an implied dedication of said easement to the County of Kaua‘i.

40. The inclusion of a designated public trail easement across Lot 10 on File Plan 1554, the reference to said trail easement on the recorded metes and bounds description of Lot 10, and the recordation of each by the owner/developer of the Kilauea Gardens Subdivision with the Bureau of Conveyance constitutes an implied dedication of said easement to the County of Kaua‘i.

41. The Warranty Deed conveying ownership to KAPHA LLC, providing that Lot 10-C is subject to an “existing trail easement as shown on File Plan 1554,” constitutes an implied dedication of said easement to the County of Kaua‘i.

42. The public’s active, continuous, and open use of the public trail easement across Lot 10-C for in excess of twenty years, along with prior owners’ acquiescence to such public use constitutes the public and County’s acceptance of an implied dedication of said easement.

COUNT III - PRESCRIPTIVE EASEMENT

43. The County realleges and incorporates by reference paragraphs 1 through 42 above, with the same force and effect as fully set out in specific detail here.

44. By in fact using the public beach access trail over and across Lot 10, now known as Lot 10-C, of the Kilauea Gardens Subdivision in an open and continuous manner for a period of more than twenty years, members of the public established a prescriptive easement over and across Lot 10, now known as Lot 10-C.

COUNT IV – NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY RIGHTS

45. The County realleges and incorporates by reference paragraphs 1 through 44 above, with the same force and effect as fully set out in specific detail here.

46. Article XII section 7 of the Hawai‘i Constitution requires the State, and by extension the County of Kaua‘i, to protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possesses by ahupua’a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

47. Hawai'i Revised Statutes section 7-1 provides generally, that the conveyance of allodial title is subject to native tenants gathering rights including the right-of-way necessary to exercise such rights.

48. HRS section 1-1 further protects the continued exercise of traditional and customary practices even by non-tenants of an ahupua'a.

49. The original conveyance of the ahupua'a of Kilauea to Charles Titcomb by Kamehameha IV in 1863, was expressly subject to the reservation of the rights of native tenants.

50. The Warranty Deed to Lot 10-C held by KAPHA LLC, provides that ownership of Lot 10-C is subject to claims arising out of customary and traditional rights and practices, including without limitation, those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawai'i Constitution and Hawai'i Revised statutes.

51. Descendants of Native Hawaiians inhabiting the Island of Kaua'i prior to 1778, historically and customarily used at least the lower portion of the trail over and across Lot 10-C, thereby establishing traditional and customary access rights for their present day descendants.

PRAYER FOR RELIEF

WHEREFORE, the County prays that the Court:

a. Declare that a public access trail easement was expressly, impliedly, or prescriptively created/dedicated in favor of the County over and across Lot 10, now known as Lot 10-C, of the Kilauea Gardens Subdivision;

b. Declare that citizens of the County of Kaua‘i who are descendants of Native Hawaiians inhabiting the Island of Kaua‘i prior to 1778, have a traditional and customary right to utilize a public access trail easement over and across Lot 10, now known as Lot 10-C, of the Kilauea Gardens Subdivision.

c. Order KAPHA LLC to establish, or to allow the County to establish, the precise metes and bounds of said public access trail easement, and to record the same with the State of Hawai‘i Bureau of Conveyances;

d. Issue a permanent injunction against Defendant KAPHA LLC, ordering it to cease and desist from denying the County’s ownership of the public access trail easement, to avoid any acts that would harm the public access trail easement, and otherwise to fully cooperate with the County in efforts to reopen the trail to the public;

e. Reimburse Plaintiff County for its attorney’s fees and costs;

f. Grant the County such other and further relief as the Court deems just and proper.

DATED: Lihu‘e, Kaua‘i, Hawai‘i, March 2, 2018.



ADAM P. ROVERSI

Attorney for Plaintiff
COUNTY OF KAUA‘I

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

COUNTY OF KAUA'I,	)	CIVIL NO. 18-1-0031
	)	(Environment, Injunctive Relief, Declaratory
Plaintiff,	)	Relief, Other Civil Action)
vs.)	
)	
KAPHA NORTH SHORE, LLC, and	)	DEMAND FOR JURY TRIAL
DOES 1-20,)	
)	
Defendant.	)	Judge: None
	)	Trial Date: None
)	

DEMAND FOR JURY TRIAL

Plaintiff COUNTY OF KAUA'I, by and through its counsel, Adam P. Roversi, hereby demands a trial by jury on all issues so triable herein.

DATED: Līhu'e, Kaua'i, Hawai'i, March 2, 2018.



ADAM P. ROVERSI

Attorney for Plaintiff
COUNTY OF KAUA'I

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

COUNTY OF KAUA'I,	)	CIVIL NO. 18-1-0031
	)	(Injunctive Relief, Declaratory Relief, Other
Plaintiff,	)	Civil Action)
vs.)	
)	
KAPHA NORTH SHORE, LLC, and	)	SUMMONS
DOES 1-20,)	
)	
Defendant.)	
)	
_____)	

SUMMONS

STATE OF HAWAI'I

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to file and serve upon Adam P. Roversi, Plaintiff COUNTY OF KAUA'I's Attorney, whose address is 4444 Rice Street, Suite 220, Lihu'e, Hawai'i 96766, an Answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service.

This Summons shall not be personally served between the hours of 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled Court permits, in writing on this Summons, personal delivery during those hours.

If you fail to obey this summons, judgment by default will be taken against you for the relief demanded in the Complaint.

DATED: Lihu'e, Kaua'i, Hawai'i, MAR - 2 2018, 2018.


 A circular seal containing the word "SEAL" and the name "CHRISTINE MARTINEZ".

CHRISTINE MARTINEZ

CLERK OF THE ABOVE-ENTITLED COURT