

**LATE  
TESTIMONY**

**SB 1361**



**SB1361**  
**RELATING TO BANYAN DRIVE**  
Senate Committee on Water and Land  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

February 5, 2013

1:45 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1361, which transfers jurisdiction, functions, powers, duties, and authority relating to Banyan Drive from the Department of Land and Natural Resources (DLNR) to the County of Hawai'i by executive order of the governor. 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. Mahalo for the opportunity to testify on this important measure.