

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
WATER AND LAND
and
WAYS AND MEANS

Thursday, April 5, 2018
10:00am
State Capitol, Conference Room 211

In consideration of
HOUSE BILL 2073, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO URBAN DEVELOPMENT

House Bill 2073, House Draft 1, Senate Draft 1 proposes to establish the Kanoiehua Industrial Area and Banyan Drive region of Hilo as a redevelopment district and authorize a redevelopment agency created pursuant to Section 53-2, Hawaii Revised Statutes (HRS), to contract with a developer for construction of non-residential uses on public lands within the district under a 10-year pilot project. Senate Draft 1 deletes PARTS II and III of the measure, removing language that would have exempted gross income from the construction of works or improvements of a redevelopment project from the general excise tax and use tax. **The Department of Land and Natural Resources (Department) opposes the appropriation of funding from the Special Land and Development Fund (SLDF) to the redevelopment agency and offers comments on the status of Banyan Drive redevelopment and leases in the Kanoiehua Industrial Area.**

The Department is currently aware of one redevelopment agency in the State formed under Section 53-2, HRS – the Banyan Drive Hawaii Redevelopment Agency (BDHRA). House Bill 2073, House Draft 1, Senate Draft 1 would give redevelopment agencies like BDHRA the authority (subject to the prior approvals of the applicable county and the Governor, and the authorization of the legislature by concurrent resolution) to negotiate a development agreement with a developer for commercial, business, or hotel or resort uses on public lands within a redevelopment area pursuant to a redevelopment plan adopted by the agency. The measure additionally states that the development agreement is to provide for the leasehold disposition of the land to include a number of items listed in the bill.

The Department has been working with BDHRA, and (prior to BDHRA's creation) with the Banyan Drive Task Force formed under former Governor Abercrombie, for a number of years on plans for the redevelopment of Banyan Drive area in Hilo. Although some of the state-owned properties on Banyan Drive are in poor condition, the Department points out that the Hilo Hawaiian Hotel, the Hilo Bay Café (former Nihon Restaurant site), and the Grand Naniloa Hotel are State leasehold properties that are in good condition, with Naniloa currently wrapping up a \$20 million renovation. The long-term leases for Uncle Billy's Hilo Bay Hotel (more recently the Pagoda Hilo Bay Hotel, which was closed in June 2017), Country Club Condominium (which is now a residential apartment building – not a condominium), and Reed's Bay Resort Hotel all expired in 2016 and have been converted to month-to-month revocable permits. No new leases for these sites have issued yet because, as noted above, the Department has been working with BDHRA to develop a long-term plan for the area. Once a long-term plan for Banyan Drive is settled on, the Department can issue new long-term resort leases for these properties, if that is what BDHRA ultimately supports. On March 7, 2018, the Department posted a request for interest (RFI) on its website as well as on the website of the State Procurement Office regarding the potential demolition of existing structures and reconstruction of a hotel on the former Hilo Bay Hotel site. The RFI was published in several newspapers in the State on March 14, 2018. Since 2014, the Department has spent approximately \$524,500 from the SLDF on consultant services and studies dedicated to the public lands at Banyan Drive.¹

The Department has worked cooperatively with BDHRA, and Department representatives have attended all the BDHRA meetings held to date. The Department has expressed to BDHRA that the Department is willing to present any viable proposal for the use of the public lands in the area to the Board of Land and Natural Resources (Board) for consideration. In this process, BDHRA's role has always been contemplated as that of a planner and not itself issuing leases to developers. In the Department's view, BDHRA is not adequately staffed or funded to act as a land manager.

With respect to the Kanoelehua Industrial Area, many of the leases of public lands in that area were issued in a two or three year period following the 1960 tsunami for terms of 55 years. Most of the lessees in this area applied for ten-year extensions of their lease terms under Section 171-36(b), HRS, which requires the lessee to make substantial improvements to the premises to qualify for a lease extension. Although some of the leasehold improvements are not in good condition, a number of them are well maintained, such as HPM Building Supply, Bank of Hawaii and Big Island Toyota on Kanoelehua Avenue, Central Supply on Makaala Street, Paradise Plants, and Kitchen and Bath Supply on Wiwoole Street, and the Coca-Cola bottling plant on

¹ The Department procured a consultant to conduct a number of studies to facilitate planning for Banyan Drive including a market study on tourism to determine if the area could support a new hotel, and studies on sea level rise, the viability of master leasing multiple parcels in the area, and the remaining useful life of existing structures on expiring lease premises. These studies are publicly available on the Department's website at <http://dlnr.hawaii.gov/ld/kanoelehua-and-banyan-drive-studies/>. Another consultant, Erskine Architects, conducted a much more detailed architectural and engineering study on whether existing improvements on the expired lease premises should be demolished or rehabilitated. Yet another consultant recently completed a study on the cost of securing the necessary permitting for demolishing the improvements on the expired leases and completing the demolition.

Holomua Street. The Department has spent approximately \$138,000 on planning studies for the Kanoelehua Industrial Area since 2014.²

The Department is additionally concerned with the fiscal impacts of the bill. Although the measure is not clear on this point, the Department presumes that if the redevelopment agency issues leases of public lands, it would also collect the rents on those leases. In addition to this bill seeking the revenues from the Banyan Drive and Kanoelehua Industrial Area leases, there are various other redevelopment agency bills moving this session seeking to take from 10% to 50% of the revenues generated from the Banyan Drive and the Kanoelehua Industrial Area leases. These lands are ceded and OHA is currently receiving 20% of the revenues and is seeking to increase its share by more than 100% from \$15.1 million to \$35 million annually. Neither this bill nor the other redevelopment agency bills relieve the Department of the lease management duties. Therefore, if these measures were all to pass and become law, the Department would be left in the very unfortunate situation of having to manage all of those leases (bill, collect, inspect, procure and pay for professionals for rental and reopening valuations, and paying for rental mediation and arbitration costs) but receive very little or no revenue in return, after expenses.

The Department and the Board 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 Board 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 for commercial, industrial, resort, geothermal and other renewable energy projects.

The SLDF is a critical and increasingly important funding source for various divisions within the Department to deal with emergency response to natural catastrophes 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. Diverting lease revenues from the

² The Department examined the possibility consolidating smaller parcels in this area to put out to lease at auction as larger lots. The Department's consultant conducted a market study on the demand for industrial parcels in Hilo, a lot consolidation analysis, and a master lease analysis of multiple parcels. These studies are also publicly available on the Department's website at <http://dlnr.hawaii.gov/ld/kanoelehua-and-banyan-drive-studies/>

Banyan Drive area to BDHRA or another redevelopment agency could negatively impact the Department's operations.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2073, H.D. 1, S.D. 1, RELATING TO URBAN DEVELOPMENT.

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND ON WAYS AND MEANS

DATE: Thursday, April 5, 2018

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Dawn T. Apuna, Deputy Attorney General

LATE

Chairs Rhoads and Dela Cruz and Members of the Committees:

The Department of the Attorney General provides the following legal concerns with this bill.

The purposes of this bill are to: (1) require the establishment of the Kanoelehua Industrial Area and Banyan Drive region of Hilo, Hawai'i, as a redevelopment district for a 10-year pilot project; and (2) allow a local redevelopment agency created pursuant to section 53-2, Hawaii Revised Statutes, to negotiate a development agreement with a developer for commercial, business, hotel, or resort uses on public lands within the redevelopment area.

We believe that the creation of a pilot redevelopment project for lands only within the Kanoelehua Industrial Area and Banyan Drive region may be deemed to be special legislation, in violation of article XI, section 5, of the Hawai'i Constitution. The Kanoelehua Industrial Area and Banyan Drive are public land holdings of the Department of Land and Natural Resources.

Article XI, section 5, of the Hawai'i Constitution provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

A general law must apply uniformly. *Sierra Club v. Dep't of Transportation*, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009).

This bill only applies to the Kanoelehua Industrial Area and Banyan Drive region. The class is not generally defined. Consequently, part I does not apply uniformly. This bill appears to be special legislation and may violate article XI, section 5, of the Hawai'i Constitution.

Additionally, this bill is unnecessary as chapter 53, "Urban Renewal Law", Hawaii Revised Statutes, already provides a process for the designation of redevelopment areas, formation of redevelopment projects and the authority of county redevelopment agencies to contract with developers to carry out urban renewal projects. By designating Kanoelehua Industrial Area and Banyan Drive region as a redevelopment area, this bill conflicts with and undermines the chapter 53 process for establishing redevelopment areas that includes redevelopment agency studies, public notices, and planning commission and county council approval.

Finally, this bill fails to provide any justification for singling out the Kanoelehua Industrial Area and Banyan Drive region for redevelopment.

We respectfully ask the Committees to consider these comments.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

April 2, 2018

Senator Karl Rhoads, Chair
Committee on Water and Land
Hawai'i State Capitol, Room 211
Honolulu, HI 96813

Senator Donovan M. Dela Cruz, Chair
Committee on Ways and Means
Hawai'i State Capitol, Room 211
Honolulu, HI 96813

Dear Chair Rhoads and Dela Cruz, and Committee Members:

Re: HB 2073, HD 1, SD 1 Relating to Banyan and Kanoelehua Industrial Area

Hearing Date: 04/05/2018 – 10:00 am; Conference Room 211

HB 2073 has followed a circuitous route. The original purpose of HB 2073 was to exempt construction of improvements in a redevelopment project from General Excise and Use Taxes. That bill was amended, and HD 1 proposed a ten-year pilot project to allow a local redevelopment agency to contract with a developer for construction within the Kanoelehua Industrial Area and Banyan Drive region of Hilo. It also amended the general excise tax exemption. Now SD 1 proposes to eliminate the tax provision entirely, expressing the belief that "other financial incentives may be provided to encourage redevelopment projects."

By way of background, Banyan Drive is underutilized and in disrepair. It is the center of tourism in East Hawai'i, but it is a jewel that is quite tarnished at the present time. The Kanoelehua Industrial Area is well utilized but is suffering the ravages of time, as leases issued to tsunami victims near their termination.

Hawai'i County has taken the first steps toward revitalizing the Banyan Drive peninsula. The administration, Council, community, and Big Island legislators have found common purpose; the redevelopment area has been defined; and a conceptual master plan has been created as a starting point. Now funds are needed to conduct the environmental impact statements necessary to complete the redevelopment plan and move forward.

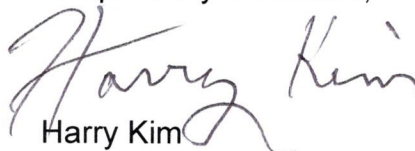
April 2, 2018

Page 2

Since the County of Hawai'i strongly supports the redevelopment of Banyan Drive and the Kanoiehua Industrial Area, we have supported SB 2972 (RELATING TO LAND DEVELOPMENT) and SB 3058 (RELATING TO PUBLIC LANDS) both of which have worked their way to Finance and hopefully will be heard; and HB 2641, which has died. We would also support HB 2073, if for no other reason than to assure that as many issues as possible are on the table for discussion in conference. However, our preference would be to have HB 2073, HD 1, SD 1 amended by substituting the language of SB 2972, SD 2. Our greatest need at this point is a funding mechanism for the environmental studies that are required in order to move forward, and SB 2972, SD 2 provides that. It surely would also be beneficial to our private sector partners if the general excise tax exemption from HB 2073 or HB 2073, HD 1 were restored and included.

SB 2972, SD 2, provides that "no funds shall be made available under this Act unless the county of Hawai'i provides matching funds of \$250,000 through its county budget for fiscal year 2018-2019." Please know that the Hawai'i County budget is severely strapped, and I have already had to impose increases in our property, fuel, and vehicle weight taxes. Nevertheless, this issue is important enough that, although no matching funds were included in my March preliminary budget, I will do my best to provide \$250,000 in the final 2018-2019 County budget, in order to provide the matching funds called for. We do believe that it is just and proper to ask the State to share in the EIS expense, given that the redevelopment area consists almost entirely of State land, but we recognize that the County must do its part as well, to the best of our financial ability.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harry Kim".

Harry Kim
Mayor, County of Hawai'i

HB-2073-SD-1

Submitted on: 4/4/2018 9:58:06 AM

Testimony for WTL on 4/5/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

To the Honorable Karl Rhoads, Chair; the Honorable Mike Gabbard, Vice-Chair, and Members of the Committee on Water and Land:

To the Honorable Donovan M. Dela Cruz, Chair; the Honorable Gilbert S. C. Keith-Agaran, Vice-Chair, and Members of the Committee on Ways and Means:

Good morning. My name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") on Legislative Priorities of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on **HB2073 HD1 SD1** relating to Urban Redevelopment; Public Lands; Kanoelehua Industrial Area; and Banyan Drive.

The OCC Legislative Priorities Committee is in favor of **HB2073 HD1 SD1** and supports its passage.

HB2073 HD1 SD1, is in alignment with the Platform of the Democratic Party of Hawai'i ("DPH"), as it establishes the Kanoelehua industrial area and Banyan drive region as a redevelopment district until June 30, 2028; and authorizes a local redevelopment agency to contract with a developer for construction of non-residential uses on public land within the redevelopment district consisting of the Kanoelehua industrial area and Banyan drive region until 6/30/2028, effective 7/1/2050 and sunsets 6/30/2028.

Specifically, the DPH Platform states that "[a] diversified and healthy economy in Hawai'i requires a well-educated and healthy citizenry. To encourage existing and new enterprise, we need to develop a combination of tax policies and credits, lending programs, and financial incentives that will attract the business community. The creation of intellectual property and new start-ups should be a part of the curriculum of our business schools. Business training should stress ethical company management that is responsive to customer needs.

State and county governments have a key role to play in setting reasonable standards for industry and trade. As market conditions change, government agencies must adapt and revise regulations to promote “green” sustainable industries that are compatible with preserving the natural and scenic beauty of Hawai‘i. In this regard, we must find ways to stimulate recycling and biodegradable packaging to minimize landfill needs. We must move from carbon-based power to electric power.

Improvements to infrastructure are critical to providing a healthy base to the Hawaiian economy. Upgrading publicly-owned water works, preserving agricultural water sources, improving public transportation, redesigning mass transit, and supporting universal basic education for all children are key elements in maintaining a strong, sustainable economy in Hawai‘i. In addition, we must abandon the “throwaway” economy to avoid wasting our valuable resources.

We believe that government plays a vital role in nurturing and regulating our economic system. We believe that private and public employers, as responsible members of community, by providing good jobs and fair pay and benefits, are essential for economic expansion, diversification, innovation, and entrepreneurship. We re-affirm our commitment to a progressive tax structure and will work to re-establish a system based upon “ability to pay.”

Availability of financial support and a capable educated people are critical to our economic expansion and diversification. The management of businesses should be ethical and responsive to the community with transparency for investors and shareholders guaranteeing sound, healthy management. (Platform of DPH, PP. 1-2, Lines 38-64 (2016)).

Given that **HB2073 HD1 SD1** establishes the Kanoelehua industrial area and Banyan drive region as a redevelopment district until June 30, 2028; and authorizes a local redevelopment agency to contract with a developer for construction of non-residential uses on public land within the redevelopment district consisting of the Kanoelehua industrial area and Banyan drive region until 6/30/2028, effective 7/1/2050 and sunsets 6/30/2028, it is the position of the OCC on Legislative Priorities to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC on Legislative Priorities

Email: legislativepriorities@gmail.com, Text/Tel: (808) 258-8889



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON WAYS AND MEANS
Thursday April 5, 2018, 10 AM, Conference Room 211
House Bill 2073, SD 1 Relating to Urban Redevelopment

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters

Chairs Rhoads and Dela Cruz, and Committee Members:

The purpose of HB 2073, SD 1 is to authorize a county redevelopment agency, established under Chapter 53, Hawaii Revised Statutes, to negotiate a contract for private redevelopment and lease of specified predominantly unblighted public lands within Hawaii County. We assume that this bill would exempt negotiation of the proposed redevelopment contract from the State Procurement Code.

Under Chapter 53, Hawaii Revised Statutes, counties may establish redevelopment agencies to designate, acquire, and redevelop “blighted” private property. However, Chapter 53

- Does not exempt county redevelopment agencies from the State Procurement Code;
- Does not authorize a county redevelopment agency to acquire and redevelop public lands without BLNR consent; and
- Does not authorize redevelopment of areas that are predominantly not “blighted”.

Because HB 2073, SD 1 proposes to establish new powers for a county redevelopment agency in only one county, we believe this bill may violate Article VIII, Section 1 of the State Constitution.

ARTICLE VIII LOCAL GOVERNMENT

CREATION; POWERS OF POLITICAL SUBDIVISIONS

Section 1. The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

Att. Gen. Op. 62-11. Law conferring power on only certain specified counties is a special law.

HB-2073-SD-1

Submitted on: 3/29/2018 3:24:38 PM

Testimony for WTL on 4/5/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David S. De Luz, Jr.	Individual	Support	No

Comments:

HB-2073-SD-1

Submitted on: 4/3/2018 2:20:36 PM

Testimony for WTL on 4/5/2018 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Glen Kagamida	Individual	Support	No

Comments:

I am writing in SUPPORT!

Mahalo!