

**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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March 18, 2013

The Honorable Cindy Evans, Chair  
and Members of the House Committee on Water & Land  
Hawai'i State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawai'i 96813

RE: Senate Bill 1361 SD2, RELATING TO BANYAN DRIVE

Aloha, Chair Evans and Committee Members:

Thank you for this opportunity to express our strong support for Senate Bill 1361 SD2, 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 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 Cindy Evans, Chair  
Page 2  
March 18, 2013

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.

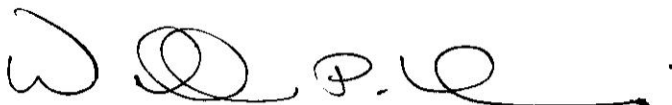
Enormous effort has been invested in bringing direct flights to Hilo to boost the East Hawai'i economy, yet the lingering problems at the Naniloa jeopardize all of the progress that has been made. If we lose those direct flights, the damage done by the failure at the Naniloa threatens to ripple out into 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 flourish extending to the right.

William P. Kenoi  
MAYOR



# Hawai'i Island Chamber of Commerce

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March 15, 2013

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

Honorable Cindy Evans, Chair  
Honorable Nicole E. Lowen, Vice Chair  
House Committee on Water & Land  
State Capitol  
415 South Beretania Street  
Honolulu, Hawai'i 96813

## RE: Testimony in Support of SB 1361 Regarding Banyan Drive

Dear Chair Evans, Vice Chair Lowen and Members of the Committee:

My name is Vaughn Cook and I am the President of the Hawaii Island Chamber of Commerce ("Chamber"). With more than 230 member businesses and over 550 member representatives, the Chamber serves as an important voice of business in Hawaii.

The Chamber **strongly supports SB 1361 relating to Banyan Drive.**

I apologize for being unable to testify in person on this very important issue to the entire community of East Hawaii, the Island of Hawaii and the State of Hawaii. This issue is **important to all interests** in our community because it deals with a critical issue – the infrastructure of our visitor industry.

I don't need to tell you that 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).



# Hawai'i Island Chamber of Commerce

117 Keawe Street, Suite 205  
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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 the local control of the County of Hawaii. The County of Hawaii has a fiduciary obligation to the people of the County to manage this precious resource in the best interest of all parties to maximize the highest and best use of East Hawaii's tourism base. Any improvements in infrastructure and resulting revenue will benefit everyone. The State will benefit from increased tax revenues generated from additional tourism and income earned by hotels and other businesses. The County will benefit from higher property values that will increase the property tax. The people of the community would benefit from a more beautiful and vibrant Banyan Drive that provides good working wage jobs to our citizens and which could improve safety and reduce traffic on our roads as fewer East Hawaii citizens would need to commute to West Hawaii to work when they could take similar positions in the visitor industry on Banyan Drive.

Please support SB 1361!

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. Please free Banyan Drive to be restored to and surpass its former glory!

Very Truly Yours

Vaughn G. T. Cook  
President



## lowen1-Kyli

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 16, 2013 4:49 PM  
**To:** waltestimony  
**Cc:** djr@teamdeluz.com  
**Subject:** Submitted testimony for SB1361 on Mar 18, 2013 08:35AM

### **SB1361**

Submitted on: 3/16/2013

Testimony for WAL on Mar 18, 2013 08:35AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David S De Luz Jr	Big Island Toyota, Inc.	Support	No

Comments: RE: Testimony in Support of SB 1361 Regarding Banyan Drive Dear Chair Evans, Vice Chair Lowen and Members of the Committee: My name is David S. De Luz, Jr. and represent Big Island Toyota and we have businesses on the East and West just celebrated our 50th year of doing business on the Big Island. We have seen many economic cycles in our 50 years and experienced significant decline in the Banyan Drive area, which I can remember was once an economic showcase of East Hawaii. I apologize for being unable to testify in person on this very important issue to the entire community of East Hawaii, the Island of Hawaii and the State of Hawaii. This issue is important to all interests in our community because it deals with a critical issue – the infrastructure of our visitor industry. I don't need to tell you that 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 the local control of the County of Hawaii. The County of Hawaii has a fiduciary obligation to the people of the County to manage this precious resource in the best interest of all parties to maximize the highest and best use of East Hawaii's tourism base. Any improvements in infrastructure and resulting revenue will benefit everyone. The State will benefit from increased tax revenues generated from additional tourism and income earned by hotels and other businesses. The County will benefit from higher property values that will increase the property tax. The people of the community would benefit from a more beautiful and vibrant Banyan Drive that provides good working wage jobs to our citizens and which could improve safety and reduce traffic on our roads as fewer East Hawaii citizens would need to commute to West Hawaii to work when they could take similar positions in the visitor industry on Banyan Drive. Please support SB 1361! 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. Please free Banyan Drive to be restored to and surpass its former glory!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, March 15, 2013 8:04 PM  
**To:** waltestimony  
**Cc:** jwmccully54@gmail.com  
**Subject:** Submitted testimony for SB1361 on Mar 18, 2013 08:35AM

**SB1361**

Submitted on: 3/15/2013

Testimony for WAL on Mar 18, 2013 08:35AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James McCully	Individual	Support	No

Comments: Aloha Chair Evans I strongly support the improved management of state lands. HRS 171 is badly in need of reform and absent that state lands in resort, commercial, and industrial use will continue as "wasting assets". Our state can ill afford this pernicious condition, and this bill offers some measure of improvement over the current 'status quo'. Active management by those in close proximity will be a distinct improvement. Please support this bill and please note that the condition of these Resort properties are a consequence of, and reflect badly upon, the statutory framework of HRS 171, especially 171-17 and 171-36. Please allow the County of Hawaii the opportunity to manage these properties for the benefit of both the County and the State. Mahalo

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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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  
WATER & LAND**

**Monday, March 18, 2013  
8:35 AM  
State Capitol, Conference Room 325**

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

Senate Bill 1361, Senate Draft 2 proposes to require the State to enter into negotiations with the County of Hawaii (County) for the lease of certain income-generating parcels of public land near or adjacent to Banyan Drive in Hilo, Hawaii. **Although the method of conveyance has been modified, the Department of Land and Natural Resources (Department) continues to oppose this measure.**

The original version of this bill required the Department to convey the State's fee interest in the lands to the County. The Department opposed that bill. Now this current version, Senate Draft 2, proposes a lease structure. The parcels to be leased include the sites of the Hilo Hawaiian Hotel, Uncle Billy's Hotel, the Naniloa Volcanoes Resort and its golf course, among other developed properties. The bill provides that the lease rent to be charged by the State to the County is one dollar per year.

These sites are already encumbered by leases to private entities, mortgages and other lienholders; therefore, as an initial matter, before the Board of Land and Natural Resources (BLNR) could lease any of these properties to the County, all of the existing lessees and their respective lienholders would need to agree to subordinate their leases and liens to a new lease to the County. The State's leases include a standard covenant of quiet enjoyment, which grants the lessee the exclusive use of the premises for the term of the lease. Entering into a new lease of the properties with the County before the current leases have expired and without a subordination agreement would constitute a breach of the covenant of quiet enjoyment for which the State could be held liable in damages. Obtaining all the required subordinations could be a major undertaking in itself.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



Generally, the conveyance of a landlord's interest in a lease to a new landlord is effectuated through a fee sale or an assignment of lessor's interest in lease. The bill recites in the preamble that the legislature does not support alienating permanently the State's public lands assets. But an assignment of the State's interest in the leases would give the County no greater rights than the State has in managing the properties. When the leases terminate, the County's interest in the land would also terminate.

Furthermore, the Department notes that the County has little or no commercial or resort property management experience. It may therefore be unwise to assign the leases for the subject properties in bulk to the County. If the intent of the bill is to determine whether the County can manage the properties better than the Department does, then perhaps the BLNR can lease the County certain parcels once the current leases expire. For example, General Lease No. S-3029 to Reeds Bay Resort Hotel Ltd. expires on March 14, 2015. The lease premises is adjacent to land (Tax Map Key: (3) 2-1-05:28) that the BLNR already set aside to the County for public park purposes. The County might be able to use the Reeds Bay parcel in conjunction with the park, or develop some other plan for the parcel.

As is evident from the list included on pages 2-3 of the bill, the leases for the properties generate over \$800,000 in rent annually for the Department. The bill provides that an unspecified percentage of the revenues the County receives from the properties should be paid over to the Director of Finance for deposit into the Special Land and Development Fund (SLDF). 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 County has not invested any resources in the development of the subject properties to date and is only required to pay nominal rent under the bill. Accordingly, if this bill passes in its present form, the percentage of revenues payable to the SLDF should be high, with the County receiving only a management fee. A management fee of no more than 10% of revenues would be appropriate, with the balance being paid to the SLDF.<sup>1</sup>

As explained in our prior testimony, the Department and 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,

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<sup>1</sup> The Department pays 20% of all revenues received from the use of ceded lands to the Office of Hawaiian Affairs (OHA), but only pays this percentage on amounts actually received by the Department. The County is not required to pay OHA for the use of ceded lands. Accordingly, OHA's receipts from the Banyan Drive properties will be reduced to the extent the County collects the revenues from these properties.



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 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.

Finally, the Department emphasizes that it is amenable to proposals from its lessees in the area for redevelopment of the properties. 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, 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.

Thank you for the opportunity to testify.