

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07OD-200

OAHU

Amend Prior Board Action of June 13, 2008, Item D-10; Grant of Perpetual, Non-Exclusive Easement to Myrna Anne Pualehua Kai for Access and Utility Purposes; Extinguishment of Two (2) Rights of Access by Removing Utility Easement from the Request and Changing the Applicant to Sanford Ujimori, in his capacity as the Commissioner of Foreclosure Proceeding, Civil No. 10-1-2553-11; Waialeale, Koolauloa, Oahu, TMK: (1) 5-8-001:015 and Road.

BACKGROUND:

On June 13, 2008, under agenda item D-10, the Board approved the issuance of a perpetual, non-exclusive easement at gratis for access and utility purposes to Ms. Kai. The approval was contingent upon Ms. Kai's property being a kuleana. A copy of the approved submittal is attached as **Exhibit 1**.

After going through the process of preparing the map and description and obtaining approval from the City regarding the easement, Ms. Kai was ready to pursue the easement request.

REMARKS:

During the review process, staff was advised by the Department of the Attorney General that §7-1, HRS would not allow installation of a waterline as utility along the access easement. Accordingly, any waterline easement will have to go through the disposition pursuant to Chapter 171, HRS, which trigger an appraisal.

Meanwhile, Ms. Kai's private property was under the foreclosure proceeding. On November 22, 2011, the court entered judgment in favor of the mortgagee and appointed Mr. Sanford Ujimori as the Commissioner. Copies of the court document are attached as **Exhibit 2**.

Recently, Mr. Ujimori advised the staff that an auction of Ms. Kai's private property is planned and he requested the easement be issued to him in the official capacity of the commissioner prior to the auction of the foreclosed property. In addition, Mr. Ujimori requests the removal of any reference of utility easement in the request, which will facilitate the finalization of the easement. In the event the future owner desire to request a utility

easement, such request will be brought to the Board for consideration at a later date.

Staff recommends the Board amend its prior action by removing all references to the proposed utility easement from the approval. Upon approval of today's request, staff will work with the AG in preparing the access easement as requested. In addition, the applicant will be changed to Sanford Ujimori, in his official capacity as the commissioner. Mr. Ujimori will provide the required liability insurance under the easement until the ownership is passed to the new owner.

RECOMMENDATION: That the Board amend its prior Board action of June 13, 2008, under agenda item D-10 by;

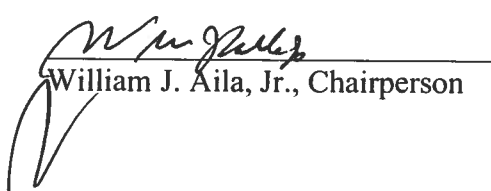
1. Removing all references to the utility easement in the submittal;
2. Replacing the applicant with Sanford Ujimori, in his official capacity as the commissioner.
3. All terms and conditions listed in its June 13, 2008 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

8-10

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 13, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07od-200

OAHU

Grant of Perpetual, Non-Exclusive Easement to Myrna Anne Pualehua Kai for Access and Utility Purposes; Extinguishment of Two (2) Rights of Access; Waialea, Koolauloa, Oahu, Tax Map Key: (1) 5-8-001:015 and road.

APPLICANT:

Myrna Anne Pualehua Kai, unmarried, whose mailing address is Haleiwa, Hawaii 96712.

LEGAL REFERENCE:

Section 171-6 and 13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waialea, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-8-001:015 and road, as shown on the attached map labeled Exhibit A.

AREA:

To be determined by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Agricultural
City & County of Honolulu LUO: AG-2

TRUST LAND STATUS:

Section 5(a) and (b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES NO

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3497, setting aside to the City & County of Honolulu for Beach Park Purposes; and

**APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON**

June 13, 2008

EXHIBIT " 1 "

D-10

Grant of Easement (LOD 27020) to PSL Inc. for roadway and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Not applicable. According to State Abstractor's report at Exhibit B, the property owned by the applicant, identified by tax map key (1) 5-8-001:021, is a kuleana.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Process and obtain subdivision at Applicant's own cost.

REMARKS:

Grant of Easement

According to the title report provided by the applicant, her property, identified by tax map key (1) 5-8-001:021 does not have any legal access. As shown on Exhibit A, the subject private property is surrounded by State land set aside to the City & County of Honolulu for beach park purposes. University of Hawaii operates its Waialea Experimental Farm on the adjacent State land under Governor's Executive Order No. 1848. Applicant intends to obtain a loan from the financial institution to renovate her

property. The lack of legal access does not allow her loan application to continue any further. Therefore, applicant requests the Board authorize the issuance of a perpetual non-exclusive easement to her for access and utility purpose to resolve the problem.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Extinguishment of Two Existing Rights of Access

Pursuant to an agreement dated May 6, 1960, recorded at the Bureau of Conveyances by Liber 3831, page 213, the previous owner of the subject private property agreed to grant two (2) rights of access to the State of Hawaii. Such accesses are shown on the attached map at Exhibit C. The applicant requests the Board extinguish the rights of access as they restrict the utilization of the private property.

Pursuant to the 1960 agreement, "...upon construction by the State of a suitable access road servicing its adjoining lands or upon the development by the State of the adjoining lands, these Rights of Access shall automatically cease ... "

To date, the adjoining land has been set aside to the City & County of Honolulu for beach park purposes. It should meet the stipulation in the 1960 agreement regarding development of the adjoining lands. Department of Parks and Recreation has no objections. Therefore, staff does not have any objections to the extinguishment of the rights of access.

Department of Hawaiian Home Lands, Board of Water Supply, Department of Planning and Permitting, Department of Facility Maintenance, Department of Parks and Recreation, Division of Aquatic Resources, Office of Hawaiian Affairs, and University of Hawaii have no objections/comments on the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1)5-8-001:021, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Myrna Anne Pualehua Kai

covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:


- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-8-001:021, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the extinguishment of two (2) rights of access in favor of the State of Hawaii mentioned in the agreement dated May 6, 1960, recorded at the Bureau of Conveyances by Liber 3831, page 213, subject to the following:
- A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



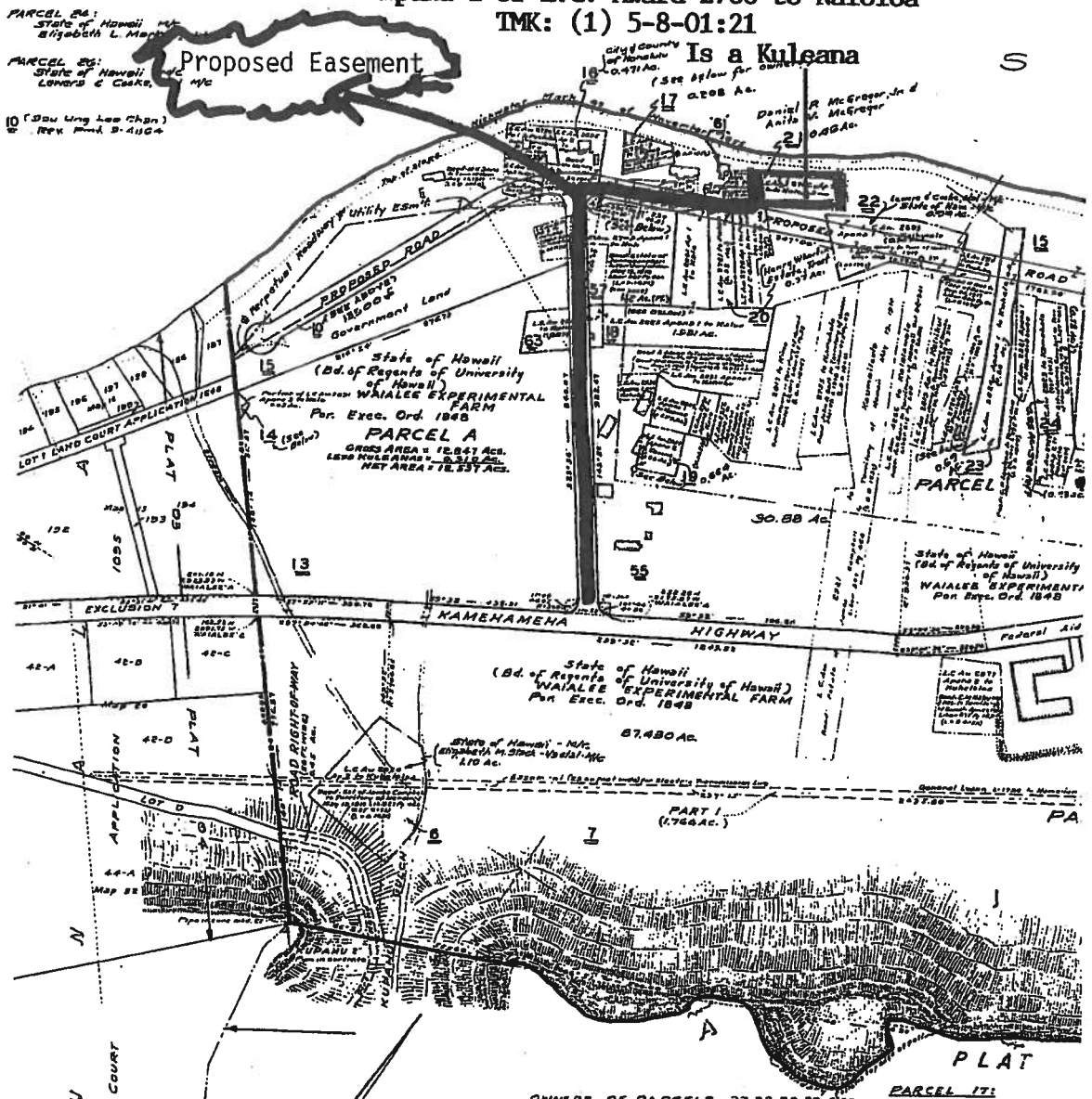
Laura H. Thielen, Chairperson 

Apana 2 of L.C. Award 2766 to Naloloa
 TMK: (1) 5-8-01:21

Proposed Easement

Is a Kuleana

JAN 1 1968
 JUN 4 1973
 OCT 3 1975



- OWNERS OF PARCELS 27, 28, 29, 32, 33**
 Adam C. Baker - 1/10mo
 Henry H. Baker - 1/10mo
 Mary Ann Baker - 1/10mo
 Marguerite B. Proyer 1/10mo
 Edward P. Baker - 1/10
 Charles A. Baker - 1/10
 Louise Copp - 1/10
 Cornelia C. Roberts - 1/10
 Solomon Kahawai, Jr. - 1/10
 Solomon Kahawai, Sr. - 1/10
- PARCEL 17:**
 City & County of Honolulu

PARCEL 37 (Part of 8):
 State of Hawaii
 (Bd. of Regents of University of Hawaii)
 WAIALEE EXPERIMENTAL FARM
 Par. Exec. Ord. 1968

PARCEL 34:
 Chun Fook - 1/10 over 1/10
 Daniel Macpangood - 1/10
 Ahia Macpangood, Est. - 1/10
 David K. Nakale, Est. - 1/10

OWNERS OF PARCEL 16 12, 13, 14
 Elizabeth M. Stock - 1/10 et al.

PARCEL 25:
 Elizabeth M. Stock - 1/10 et al.
 State of Hawaii - 1/10

18 McCandless Land & Cattle Co. 1/10 et al.

DWG. NO. 1729 (Revised)
 SOURCE: H.I.S. PLAT 2197-B
 BY: H.N./E.N. March 21, 1968

FOR WAIALEE, KOOLAULOA, OAHU

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 16, 2007

10286(O)

MEMORANDUM

TO: Barry W. Cheung, Oahu Land Agent

THROUGH: Russell Y. Tsuji, Administrator

FROM: E. Mahoe Collins, ~~State~~ Abstractor

SUBJECT: Kuleana Status of TMK: (1) 5-8-001:021

We have been requested to determine the kuleana status of the original source of title to the subject tax map key parcel (1) 5-8-001:021, identified thereon as being all of Apana 2 of Land Commission Award No. 2766 situate at Waialea, Koolauloa, Oahu.

Records in the State Archives and the Land Division of the Department of Land and Natural Resources reveal that Land Commission Award 2766, dated October 18, 1854, adjudicated the claim of Naloloa to two parcels (Apana) of land. Apana 2 is the subject property of this memorandum.

The name Naloloa does not appear in the 1848 Mahele Book, indicating that the awardee did not receive his lands, as a konohiki, from Kamehameha III in the 1848 land division.

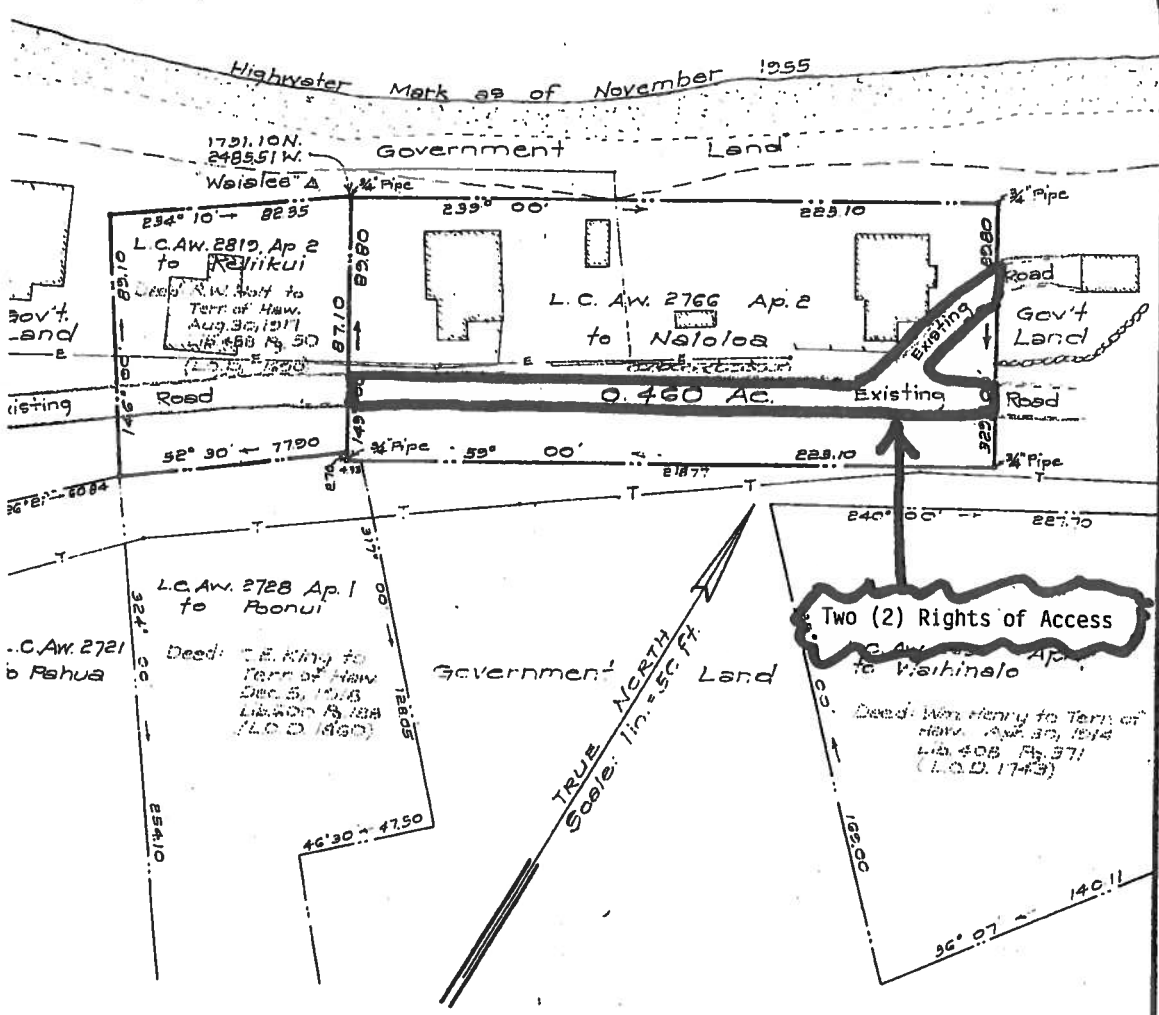
By the testimony of Mose to the Land Commissioners, given on January 16, 1850 and recorded in volume 11 at page 445, the claimant Naloloa received his lands from his wife's parents who received the said lands in the time of Kamehameha I, and possessed it without dispute.

We find that the subject property, a house lot situate in the Ili of Puunoni in the Ahupuaa of Waialea, Koolauloa, Oahu, adjudicated as Apana 2 of Land Commission Award 2766 to Naloloa, dated October 18, 1854, is a kuleana.

If you have any questions, please feel free to call me at 587-0458.

Enclosure

EXHIBIT "B"



Plan showing adjustment of the location of
 L.C. Aw. 2766, Apana 2 to Naloloa
 Waialeale, Koolauloa, Oahu, Hawaii
 Scale: 1 inch = 50 feet.
 Surveyed by Robert T. Hashimoto April 7, 1960

It is hereby mutually agreed by the undersigned owners and parties at interest that the boundaries of L.C. Aw. 2766, Apana 2 to Naloloa as shown hereon are approved and accepted.

Donita Valerie McHugh 5/6/60
 Date
 Owners of L.C. Aw. 2766
 Apana 2 to Naloloa

James M. Quinn 5/6/60
 Commissioner of Public Lands Date
Robert T. Hashimoto 5/6/60
 Surveyor - State of Hawaii Date

b 475
 Hashimoto's C.B. 11 F.B. 1667
 Map: 5-8-01

SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII
 R.T.H. Apr. 7, 1960

EXHIBIT "C"

870316.01

KOBAYASHI, SUGITA & GODA

WENDELL H. FUJI, 4222-0
JESSE W. SCHIEL, 7995-0
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-3889
Telephone: 539-8700
Fax: 539-8799

Attorneys for Plaintiff
FIRST HAWAIIAN BANK

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 NOV 23 PM 12: 07

N. ANAYA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

FIRST HAWAIIAN BANK,	)	CIVIL NO. 10-1-2553-11
	)	(Foreclosure)
Plaintiff,)	
	)	JUDGMENT
vs.)	
)	
MYRNA ANNE PUALEHUA KAI; JOHN)	
DOES 1-50; JANE DOES 1-50; DOE)	
PARTNERSHIPS 1-50; DOE)	
CORPORATIONS 1-50; DOE ENTITIES)	
1-50; and DOE GOVERNMENTAL UNITS)	
1-50,)	
Defendants.)	

JUDGMENT

Pursuant to Rules 54(b) and 58 of the Hawaii Rules of Civil Procedure, and pursuant to the Findings of Fact, Conclusions of Law, and Order Granting Plaintiff First Hawaiian Bank's Motion for Summary Judgment Against Defendant Myrna Anne Pualehua Kai and For An Order For Interlocutory Decree of Foreclosure and For Entry of Final Judgment Pursuant to Haw. R. Civ. P. 54(B), filed on July 29, 2011, final judgment is hereby entered in favor of Plaintiff First Hawaiian Bank, a Hawaii banking corporation, ("Plaintiff") and against Defendant Myrna Anne

EXHIBIT " 2 "

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

n. Anaya
CLERK, Circuit Court, First Circuit

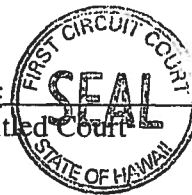
EXHIBIT " "

Pualehua Kai on all claims asserted in Plaintiff's Complaint, filed November 24, 2010.

As there is no just reason for delay in execution upon the claims resolved by this Judgment, this Judgment shall be certified as a Final Judgment and entered as a Final Judgment pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure, and against all Defendants.

Dated: Honolulu, Hawaii, NOV 27 2011.

BERT I. AYABE
Judge of the Above-Entitled Court



First Hawaiian Bank v. Myrna Anne Pualehua Kai, et al, Civil No. 10-1-2553-11; Circuit Court of the First Circuit, State of Hawaii; JUDGMENT

870316.01
KOBAYASHI, SUGITA & GODA

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Telephone: 539-8700
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Attorneys for Plaintiff
FIRST HAWAIIAN BANK

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 NOV 23 PM 12: 06

N. ANAYA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

FIRST HAWAIIAN BANK,	)	CIVIL NO. 10-1-2553-11
	)	(Foreclosure)
Plaintiff,)	
	)	FINDINGS OF FACT, CONCLUSIONS OF
vs.	)	LAW, AND ORDER GRANTING PLAINTIFF
	)	FIRST HAWAIIAN BANK'S MOTION FOR
	)	SUMMARY JUDGMENT AGAINST
MYRNA ANNE PUALEHUA KAI; JOHN	)	DEFENDANT MYRNA ANNE PUALEHUA
DOES 1-50; JANE DOES 1-50; DOE	)	KAI, FOR INTERLOCUTORY DECREE OF
PARTNERSHIPS 1-50; DOE	)	FORECLOSURE AND FOR ENTRY OF
CORPORATIONS 1-50; DOE ENTITIES	)	FINAL JUDGMENT PURSUANT TO HAW R.
1-50; and DOE GOVERNMENTAL UNITS	)	CIV. P. 54(B), FILED JULY 29, 2011;
1-50,	)	EXHIBIT "A"
Defendants.)	
	)	<u>Hearing</u>
	)	Date: August 24, 2011
	)	Time: 9:00am
	)	Judge: Honorable Bert I. Ayabe

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
PLAINTIFF FIRST HAWAIIAN BANK'S MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANT MYRNA ANNE PUALEHUA KAI, FOR
INTERLOCUTORY DECREE OF FORECLOSURE, AND FOR ENTRY OF FINAL
JUDGMENT PURSUANT TO HAW R. CIV. P. 54(B), FILED JULY 29, 2011

This case came on for hearing before this Court, the Honorable Bert I. Ayabe
presiding, on August 24, 2011, on Plaintiff First Hawaiian Bank's ("Plaintiff") Motion for

Summary Judgment Against Defendant Myrna Anna Pualehua Kai ("Defendant"), and For an
I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.



Order For Interlocutory Decree of Foreclosure, and for Entry of Final Judgment Pursuant to Haw R. Civ. P. 54(B), filed on July 29, 2011 (hereinafter "**Motion for Summary Judgment**").

Jesse W. Schiel appeared on behalf of Plaintiff, Gary Victor Dubin appeared for Defendant, and ~~no other parties~~ ^{defendant} appeared.

The Court, having heard the statements of counsel, and having considered the Motion for Summary Judgment, the Declaration and Exhibits attached thereto, the Memorandum filed herein, and the evidence presented herein, and being fully advised in the premises, makes the following Findings of Facts:

FINDINGS OF FACT

1. Plaintiff is a Hawaii banking corporation organized and existing under the laws of the State of Hawaii.

2. Defendant is the sole title holder of the property being foreclosed on and located in Hawaii, and is a resident of Hawaii.

3. Defendants JOHN DOES 1-50, JANE DOES 1-50, DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50, DOE ENTITIES 1-50, and DOE GOVERNMENTAL UNITS 1-50 are persons or entities who in some manner, presently unknown to Plaintiff, are liable to Plaintiff for the amounts due as alleged herein, who have lien rights in the property being foreclosed upon and/or who have in some manner presently unknown to Plaintiff, an interest in and to the property being foreclosed upon, and whose true names, identities and capacities are presently unknown to Plaintiff or its attorneys being that their names or identities have not appeared in a search of the title of the property being foreclosed upon, and despite diligent and good-faith efforts to ascertain their names or identities on behalf of Plaintiff and its attorneys.

4. On or about September 10, 2007, Plaintiff made a loan to Defendant in the

principal amount of EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (US \$850,000.00) (hereinafter referred to as “**Loan**”).

5. On or about September 10, 2007, Defendant, as maker, for value received and in conjunction with the Loan, executed and delivered that certain Promissory Note in the principal amount of EIGHT HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (U.S. \$850,000.00) (hereinafter referred to as “**Note**”), a true and correct copy of which is attached to the Motion for Summary Judgment as **Exhibit “B”**.

6. The Promissory Note was secured by that certain Mortgage also dated September 10, 2007, executed by Defendant, as Mortgagor, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-211485 (herein referred to as the “**Mortgage**”), a true and correct copy of which is attached to the Motion for Summary Judgment as **Exhibit “C”**.

7. On November 10, 2009, Defendant and Plaintiff executed a Change in Terms Agreement which extended the First Maturity Date to February 10, 2010 (herein referred to as the “**Change in Terms**”), a true and correct copy of which is attached to the Motion for Summary Judgment as **Exhibit “D”**.

8. On September 10, 2007, Defendant signed an Account Pledge and Security Agreement (“**Pledge Agreement**”). The Pledge Agreement secured the repayment of the Loan and all renewals, extensions and modifications thereof, the payment of all interest thereon, and the payment, the observance and the performance of all covenants, conditions and agreements required to be paid, observed and performed by Defendant according to the terms and provisions of the Mortgage, Note, and any other instruments or agreements executed in connection with the Loan, a true and correct copy of which is attached to the Motion for Summary Judgment as **Exhibit “E”**.

9. The Note, Mortgage, Change in Terms, Pledge Agreement are herein collectively referred to as the "Loan Documents". The specific description of the real property is set forth in each of the respective Loan Documents and such descriptions are hereby incorporated herein by this reference. All of the real property identified and described in the Loan Documents is collectively referred to herein as the "**Mortgaged Property**".

10. The Mortgaged Property is all of that certain fee simple interest in that certain parcel of land situated at 58-207^H Kamehameha Highway, Haleiwa, Hawaii 96712, together with all other rights and real and personal property, and further identified by tax map key number (1) 5-8-001-021.

11. Defendant has defaulted in the observance and performance of the terms, covenants and conditions set forth in the Loan Documents in that although demand has been made on her, she has failed and neglected to pay the principal sum thereof and interest thereon at the times and in the manner therein provided, to-wit, that the monthly installments due and payable under the terms of the Note and Change in Terms are past due and delinquent; that she has failed and neglected to pay additional mortgage expenses, advances, and charges incurred or made pursuant to the terms and conditions of the Mortgage and Pledge Agreement; and that by reason of such default, the entire amount of said obligation presently unpaid remains due and payable.

12. The unpaid amounts owed to Plaintiff by Defendant under the Loan Documents as of July 18, 2011, are as follows:

Unpaid Principal	\$ 850,000.00
Interest (3/10/10 to 7/18/11 @ 7.750%)	\$ 95,701.74
Default Interest (12/10/10 to 7/18/11 @ 4.00%)	\$ 49,300.00
TOTAL	\$ 995,001.74

In addition, interest continues to accrue on a daily basis in the amount of \$277.43. Plaintiff's

Adele Kimura-Kemp 08

summary of account is shown by the Declaration of ~~Gary Y. Kawamoto~~ attached to the Motion for Summary Judgment.

13. The aforesaid total sum of NINE HUNDRED NINETY FIVE THOUSAND ONE AND 74/100 DOLLARS (U.S. \$995,001.74), together with interest, late charges, attorneys' fees, and such other and further amounts and charges as may be proper and allowed, accrued or incurred by Plaintiff are valid liens against the Mortgaged Property, more particularly described in Exhibit "A" attached hereto, senior and superior in priority to any interests of any of the parties named herein in or to the Mortgaged Property.

14. The determination of such additional amounts due under the Loan Documents, including principal, interest, advances, late charges, costs, expenses and attorneys' fees, as well as the amount of expenses reasonably expended by the Plaintiff for the preservation of the Mortgaged Property, shall be made at the time of confirmation of sale.

15. By reason of the facts above set forth and alleged, Plaintiff is entitled to a judgment against Defendant for the amounts set forth hereinabove, plus accrued interest, costs and attorney's fees, judgment for foreclosure against Defendant, foreclosure of the Mortgage, to a sale of all of the Mortgaged Property, and to have the proceeds from the sale disbursed to Plaintiff to pay the amounts due and owing to Plaintiff under the Loan Documents.

16. Pursuant to Section 634-51 of the Hawaii Revised Statutes, Plaintiff filed its Notice of Pendency of Action herein on November 24, 2010, and recorded the Notice of Pendency of Action in the State of Hawaii Bureau of Conveyances as Document No. 2010-185637 on December 1, 2010.

17. It is provided in the Mortgage that in the event of foreclosure, Plaintiff may be awarded all sums by said mortgage secured, including reasonable attorneys' fees and all costs, expenses or advances made by Plaintiff for the benefit or protection of its said Mortgage or

connected therewith.

18. There is no just reason for delay and this Court should enter final judgment against Defendant and in favor of Plaintiff on the Complaint, filed herein on November 24, 2010 (“Complaint”).

CONCLUSIONS OF LAW

Pursuant to the foregoing Findings of Fact, the Court concludes:

1. This Court has jurisdiction over all the parties to this action, the subject matter of this action and all of the claims presented herein. The Court also concludes that venue is proper.

2. Defendant is in default under the Loan Documents.

3. Pursuant to HRS Section 634-51, any and all further encumbrances or purchasers in respect of the Mortgaged Property or any part thereof, whose interest arises from and after the Notice of Pendency of Action filed in the State of Hawaii Bureau of Conveyances on December 1, 2010, are deemed to have constructive notice of the pendency of this action and are bound by any judgment entered herein if the person claims through a party to this action.

4. Plaintiff is entitled to judgment against Defendant for the amounts set forth hereinabove, plus accrued interest, costs and attorneys’ fees.

5. Plaintiff is entitled to judgment for foreclosure, to have the Mortgage foreclosed and the Mortgaged Property sold in the manner prescribed by law, and is further entitled to have the proceeds arising from such sale applied to the sums due and owing to Plaintiff.

6. Plaintiff is entitled to a deficiency judgment against Defendant for the difference between the amount owed to Plaintiff under the Loan Documents, and the proceeds of the sale of the Mortgaged Property applied thereto.

7. Plaintiff's Mortgage is a valid lien against the Mortgaged Property, senior and superior in priority to all claims or interests by any of the parties named herein.

8. Plaintiff is entitled to judgment as a matter of law for foreclosure against Defendant pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure, as there is no just reason for delay.

9. That the Court directs a final judgment for foreclosure be entered herein as to Plaintiff's Complaint.

ORDER GRANTING PLAINTIFF FIRST HAWAIIAN BANK'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT MYRNA ANNE PUALEHUA KAI, FOR INTERLOCUTORY DECREE OF FORECLOSURE AND FOR ENTRY OF FINAL JUDGMENT PURSUANT TO HAW R. CIV. P. 54(B)

Pursuant to the foregoing Findings of Fact and Conclusions of Law

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff's Motion for Summary Judgment Against Defendant Myrna Anne Pualehua Kai, and For An Order For Interlocutory Decree of Foreclosure and For Entry of Final Judgment Pursuant to Haw R. Civ P. 54(B), filed on July 29, 2011 is hereby granted in favor of Plaintiff against Defendant Myrna Anne Pualehua Kai.

2. That this Court expressly direct that said Summary Judgment and Interlocutory Decree of Foreclosure as to All Claims and Parties in Plaintiff's Complaint, be entered as a final judgment, as there is no just reason for delay, pursuant to Rule 54(b), Hawaii Rules of Civil Procedure.

3. That the Mortgage is foreclosed.

4. That SANFORD UJIMORI

whose address is 94-674 Farrington Highway, Waipahu, HI 96797, and whose telephone number is 671-5628, is hereby appointed Commissioner of this Court to serve without bond.

5. Upon the effective date of the Commissioner's appointment, the Commissioner shall henceforth hold all legal and equitable title to the Mortgaged Property.

6. That the Commissioner is authorized and directed to take possession of the Mortgaged Property and make this sale of foreclosure as hereinafter set forth.

7. That this sale shall be at public auction, without upset price; that the amount of ten percent (10%) of the bid price shall be paid down at the close of the auction in cash or cashier's check; that the balance must be paid concurrently with the delivery of the documents transferring title; that the purchaser shall pay all costs and expenses of closing, including the costs of escrow, conveyance, recordation, conveyance taxes and all escrow and closing costs; that the purchaser shall be responsible for securing purchaser's possession to the Mortgaged Property; and that such sale shall not be final until approved by the Court.

8. That the Commissioner shall give notice of the sale as follows:

a. The notice shall be published in the classified advertisements section of a newspaper of general circulation in the county in which the subject property lies or as the Court may order.

b. The notice need not contain a full legal description of the Mortgaged Property.

c. The notice shall give the date, time and place of sale and a general description of the Mortgaged Property.

d. The notice shall be published once in each week for three consecutive weeks, with the sale to take place no sooner than fourteen (14) days after the third date of publication.

e. The Commissioner may give further notice of the sale in such manner and frequency as such Commissioner may, in the exercise of such Commissioner's discretion,

deem reasonable and appropriate.

9. That the sale so made and confirmed shall be free and clear of all liens and encumbrances of any nature by any of the parties herein against upon the Mortgaged Property and every part thereof.

10. That said Commissioner shall have full authority to manage the Mortgaged Property, receive and collect all rents, income and profits from the Mortgaged Property, to expend a reasonable sum for advertising the sale thereof, and to expend a reasonable sum for proper maintenance and repair thereof.

11. That said Commissioner shall have the authority to apply to the Court for a Writ of Possession to remove the Defendant and any tenants or other persons occupying the Mortgaged Property, if necessary.

12. That the closing of the sale so made and confirmed shall perpetually bar Borrower, and all parties hereto, and all other persons claiming by, through or under them, of and from all right, title and interest in and to the Mortgaged Property and any part thereof.

13. That all parties appearing herein are authorized to be purchasers at said sale, and that if Plaintiff is the highest bidder, payment of the down payment and the balance of the sale price may be made by offset against the amount owed to Plaintiff under the Loan Documents.

14. That the ten percent (10%) down payment requirement shall be offset as to Plaintiff and any other secured party herein, up to the amount of its secured indebtedness available to it out of the net proceeds of sale, and the balance of the purchase price may be satisfied by way of offset up to the amount of its secured indebtedness which are payable and available out of the net proceeds of sale.

15. That the Commissioner shall file herein an accurate accounting of all the

Commissioner's receipts and expenses and distributions.

16. That the Commissioner shall be awarded such fees and costs as this Court shall determine to be reasonable.

17. That a further hearing shall be held to consider the confirmation of the foreclosure sale, with this Court determining the amounts of fees and expenses to be awarded the Commissioner, and the total amount due and owing to Plaintiff at the time of judgment under the Loan Documents including but not limited to the amount of attorneys' fees and costs, the amount of expenses reasonably expended by for the preservation of the Mortgaged Property and such additional amounts due Plaintiff including the priorities of the parties' liens and respective attorneys' fees, advances and costs.

18. That at the hearing on confirmation hereinabove mentioned, if it appears that the proceeds of such sale shall be insufficient to pay all the amounts which are valid claims under the Loan Documents, and that a deficiency exists, judgment shall be entered against Defendant MYRNA ANNE PUALEHUA KAI for such deficiency in favor of Plaintiff.

19. That the cost of drafting closing documents transferring title to the Property to the purchaser, notary fees, escrow fees, conveyance tax, recordation fees, consent fees, and title insurance shall be payable by the purchaser thereof.

20. That Plaintiff shall be entitled to an award of attorneys' fees and costs incurred herein, and such other and further relief as this Court may deem just and equitable.

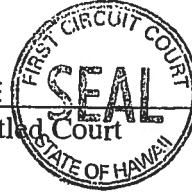
21. That the interests of all persons or entities which have not been fully determined and adjudicated hereby shall be determined at a subsequent hearing herein.

22. That there being no just reason for delay, this Court expressly determines and directs that final judgment be entered in favor of Plaintiff and against all Defendants, pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure.

23. That this Court reserves jurisdiction to direct such further matters, claims and proceedings herein.

DATED: Honolulu, Hawaii, NOV 22 2011

BERT I. AYABE
Judge of the Above-Entitled Court



APPROVED AS TO FORM:

GARY VICTOR DUBIN
FREDERICK J. ARENSMEYER
PETER T. STONE

Attorneys for Defendant,
MYRNA ANNE PUALEHUA KAI

First Hawaiian Bank v. Myrna Anne Pualehua Kai, et al. Civil No. 10-1-2553-11; Circuit Court of the First Circuit, State of Hawaii; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF FIRST HAWAIIAN BANK'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT MYRNA ANNE PUALEHUA KAI, AND FOR AN ORDER FOR INTERLOCUTORY DECREE OF FORECLOSURE AND FOR ENTRY OF FINAL JUDGMENT PURSUANT TO HAW.R.CIV.P. 54(B), FILED JULY 29, 2011; EXHIBIT "A"

EXHIBIT A

Exhibit "A"

ALL OF THAT CERTAIN PARCEL OF LAND BEING ALL OF THE LAND DESCRIBED IN AND COVERED BY ROYAL PATENT NUMBER 2907, LAND COMMISSION AWARD NUMBER 2766, APANA 2 TO NALOLOA, SITUATE, LYING AND BEING AT WAIALEE, DISTRICT OF KOOLAULOA, CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4-INCH PIPE AT THE WEST CORNER OF THIS PARCEL OF LAND, AND ON THE NORTH CORNER OF L. C. AW. 2819, APANA 2 TO KELIUKUI, THE COORDINATES OF SAID POINT OF BEGINNING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "WAIALAEE" BEING 1,791.10 FEET NORTH AND 2,485.51 FEET WEST, AS SHOWN ON GOVERNMENT SURVEY REGISTERED MAP 4091, THENCE RUNNING BY AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH:

1. 239° 00' 223.10 FEET ALONG GOVERNMENT LAND TO A 3/4-INCH PIPE;
2. 329° 00' 89.80 FEET ALONG GOVERNMENT LAND TO A 3/4-INCH PIPE;
3. 59° 00' 223.10 FEET ALONG GOVERNMENT LAND AND ALONG L. C. AW. 2728, APANA 1 TO POONUUI TO A 3/4-INCH PIPE;
4. 149° 00' 89.80 FEET ALONG L. C. AW. 2728, APANA 1 TO POONUUI AND L. C. AW. 2819, APANA 2 TO KELIUKUI TO THE POINT OF BEGINNING AND CONTAINING AN AREA OF 0.460 ACRE, MORE OR LESS.

BEING ALL OF THE PREMISES CONVEYED BY COMMISSIONER'S DEED RECORDED DECEMBER 7, 2007 AS REGULAR SYSTEM DOCUMENT NO. 2007-211484 OF OFFICIAL RECORDS
GRANTOR: BRADY YEE, THE DULY APPOINTED COMMISSIONER IN MYRNA ANNE PUALEHUA KAI VS. RALPH S. GRAY AND CATHERINE M. GRAY, ET. AL., CIVIL NO. 05-1-2015-11, FILED IN THE CIRCUIT COURT OF THE FIRST CIRCUIT OF THE STATE OF HAWAII
GRANTEE: MYRNA ANNE PUALEHUA KAI, UNMARRIED

TMK(S): (1) 5-8-001-021-0000