

THIRD CIRCUIT
STATE OF HAWAII
FILED

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

HENRY BARBA, BALBINO SALMASAN,)	CIVIL NO. 4590
ERNEST BUYUAN, RALPH DEDMAN,)	
BELE HANOA, and THE SPORTS-)	JUDGMENT
MAN'S CLUB OF KAU, on behalf)	
of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MATSUHEI OKUNA, also known as)	
THOMAS OKUNA, and the STATE OF)	
HAWAII,)	
)	
Defendants.)	

JUDGMENT

Pursuant to the Findings of Fact, Conclusions
of Law, and Order filed herewith in this cause,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1) Pursuant to Rule 23(b)(2) of the Hawaii Rules
of Civil Procedure, a class is certified and the class is
defined as follows:

All residents of the State of Hawaii,
who in the past have used and enjoyed
reasonably, or who have been prevented or
deterred by Defendants' actions and conduct
from using and enjoying reasonably the
trails and paths claimed in the Complaint
filed in this cause to reach Kawa Bay and the
adjacent tidelands, beaches and oceans.

2) The individual Plaintiffs, members of the

EXHIBIT B1

EXHIBIT AA-8

Sportsmans Club of Kau, persons similarly situated, and the general public are entitled to reasonable access to Kawa Bay and the adjacent shoreline in the following manner along the following rights-of-way more specifically described in the Findings of Fact and Conclusions of Law entered herewith:

a) A 3 foot wide pedestrian easement along the Ancient Walking Trail.

b) A 15 foot wide pedestrian, equestrian, and wagon easement along the portion of the Government Road which extends from the Honuapo boundary of the subject property to Hilea Stream.

c) A 15 foot wide pedestrian, equestrian and vehicular easement along that portion of the Government Road which extends from Hilea Stream to the Punalu'u boundary of the subject property.

d) A 3 foot wide pedestrian easement from the upper reach of the waves at the mouth of Hilea Stream to the intersection of Hilea Stream with the Government Road.

e) A 10 foot wide vehicular, equestrian and pedestrian easement along the Corral Gate Road as located in Plaintiffs' Exhibit 13(a).

f) A 3 foot wide pedestrian easement along the Hilea Trail as located in Plaintiffs' Exhibit 13(a).

3) Defendant MATSUHEI OKUNA and his agents, servants, employees, and all persons acting in active concert or participation with him who receive actual notice of this order are permanently enjoined from barring or preventing the Plaintiffs, members of the Sportsmans Club of Kau, persons similarly situated, and members of the public from using any

EXHIBIT B2

EXHIBIT AA-9

of the trails, roads and rights-of-way in the manner above-
described to reach the shoreline of the subject property.

DATED: Hilo, Hawaii, OCT 14 1980

James Kilby
JUDGE OF THE ABOVE-ENTITLED COURT

EXHIBIT A3

EXHIBIT AA-10

STATE OF HAWAII
1980 29

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

HENRY BARBA, et al.,)	CIVIL NO. 4590
Plaintiffs,)	FINDINGS OF FACT AND
vs.)	CONCLUSIONS OF LAW;
)	ORDER
MATSUHEI OKUNA, et al.,)	
Defendants.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing on May 14, 1980, before the Honorable Ernest Kubota, Judge of the above-entitled Court, sitting without a jury, and the Court having reviewed and examined the testimony, exhibits, and written arguments presented by BEN H. GADDIS and TIM LUI-KWAN, of the Legal Aid Society of Hawaii, attorneys for Plaintiffs, STUART ODA, attorney for Defendant MATSUHEI OKUNA, and Deputy Attorney General JACKIE MAHI ERICKSON, attorney for the State of Hawaii, and being fully advised, the Court makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT
A. The Parties

1. Plaintiffs HENRY BARBA, BALBINO SALMASAN, ERNEST BUYUAN, PELE HANOA, and RALPH DEDMAN are all

residents of the District of Kau, County and State of Hawaii.

2. Plaintiffs SPORTSMANS CLUB OF KAU is an unincorporated association composed of residents of the District of Kau. The club was organized for the purpose of securing public access for recreational purposes to the shoreline in the Kau District, including the shoreline adjacent to Kawa Bay.

3. Defendant MATSUHEI OKUNA, also known as THOMAS OKUNA, is a resident of Waiohinu, County and State of Hawaii, and owns land adjacent to Kawa Bay, which is the subject of this action, designated by State of Hawaii Tax Map Key Numbers 9-5-17-07, 9-5-16-25, and 9-5-16-06.

4. Defendant STATE OF HAWAII owns a parcel which is the subject of this action described by State of Hawaii Tax Map Key Number 9-5-16-30.

B. The Shoreline And Its Use

5. Kawa Bay is situated on the shoreline on the Island of Hawaii between Honuapo Bay and Punaluu in the District of Kau.

6. An intermittent stream known as Hilea empties into Kawa Bay and forms a black sand beach at its mouth.

7. On the Honuapo side of Hilea Stream, the land surface is composed of smooth pahoehoe lava. This shoreline area has no sea cliffs and is relatively flat.

8. On the Punalu'u side of Hilea Stream, the terrain is composed of rough a'a lava with sea cliffs which preclude land travel along the shoreline within the upper reach of the waves.

9. A large fishpond or tidal inlet is located on

EXHIBIT AS

EXHIBIT AA-12

the Honuapo side of Kawa Bay. This pond is known as Kawa Springs, Hilea or Kaalaiki fishpond and is fed by a large fresh water spring.

10. The heiau of Keeku is located on a cliff overlooking Kawa Bay.

11. Keeku heiau was constructed between the thirteenth and fifteenth centuries as a Luakini heiau dedicated to the god Ku.

12. The heiau was of great significance in the district in ancient times and was maintained by priests who performed human sacrifices and other ceremonies which draw persons to Kawa Bay from the entire District of Kau.

13. Physical features such as the large fishpond, the fresh water spring, ancient habitation sites, and the heiau as well as the opinions of expert witnesses William Bonk and Marion Kelly all establish that several hundred Hawaiians lived in this shoreline area in ancient times.

14. The diary of Reverend William Ellis, recorded in 1823, contains an account of a village consisting of at least two hundred persons at this location.

15. Keeku heiau and its associated features continue to be important sites for study by students of Hawaiian culture.

16. Anthropologists, archaeologists, and historians presently conduct studies and research in this area. College classes on Hawaiian culture have visited the area, and local residents continue to guide interested persons to these ancient and historic sites.

17. The entrance to Kawa Bay has been a famous surfing site since ancient times and continues to receive heavy use because it is one of the few good surfing areas within the Kau District.

18. Fishing is and always has been excellent from the shoreline in this area.

19. Numerous persons use this area for swimming, picnicing, camping and other recreational purposes.

20. The features and attractions described above draw large numbers of persons to the shoreline of the subject property from both within and without the district.

21. This shoreline area received heavy use by persons throughout this part of the Island in both ancient and historic times.

22. Traditional informants or "kamaaina witnesses" such as ninety-two year old William Heinecke, were born and raised in the District of Kau and were taught about the customs and history of use of this shoreline area by older residents and relatives.

23. Testimony from such elderly residents demonstrates that a large and undefinable group of persons, hereafter termed "the public", from both within and without the district, have used accessways in the manner hereinafter described to reach the shoreline of the subject property for the purposes described above for as long as anyone can remember.

24. All segments of the community and all races have freely and continuously used the accessways hereinafter

described to reach this shoreline until the mid 1970's.

25. The public used these rights-of-ways believing that they had a right to use these trails and roads to reach the shore.

26. The vast majority of the public using these rights-of-way did not ask, nor did they receive permission for such use from Defendant OKUNA and/or his predecessors in interest.

27. Until trespassing arrests began in the mid 1970's, there is no evidence that the public attempted to conceal its use of these rights-of-way.

28. Use of these rights-of-way by the public was open and obvious and was of such a nature that Defendant OKUNA and/or his predecessors and agents must have been aware of the public use and the hostile and adverse nature of the use.

C. The Ancient Walking Trail

29. A trail or right-of-way for pedestrian travel, hereinafter "Ancient Walking Trail", has existed parallel to this shoreline continuously since ancient times.

30. This Ancient Walking Trail is part of the system of shoreline trails which extends around the Island of Hawaii.

31. This shoreline trail system was customarily used by native Hawaiians in prehistoric times to move from place to place along the shoreline.

32. The Ancient Walking Trail extends from Hilea Stream towards Punaluu and is well marked by the placement of large smooth round stones, two to three feet

EXHIBIT A8

EXHIBIT AA-15

apart, on the rough a'a lava.

33. The physical location of this portion of the Ancient Walking Trail is established by the aerial photograph and the map admitted into evidence as Plaintiffs' Exhibit 12 and 13(a), respectively.

34. The Ancient Walking Trail continues on to Honuapo from Hilea Stream over the relatively smooth pahoehoe lava immediately adjacent to the shoreline.

35. The Ancient Walking Trail is three feet in width. (See photographs admitted as Plaintiffs' Exhibit 17(x)-17(r).)

36. The Ancient Walking Trail has been continuously used as a right-of-way by the public for travel since ancient times.

37. The Reverend William Ellis used this trail on his tour around the Island of Hawaii one hundred and fifty seven years ago.

38. The Ancient Walking Trail was in existence and was used for travel by the public both before and after the Great Mahele of 1848.

39. Members of the public have walked up and down this pedestrian right-of-way for as long as anyone can remember in order to fish from the shoreline.

40. Public rights-of-way such as the Ancient Shoreline Trail were not normally reserved expressly in conveyances of land from the sovereign during this period.

41. Where the terrain was smooth, persons using

the Ancient Walking Trail walked adjacent to the shore, probably within the shoreline setback. On a'a lava, they used the stepping stones located on the map admitted into evidence as Plaintiffs' Exhibit 13(a) to reach fishing areas along the seacliffs.

42. Fishermen who have used other trails or roads to reach this shoreline used the ancient trail to range up and down the shoreline while fishing.

43. There is no credible evidence that the use of the Ancient Walking Trail has ever been interrupted but for a time of national emergency when temporary wartime restrictions on access to the coastline were imposed by military authorities during World War II.

44. No owner or occupier of these lands has ever attempted to bar or restrict the use of this right-of-way.

45. The use of this Ancient Walking Trail by members of the public has been peaceable, reasonable, and free from dispute from time immemorial until this action was initiated.

46. The Ancient Walking Trail is still regularly used for fishing, shoreline travel and for other recreational purposes.

47. There is no credible evidence that anyone ever asked or required permission for a member of the public to travel across this property along the Ancient Walking Trail.

48. Public use of the Ancient Walking Trail has

been open, adverse, continuous, notorious, under a claim of right and uninterrupted for over a century.

49. Predecessors in interest of Defendant OKUNA were aware of the use of the Ancient Walking Trail by the public for fishing.

50. The use of the Ancient Walking Trail by fishermen and others was of such frequency and was of such a nature that Defendant OKUNA and his predecessors must have known that the public used the Ancient Walking Trail hostilely, as a matter of right, and not in reliance upon toleration or permission of the landowner.

51. Defendant OKUNA, and his predecessors in interest, by their silence and inaction have acquiesced in the use of this Ancient Walking Trail by fishermen and other members of the public for as long as anyone can remember.

52. But for the Ancient Walking Trail, no other reasonable means exists for the public to travel parallel to the shoreline of this property for fishing.

D. The Government Road

53. A second roadway, hereinafter the "Government Road", extends across this property parallel to the shoreline mauka of the Ancient Walking Trail.

54. The Government Road was constructed in the mid 1800's when horses came into regular use on this portion of the Island of Hawaii.

55. The road was constructed as a public project in order to provide access for missionary and public activities that were beginning in the district.

56. Thereafter the Government Road received .

EXHIBIT B//

EXHIBIT AA-18

regular and extensive use by pedestrian, horse, bullock and cart traffic.

57. The Government Road is shown as a trail, which was identified by the designation of "aupuni" or Government Road on a map of Kau compiled by S.S. Lyman dated August, 1879. (Plaintiffs' Exhibit 1)

58. Numerous later maps (such as Plaintiffs' Exhibits 2, 3, and 4) identify this right-of-way as a Government Road.

59. The Government Road is still designated as "Government Beach Trail" on current tax maps which describe this property (Plaintiffs' Exhibits 5 and 6).

60. The Government Road is clearly visible on the aerial photograph admitted as Plaintiffs' Exhibit 12, and its location is shown on the map admitted as Plaintiffs' Exhibit 13(a).

61. The Government Road passes over a'a lava on the Punalu'u side of Hilea Stream and is presently a very rough road which requires a four-wheel drive for vehicular travel.

62. The Government Road is well marked by stones on both sides on the Honuapo side of Hilea Stream.

63. On the Honuapo side of Hilea Stream, the Government Road no longer receives vehicular use but continues to receive pedestrian use.

64. The map of a portion of Grant 2370, admitted as Plaintiffs' Exhibit 7, shows the location of the Government Road across TMK No. 9-5-16-25 and demonstrates that the Government Road is fifteen feet in width.

65. Defendant OKUNA has conceded that a public right of pedestrian and equestrian access exists upon the Government Road from the Honuapo boundary of the property at issue to Hilea Stream, and that a public right of pedestrian, equestrian and vehicular access exists from Hilea Stream to the Punalu'u side of the property in question along the Government Road.

66. The Ancient Walking Trail and the Government Road intersect at the mouth of Hilea Stream several hundred feet mauka of the upper reach of the waves at Kawa Bay.

67. Members of the public used the Government Road continuously as a right-of-way for travel by foot, horse and cart to Kawa Bay from the mid 1800's until the late 1930's.

68. Such use was continuous and was of sufficient frequency that predecessors in interest of Defendant OKUNA must have known that persons were using the road as a matter of right and not in reliance upon toleration or permission.

69. In the late 1930's or early 1940's, public use of that portion of the Government Road between Hilea Stream and the Honuapo boundary of the property at issue, became less frequent.

70. However, there was no evidence of any intention on the part of the public or public authorities to abandon this portion of the Government Road.

71. The general public used the Government Road for pedestrian, equestrian, and wagon travel openly, adversely,

continuously, notoriously, under a claim of right, and without interruption for a period of at least 80 years.

72. In the mid 1940's, the military converted the portion of the Government Road from the Punalu'u boundary of the subject property to Hilea Stream and Kawa Bay into a jeep trail.

73. Since 1946, the portion of the Government Road described in paragraph 73 has received regular use as a right-of-way by the public for four-wheel drive vehicles.

74. Beginning in 1946, the general public has used the portion of the Government Road described in paragraph 73 for pedestrian and vehicular travel, openly, adversely, continuously, notoriously, under a claim of right, and without interruption for a period of at least 30 years.

75. At present, however, use of this portion of the Government Road as a vehicular right-of-way is extremely difficult even for four-wheel drive vehicles, inasmuch as the road is very rough.

76. No owner or occupier of these lands ever attempted to bar or restrict the use of the Government Road until the 1970's.

77. In the 1970's, Defendant OKUNA placed large rocks and poles across the Government Road for the purpose of containing his cattle.

78. These rocks and barriers were quickly removed by members of the public utilizing the Government Road and did not interrupt its use.

79. Even during World War II when wartime restrictions on coastline access were imposed, some members of the public still used this road to reach Kawa Bay.

80. There is no evidence that any member of the public ever asked permission nor did any landowner require permission for a member of the public to travel across this property along the Government Road to the beach at Kawa Bay.

81. Members of the public still regularly use the Government Road to reach the shoreline at Kawa Bay from both the Honuapo and Punalu'u sides of the property, although travel is very difficult.

E. The Corral Gate Road

82. Mauka-makai trails have existed within the ahupuaas of Kaalaiki and Hilea since ancient times.

83. Ancient Hawaiians from other ahupuaas were able to and did travel freely to Kawa Bay along mauka-makai trails.

84. One mauka-makai trail (hereinafter "Corral Gate Road") extends from the freshwater springs at Kaalaiki fishpond mauka to Highway 11 and further mauka to the old Volcano Highway and beyond.

85. The Corral Gate Road is a distinct and visible one lane roadway, at least ten feet wide, which can be seen in the aerial photograph admitted into evidence as Plaintiffs' Exhibit 12. The road is identified on the map admitted into evidence as Plaintiffs' Exhibit 13(a).

86. The Corral Gate Road intersects further mauka with lateral trails such as the Kaalaiki Camp Trail, which extends all the way from Naalehu. (See U.S. Geologic Survey

Map of Naalehu Quadrangle dated 1921, admitted into evidence as Plaintiffs' Exhibit 4.)

87. The public has continuously and customarily used mauka-makai trails such as Corral Gate Road to reach the shoreline at Kawa since ancient times.

88. The public has used the Corral Gate Road as a distinct and visible path for foot, horse and mule traffic for as long as local residents can remember.

89. Persons from within and without the District of Kau have used the Corral Gate Road to go to the shoreline at Kawa to picnic and fish since time immemorial.

90. For as long as anyone can remember, the public has also travelled along the Government Road from Ninoola to Kaalaiki fishpond and from there mauka into the ahupuaa of Kaalaiki along the Corral Gate Road.

91. The Corral Gate Road was customarily used for public pedestrian and equestrian travel to Kawa Bay from mauka areas of Kau before the 1890's.

92. The Corral Gate Road has been continuously used as a right-of-way by the public for pedestrian and equestrian travel since before the 1890's.

93. In 1939, the Hawaii Belt Highway 11 was constructed through this area and unlocked gates were installed where the highway intersected with the Corral Gate Road.

94. After 1939, persons continued to travel from Punaluu and Ninoola to Kawa and mauka to Kaalaiki along the Corral Gate Road by horseback or mule.

95. Other members of the public began to use the

EXHIBIT B16

entrance of the Corral Gate Road from the Hawaii Belt Highway to reach Kawa.

96. Beginning in 1939, members of the public began to drive automobiles down the Corral Gate Road to the fishpond at Kaalaiki in order to reach Kawa.

97. In order to reach the shoreline, persons would unlatch the gate next to the corral on Hawaii Belt Highway 11 and would drive down and park their automobiles next to the fishpond.

98. Members of the public would also park their cars next to the Hawaii Belt Highway and would walk along the Corral Gate Road to the fishpond and the shoreline.

99. For as long as anyone can remember, Defendant OKUNA and his predecessors in interest, by their silence and inaction, have acquiesced in the public use of the Corral Gate Road.

100. Defendant OKUNA posted a "no trespassing" sign on the highway entrance to the corral gate in 1955 and again in the 1960's.

101. These "no trespassing" signs disappeared soon after they were posted and did not affect public use of the Corral Gate Road.

102. In the early 1960's, Defendant OKUNA chained and locked the highway gate on the Corral Gate Road in order to protect his livestock.

103. Thereafter, members of the public continued to use the Corral Gate Road by climbing over the gate and walking down the road to the fishpond.

104. In the mid 1970's, Defendant OKUNA halted most of the public use of the Corral Gate Road by painting

EXHIBIT AA-24

"no trespassing" signs on the gate, placing barbed wire on top of the gate and by filing trespassing complaints with the Police Department of the County of Hawaii.

105. No other owner, occupier of these lands, or predecessor in interest of Defendant OKUNA has ever attempted to bar or restrict the public use of the Corral Gate Road.

106. Use of the Corral Gate Road by members of the public was peaceable, reasonable and free from dispute until Defendant OKUNA began to actively prevent members of the public from using this road in the mid 1970's.

107. Even after the mid 1970's, members of the public continued to use the road, however, many of these persons were arrested for trespassing.

108. The public has reasonably used the Corral Gate Road for pedestrian, horse, and automobile travel in order to reach the shoreline at Kawa for recreational purposes including fishing and surfing.

109. The public has used the Corral Gate Road for pedestrian travel to Kaalaiki fishpond and the surrounding shoreline openly, adversely, continuously, notoriously, under a claim of right and without interruption for at least 100 years.

110. The public has used the Corral Gate Road for equestrian travel to Kaalaiki fishpond and the surrounding shoreline openly, adversely, continuously, notoriously, under a claim of right, and without interruption for at least 50 years.

111. Beginning in 1946, the public has used the Corral Gate Road for vehicular travel to Kaalaiki fishpond and the surrounding shoreline openly, adversely, continuously,

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notoriously, under a claim of right, and without interruption for at least 13 years.

112. The vast majority of the members of the public using the Corral Gate Road did not seek permission to use this accessway to reach Kawa from Defendant OKUNA and/or his predecessors in interest.

113. Predecessors in interest and/or occupants of the property, such as Mitsuhei Okuna, Thomas Masaru Okuna, Lydia Papalimu, and Katherine Hamilton and her family were aware of the use of the Corral Gate Road by the public.

114. The use of the Corral Gate Road by persons seeking to reach Kawa was of such frequency that Defendant OKUNA and his predecessors must have known that persons using the road did so as a matter of right and not in reliance on toleration or permission.

F. The Hilea Trail

115. Another mauka-makai trail extends from the old Volcano Highway close to the Village of Hilea down to the shoreline at Kawa.

116. This trail crosses the Hawaii Belt Highway at the location of Gate #2 identified on Plaintiffs' Exhibit 13(a).

117. From the Hawaii Belt Highway, the trail extends to the shoreline in the vicinity of Kawa Bay.

118. By the 1850's, large numbers of Hawaiians lived in mauka areas around the Village of Hilea.

119. Hilea Village is located and identified by an orange circle on the map by M.D. Monsarat dated 1887 and admitted into evidence as Plaintiffs' Exhibit 2.

EXHIBIT 13

120. Hawaiians living around the Village of Hilea have customarily used a mauka-makai trail to reach Kawa at least since the 1850's.

121. A right-of-way in substantially the same location as the Hilea Trail was customarily used for public pedestrian travel to mauka areas around the Village of Hilea well before the 1890's.

122. A right-of-way in substantially the same location as the Hilea Trail has been continuously used as a right-of-way by the public for pedestrian travel since before the 1890's.

123. The Hilea Trail has been customarily and continuously used for pedestrian travel by people living in the Village of Hilea and other persons from the district for as long as anyone can remember.

124. Based on the type of usage which this trail received, the Hilea Trail is determined to be a minimum of three feet wide.

125. The Hilea Trail was regularly used by members of the public and such use was continued without interruption until Defendant OKUNA actively began to restrict mauka-makai access to the area in the mid 1970's.

126. After the Hawaii Belt Highway was constructed, in 1939, use of the Hilea Trail intensified because persons would park their cars along the highway and would walk to Kawa Bay.

127. The Hilea Trail has been particularly popular with surfers who carry their surfboards to Kawa Bay by this most direct route.

128. Defendant OKUNA posted "no trespassing" signs on the gate at the highway entrance of the Hilea Trail adjacent to the Hawaii Belt Highway around 1955 and again in the 1960's, however, these signs disappeared shortly after they were erected.

129. These "no trespassing" signs did not effectively interrupt public use of the Hilea Trail.

130. Defendant OKUNA made no further attempt to halt use of the Hilea Trail until the mid 1970's.

131. No other owner, or occupier of these lands, or predecessor in interest of Defendant OKUNA, has ever attempted to bar or restrict public use of the Hilea Trail.

132. Use of the Hilea Trail by members of the public was peaceable, reasonable, and free from dispute until Defendant OKUNA began to actively prevent members of the public from using these trails in the mid 1970's.

133. Even after the mid 1970's, some members of the public continued to use the trails; however, many were arrested for trespassing.

134. The public has used a trail in substantially the same location as the Hilea Trail for pedestrian travel to the shoreline of the subject property openly, adversely, continuously, notoriously, under a claim of right, and without interruption for over a century.

135. The public has used the Hilea Trail from Gate Number 2 for pedestrian travel to the shoreline of the subject property openly, adversely, continuously, notoriously, under a claim of right, and without interruption, for over 35 years.

EXHIBIT 121

EXHIBIT AA-28

136. The vast majority of the members of the public using the Hilea Trail never asked permission from Defendant OKUNA and/or his predecessors in interest to use this means to reach Kawa.

137. Some of Defendant OKUNA's predecessors in interest as well as occupants of this property were aware of the public nature of the use of the Hilea Trail.

138. The use of the Hilea Trail by the public was of such frequency that Defendant OKUNA and his predecessors must have known that persons using the trail did so as a matter of right and not in reliance upon toleration or permission of the landowners.

139. Until 1975, Defendant OKUNA and his predecessors in interest, by their silence and inaction, acquiesced in the use of the Hilea Trail by members of the public for as long as anyone can remember.

G. Other Findings

140. All of the lands at issue were originally owned by the sovereign and were conveyed by Government to separate individual owners.

141. Since the mid 1970's, public use of the shoreline at Kawa has been sharply reduced inasmuch as persons wishing to use the area must have access to four-wheel drive vehicles or walk much further along the Government Road or Ancient Walking Trail in order to reach the shoreline at Kawa.

142. Defendant OKUNA has since 1975 barred the individual Plaintiffs, members of the Sportsmans Club of Kau, and other members of the public, from using the

EXHIBIT B22

EXHIBIT AA-29

mauka-makai trails described above and has denied them reasonable access to and from Kawa Bay and the adjacent ocean, tidelands and beaches.

143. Defendant OKUNA has never acted to make his lands or the accessways above-described available to the public for recreational purposes.

144. The individual Plaintiffs and members of the Sportsmans Club of Kau, who have used and enjoyed this shoreline for many years, have been injured by these restrictions on access in a manner which differs in degree and kind from that suffered by the community at large.

145. The individual Plaintiffs and members of the Sportsmans Club of Kau have traditionally used and enjoyed this shoreline for recreational purposes, and have been specially, personally and adversely affected by the actions of Defendant OKUNA in barring the general public from reaching the shoreline along the accessways above described.

146. Public interests and claims in the subject property were not adjudicated in Ulrich v. Okuna, Civil No. 1240, inasmuch as the State of Hawaii was dismissed as a party before a judgment was rendered on the merits.

147. Plaintiffs are proper representatives of a class so numerous that the joinder of all members is impracticable.

148. There are questions of fact common to Plaintiffs and class members.

149. The representative parties will fairly and adequately protect the interests of the class.

150. Defendant OKUNA has acted on grounds generally applicable to the class.

II. CONCLUSIONS OF LAW

Upon the Findings of Fact aforesaid, the Court concludes as follows:

1. There are questions of law common to Plaintiffs and class members.

2. The claims of the representative parties are typical of the claims or defenses of the class.

3. The representative parties will fairly and adequately protect the interests of the class.

4. Final injunctive relief and corresponding declaratory relief is appropriate for the class as a whole.

5. The Court finds the following individuals to be members of the class:

All residents of the State of Hawaii, who in the past have used and enjoyed reasonably, or who have been prevented or deterred by Defendants' actions and conduct from using and enjoying reasonably the trails and paths claimed in the Complaint filed in this cause to reach Kawa Bay and the adjacent tidelands, beaches and ocean.

6. The decision in Ulrich v. Okuna, Civil No. 1240, filed on July 13, 1966, does not bar Plaintiffs' claims.

7. Res judicata and/or collateral estoppel do not bar these claims inasmuch as public interests in the lands at issue were not adjudicated in Ulrich v. Okuna.

8. Section 520-7, H.R.S., does not preclude the acquisition of public prescriptive rights over the rights-of-way in question, inasmuch as applicable prescriptive periods were satisfied and prescriptive rights vested in the public long before the enactment of this statute.

9. Section 520-7, H.R.S., does not bar acquisition of prescriptive easements to this property by the public because Defendant OKUNA has not acted to make his lands available to the public for recreational purposes and thus

EXHIBIT B24

cannot claim the protection and benefits of Chapter 520.

10. Kaalaiki fishpond designated and described by Hawaii Tax Map Key No. 9-5-16-30 was expressly reserved by the sovereign in Grant 1530 to Kimokeo and remains public land owned by the State of Hawaii.

11. Section 657-31, H.R.S., does not bar this action inasmuch as Plaintiffs have acted promptly to assert their claims and have met all applicable statutory limitation periods.

12. Any interruption of use of these rights-of-way by the military during World War II would not affect prescriptive or customary access claims inasmuch as these restrictions were imposed by public authorities in a time of national emergency and bear no relation to the rights or state of mind of the landowners or trail users.

13. The public has without interruption, openly, adversely, continuously, and notoriously, used under a claim of right, the rights-of-way described below for the following periods:

(a) Ancient Walking trail for pedestrian travel for at least 20 years and probably for over 100 years.

(b) Government Road for pedestrian, equestrian and wagon travel for at least 20 years and probably for over 80 years.

(c) Government Road from Hilea Stream to the Punaluu boundary of the property for vehicular travel for at least 20 years and probably for over 30 years.

(d) Corral Gate Road for pedestrian travel for at least 20 years and probably for over 100 years.

(e) Corral Gate Road for pedestrian travel for

EXHIBIT 25

EXHIBIT AA-32

at least 20 years and probably for over 100 years.

(f) Beginning in 1946, Corral Gate Road for vehicular travel for over 13 years.

(g) A trail in substantially the same location as the Hilea Trail for pedestrian travel at least 20 years and probably for over 100 years.

(h) The Hilea Trail from Gate Number 2 on the Hawaii Belt Highway for pedestrian travel for at least 20 years and probably for over 35 years.

14. The acts of Defendant OKUNA which prevent or hinder Plaintiffs and other members of the public from using these trail are in violation of their right to access through an easement by prescription.

15. It is well established that all land in Hawaii originates with a common grantor.

It was long ago acknowledged that the people of Hawaii are the original owners of all Hawaiian land. The Constitution of 1840, promulgated by King Kamehameha III, states:

Kamehameha I, was the founder of the kingdom and to him belonged all the land from one end of the Islands to the other, though it was not his own private property. It belonged to the chiefs and the people in common, of whom Kamehameha I was the head, and had the management of the landed property. Fundamental Law of Hawaii (1904) at 3. State v. Zimring, 58 Haw. 106, 111 (1977).

16. Plaintiffs as members of the general public are entitled to access through the subject property along the Ancient Walking Trail, the Government Road and the Corral Gate Road above-described because easements in favor of Plaintiffs and the general public were reserved by implication in all conveyances of this property.

EXHIBIT E26

EXHIBIT AA-33

17. The acts of Defendant OKUNA which prevent or hinder access to the Ancient Walking Trail, the Government Road and the Corral Gate Road by the Plaintiffs and other members of the general public are in violation of an implied reservation of easement.

18. Prior to the overthrow of the Hawaiian Monarchy and the adoption of the common law of England as the common law of Hawaii, in 1892, the public enjoyed a customary right of access across the subject property along the rights-of-way and for the purpose hereafter described:

(a) Ancient Walking Trail for pedestrian travel.

(b) Corral Gate Trail for pedestrian and equestrian travel.

(c) A trail in substantially the same location as the Hilea Trail for pedestrian travel.

19. Defendant OKUNA now refuses to recognize or acknowledge the customary rights of access above-described and has violated the rights of Plaintiffs and the general public to utilize the Ancient Walking Trail, the Corral Gate Road, and the Hilea Trail based on Hawaiian usage and custom.

20. Before the beginning of the written history of the state and prior to the institution of a system of private land tenure, and thereafter, Plaintiffs and their predecessors, as a custom, have utilized the Ancient Walking Trail, the Corral Gate Trail and a trail in substantially the same location as the Hilea Trail to travel across the subject property.

21. A customary public right of access along the trails and roads above-described is not repugnant to other

customs or laws of the State or County of Hawaii.

22. The acts of Defendant OKUNA which have denied or discouraged public access across this property have violated the rights of Plaintiffs and the general public to customary access along the rights-of-way above-described.

23. By reason of necessity, the State of Hawaii is entitled to access through and across the subject property through the use of a mauka-makai trail from the Hawaii Belt Hawaii to Kaalaiki fishpond.

24. Plaintiffs and the general public are entitled to access across the subject property along the Ancient Walking Trail by virtue of the doctrine of necessity inasmuch as no other means exists whereby persons such as Plaintiffs may traverse the shoreline to fish and enjoy the beaches and tidelands as they have done in the past.

25. Plaintiffs and the general public are entitled to access through and across the subject property through the use of a mauka-makai trail inasmuch as no other reasonable means exists by which members of the public may travel from the Hawaii Belt Highway to reach the shoreline at Kawa.

26. Any actions of Defendant OKUNA which would prevent access along the Ancient Walking Trail and/or access along a mauka-makai trail from Highway 11 would violate the public's right to an easement to this shoreline pursuant to the doctrine of necessity.

27. Any alienation or abandonment of an established public right-of-way by the Defendant STATE OF HAWAII which leaves the public without reasonable access to Kawa Bay and the adjacent shoreline would constitute a breach of public trust; however, there has been no evidence showing

that such an alienation or abandonment occurred.

28. Defendant OKUNA's past actions such as posting "no trespassing" signs, locking gates, blocking rights-of-way with stones and poles and commissioning trespassing arrests, have interfered with the possession, use, and enjoyment of these rights-of-way by the public and warrant the imposition of injunctive relief.

III. ORDER

Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1) Pursuant to Rule 23(b)(2) of the Hawaii Rules of Civil Procedure, a class is certified and the class is defined as follows:

All residents of the State of Hawaii, who in the past have used and enjoyed reasonably, or who have been prevented or deterred by Defendants' actions and conduct from using and enjoying reasonably the trails and paths claimed in the Complaint filed in this cause to reach Kawa Bay and the adjacent tidelands, beaches and ocean.

2) The individual Plaintiffs, members of the Sportsmans Club of Kau, persons similarly situated, and the general public are entitled to reasonable access to Kawa Bay and the shoreline of the subject property in the following manner along the following rights-of-way.

a) A 3 foot wide pedestrian easement along the Ancient Walking Trail.

b) A 15 foot wide pedestrian, equestrian, and wagon easement along that portion of the Government Road which extends from the Honuapo boundary of the subject property to Hilea Stream.

c) A 15 foot wide pedestrian, equestrian and vehicular easement along that portion of the Government

Road which extends from Hilea Stream to the Punalu'u boundary of the subject property.

d) A 3 foot wide pedestrian easement from the upper reach of the waves at the mouth of Hilea Stream to the intersection of Hilea Stream with the Government Road.

e) A 10 foot wide vehicular, equestrian and pedestrian easement along the Corral Gate Road, as located in Plaintiffs' Exhibit 13(a).

f) A 3 foot wide pedestrian easement along the Hilea Trail as located in Plaintiffs' Exhibit 13(a).

3) Defendant MATSUHEI OKUNA and his agents, servants, employees, and all persons acting in active concert or participation with him who receive actual notice of this order are permanently enjoined from barring or preventing the Plaintiffs, members of the Sportsmans Club of Kau, persons similarly situated, and members of the public from using any of the trails, roads and rights-of-way in the manner above-described to reach the shoreline of the subject property.

DATED: Hilo, Hawaii, OCT 14 1980


JUDGE OF THE ABOVE-ENTITLED COURT

EXHIBIT A30

EXHIBIT AA-37

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
KAUPULEHU DEVELOPMENTS)
)
To Amend the Conservation Land Use District)
Boundary into the Urban Land Use District for)
Approximately 1,009.086 Acres of Land at)
Ka'upulehu, North Kona, Island, County, and)
State of Hawai'i, TMK 7-2-03: por: 1)
_____)

DOCKET NO. A93-701

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

This is to certify that this is a true and correct
copy of the Decision and Order on file in the office
of the State Land Use Commission, Honolulu, Hawaii.

OCT 18 2001

Date

by *Anthony J. Adair*
Executive Officer

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER

2001 OCT 18 P 12:51
LAND USE COMMISSION
STATE OF HAWAII

EXHIBIT BB-1

RECEIVED OCT 22 2001