

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

**Before the House Committee on  
FINANCE**

**Monday, April, 1, 2013  
2:00 PM  
State Capitol, Conference Room 308**

**In consideration of  
SENATE BILL 1361, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO BANYAN DRIVE**

Senate Bill 1361, Senate Draft 2, House Draft 1, proposes to create the Banyan Drive Community Development Board (District Board) to advise the Department of Land and Natural Resources (Department) on the restoration and management of its properties in the Banyan Drive area of Hilo, Hawaii. **The Department opposes this bill for the following reasons.**

**The bill creates an unnecessary, bureaucratic addition to Departmental operations**

The bill provides that the nine-member District Board is to be a policy-making board for the Banyan Drive area and is to be attached to the Department for administrative purposes. The bill directs the Department to appoint staff as necessary to support the functions of the District Board. While a general appropriation in an undetermined amount is made for the Fiscal Year 2013-2014 to carry out the purposes of the measure, the bill does not create or fund any new staff positions. Accordingly, the expense of maintaining the District Board will likely be borne primarily by the Department.

Moreover, the bill proposes an unnecessary, bureaucratic addition to the Department's operations. The Department already has planning and development staff to assess appropriate uses of land in its inventory. Additionally, the Department can procure consultants to analyze market trends, explore options for redevelopment and rehabilitation of specific parcels or areas, and receive local government and public input on future uses of lands. A consultant can perform these functions much more efficiently and economically than a new bureaucracy.

Furthermore, the Department's land dispositions are controlled by the Board of Land and Natural Resources (BLNR). Under the bill, the District Board may advise the Department on the

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

**ESTHER KIA'AINA**  
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**WILLIAM M. TAM**  
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

restoration and management of its Banyan Drive lands. But the BLNR is bound by a fiduciary duty in managing the public land trust (including the Banyan Drive area), and if the advice of the District Board is not consistent with the BLNR's fiduciary duty, then the BLNR cannot follow the advice. There is no provision in the statute to address potential conflicts between District Board advice and the BLNR's fiduciary duty.

**The authority to construct, improve, renovate and revitalize areas within Hawaii County is already authorized under Section 46-80.5, Hawaii Revised Statutes, and Section 12 of the Hawaii County Code.**

The bill seeks to provide a vehicle to promote the redevelopment and rehabilitation of public lands within the Banyan Drive area of Hilo. 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. 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 Banyan Drive area of Hilo are already vested with the County of Hawaii. Most, if not all, of the parks, public roadways and utility infrastructure within the Banyan Drive area have been dedicated to the County. The County's improvement district ordinance already addresses these issues and provides the procedures and authority to assess the benefited lands.

**State Lands within the Banyan Drive area of Hilo are Subject to Chapter 171, HRS.**

In the past, various lessees of State lands within the Banyan Drive area 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 another 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 BLNR 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 redevelopment of properties in this area under the authority of existing law. Act 219 sunsets on December 31, 2015.

For the reasons above, the Department opposes this bill.

**William P. Kenoi**  
*Mayor*



**Walter K.M. Lau**  
*Managing Director*

**Randall M. Kurohara**  
*Deputy Managing Director*

## County of Hawai'i Office of the Mayor

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April 1, 2013

The Honorable Sylvia Luke, Chair  
and Members of the House Committee on Finance  
Hawai'i State Capitol  
415 South Beretania Street, Room 308  
Honolulu, Hawai'i 96813

RE: Senate Bill 1361 SD2 HD1, RELATING TO BANYAN DRIVE

Aloha, Chair Luke and Committee Members:

Thank you for this opportunity to express our strong support for the Senate version of Senate Bill 1361, which would instruct the state Department of Land and Natural Resources (DLNR) to negotiate a long-term, nominal rent lease to transfer management responsibility for the resort properties along Banyan Drive in Hilo to the County of Hawai'i. We recognize that the House Committee on Water and Land made amendments to this measure, but we respectfully ask for your support for the Senate version (SB 1361, SD2).

We have a deep concern with the deteriorating situation on Banyan Drive in general, and particularly at the Naniloa Volcanoes Resort. As you know, Banyan Drive has traditionally been the hub of East Hawai'i's resort activity, which makes it critically important to the economy of the Island of Hawai'i. When properly managed, this resort area is an economic engine and a job creator that provides benefits to our working families. The DLNR currently oversees this activity as the lessor of the resort properties along Banyan Drive, and we believe it would benefit the entire East Hawai'i community if the county is allowed to replace the DLNR in the role of manager of these properties.

We believe the entity that oversees these important public lands has an obligation to actively manage the Banyan Drive leases to assure those properties are properly maintained and operated by tenants who comply with the terms of their leases. We believe the county is in a better position to meet these obligations than DLNR.

The Honorable Sylvia Luke, Chair  
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To cite one obvious example, Hawai'i Outdoor Tours Inc. has now held the lease for the Naniloa Volcanoes Resort and the Banyan Drive golf course for seven years, and the result has been a disaster for East Hawai'i. The Kilauea Tower of the resort has been gutted and empty for years, the grounds of the property are a shambles, and the golf course clubhouse is closed. Valuable retail space on the grounds of the resort that could be contributing to the local economy and generating jobs is vacant and closed. Despite the lessee's well-publicized promises to restore the area as a top-quality destination, a lounge adjoining the hotel is usually closed, and the pool on the Banyan Drive side of the property has been drained. Only a fraction of the rooms in the Naniloa have actually been renovated. Since much of the hotel is empty, the facility operates with minimal staff.

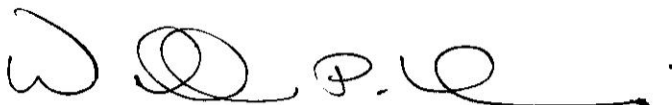
Enormous effort has been invested in bringing direct flights to Hilo to boost the East Hawai'i economy, yet the lingering problems at the Naniloa jeopardize all of the progress that has been made. If we lose those direct flights, the damage done by the failure at the Naniloa threatens to ripple out into the surrounding business community. Jobs are being lost, businesses are suffering, the state is collecting less transient accommodation and excise tax revenue than it should, and potential lease rent revenue is being lost to the state because of the neglect of this single, strategically placed resort.

Now that Hawai'i Outdoor Tours Inc. has filed for protection in bankruptcy court, it is absolutely clear the company does not have the resources required to restore the Naniloa. Under the "breach" provisions of the Naniloa lease, the lessor now has the right to terminate this lease. The lease specifically allows for termination "if the Lessee shall become bankrupt..." We believe the lessor also has the right to terminate under a separate Naniloa lease provision requiring the lessee to "keep, repair, and maintain all buildings and improvements...on the premises in good order, condition and repair, reasonable wear and tear excepted."

Many of our East Hawai'i residents are traveling 100 miles to work at jobs in Kona and the Kohala Coast resort areas, while the once-beautiful Naniloa property sits mostly empty. This is just one example of the problems along this critically important resort area, and other hotel operators along Banyan Drive are also frustrated with the management of the area. We cannot stand by while the situation along Banyan Drive continues to deteriorate. For the good of our working families and the business climate in all of East Hawai'i, we ask that you transfer control of these properties to the county and allow the county to take charge of the management of this area.

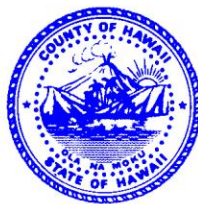
Thank you for your consideration.

Aloha,

A handwritten signature in black ink, appearing to read 'William P. Kenoi', with a long horizontal line extending to the right.

William P. Kenoi  
MAYOR

DENNIS "FRESH" ONISHI  
Council Member  
District 3



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## HAWAI'I COUNTY COUNCIL

25 Aupuni Street, Hilo, Hawai'i 96720

March 30, 2013

The Honorable Sylvia Luke, Chair  
and Members of the House  
Committee on Finance

I represent the residents of Banyan Drive on the Hawai'i County Council. Thank you very much for this opportunity to provide testimony in strong support of Senate Bill 1361 SD2 HD1.

Over the years there have been many discussions among community members, business leaders and government officials about feasible options to improve the economy of East Hawai'i. One way would be to increase the number of direct flights into Hilo from points beyond Honolulu. But with the exception of a couple flights to Los Angeles and Maui, that has not happened, and it is costing our economy millions of dollars in revenue.

Ultimately, the discussions reach this conclusion: The direct flights aren't coming because there aren't enough visitors to Hilo. There aren't enough visitors here because of the quality of the hotel accommodations in Hilo compared to those in West Hawai'i. And the quality of the hotel accommodations in Hilo is a direct result of the hotel leases managed by the Department of Land and Natural Resources.

The current version of SB 1361 creates a Banyan Drive Community Development Board that would develop recommendations regarding community development policies and guidelines for restoration and management. **I support this bill because it will lead to reasonable, common sense solutions that will prevent the further deterioration of the Banyan Drive properties and make the Waiākea peninsula the beautiful place it once was.**

Please recommend approval of this bill.

Sincerely,

Dennis "Fresh" Onishi  
Hawai'i County Council Member