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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Thursday, February 28, 2013
9:35 AM
State Capitol, Conference Room 211

In consideration of
SENATE BILL 457, SENATE DRAFT 1
RELATING TO HAPUNA BEACH PARK

Senate Bill 457, Senate Draft 1 proposes to transfer Hapuna Beach State Recreation Area from the State of Hawaii (State) to the County of Hawaii (County) in fee simple. **The Department of Land and Natural Resources (Department) is willing to discuss the issue with the County of Hawaii but does not support this measure.**

During the Regular Session in 2010, the Legislature introduced several measures requesting the Department to pursue transferring this recreation area to the County. The Department testified that it would be willing to discuss the issue with the County. Subsequently, the County approached the Department, discussions occurred, and work was done to develop agreements to effectuate such a transfer. In 2011, the Legislature introduced a measure requesting that such a transfer not take place. Accordingly, the Department did not pursue the issue any further.

The Department has concerns with this measure including the requirement to transfer all State appropriations used for maintenance, operations, repair, construction, or other uses in Hapuna to the County. The lifeguard services (provided by the County and funded by the State) are paid out of the State Parks Special Fund. Hapuna does not currently generate significant revenue, so this provision would result in funds generated in State Parks statewide being transferred to the County of Hawaii. The measure is silent on the disposition of personnel. This needs to be addressed as, if all funds are transferred to the County and personnel remain with the State, the Department will be unable to make payroll.

In the last ten years, the Department has made significant improvements to the park, investing \$3.8 million to remake the Americans with Disabilities Act (ADA) barriers, improve sewer and water systems, repair picnic shelters and restrooms, and is in the process of repairing the parking areas and park roads. In addition, the Department has executed a pilot parking management

agreement which will generate approximately \$200,000 annually for the operation and maintenance of this recreation area, including lifeguards at Hapuna Beach.



LATE

SB457 SD1
RELATING TO HAPUNA BEACH PARK
Senate Committee on Ways and Means

February 28, 2013

9:35 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB457 SD1, which requires the Department of Land and Natural Resources (DLNR) to transfer its jurisdiction, functions, powers, duties, and authority relating to Hapuna Beach Park 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 portions of Hapuna Beach Park, 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 Hapuna Beach Park to the County of Hawai'i would diminish the state's control over the ceded land corpus, OHA objects.

Additionally, the 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 the Hapuna Beach Park 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** SB457 SD1. Mahalo for the opportunity to testify on this important measure.