

1638-A Mikahala Way
Honolulu, HI 96816

September 11, 2019

David Kimo Frankel's Testimony on Resorttrust Hawaii LLC's Request for a Right of Entry to Use Land Dedicated to Public Beach Use in Front of the Kahala Hotel, Item D-4 on the September 13, 2019 Agenda

Chair Case and members of the board,

The staff submittal "Remarks" begins with misleading information. Yes, the area that is currently grassy was built "at the cost of the private property owners and tenants around 1963." But the staff submittal fails to inform you that it was built (a) in exchange for allowing the hotel to be built; and (b) to provide "a public beach."

In the early 1960s, Bishop Estate lobbied the City to change the zoning of its parcel to allow the hotel to be built. *See e.g.* Honolulu Advertiser, April 24, 1960. Bishop Estate trustees released a statement published in the August 9, 1960 Honolulu Star-Bulletin. The trustees pledged:

In front of the hotel and indeed extending westward past the golf clubhouse and the public park to Kapakahi Stream, the developer would create a good beach. The beach will be designed to improve conditions due to the Kapakahi Stream and must have the approval of State officials. All the beach seaward from the Estate's land court makai boundary would belong to the State and the public would have free access to it across the park and enjoyment of the beach area.

In the microfilm files in City Hall are a slew of petitions submitted by Vince Esposito, asking the Honolulu City Council to rezone the property so that the public could benefit from the beach. The re-zoning bill was vetoed, but over-ridden based, in part, on the promises that if the land was re-zoned, this new public beach would be created. So, please do not be misled into thinking that the beach was created as an unselfish goodwill gesture by the hotel. BLNR owes the hotel nothing.

In 1963, the chair of the BLNR, along with Charles Pietsch, the trustees of Bishop Estate and others signed an agreement that is recorded in Land Court. It was mutually agreed by all parties that the land makai of the Bishop Estate property would be "used as a public beach." A copy of this agreement is in DLNR's files and should be made available to members of the Board.

The area that is now grassy was not always grassy. In the 1960s and 1970s, the entire area makai of the hotel was sandy. The entire area was— as all the parties had originally agreed — "used as a public beach." In the 1980s, part of the area was landscaped with grass. And in later decades, the hotel increasingly made use of public land that had been dedicated to be "used as a public beach."

I hope that you keep this history in mind when you consider the hotel's request to use the area

dedicated to be “used as a public beach.” Please also consider that the hotel occupies more than six acres of land. There is no reason that the hotel, which operates several restaurants, cannot accommodate a luau on its own land.

Finally, please understand that your staff is asking you to approve a rental of ten cents per square foot for use of state land for twelve hours. If members of the public request a wiki permit, they are also charged ten cents per square foot. But members of the public are limited to only two hours of use and are prohibited from using any kind of equipment or apparatus. *See* <https://dlnr.ehawaii.gov/permits/terms.html> In other words, the hotel gets a sweetheart deal. They can use state land for a greater length of time and with fewer restrictions, but pay the same price as everyone else. And consider this: the hotel is paying you less for the use of state land for twelve hours than they are the attorneys who are helping them get this permit. You have the legal authority to charge more.

/s/

David Kimo Frankel