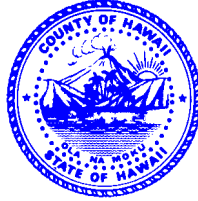


DENNIS “FRESH” ONISHI
Council Member
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HAWAI‘I COUNTY COUNCIL

25 Aupuni Street, Hilo, Hawai‘i 96720

January 30, 2013

The Honorable Cindy Evans, Chair
and Members of the House
Committee on Water and Land

Dear Chair Evans and Committee Members,

Thank you very much for this opportunity to provide testimony in strong support of House Bill 1249.

While the visitor industry is a major driver of Hawai‘i’s economy, in East Hawai‘i the potential is limited by the lack of adequate hotel space. Most of the hotel rooms in East Hawai‘i are concentrated along Banyan Drive on Hilo’s Waiākea Peninsula, and most of the hotel properties are managed by the state Department of Land and Natural Resources.

I agree with the statement in House Bill 1249 that “little incentive” exists for the lessees of the properties along Banyan Drive to make major investments, “resulting in the deterioration of the area’s infrastructure and facilities.”

A community development district focused on the Banyan Drive properties would help this area recover some of the charm and economic vitality it has lost in recent decades. I ask for your support in recommending approval of this bill.

Sincerely,

Dennis “Fresh” Onishi
Hawai‘i County Council
District 3

DO:ps



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKA
KALAELOA

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STATEMENT OF
ANTHONY J. H. CHING, EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

ON

Friday, February 1, 2013

8:00 A.M.

State Capitol, Conference Room 325

in consideration of

**H. B. 1249 – RELATING TO THE HAWAII COMMUNITY
DEVELOPMENT DISTRICT.**

Purpose: Establishes the Banyan Drive Community Development District where hotel, resort, commercial, residential, and public uses may coexist.

Position: Speaking as the Executive Director only (as the Authority has not had an opportunity to meet and act upon this measure), I take no position on the proposal, but offer the following comments. I note that the Department of Land and Natural Resources (DLNR) provides testimony in opposition to the proposal and defer to our sister agency on matters affecting their administration of state lands in the area and their significant responsibility for stewarding our State's public lands and natural resources.

Constitutional Requirements for Titles of Legislative Proposals. The measure is entitled – relating to the Hawaii Community Development District.

Testimony reflects the view and position of the Executive Director and not that of the Authority.

However, there is no mention or specification within the proposal for the “Hawaii Community Development District”. As there are constitutional requirements that the subject of the proposal is related to the title of the measure, unless corrected, this may represent a fatal flaw to the proposal.

Clarity of Intent. The measure alternately refers to the “board” and the “authority”. I am unclear whether the measure establishes an additional community development district or a new agency (page 2, lines 3-6, lines 7-11). It is my belief that clarity is required, as both purposes cannot be accomplished. If a new agency is to be created, I note that as section 6 of the proposal makes an appropriation to the HCDA and not the Banyan Drive Authority or agency, it is likely that this appropriation may not be able to be expended by the new agency.

Governance Structure. While I defer to the Legislature with respect to the composition and structure of the proposed agency or the HCDA, I note that beginning on page 11, section 2 of the proposal completely reverses the membership and governance structure that was just revamped by the 2012 State Legislature (Act 323, SLH 2012).

Impact Upon DLNR Operations. I am aware that the DLNR is dependent on the revenues of assets such as the lands at Banyan Drive to fund its asset management and natural resources stewardship programs. As such, I can well imagine the impact that the loss of revenues associated with their Banyan Drive assets might wreck upon their programs and would ask that those consequences be factored into the legislative deliberations.

Capacity and Mission of the HCDA. The HCDA is a corporate instrumentality of the State of Hawaii that is charged with building community and place in community development districts designated by the State Legislature. The HCDA employs planners, architects, engineers, project managers, asset management specialists and administrative staff with experience in:

- Promulgating and administering land use/zoning regulations;
- Developing and implementing community development plans (i.e., compiling community master, infrastructure and public facilities plans; managing redevelopment projects carried out in conjunction with those plans; managing infrastructure improvement projects; soliciting and managing community redevelopment projects); and
- Managing and stewarding assets held by the agency in its corporate capacity.

Given its charge as a community redevelopment agency and existing staffing, the HCDA does possess some of the capacity and operational resources to achieve the purposes outlined in this measure. However, without additional clarity (as to purpose, governance structure and operations) and coordination with DLNR to avoid any negative impacts upon their operations, passage of this proposal might create legal questions and unintended consequences.

Thank you for the opportunity to provide comments on this legislative proposal.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR
Chairperson**

**Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**Friday, February 1, 2013
8:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1249
RELATING TO THE HAWAII COMMUNITY DEVELOPMENT DISTRICT**

House Bill 1249 proposes to create the 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 area in Hilo, Hawaii. The bill directs the Department to convey to the Hawaii Community Development Authority (HCDA) the public lands the Department leases within the district boundaries, and transfers the leases on those lands to HCDA, including the hotel and resort leases within the Banyan Drive area. The Department opposes this bill for the following reasons.

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 operations and management of public lands/programs. Annual lease revenues currently support

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COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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 within 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 Hawaii Community Development 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 1249.

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 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. Act 219, Session Laws of Hawaii 2011, authorized the BLNR to extend existing hotel and resort leases up to 55 years where the lessee makes substantial improvements to the premises in accordance with an approved development agreement. At its meeting of October 26, 2012, Item D-11, the Board approved in concept an extension of General Lease No. S-3961 for the Hilo Hawaiian Hotel based on the lessee's proposal to make substantial improvements to the hotel property in the amount of approximately \$5.4 million. The Department and the lessee are currently in the process of preparing the development agreement for this project. Accordingly, the Department is working with its lessees to extend leases to justify re-development of properties in this area under the authority of existing law. Act 219 sunsets on December 31, 2015. To the extent the District Board could issue new long-term leases for the hotels without requiring substantial improvements, this bill would not serve the stated purpose of redevelopment of the hotel sites.

For the reasons above, the Department opposes this bill.