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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR
Chairperson

Before the House Committee on
WATER, LAND & OCEAN RESOURCES

Friday, February 10, 2012
9:45 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2366
RELATING TO THE EAST HAWAII COMMUNITY DEVELOPMENT DISTRICT

House Bill 2366 bill proposes to create the East Hawaii Community Development District and Board (District Board) to acquire, plan and redevelop public lands leased by the Department of Land and Natural Resources (Department) in the Banyan Drive and Kanoelehua industrial area in Hilo, Hawaii. The bill requires the Department deed to the District Board the existing leases of public lands within the district boundaries, including specific leases within the Banyan Drive area. The Department opposes this bill for the following reasons.

First and foremost, the Department would prefer to develop these lands through the PLDC.

The Public Land Development Corporation (PLDC) is administratively attached to the Department and its mission is to develop Department (and other public) lands with 85% of the revenues from these development projects going directly to support department operations.

The Department relies on the revenues from leases of public lands to fulfill its fiduciary duties.

The Department and Board of Land and Natural Resources (BLNR) are responsible for managing approximately 1.3 million acres of public lands comprised of sensitive natural, cultural and recreational resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the BLNR determined that the Department should utilize a portion of the lands it manages to generate revenues to support the Department's

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - WATER

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operations and management of public lands/programs. Annual lease revenues currently support the Special Land and Development Fund (SLDF), with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects, including the Banyan Drive leases that would be transferred under this bill.

The SLDF is a critical and increasingly important funding source for various divisions within the Department to deal with emergency response to natural catastrophe such as fire, rockfall, flood or earthquake and hazard investigation and mitigation. The SLDF also is critical for staff support of various programs and funding conservation projects on all state lands. It has also become an important source of state match for federally funded endangered species and invasive species initiatives that otherwise would not go forward.

The bill transfers the revenues from public lands but not the management responsibilities.

Revenues from leases of public lands managed by the Department go hand in hand with the Department's ability to fulfill its public land management responsibilities and fiduciary obligations. The revenues from public lands cannot, and should not, be separated from these public land management obligations.

The authority to construct, improve, renovate and revitalize areas with Hawaii County are already authorized under §46-80.5, HRS, and Section 12 of the Hawaii County Code.

The bill seeks to redevelop the infrastructure and facilities within the proposed East Hawaii District boundaries. However, the bill is unnecessary because there are already existing laws and ordinances that provide the process and financing to make such improvements.

Section 46-80.5, Hawaii Revised Statutes (HRS), authorizes the various counties to enact ordinances to create special improvement districts for the purpose of providing and financing such improvements, services, and facilities within the special improvement district as the applicable county council determines necessary or desirable to restore or promote business activity in the special improvement district. This is the same purpose sought by House Bill 2366.

Under this authority, the Hawaii County enacted Chapter 12 of the Hawaii County Code, which authorizes the County of Hawaii to create improvement districts to construct new, or improve existing infrastructure and facilities, including roadways and utility infrastructure and improvements.

It should also be noted that the responsibilities for maintaining such improvements within the proposed East Hawaii Community Development District are already vested with the County of Hawaii. Most, if not all, of the public roadways and utility infrastructure within the proposed district boundaries have been dedicated to the County. It is not clear whether the bill contemplates the District Board taking over the responsibility for improving and maintaining such infrastructure from the County and financing the improvements on its own (or assessing the lessees for such costs) or whether the District Board intends for the County to undertake the improvements and the District Board's authority to require the County to do so.

In addition, the bill is unclear on whether private lands will be subject to the District Board's jurisdiction. If private lands are being serviced by the infrastructure to be improved, the cost of such improvements should be shared by all lands that benefit from such improvements, which

will also require the consent of such landowners. It is unclear whether the bill authorizes the District Board to assess private landowners and the process for obtaining such landowners consent. The County's improvement district ordinance already addresses these issues and provides the procedures and authority to assess the benefited lands.

Public Lands within the District are Subject Chapter 171, HRS.

In the past, various lessees of public lands within the proposed district, have sought lease extensions or new direct leases. Restrictions in Chapter 171, HRS, however, limited the Department's ability to accommodate such requests. If one of the primary purposes of the bill is to allow the District Board to grant such lease extensions or issue new direct leases to existing lessees within the district, it would not be possible because the underlying demised lands of the leases to be transferred remain "public lands" and subject to the restrictions of Chapter 171, HRS.

For the reasons above, the Department opposes this bill.

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES
ON
HOUSE BILL NO. 2366

February 10, 2012

RELATING TO THE EAST HAWAII COMMUNITY DEVELOPMENT DISTRICT

House Bill No. 2366 establishes the East Hawaii Community Development District on the island of Hawaii and creates the East Hawaii Community Development Revolving Fund to administer the program.

While the Department of Budget and Finance does not take any position on establishment of the East Hawaii Community Development District, as a matter of general policy, the department does not support the creation of special or revolving funds which do not meet the requirements of Section 37-52.3, Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 2398, it is difficult to determine whether the fund will be self-sustaining.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.



HB2366
RELATING TO THE EAST HAWAII COMMUNITY DEVELOPMENT DISTRICT
House Committee on Water, Land & Ocean Resources

February 10, 2012

9:45 a.m.

Room 325

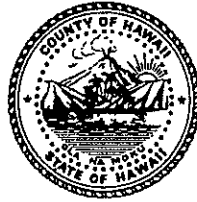
The Office of Hawaiian Affairs (OHA) **OPPOSES** HB2366, which would transfer to the Hawai'i Community Development Authority (HCDA) public land in East Hawaii and create the East Hawaii Community Development District (EHCDD).

OHA opposes this measure because the HCDA would not be bound by Hawai'i Revised Statutes section 171-64.7 (Act 176, Session Laws of Hawai'i 2009), which was enacted as a result of the state and OHA's settlement in the sale of ceded lands case. HB2366 allows HCDA to follow a different process when selling public land within the East Hawaii Community Development District that does not comport with the settlement.

OHA further notes that Admission Act section 5(f), Hawai'i Constitution, article XII, Chapter 10, Hawai'i Revised Statutes, Act 178, SLH (2006), and Executive Order 06-06 impose trust obligations on all state agencies with respect to revenues generated on public trust land. Restricting the use of revenues generated on public trust land within the EHCDD would violate the state's obligations.

OHA urges the committee to HOLD HB2366. Mahalo for the opportunity to testify on this important measure.

DENNIS "FRESH" ONISHI
Council Member
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HAWAI'I COUNTY COUNCIL
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February 9, 2012

TESTIMONY OF DENNIS "FRESH" ONISHI
HAWAI'I COUNTY COUNCIL MEMBER
ON

HB 2366, RELATING TO THE EAST HAWAI'I COMMUNITY DEVELOPMENT DISTRICT
House Committee on Water, Land, & Ocean Resources
February 10, 2012, 9:45 a.m.
Conference Room 325

Dear Chair Chang, Vice Chair Har and Members of the Committee on Water, Land, and Ocean Resources:

Thank you for the opportunity to provide testimony in support of House Bill No. 2366.

This Bill establishes the East Hawai'i Community Development District and Board and requires DLNR to deed certain leases to the Board.

As the Hawai'i County Council Member who represents this district, I strongly support this bill. The Banyan Drive area contains the majority of the overnight accommodation in East Hawai'i and it has been allowed to deteriorate. There is little incentive for the lessees of the State owned area properties to make improvements, thus the area is in dire need of renewal and renovation.

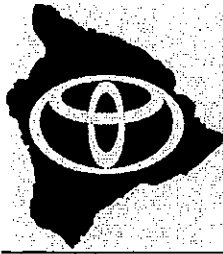
To quote an article from the Hawai'i Tribune Herald (Sunday, February 5, 2012) in describing one of the hotel properties:

"A man from Mississippi was less charitable. "I felt like I was in one of those creepy video games that take place in an old abandoned hotel," he wrote, "and zombies were going to attack at any moment."

The large, abandoned swimming pool generates a lot of complaints. Located adjacent to a shuttered restaurant and a parking lot that has also been used for storage, the pool is a haven for algae, waterfowl and mosquito larvae. Weeds sprout amid the concrete and the metal fence that surrounds it is broken in several places."

This vividly illustrates the need for HB 2366 and the revitalization of the Banyan Drive area.

Once again, thank you for the opportunity to submit testimony on this matter.



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February 9, 2012

Submitted On-Line at <http://www.capitol.hawaii.gov/submittestimony.aspx>

Honorable Jerry L. Chang, Chair
House Committee on Water, Land, and Ocean Resources
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

RE: Testimony in Support of HB 2366 East Hawaii Community Development District

Dear Committee:

As a business in the affected area on Kanoelohua for over 40 years, our business **strongly supports** HB 2366 which will create an East Hawaii Community Development District with a local governing board. We are a member of the Hawaii Island Chamber of Commerce and the Kanoelohua Industrial Area Association; we also feel we have a vested interest to revitalize and invigorate this area in particular of East Hawaii.

This issue is **important to all interests** in our community because it deals with a critical issue – the infrastructure of our visitor industry. East Hawaii suffers from a lack of sufficient hotel rooms and meeting space. It is no secret that Banyan Drive, once a jewel of the visitor industry on the Big Island, has fallen on hard times and has suffered from a lack of investment in upkeep and management of the properties. As far as I know, we are the only community in the State of Hawaii that has virtually its **entire inventory** of hotel space on land managed by the Hawaii Department of Land and Natural Resources (DLNR).

While the DLNR does many wonderful things, we believe that it would be better for both the State and the people of Hawaii for the Banyan Drive area to come under a governing board comprised of local community members that HB 2366 would provide. Such a board comprised of community members would be more responsive to the needs of the area and have a vested interest in the revitalization of this jewel of the visitor industry.

Please support HB 2366.

We look forward to the day when visitors come to East Hawaii as a destination rather than a transit point for a visit to the Volcano.

Sincerely,

Jacqueline De Luz-Watanabe
Vice President of Human Resources

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har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 08, 2012 9:30 AM
To: WLOtestimony
Cc: easthawaiidogspsychologycenter@yahoo.com
Subject: Testimony for HB2366 on 2/10/2012 9:45:00 AM

Testimony for WLO 2/10/2012 9:45:00 AM HB2366

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Dr. Carl F. Oguss
Organization: Individual
E-mail: easthawaiidogspsychologycenter@yahoo.com
Submitted on: 2/8/2012

Comments:
Aloha!

My name is Dr. Carl F. Oguss and I have lived on Banyan Drive since 2003. Over the past decade, I have developed a good sense of it's history and current problems. I applaud your interest in focusing special attention on helping our challenged hotel industry and in particular the fate of those hotels on Banyan Drive. I am pleased to see that you embrace the spirit of achieving the best balance between the various current users of the properties on Banyan Drive, and I have a few suggestions to advance this end and to better support the hotel industry.

1. The current wording of HB 2366 notes on page 14 that there are three apartment or condominium facilities on Banyan Drive. At least two of these, Reeds Bay and Country Club Hawaii#, were built and operated as budget motels, but were converted to long-term residential use, because there was not enough tourist demand in Hilo for them to operate profitably offering budget transient accommodations.

This is still the case, as is evidenced by the fact that most of the owners of apartments in these buildings rent lease them to long-term residential tenants or use them themselves; they do not rent them out "hotel style" although the zoning of the district still allows them to do so.

I would like to see an option added to this bill to allow the owners associations of these three apartment complexes to agree to remove most or all of their apartments from transient accommodations rentals in exchange for the AOA membership being granted a new lease of 55 years at no initial buy-in cost. The owners would continue to exercise their current rights until the end of their current leases (in 2015 for at least two of these properties), and would pay monthly rent on the new lease at an agreed rate and schedule for review during it's 55 year duration.

The effect of your making this possible would be:

1. The hotels on Banyan Drive and elsewhere in Hawaii would gain the advantage of having three less competitors. Even the additional income from our modest market share would help them earn more, which they clearly need to do.

2. These buildings have been the most neglected properties on Banyan Drive over the years due to the poor management of the current lease holder who acquired them back in the 1980s. Any agreements of any kind on Banyan Drive should exclude this party and their business partners and associates and be contracted between the State and the real owners of these properties, the individual members of their associations of apartment owners. These are the people who pay all the builds and have a stake in the future. These are the ones who deserve recognition as the appropriate parties to negotiate with, not the current lease holders whose own neglect (or worse) has caused most of our problems on Banyan Drive.

3. This change would allow all visitors to have the experience of staying in a real resort hotel and to enjoy an aesthetically pleasing environment and atmosphere. The reviews of visitors who stayed in the three apartment complexes is often very poor; this taints their entire experience of East Hawaii. This problem is entirely avoidable.

4. Waiving the buy-in cost of the lease would free up those funds for the AOA's of the apartment complexes to improve their properties appearances and make needed repairs, etc. Uncertainty about what will happen to our buildings in 2015 will cause a general withdrawal of interest on the part of owners of apartments here, resulting in defaults and eventual abandonment by all but those with no where else to go. If we can be guaranteed stability and control over our future by having the next lease granted to us, the owners of the Projects, and not a commercial developer, current or future, then we will be able to do 100% of our share in improving Banyan Drive and helping our local hotels survive.

4. Finally, this option would allow us to add to the stable availability of affordable residential housing in Hilo. Many of these apartments are set up as studio apartments with kitchen sinks, cooking ranges, etc., and these can be added to most of the other units.

There is also a great need in Hawaii for elder housing options, and elder residents are especially well suited to these apartments and this immediate area with it's lovely park, golf course, and new beach park only steps away. We also have at least two restaurants on Banyan Drive which have closed their doors for lack of business. These could be converted to offer delivery and sit-down meals for elder and other residents, as well as the people at local resort hotels, which would be a more realistic business model for the restaurants (who also need our help) and a great convenience especially for elder residents.

So, please consider my suggestions in your reviews of HB2366 and in your future works on behalf of our local Hawaiian residents and our guests.

Mahalo!

Dr. Carl F. Oguss
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