

1638-A Mikahala Way  
Honolulu, HI 96816  
[davidkimofrankel@gmail.com](mailto:davidkimofrankel@gmail.com)

Testimony in Opposition to the Renewal of Revocable Permit S-7915 for the RTH,  
Item D-12 on the December 7-8, 2023 Agenda

Chair Chang and member of the board,

Revocable permit S-7915 allows Resorttrust Hawaii, LLC to exclude members of the public from using portions of land dedicated to be used as a public beach in front of the Kāhala Hotel.

Resorttrust should continue to hold a revocable permit to allow them to maintain Lot 41, but the terms of the permit must exclude presetting of beach chairs and any other commercial use.

I. **The Legislature Prohibited Presetting Chairs on Our Beaches.**

A few months ago, the legislature passed Act 227 (2023). It prohibits vendors from presetting commercial beach equipment on any beach under DLNR's jurisdiction (unless newly promulgated DLNR rules authorize them). The legislature noted that "the presetting of commercial beach umbrellas, chairs, and other beach equipment on beaches has been a long-standing issue that has generated many complaints." It also recognized the importance of "the public's ability to freely enjoy Hawaii's beaches." Conf. Comm Rep. No. 174 found at: [https://www.capitol.hawaii.gov/sessions/session2023/CommReports/SB67\\_CD1\\_CCR174\\_.htm](https://www.capitol.hawaii.gov/sessions/session2023/CommReports/SB67_CD1_CCR174_.htm)

To be clear, the grassy portion of Lot 41 is a public beach – despite the convoluted arguments offered by your staff.

In 1963, the State of Hawai'i entered into an agreement with the Kāhala Hilton Hotel Company, Inc., Bishop Estate, and others, in which all the parties understood and agreed that the filled and reclaimed lands that now constitute Lot 41 "**shall be used as a public beach.**" Exhibit A. The 1963 Agreement provides that "Title to and ownership of **all filled and reclaimed lands** and improvements **seaward** of the **makai** boundaries of Land Court Application No. 828 and 625 shall **remain** in and vest in the State of Hawaii and shall be used as a public beach." *Id.*

Before it was created, Lot 41 was beach and ocean. It was then filled. The following photographs demonstrate that the "filled and reclaimed lands" that are "seaward of the makai boundaries of Land Court Application No. 828" constitute Lot 41. They show that Lot 41 occupies the area that was once sandy beach and ocean. The first photograph shows what the beach looked like prior to construction. Notice the beach forms basically a straight line across.

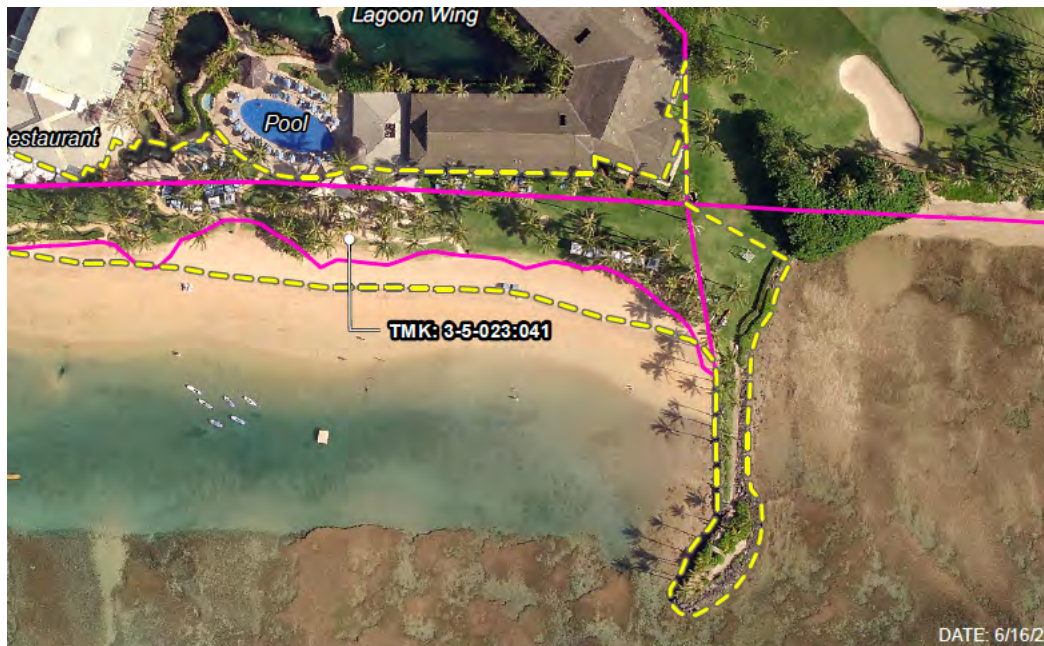


The next photograph shows what the beach looked like after construction.



The beach now juts out from the natural coastline. Everything makai of the mauka base of the groin on the right side of the photograph was filled. The mauka edge of Lot 41 runs to the base of the groin. The area makai of the base of the groin is the “filled and reclaimed lands and improvements seaward of the makai boundaries of Land Court Application No. 828 and 625.” That is the area that “shall remain in and vest in the State of Hawaii and shall be used as a public beach.” *Id.*

The next photograph shows what it looks like today. The original shoreline can be seen on the right. Some time in the 1980s, the Kahala Hotel grassed over portions of the sandy beach on Lot 41. Although primarily covered in grass now, a sandy beach lies beneath Lot 41's turf.



Everything makai of the mauka edge of Lot 41 was filled and reclaimed. The makai edge of Lot 41 is the shoreline, and the mauka edge borders the Kāhala Hotel, which occupies TMK parcel (1) 3-5-023:39, also designated as lot 228 of Land Court Application 828. No one disagrees that the Kāhala Hotel is on lot 228 of Land Court Application 828. Lot 41 is directly seaward of the makai boundary of Land Court Application 828. This is the area dedicated to “be used as a public beach.”

Finally, the legislature has defined the term “beach” to include the area encompassed by Lot 41. Act 227 (2023) amended HRS chapter 200, which includes a definition of “beaches encumbered with easements in favor of the public.” It means “**any lands** which lie **along the shores** of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.” HRS § 200-1 (emphasis added). It does not say makai of the shoreline. Similarly, in HRS chapter 205A, the legislature defined “beach” as

**a coastal landform** primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action and tidal processes.” “Beach” includes sand deposits in nearshore submerged areas, or sand dunes **or upland beach deposits landward of the shoreline, that provide benefits for public use and recreation**, for coastal ecosystems, and as a natural buffer against coastal hazards.

HRS § 205A-1 (emphasis added). *See also* HRS § 171-151 (““Beach lands’ means all lands in the shoreline area including sand, rocky, or cobble beaches, dune systems, **landward and**

**seaward** sand reserves, and all such lands subject to the natural processes of erosion and accretion. The term includes easements and rights in such land and any improvements on land.”); HRS § 171-42 (“In any disposition under this section the board shall give consideration to the needs of the **public for beach area above the high water mark.**”).<sup>1</sup>

Setting the law aside for a minute, how is it in the state’s interest to exclude members of the public from using a portion of land that has been set aside to “be used as a public beach? It is in the hotel’s financial interest to landscape, maintain and groom the area and will do so even if it cannot preset any chairs.

The terms of revocable permit S-7915 need to be amended.

## **II. RTH Has Been Violating the Terms of the Revocable Permit.**

In addition, the hotel has **not** been complying with the terms of the permit. RTH frequently presets more than the 70 beach chairs that S-795 authorizes them to preset. We have many videos that we can show to you that RTH often places more than 70 chairs on Lot 41. We have asked for time to show your staff these videos, but they have refused to meet with us. RTH sets out more chairs in the summer – when more tourists stay at the hotel – than in October. The fact that on one day out of 365 days of the year, your staff observed that there were fewer than 70 chairs (and after Tyler Ralston’s videos documenting the number of preset chairs were posted on BLNR’s website for RTH to see) is not evidence of compliance.

Recently, the City cited the hotel for its unauthorized fence, an issue that we have raised in the past. Exhibit B.

When Hawaiians constructed an ahu on Mauna Kea, government officials tore it down. When a hotel installs a plaque on public land, it faces no consequences. Your staff is asking you to legalize a plaque that Kāhala Hotel embedded on public land without authorization whatsoever. How is leaving an illegal plaque on public land in the state’s best interests?

Last year, your staff finally understood that RTH’s outfall pipes run across state land – an issue that we have attempted to point out for years. This board has never authorized those uses and has not collected a penny in rent from this use of ceded land, as is its trust duty. And despite this board’s requiring RTH and the Land Division to follow through on this issue, there has been no substantive progress in more than a year.

Moreover, we have evidence that the hotel (or its contractor) is engaged in commercial activity on Lot 41, which is not authorized by the permit.

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<sup>1</sup> HRS § 171-42 also provides, “Where public land disposed of for hotel or resort use is adjacent to any beach, waterway, or historic monument or landmark, **the disposition shall be subject to reservations of public right-of-way or public access at all times to such beach**, waterway, historic monument, or landmark.” HRS § 171-26 states that “the right of the people to utilize the public beaches . . . shall be protected.”



May 8, 2023 at 11:52:13 AM  
5000 Kahala Ave  
East Honolulu HI 96816  
United States  
The Kahala Hotel & Resort



May 8, 2023 at 11:52:19 AM  
5000 Kahala Ave  
East Honolulu HI 96816  
United States  
The Kahala Hotel & Resort

RTH has a well-established pattern and practice of thumbing its nose at the requirements imposed by this board. Exhibit C. Its behavior should not be rewarded.

Aloha,

/s/ David Kimo Frankel

see attached exhibits

# EXHIBIT A

**RECORDATION REQUESTED BY:**

DEPT. OF LAND AND NATURAL RESOURCES  
LAND MANAGEMENT DIVISION

**AFTER RECORDATION, RETURN TO:**

DEPT. OF LAND AND NATURAL RESOURCES  
LAND MANAGEMENT DIVISION

**RETURN BY: MAIL ( ) PICKUP (x)**

THE ORIGINAL OF THIS DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII  
OFFICE OF  
**BUREAU OF CONVEYANCES**

Received for record this 27th  
day of January, A.D., 1967  
at 11:15 o'clock A M. and  
recorded in Liber 5568  
No. Pages 249

Space above this line for Registrars  
use.

In accordance with the provisions of Section 343-21,  
Revised Laws Hawaii, 1955, as amended, this page is  
attached to that certain instrument dated  
February 15, 1963 between:

STATE OF HAWAII

**AND**

KAHALA HILTON HOTEL COMPANY,  
INC., ETALS



AGREEMENT

THIS AGREEMENT entered into this 15<sup>th</sup> day of February, 1963, by and between the State of Hawaii, hereinafter referred to as the "State," and the Kahala Hilton Hotel Company, Inc., a Hawaii corporation, whose principal place of business and post office address is 2005 Kalia Road, Honolulu, City and County of Honolulu, State of Hawaii, Charles J. Pietsch, Jr., whose principal place of business and post office address is 235 Queen Street, Honolulu aforesaid, David T. Pietsch, whose principal place of business and post office address is 235 Queen Street, Honolulu aforesaid, hereinafter referred to as the "owners" and the Waialae Country Club, whose principal place of business and post office address is 4997 Kahala Avenue, Honolulu aforesaid, the Sheraton Hawaii Corporation, whose principal place of business and post office address is 2259 Kalakaua Avenue, Honolulu aforesaid, the Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, whose principal place of business and post office address is 519 Halekawiila Street, Honolulu aforesaid.

WITNESSETH THAT:

WHEREAS, the Bernice P. Bishop Estate is the registered title holder of Lots 227 and 228, as shown on May 21 of Land Court Application No. 828 (Transfer Certificate of Title No. 83447) and Lot 23, as shown on May 2 of Land Court Application No. 665 (Transfer Certificate of Title No. 76540); and

SOH000016

WHEREAS, the Kahala Hilton Hotel Company, Inc. is the sub-lessee under the registered sublease (Land Court Document No. 289158 of said Lot 228 as shown on said Map of Land Court Application No. 838); and

L. 273491  
S/L. 285441  
a/d 204049

WHEREAS, Charles J. Pietsch, Jr. and David T. Pietsch are the lessees under registered leases (Land Court Document Nos. 273490 and 273491 of the said Lots 227 and 228 as shown on the said Map 21 of Land Court Application No. 828); and

no. unrecorded

original to  
C.H. Hilton Inc  
204049

WHEREAS, the Sheraton Hawaii Corporation is the registered title holder of said Lot 22 as shown on said Map 2 of Land Court Application No. 665 (Transfer Certificate of Title No. 75667); and

unrecorded  
204049

WHEREAS, the Waialae Country Club is the lessee under an unrecorded lease of the said Lot 23 as shown on Map 2 of Land Court Application No. 665 and also lessee under an unrecorded lease of the said Lot 22 as shown on Map 2 of Land Court Application No. 665; and

WHEREAS, the owners desire to dredge a swimming area and construct a beach and on their behalf a request to the Department of Transportation, Harbors Division, for permission to dredge and fill certain areas fronting and abutting their respective properties for the purpose aforesaid has been made; and

WHEREAS, the State and the said Trustees, the said Sheraton Hawaii Corporation and the Waialae Country Club are desirous of having a public beach and swimming area constructed in the place and manner shown on Exhibit "A" and the owners agree to construct such beach and swimming area for and on behalf of the State; and

WHEREAS, the Department of Transportation, Harbors Division, under Permit No. 1164, has approved of the application for the permit to create said beach at Waialae-Kahala area on August 13, 1962 and indicated its willingness to such dredging and filling under the terms of such permit and are willing to permit such dredging and filling under the terms and conditions as are herein set forth; and

WHEREAS, the City and County of Honolulu has granted its approval of the construction of said Waialae-Kahala beach improvement by letter dated September 18, 1962;

NOW, THEREFORE, and in consideration of the terms, covenants and conditions herein set forth on the part of the parties hereto to be observed and performed, the State hereby grants to the owners the right to dredge and fill that certain area hereinafter described in accordance with the plans and specifications hereinafter set forth.

The terms, covenants and conditions under which this right and permit is granted are as follows:

(1) The permit area to be dredged or filled is that area described and outlined on the plan entitled "Beach Improvement at Waialae-Kahala" prepared by Wilson & Associates, Architects and Engineers, and dated May 25, 1962, a copy of which plan is attached hereto as Exhibit "A" and made a part hereof.

(2) The owners hereby jointly and severally agree to dredge and fill those areas as shown on Exhibit "A" in accordance with the section, depths and notations shown thereon.

SOH000018

(3) Said Exhibit "A" has been submitted to and approved by the Department of Transportation, Harbors Division.

(4) The dredging and filling authorized herein shall commence not later than one month from and after the date and execution of the agreement and all work thereon shall be completed within twelve (12) months from said commencement date. In the event the filling operation is abandoned prior to completion, the owners hereby jointly and severally agree to restore the project areas back to the condition existing prior to the commencement of operations under this agreement.

(5) Coral and other material obtained by the dredging operations shall be disposed of in the following manner:

(a) The owners shall use so much thereof as is needed to fill in the "Fill Area" designated in Exhibit "A", "Typical Section A-A", page 2, identified as "Firm Salvaged material."

(b) All or any part of the remaining coral or other material may be taken by the owners for any purpose upon paying to the State royalty therefor in accordance and with the established schedule of rates as set by the Department of Transportation, Harbors Division.

(c) All coral or other material not used or taken as provided for in Sections (a) and (b) above shall be hauled and dumped at the owners' expense at a location to be determined by the Department of Transportation, Harbors Division.

SOH000019

(6) The owners shall comply with the provisions of all applicable statutes, ordinances, rules and regulations of any governmental body affected by the work permitted herein.

(7) The owners shall, jointly and severally, for a period of five (5) years after the effective date of this agreement save the State and the City and County of Honolulu harmless from and against any and all claims for personal injury, death or property damage, including but not limited to beach erosion and injury to vested fishing rights caused by the operations of the owners under this agreement.

From the commencement of the construction of this project as shown on Exhibit "A" and until three (3) months from and after the completion and acceptance thereof as provided in this agreement, the owners and/or contractor shall obtain and keep in force such liability insurance and such performance and/or completion bond as may be required by the Director of Transportation to protect the interest of the State. The requirement of liability insurance and bond for the period hereinabove provided shall in no way affect the five-year indemnification provided for in this provision of the agreement.

(8) It is mutually understood and agreed by all the parties hereto that this agreement shall in no way affect the title and ownership of the land subject to this agreement. Title to and ownership of all filled and reclaimed lands and improvements seaward of the makai boundaries of Land Court Applications Nos. 828 and 665 shall remain in and vest in the State of Hawaii and shall be used as a public beach. And it is further understood and agreed that the owners, the Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, the Sheraton Hawaii Corporation, and the Waiialae Country Club hereby waive any and all claims to littoral rights and any accretion that may accrue.

*Registered  
Ltd.*

SOH000020

(9) The project shall be considered completed for the purposes of this agreement when so determined by the State, by the Director of Transportation, and the determination of the State shall be announced by written notice to the owners and may be made on the basis of a full or substantial completion of the project.

(10) The owners shall keep the mouth of Kapakahi Stream clear of sand and loose coral for a period of twenty-five (25) years from the date of this agreement. Such sand and coral shall remain the property of the State and the disposition thereof to be determined by the Director of Transportation.

(11) In any conflict between the terms of this agreement and said Permit No. 1184, the terms and provisions of this agreement shall govern.

(12) The Trustees under the Will and of the Estate of Bernice P. Bishop, Deceased, the Sheraton Hawaii Corporation and the Waialae Country Club hereby consent to the construction of said beach and improvements by the owners as provided herein, and reserve unto themselves the right of access to such beach and improvements, subject to all applicable statutes, ordinances, rules and regulations of any governmental body.

IN WITNESS WHEREOF, the State of Hawaii has caused these presents to be executed by its duly authorized officials and the Kahala Hilton Hotel Company, Inc. has caused these presents to be executed and its corporate seal to be hereto affixed by its duly authorized officers and the Waialae Country Club has caused these presents to be executed by its duly authorized officers and the Trustees of the Bernice P. Bishop Estate have caused these presents to be executed by their duly authorized officers and Charles J. Pietsch, Jr. and David T. Pietsch have herunto set their hands, all effective as of the day and year first above written.

SOH000021

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

Luis Watson

BOARD OF LAND AND NATURAL RESOURCES

By [Signature]

By [Signature]

APPROVED AS TO FORM:

[Signature]  
Asst. Attorney General  
Dep. State of Hawaii

KAHALA HILTON HOTEL COMPANY, INC.

By [Signature]

By Vincent Esposito

CHARLES J. PIETSCH, JR.

[Signature]

DAVID T. PIETSCH

[Signature]

TRUSTEES UNDER THE WILL AND OF THE  
ESTATE OF BERNICE P. BISHOP, DECEASED

[Signature]

[Signature]

[Signature]

APPROVED AS TO FORM  
ROBERTSON, CASTLE & ANTHONY

By [Signature]

SHERATON HAWAII CORPORATION

By [Signature]

By [Signature]

WAIALAE COUNTRY CLUB

By [Signature]

By [Signature]

SOH000022

STATE OF HAWAII ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 21<sup>st</sup> day of February, 1968

before me personally appeared Charles J. Pietsch, Jr.  
and O. Vincent Espino, who, being by me duly sworn,

did say that they are the Exec. Vice Pres. and Asst. Secy. Treas. respectively of KAHALA HILTON HOTEL COMPANY, INC., a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and that the said Charles J. Pietsch, Jr.

and O. Vincent Espino severally acknowledged said instrument to be the free act and deed of said corporation.

Birdie Green  
Notary Public, First Judicial  
Circuit, State of Hawaii

My Commission expires: 2-9-67

STATE OF HAWAII ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 15<sup>th</sup> day of February, 1968, before me personally appeared CHARLES J. PIETSCH, JR. and DAVID T. PIETSCH, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Birdie Green  
Notary Public, First Judicial  
Circuit, State of Hawaii

My commission expires: 2-9-67

Charles Joseph Pietsch Jr  
David Thomas Pietsch


SOH000023



STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 19th day of February, 1963, before  
me personally appeared Edwin P. Murray,  
Frank E. Midkiff and H. K. Keppeler.

three of the Trustees under the Will and of the Estate of Bernice  
P. Bishop Estate, deceased, to me known to be the persons described  
in and who executed the foregoing instrument, and severally acknow-  
ledged that they executed the same as their free act and deed.

  
Notary Public, First Judicial  
Circuit, State of Hawaii  
My commission expires: DEC 14 1965

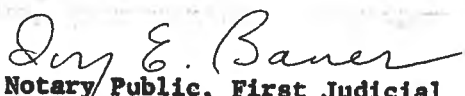
*section in instrument*

STATE OF HAWAII }  
CITY AND COUNTY OF HONOLULU } SS

On this 23 day of February, 1963

before me personally appeared Richard E. Holtzman  
who, being by me duly sworn did say that he is the President

of SHERATON HAWAII CORPORATION, a Delaware corporation, and that the  
seal affixed to the foregoing instrument is the corporate seal of said  
corporation, and that said instrument was signed and sealed in behalf  
of said corporation by authority of its Board of Directors and that the  
said Richard E. Holtzman acknowledged said instrument  
to be the free act and deed of said corporation.

  
Notary Public, First Judicial  
Circuit, State of Hawaii  
My commission expires: Feb. 29, 1964

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this 26<sup>th</sup> day of February, 1968, before  
me personally appeared Kenneth F Brown and  
Hugh Howell, who, being by me duly sworn  
did jointly and severally say that they are the \_\_\_\_\_  
President and Treasurer,  
respectively of the Waialae Country Club, and that the seal affixed  
to the foregoing instrument is the corporate seal of said corporation;  
and said instrument was signed and sealed on behalf of said corporation  
by authority of and with the approval of the Board of Directors of  
the WAIALAE COUNTRY CLUB and said Kenneth F Brown and  
Hugh Howell jointly and severally acknowledged  
said instrument to be the free act and deed of said corporation.

Mildred Nakamura  
Notary Public, First Judicial  
Circuit, State of Hawaii

My Commission expires: 6/20/66

# EXHIBIT B



# Notice of Violation

Violation No.: **2023/NOV-06-051 (EX)**

Date: **June 13, 2023**

Owner(s)

B.P. BISHOP TRUST ESTATE,  
 (COMMERCIAL REAL ESTATE DIVISION)  
 C/O BOBBIE LAU  
 567 S KING ST SUITE 200  
 HONOLULU, HI 96813

B.P. Bishop Trust Estate  
 P.O. Box 3466  
 Honolulu, Hawaii 96801

Contractor(s)

Tenant/Violator

Architect/Plan Maker

Violator  
 The Kahala Hotel  
 c/o Paracorp Incorporated  
 5000 Kahala Avenue  
 Honolulu, Hawaii 96816

Violator  
 The Kahala Hotel & Resort  
 c/o Paracorp Incorporated  
 5000 Kahala Avenue  
 Honolulu, Hawaii 96816

Lessee

Agent

Engineer

RESORTTRUST HAWAII, LLC  
 C/O KAHALA HOTEL & RESORT  
 5000 KAHALA AVENUE  
 HONOLULU, HAWAII 96816

Paracorp Incorporated  
 c/o Honolulu Information Service, INC.  
 900 Fort Street Mall Suite 1680  
 Honolulu, Hawaii 96813

RESORTTRUST HAWAII LLC  
 1001 Bishop Street Suite 2100  
 Honolulu, Hawaii 96813

Honolulu Information Service, Inc.  
 c/o Jo Kamae Byrne  
 P O BOX 2390  
 Honolulu, Hawaii 96804-2390

RESORTTRUST HAWAII LLC  
 c/o Paracorp Incorporated  
 900 Fort Street Mall Suite 1680  
 Honolulu, Hawaii 96813

TMK: **3-5-023-039**      **5000 KAHALA AVE Honolulu / Wai'alea Kahala 96816**

**Specific Address of Violation: 5000 Kahala Avenue**

I have inspected the above-described premises and have found the following violations of City and County of Honolulu's laws and regulations governing same:

Codes and/or Ordinance(s) and Section(s)	Violation(s)
ROH 2021, as amended, Chapter 18 Section 18-3.1	<p><b>PERMITS REQUIRED</b></p> <p>The white vinyl fence located at the right rear of the above-referenced property near the shoreline approximately 64" inches in height and approximately 10' feet in length has been erected without first obtaining a building permit.</p> <p><b>REMEDIAL ACTION NECESSARY</b></p> <p>A building permit is required to for the white vinyl fence.</p> <p>Please obtain a building permit from the City &amp; County of Honolulu, Department of Planning &amp; Permitting.</p>
ROH 2021, as amended, Chapter 18 Section 18-6.2 (d)	<p><b>TRIPLE FEE PENALTY</b></p> <p>A Triple fee penalty shall be assessed for starting work without the required building permit.</p>



# Notice of Violation

Codes and/or Ordinance(s)  
and Section(s)

Violation(s)

**ROH 2021, as amended, Chapter 23  
Section 23-1.5(b)**

**SHORELINE SETBACKS**

**The white vinyl fence constructed in the shore line setback area  
without a variance.**

**REMEDIAL ACTION NECESSARY**

**Please corrected the violation within the time specified below.**

**NOTE: If you obtain a variance, you are required to apply for a  
building permit to correct the above-mention violation.**

You are hereby ordered to obtain permit(s) and/or correct violation by July 13, 2023.  
Restore the area immediately and complete all work within 30 days from the date of this notice.  
Please call the undersigned after the corrections have been made.

You are reminded that if no action is taken within the specified time:

1. A Notice of Order will be issued by the Department of Planning and Permitting imposing CIVIL FINES for the specified violations; and/or
2. This matter may be referred to the Prosecuting Attorney and/or Corporation Counsel for appropriate action.

Special Instructions:

Inspector

Alfonso Caro

Phone: 768-8157

for the Director Department of Planning and Permitting

# EXHIBIT C



# SIERRA CLUB OF HAWAI'I

MĀLAMA I KA HONUA. *Cherish the Earth.*

June 23, 2018

BLNR Chair Suzanne Case  
P.O. Box 621  
Honolulu, HI 96809

Dear Chair Case,

We wish to bring to your attention the Kahala Hotel's impermissible commercial uses of state lands and waters. Before the BLNR considers whether to renew revocable permit number S-7849 to Resorttrust Hawaii LLC, the BLNR needs to (1) investigate and take action into violations of the revocable permit; (2) investigate and take action into other violations by Resorttrust within nearby state land and waters; (3) assess and charge for the true value of this land; and (4) consider whether it would be appropriate to incorporate alternative language into any revocable permit if it chooses to renew the RP. A photograph from Resorttrust's withdrawn environmental assessment provides some context. The area covered by the RP is outlined in pink, makai of the hotel.

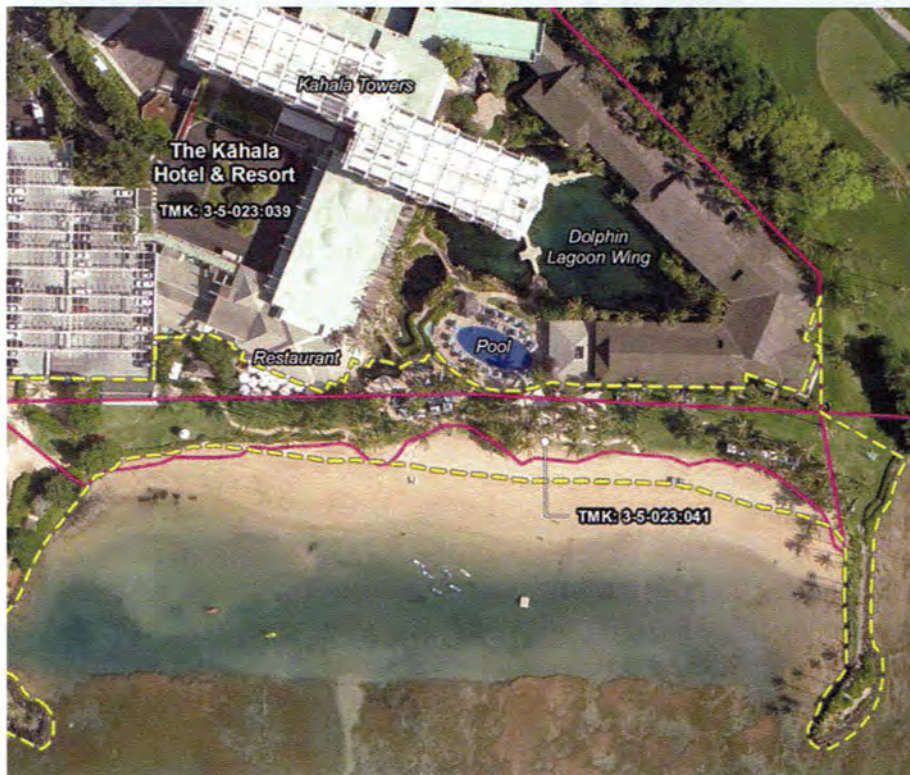


Figure 6: Site Map

**The Kāhala Hotel & Resort**  
The Kāhala Hotel & Resort

This next photograph shows the high tide line (or “shoreline”) on one of the king tide days in 2017:



### **Violations of RP S-7849**

RP S-7489 allows Resorttrust Hawaii LLC the right to occupy and use state owned ceded land at TMK (1) 3-5-023:041 “for the following specified purposes **only: recreational and maintenance purposes.**” (paragraph A1). As is readily apparent from only a cursory investigation, the Kahala Hotel, Resorttrust engages in, and facilitates, the following commercial activities on state owned ceded land:

- a restaurant and bar
- weddings and wedding events
- surf lessons
- alcohol sales and consumption
- beach chair and cabana rentals

During daylight hours, more than half of TMK (1) 3-5-023:041 is occupied by chairs, tables, cabanas, pre-set beach chairs, and a wedding gazebo (on wheels) that make more than half the parcel inaccessible to members of the public and is being exclusively used to generate profits by Resorttrust Hawaii LLC. On king tide days, which will only occur more frequently with sea level rise, there is almost no room for members of the public.



The Seaside Grill is located in the middle of the land covered by RP S-7489. While the restaurant's kitchen appears to be on private land, the portion of the restaurant in which customers sit, eat and drink is on TMK (1) 3-5-023:041. Resorttrust has cordoned off a portion of the state parcel for use as an outdoor dining area for exclusive use of hotel guests. The general public is excluded from using this area. This commercial restaurant use of state land is **not** "recreational." See the photograph below (taken May 26, 2018).



Weddings and wedding events also take place on TMK (1) 3-5-023:041. See the photograph below (taken May 26, 2018):



The Kahala Hotel's website, <https://www.kahalaresort.com/Romance-Weddings/Wedding-Packages>, sells a wedding package for \$7,100, which includes an "Ocean front" ceremony, "Up to 40 Chiavari chairs" and "Amplification system" and "Exclusive use of The Kahala Hotel & Resort property for wedding photography" The "*Ceremony package includes one hour use of the ceremony site. Ceremony package does not include guest rooms. All ceremony package prices are valid through December 31, 2018.*"

Resorttrust has placed cabanas and lounge chairs for rent within TMK (1) 3-5-023:041:



(taken May 26, 2018)



(taken June 15, 2018)

The Kahala Hotel charges \$165 to use a cabana tent for the day.  
<https://www.kahalaresort.com/Experiences/Pool-Beach>.

Resorttrust also preset beach chairs on the sandy beach makai of TMK (1) 3-5-023:041 in violation of condition B17, but recently stopped that practice.

Not only is Resorttrust engaged in private commercial uses of public land, it has also impermissibly placed structures on public land. Paragraph 17 and HRS chapter 205A prohibit any “improvements” on this land without authorization from both the BLNR and the city. HRS §§ 205A-28 and -44(b) requires a special management area permit (use permit or minor permit) and a shoreline setback variance for structures placed near the shoreline. As far as we can tell, the pavers placed underneath the cabanas, and the cabanas themselves (pictured above), which have been there permanently for months, have never received any authorization from the BLNR or the City. Nor has the storage cabinet (pictured below).



**Illegal Activities Near TMK (1) 3-5-023:041**

Although technically not within TMK (1) 3-5-023:041, Resorttrust appears to be violating the law on state land and state waters nearby in several ways.

First, it conducts additional weddings and wedding events on state owned land just east of, and adjacent to, TMK (1) 3-5-023:041 without paying the DLNR anything and without authorization. *See HAR § 13-221-35.*



(taken May 26, 2018)

Second, it (or its contractors) stores beach chairs and a canoe used for commercial purposes on the state-owned land just east of TMK (1) 3-5-023:041 without paying the DLNR anything and without authorization. *See HAR §§ 13-221-35 and 13-221-14*



(taken on June 15, 2018)

Third, it (or its contractor) launches and operates a canoe in an area exclusively designated for swimming in violation of HAR § 13-256-89(b)(2).



Fourth, it releases pollutants from a point source along the shoreline without a permit from the Department of Health. Its permit is for discharges much further off-shore.

Fifth, it has hosted a commercial sailing canoe that has been illegally moored and that fails to abide by HAR § 13-256-89.



(taken April 27, 2018)

### **Improper Valuation of the land**

We do not believe that commercial use of public beachfront property is appropriate. The Kahala Hotel's commercial activities occupy far too much public land at the expense of the general public. Public recreational use is the most appropriate use of this land. As the Hawai'i Supreme Court held:

Under public trust principles, the State as trustee has the duty to protect and maintain the trust property and regulate its use. Presumptively, this duty is to be implemented by devoting the land to actual public uses, *e.g.*, recreation. Sale of the property would be permissible only where the sale promotes a valid public purpose.

*State by Kobayashi v. Zimring*, 58 Haw. 106, 121, 566 P.2d 725, 735 (1977).

Nevertheless, if the BLNR decides that the Kahala Hotel should be able to maximize its profits through the commercial use of this beachfront land, the BLNR must charge far more than it is currently collecting. Resorttrust Hawaii LLC is owned by a multi-billion dollar multinational corporation. This corporation pays only \$1,244 per month for the ability to use this state land. It makes far more than that in a single day (in fact, in a single hour) – and can afford to pay much, much more. Compare, for example, how much money the City generates from concessions on city-owned land at Hanauma Bay. The snorkel concession pays the City more than \$150,000 per month. The shuttle concession pays approximately \$3,000 per month. The food concession pays more than \$30,000 per month. And the gift shop concession pays more than \$20,000 per month. The City is generating more than \$200,000 per month – while the DLNR is earning \$1,244. The City is bringing in 160 times more revenue on less land.

The BLNR should also know that although paragraph A6 requires Resorttrust Hawaii LLC to pay real property taxes for the premises, the City has not charged property taxes for use of the property and Resorttrust has not paid property taxes for use of this land.

### **Additional conditions**

Curiously, while the RP, by its own terms, expires on June 30, 2018 (paragraph B1), the staff at Land Management has taken the position that the RP expires at the end of the calendar year. This discrepancy makes no sense. In any case, if the BLNR decides that renewal of RP S-7849 is in the public interest, it must decide whether it wishes to allow commercial uses of this land (over our objection).

If so, the RP should include the following additional conditions:

- The Permittee shall install an easily-identifiable pathway, at least five-feet wide, that crosses this parcel and is open to public use. The pathway must be demarcated on the eastern and western ends of the parcel signs saying "Public Access" with lettering at least two-inches high visible to those approaching the Premises.

- In exchange for this RP, Resorttrust LLC shall allow the public (not including any employees or contractors) to park for free in ten parking spaces within the Kahala Hotel property between the hours of 5:00 a.m. and 11:00 p.m. daily.
- Monthly rent in the sum of \$200,000.

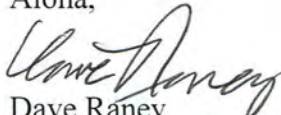
If the BLNR agrees that commercial use of this prime beachfront land is inappropriate, the RP should include the following additional conditions:

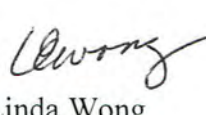
- The Permittee is prohibited from using TMK (1) 3-5-023:041 for any commercial use or using it to facilitate any commercial use makai of the parcel. Prohibited commercial uses of this parcel and the area makai of the parcel include, but are not limited to: any restaurant and bar, or restaurant or bar services; weddings and wedding events; surf lessons; fishing tours; alcohol sales and consumption; beach chair rentals; cabana rentals; stand-up paddle board rentals; kayak rentals; and rentals of any type of watercraft.
- The Permittee shall ensure that its employs, permittees and contractors comply with the terms of this permit and shall be responsible for any violations. Thus, for example, the Permittee may not allow a surf school or wedding service to operate on its property that uses, or crosses, this parcel.
- The Permittee shall not, ~~without the prior written approval of the Chairperson of the Board~~ place improvements within the Premises, and/or preset beach equipment ~~or conduct surf instruction~~ within the public beach fronting the Premises.
- Permittee shall not engage in any activity that facilitates commercial activity in the ocean, including, but not limited to, surf instruction, canoe tours, and fishing tours, within the public beach or waters fronting the Premises.
- The Permittee shall install signs on the eastern and western ends of the parcel signs saying "Public Welcome" with lettering at least two-inches high, visible to those approaching the Premises.

### **Conclusion**


The Kahala Hotel has been and is using state land and waters in ways that appear to violate revocable permit number S-7849 as well as administrative rules. We ask you to investigate these claims and to take vigorous enforcement action. Please let us know of any citations you issue. We can provide additional photographs and eye witness testimony. Please consider these issues as you decide whether to renew the revocable permit. Although we oppose the commercial use of this land and the state waters, if you are going to allow Resorttrust to continue to profit off of public land at the public's expense, fulfill your fiduciary duty by charging the resort far more than you have been. If you are going to renew the revocable permit, please consider the additional conditions we have drafted.

Aloha,

  
Dave Raney

  
Linda Wong

  
Tyler Ralston

  
Jim Nicolay

  
Martha Townsend  
Director, Sierra Club of Hawai'i<sup>1</sup>

copy Barry Cheung

Resorttrust Hawaii LLC c/o  
Paracorp Incorporated  
1136 Union Mall Ste 301  
Honolulu, Hawaii 96813

Resorttrust Hawaii LLC  
5000 Kahala Ave  
Honolulu, Hawaii 96816

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<sup>1</sup> This letter is also sent pursuant to HRS § 607-25



# Land Board Meeting for 12/7/23

Item D-12 RALSTON (RP 7915)

Video submitted:

1.	<a href="#">230427 86 chairs 25 tables</a>
2.	<a href="#">230505 85 chairs 30 tables</a>
3.	<a href="#">230508 86 chairs 35 tables</a>
4.	<a href="#">230511 SUP kayak rental on the beach &amp; illegal in lagoon</a>
5.	<a href="#">230512 SUP kayak rental on the beach</a>
6.	<a href="#">230525 84 chairs 34 tables</a>
7.	<a href="#">230601 83 lounges 35 tables</a>
8.	<a href="#">230604 83 chairs 32 tables</a>
9.	<a href="#">230612 86 chairs 37 tables</a>
10.	<a href="#">230623 83 chairs 35 tables</a>
11.	<a href="#">230626 82 chairs 34 tables</a>

December 7-8, 2023

**Tyler Ralston's STRONG OPPOSITION to the renewal of revocable permit 7915, for Resorttrust Hawaii, LLC, (Item D - 12 on the December 7-8, 2023 BLNR agenda).**

Dear Chair Chang and Members of the Board,

**Please do not renew revocable permit 7915 for Resorttrust Hawaii (RTH) until the terms that currently allow RTH to preset 70 chaise lounges and tables for the exclusive use of hotel guests, and place a towel caddy on the lot, are both removed from the permit.**

Lot 41 was designated long ago as a beach to be for public use in perpetuity. Hawai'i's people are not able to use the majority of the biggest, best and most useable portion of the level, grassed-over beach lot because Resorttrust has preset furniture for the exclusive use of their guests.

By not allowing Resorttrust to preset furniture on this public beach, BLNR would also be bringing the issue of presetting beach chairs, in alignment with all other public beaches on which presetting beach chairs is now illegal.

In addition, it is important to know that Resorttrust has been violating the terms of its RP in numerous ways for many years. For example, every day of this year until around the time I submitted my testimony for the previous BLNR hearing on this renewal, the hearing that was pushed back until December, they have preset more than 80 chaise lounge beach chairs on the grassed-over beach lot when their permit only allows for a maximum of 70. Please see attached sampling of videos so that you can count the number for yourselves. Below is also a still photo showing a portion of the 80 chairs on the public grassed-over beach lot on May 12, 2023. The property line is approximately 15' mauka of the beach chairs you see in the photo and videos of the grassed-over beach. It is notable and of concern that the DLNR land agent has again failed yet again, in citing Resorttrust even though the violation was happening every day for over to 240 days of the permitted year.

Continued on next page.



A portion of the 80+ beach chair loungers Resorttrust presets every day, on the grassed-over public beach .

Resorttrust has also been engaging in illegal SUP and Kayak rentals on the public beach without a permit, via its contractor. Through the hotel concierge desk, hotel guests can book a SUP or Kayak rental with the contractor stationed out on the beach. The contractor uses the towel caddy as a concession desk, solicits business with signs, paddles, kayaks and SUPs on the public beach, all without a permit. Resorttrust and its contractor conduct this business on Lot 41 and the public beach makai of Lot 41, and then assists guests in launching their SUP or Kayak, into the swimming-only area of the lagoon fronting the hotel, as designated by H.A.R. §13-256-89 (b) (2). Vessels of any sort including SUPs and Kayaks are not allowed in this designated swimming-only area. Please see attached videos showing this illegal activity. There are multiple illegalities and RP violations tied with this activity that the hotel via its contractor engages in on a daily basis. The DLNR land agent has also failed yet again to cite Resorttrust and the contractor even though the violation happens every day.



The property line is mauka of this photo. The SUP/ Kayak rental contractor, his rental sign on the bush against the coconut tree, the paddles on the bush, and the SUPS in the photos are all on public property designated as public beach. This, along with the hotel concierge service, is where the business is done for the rentals.

For many years, Resorttrust had a fence erected almost entirely on the state beach Lot 41 that would block the view of the beach area in front of the hotel from the public walking down the beach from the West. The fence created a more private space in front of the hotel, further misleading the public in conveying that this land is not for the public. Resorttrust failed to obtain a permit for the fence as it was illegally erected on Lot 41, the public beach parcel. Although Resorttrust was informed of this, they chose to leave the illegal fence in place. The DLNR land agent also failed to do anything about this illegal fence. This year, a City Department of Planning and Permitting inspector cited Resorttrust with a formal violation for the illegal fence (see attached formal notice of violation). Only then did Resorttrust remove the fence, cutting off the posts, and leaving visible unsightly plastic bases in the ground on the public land.



Illegal fence on public land. C&C DPP issued a formal violation to Resorttrust.

To be clear, I support a permit that allows Resorttrust to maintain the plantings and foliage of the grassed-over beach lot so it looks nice for their guests, however I strongly

oppose any inclusion of permit terms that allow for presetting beach chair loungers, tables, other furniture, towel caddies, or conducting commercial / business activity of any sort.

Resorttrust's commercial and private use of Lot 41 in any way, whether it is presetting beach lounge chairs and tables for their guests, or facilitating illegal SUP and Kayak rentals, is inappropriate and will continue to be vigorously opposed for as many decades as necessary until this public beach is appropriately protected and taken care of for the public and Hawai'i's people.

**Please do not renew the permit as it is currently drafted allowing Resorttrust to preset beach chairs, towel caddies, and any other furniture on public beach.**

Sincerely,



Tyler Ralston

Attachments:

- DPP issued notice of violation for the illegal fence
- Flashdrive containing
  - Nine (9) video samples showing well over 70 preset beach chair loungers + tables
  - Two (2) video samples showing illegal commercial rental activity on the beach and in the ocean.