

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

September 26, 2025

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

OAHU

Report on Intermediate Court of Appeals Published Opinion in *Frankel v. Bd. of Land & Nat. Res.*, 155 Hawai'i 358, 564 P.3d 1157 (Ct. App. 2025), *as corrected* (Mar. 5, 2025); and,

Request for Approval of Proposed Stipulated Judgment as to Count 4 in *Frankel v. Bd. of Land & Nat. Res.*, Civ. No. 18-1-1959-12 SMK.

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

BACKGROUND:

Link to ICA decision:

<https://www.courts.state.hi.us/wp-content/uploads/2025/01/CAAP-20-0000603.pdf>

EXHIBIT A: Stipulated Judgment

RECOMMENDATION: That the Board:

1. Approve the Proposed Stipulated Judgment as to Count 4 in *Frankel v. Bd. of Land & Nat. Res.*, Civ. No. 18-1-1959-12 SMK.

Respectfully Submitted



Ian Hirokawa
Acting Administrator

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to be 'Dawn N.S. Chang', written over a horizontal line.

Dawn N.S. Chang, Chairperson

David Kimo Frankel
1638-A Mikahala Way
Honolulu, HI 96816
(808) 345-5451
davidkimofrankel@gmail.com

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

David Kimo Frankel,	)	CIVIL NO. 18-1-1959-12 JPC
	)	(Environmental Court)
Plaintiff,)	
vs.	)	PROPOSED STIPULATED JUDGMENT
	)	AS TO COUNT 4
Board of Land and Natural Resources,)	
Department of Land and Natural Resources,)	
and Resorttrust Hawaii LLC,	)	JUDGE: Honorable Shirley M. Kawamura
)	
Defendants.)	

PROPOSED STIPULATED JUDGMENT AS TO COUNT 4

Given the Intermediate Court of Appeals' January 29, 2025 opinion and the supreme court's denial of the Board of Land and Natural Resources' application for a writ of certiorari, the parties wish to enter into this stipulation, which should lead to the filing of final judgment shortly thereafter.

Dated: Honolulu, Hawai'i, September ____, 2025

/s/ David Kimo Frankel

EXHIBIT A

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1638-A Mikahala Way
Honolulu, HI 96816
(808) 345-5451
davidkimofrankel@gmail.com

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

David Kimo Frankel,	)	CIVIL NO. 18-1-1959-12 JPC
	)	(Environmental Court)
Plaintiff,)	
vs.	)	STIPULATED JUDGMENT AS TO
	)	COUNT 4
Board of Land and Natural Resources,)	
Department of Land and Natural Resources,	)	JUDGE: Honorable Shirley M. Kawamura
and Resorttrust Hawaii LLC,)	
)	
Defendants.)	

STIPULATED JUDGMENT AS TO COUNT 4

WHEREAS, the first three counts of David Kimo Frankel's first amended complaint were dismissed;

WHEREAS, count four of the first amended complaint alleges that the Board of Land and Natural Resources ("BLNR") breached its trust duties in its decisionmaking and approval of the revocable permit for calendar year 2019 granted to Resorttrust Hawaii LLC (the "2019 RP") for the use of Lot 41;

WHEREAS, Lot 41 is made up of formerly submerged, filled, and reclaimed land ma kai of the hotel currently owned by Resorttrust Hawaii LLC;

WHEREAS, the Intermediate Court of Appeals held that this court erred in granting summary judgment on count 4 to the BLNR, the Department of Land and Natural Resources, and Resorttrust Hawaii LLC; and that it erred in denying Frankel's motion for summary judgment as to count 4;

IT IS HEREBY STIPULATED, by and between the parties that:

1. Public trust principles apply to Lot 41, which is part of the returned crown and government lands (or ceded lands). In rendering its decision regarding the use of Lot 41, the BLNR was required to (a) begin its analysis with the presumption in favor of public use when balancing between public and private purposes, (b) consider practicable alternatives, and (c) set forth its decision with clarity.

2. The BLNR breached its trust duties regarding Lot 41 in approving the 2019 RP because the BLNR did not start with the presumption in favor of public use, consider alternatives, or provide clarity in its decision.

3. David Kimo Frankel is entitled to judgment as a matter of law as to count 4. Judgment as to count 4 is hereby granted to Frankel.

4. Because BLNR breached its trust duties for the reasons expressed in paragraph 2, BLNR's 2019 RP for Lot 41 was not authorized.

5. The BLNR will comply with the ICA's opinion.

6. The BLNR must explicitly and clearly authorize the storage of equipment or presetting of chairs on Lot 41 if they are to occur.

7. The plaintiff will not amend his complaint or file a new claim based on the validity of the 2019 RP.

DATED: Honolulu, Hawai'i: _____, 2025

/s/ _____
DAVID KIMO FRANKEL
Pro Se Plaintiff

DATED: Honolulu, Hawai'i: _____, 2025

/s/ _____
MIRANDA C. STEED
Deputy Attorney General

Attorney for Defendants
BOARD OF LAND AND NATURAL
RESOURCES AND DEPARTMENT OF
LAND AND NATURAL RESOURCES

DATED: Honolulu, Hawai'i: _____, 2025

/s/ _____
WILLIAM M. HARSTAD
PUANANIONAONA P. THOENE

Attorneys for Defendant
RESORTTRUST HAWAII, LLC

APPROVED AND SO ORDERED:

JUDGE OF THE ABOVE-ENTITLED COURT