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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 Senate Committee on
WAYS AND MEANS**

**Tuesday, February 26, 2013
10:05 AM
State Capitol, Conference Room 211**

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

Senate Bill 1361, Senate Draft 1 seeks to require the State to transfer to the County of Hawaii (County) in fee simple nine income-generating parcels of public land near or adjacent to Banyan Drive in Hilo, Hawaii. **The Department of Land and Natural Resources (Department) vigorously opposes this measure.**

The parcels to be transferred under the bill include the sites of the Hilo Hawaiian Hotel, Uncle Billy's Hotel, the Naniloa Volcanoes Resort and its golf course, among other developed properties. As is evident from the list included on page 2 of the bill, the leases for the properties generate over \$800,000 in rent annually for the Department.

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 the Special Land and Development Fund (SLDF), with revenues coming primarily from leases

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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



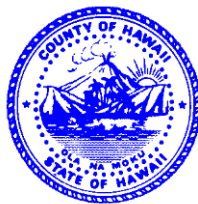
for commercial, industrial, resort, geothermal and other renewable energy projects, including the Banyan Drive leases that would be transferred under this bill.

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.

In the past, various lessees of public lands in the Banyan Drive area, have sought lease extensions or new direct leases. Restrictions in Chapter 171, Hawaii Revised Statutes (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 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 negotiating 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. Senate Bill 1361, Senate Draft 1 provides that the County would be subject to Chapter 171, HRS, in its management of the properties. The County would also take the properties subject to all existing leases. There is no explanation in the bill as to how the County will better be able to manage the properties.

To the extent the bill requires Banyan Drive itself to be turned over to the County, this roadway was conveyed to the County of Hawaii by the State of Hawaii on July 16, 1969 under Land Office Deed No. S-25,838. The State no longer has an interest in Banyan Drive to convey to the County.

DENNIS “FRESH” ONISHI
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HAWAI‘I COUNTY COUNCIL
25 Aupuni Street, Hilo, Hawai‘i 96720

February 26, 2013

The Honorable David Y. Ige, Chair
and Members of the Senate
Committee on Ways and Means

Dear Senator Ige and Committee Members,

Thank you very much for this opportunity to provide testimony in strong support of Senate Bill 1361.

The deterioration of the properties along Banyan Drive, which contain most of the hotel accommodations in East Hawai‘i, have a major impact on the Big Island economy that extends far beyond the Waiākea Peninsula.

The current lease structure by the Department of Land and Natural Resources discourages active investment in the properties in Hilo’s most scenic location. Hawai‘i County is in a better position to meet these obligations than the DLNR.

Please recommend approval of this bill.

Sincerely,

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



SB1361 SD1
RELATING TO BANYAN DRIVE
Senate Committee on Ways & Means

February 26, 2013

10:05 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1361 SD1, which transfers in fee simple certain properties near or adjacent to Banyan Drive. It also transfers the jurisdiction, functions, powers, duties, and authority from the Department of Land and Natural Resources (DLNR) to the County of Hawai'i. To the extent that this act would diminish the ceded land corpus or cause the state to abdicate its fiduciary obligations under the public land trust, OHA opposes this bill.

The bulk of the land managed by DLNR, including land along Banyan Drive, is former government or crown land that was ceded by the Republic of Hawai'i to the United States in 1898, "without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government[.]" P.L. 103-150 (1993). OHA maintains that the state cannot diminish the ceded land corpus until the Native Hawaiian people's claim to ceded lands has been resolved. To the extent that transferring jurisdiction over Banyan Drive to the County of Hawai'i would diminish the state's control over the ceded land corpus, OHA objects.

Additionally, Admission Act section 5(f) created the public land trust pursuant to which certain land and the proceeds or income from the disposition of that land are to be held by the State of Hawai'i for five public purposes, including the betterment of the conditions of native Hawaiians. 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. Transferring public trust land along Banyan Drive to the county would improperly relieve the state of its obligation, while imposing no mechanism for the county to ensure these fiduciary obligations are not abandoned altogether.

For these reasons, OHA urges the committee to **HOLD** SB1361 SD1. Mahalo for the opportunity to testify on this important measure.