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HAWAII



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COMMISSION ON WATER RESOURCE MANAGEMENT

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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committee on  
WAYS AND MEANS

Friday, April 5, 2019  
10: 05 AM  
State Capitol, Conference Room 211

In consideration of  
HOUSE BILL 1219, HOUSE DRAFT 1, SENATE DRAFT 1  
RELATING TO PUBLIC LANDS

House Bill 1219, House Draft 1, Senate Draft 1 proposes to authorize the designation of areas or regions of public lands classified as commercial, industrial, hotel, apartment, motel or resort use and the establishment and implementation of guidelines for the redevelopment of such areas or regions. Senate Draft 1 of the measure proposes to change the requirements for composition of planning committees and includes a new PART IV regarding rent credits for leases of public lands that require substantial demolition or infrastructure improvement costs in order to for the lessee to utilize the premises. **The Department of Land and Natural Resources (Department) supports PART IV of the measure relating to rent credits to lessees who incur significant demolition or infrastructure costs, but opposes PARTs II and III of this measure to the extent it seeks to create a planning district and planning committee for the Waiakea Peninsula area of Hilo.**

Currently, Chapter 171, Hawaii Revised Statutes (HRS), limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land. PART IV of this measure seeks to authorize the Board of Land and Natural Resources (Board) to approve a rent reduction or waiver for up to twenty years not to exceed the amount of the lessee's total expenditures for demolition of improvements or provision of infrastructure.

There are a number of long-term leases of public lands originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8-10 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land. One alternative would require a significant commitment of public funds at a time when critical priorities are competing for a limited amount of resources. Furthermore, simply passing the responsibility to a prospective lessee to assume such high costs with no avenue for relief will significantly deter demand for the property, reducing the likelihood of a successful development.

Additionally, the Department is currently conducting planning for projects to develop State lands for resort, commercial, industrial, and other business or residential use on various islands, for the purpose of generating income to support the Department's resource management and protection programs. However, substantial investments in infrastructure including drainage, sewer, water, electricity, and other utilities will be required to facilitate development of the lands with costs in the tens of millions of dollars. As with the previous scenario, rather than rely solely on public funds, the State seeks to defer, either whole or in part, the infrastructure and other development costs of these lands on to a future lessee of the lands. PART IV of this measure would facilitate that objective, while also helping to ensure the long-term success of projects that benefit the Department and the State as a whole.

The remaining provisions of the measure (PARTs II and III) are intended to promote redevelopment of the Waiakea Peninsula area. Under Chapter 171, HRS, the Board is authorized to issue leases up to a maximum term of 65 years. Section 171-32, HRS, provides that it is the policy of the State to issue leases by public auction. As the preamble to this measure indicates, at the end of their lease terms, lessees have little incentive to invest in improvements to their leasehold properties because the leases cannot be extended further. Rather, new leases of the lands must be issued pursuant to the public auction process. As a result, the properties frequently fall into disrepair.

House Bill 1219, House Draft 1, Senate Draft 1 seeks to promote the redevelopment of public lands in commercial, industrial, hotel, apartment, motel or resort use. The redevelopment districts would have their own nine-member planning committees to act as the policy-making body for the district. In addition to preparing redevelopment plans for the district, the planning committee would have authority to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the district. The planning committee would also be empowered to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements, provided that the reduction or waiver shall not exceed one year. The measure would further authorize the planning committee to enter into development agreements with a developer for any project contained in a development plan, and specifies the contents of the development plan.

The bill proposes to designate the Waiakea Peninsula Redevelopment District in Hilo as a redevelopment district under the measure. This area constitutes the Department's primary hotel/resort landholdings on Hawaii Island. The Department has been working with the private sector lessees and permittees to move Banyan Drive buildings on State land into redevelopment in phases. Key state parcels in which the Department is engaged in redevelopment of Banyan Drive include:

- 1) Hilo Hawaiian Hotel: ground lease from the Department; renovated.
- 2) Hilo Bay Café (former Nihon restaurant site): ground lease from the Department; renovated.
- 3) Grand Naniloa Hotel: ground lease from the Department; \$20 million in renovations completed in 2018.
- 4) Golf Course: part of Grand Naniloa ground lease from the Department; requires participation of lessee for redevelopment.
- 5) Uncle Billy's: closed in 2017 by the Board; under Revocable Permit (RP) to Tower Development, Inc. (TDI), who is an affiliate of the lessee of the Grand Naniloa; 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. Notice of the RFI was additionally published in several newspapers in the State on March 14, 2018 with a response deadline of April 30, 2018. One response (from TDI) was received with a proposal to substantially demolish and reconstruct a branded hotel on the site consisting of approximately 125 guest rooms, fitness room, appropriate back of house spaces and food and beverage venue. TDI additionally proposed to contribute \$1.5 million toward demolition costs (projected by the Department's consultants to exceed \$8 million in total).
- 6) Country Club: under RP; the Department is reviewing for potential issuance of an RFI for tear-down and rebuild or renovate proposals.
- 7) Reed's Bay Resort Hotel: under RP; has some remaining useful life.

Since 2014, the Department has spent approximately \$524,500 from the Special Land and Development Fund (SLDF) on consultant services and studies dedicated to the public lands at Banyan Drive.

- One consultant prepared a market study on tourism to determine if the area could support a new hotel, as well as 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/><sup>1</sup>

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<sup>1</sup> This link also includes consultant studies on the Kanoelehua Industrial Area of Hilo. The Department has spent approximately \$138,000 on planning studies for the Kanoelehua Industrial Area.

- Another consultant conducted a much more detailed architectural and engineering study on whether existing improvements on the expired lease premises should be demolished or rehabilitated.
- 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.
- Additionally, the Department procured an engineering consultant to assist in reviewing the renovation plans for the Grand Naniloa Hotel.
- Apart from the fees for consultant services, a significant amount of staff time has been invested in planning for the area including attendance at the BDHRA meetings.

The County of Hawaii (County) and the State have cooperated, and should continue to cooperate, in planning for redevelopment at Banyan Drive.

As noted above, the measure includes a provision allowing the planning committees to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements, provided that the reduction or waiver shall not exceed one year. The Department already has authority under Section 171-6, HRS, to waive up to one year of ground rent for new leases that require substantial improvements. As noted above regarding Uncle Billy's, TDI (the sole responder to the RFI) indicated it would only be able to absorb about \$1.5 million of the State's estimated \$8-10 million in demolition costs for the shuttered hotel. The Department has therefore been exploring different ways to promote redevelopment in the Banyan Drive area.

In a separate CIP bill before the Legislature this session (House Bill 1259, Senate Draft 1), the Department is requesting a general fund appropriation of \$2 million this fiscal year and \$4 million next fiscal year for demolition of the dilapidated improvements of the former Uncle Billy's Hotel on Banyan Drive. The Department respectfully requests the Legislature's support of the CIP bill instead of passing a new law regarding planning committees.

In addition, the Department identifies the following issues with respect to this measure:

***The measure creates an additional layer of bureaucracy in government***

The measure provides that the Legislature may designate an area of public lands as a redevelopment district. Upon such designation, a nine-member planning committee is to be established as a policy-making board for the district. The planning committee, who serves without compensation, then appoints a district administrator for the district who is to be compensated. The planning committee may hire additional staff as well.

With respect to Banyan Drive in Hilo, the bill would create a new layer of redevelopment process in addition to the task force and the BDHRA: the Waiakea Peninsula Redevelopment District and a planning committee to serve as a policy-making board for the district. In addition

to the administrator, the planning committee would likely require a secretary and perhaps more staff for proper administration, as well as office equipment, supplies, and travel expenses for the nine committee members. There will be added expense for the committee to comply with HRS Chapter 92's sunshine law requirements. Further, the committee's actions may be subject to contested case hearings and appeals. A conservative budget for such a planning committee, including payroll, fringe benefits, hearing officer fees, and other costs and expenses, would be \$500,000 annually. The bill makes an unspecified general fund appropriation to the Waiakea Peninsula Redevelopment District revolving fund, and then authorizes an unspecified appropriation out of the fund for fiscal year 2020-2021 for purposes of PART III of the measure. Additional funds would be made available to the planning committee through the Department's lease revenues in the designated district.

The measure proposes an unnecessary, bureaucratic addition to the Department's operations. As explained above, the Department has been working with the BDHRA regarding plans for the Banyan Drive area. Additionally, as mentioned above, the Department has procured consultants for Banyan Drive to analyze market trends, and explore options for redevelopment and rehabilitation of specific parcels or areas. After the 2013 legislative session, former Governor Abercrombie approved the formation of a Banyan Drive Task Force that met a number of times to discuss many of the issues covered by the bill as they relate to the Banyan Drive area. The task force members included representatives from local businesses, the former executive director of the Big Island Visitors Bureau, the executive director of the 'Imiloa Astronomy Center of Hawaii, and representatives from the Hawaii County Mayor's Office and State legislators also attended the meetings. This informal task force worked well and at limited expense to the State.

#### ***There are practical problems with the measure***

As noted above, the measure allows the Legislature to designate redevelopment districts on public lands. As defined in Section 171-2, HRS, public lands exclude lands used as roads and streets. While the State owns some contiguous parcels in the Banyan Drive area of Hilo, it does not own or manage the roads, which often include utility lines and other infrastructure. Accordingly, to the extent the bill seeks to improve infrastructure in a given area, a redevelopment district designated by the Legislature would likely not include important infrastructure components. Rather, the district would be confined to the particular parcels under the Department's management.

#### ***The Department relies on the revenues from leases of public lands to fulfill its fiduciary duties***

The measure proposes to deposit 50% of the revenues, income and receipts of the Department from the public lands in the Waiakea Peninsula Redevelopment District into the district's revolving fund. In addition to this bill seeking funds from SLDF, there are various other redevelopment agency bills moving this session seeking to take 10% of the revenues generated from the Banyan Drive 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 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) but receive nominal revenue in return.

The Department and the Board are responsible for managing approximately 1.3 million acres of public lands comprising 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 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. The Department opposes transferring funds from the SLDF to planning committees formed under this measure for redevelopment purposes.

***The authority to construct, improve, renovate and revitalize areas within the counties is already authorized under Section 46-80.5 and Chapter 53, HRS.***

The measure seeks to redevelop the infrastructure and facilities within designated redevelopment districts. However, the bill is unnecessary because there are already existing laws and ordinances that provide the process and financing to make such improvements, as evidenced by the County of Hawaii's creation of BDHRA under Chapter 53, HRS. The measure appears to recognize the ability of a Chapter 53 agency to assist in the redevelopment of the Banyan Drive area, but goes too far in delegating authority to such an agency without oversight by the Board to negotiate and enter into a development agreement with a developer for commercial, business, or hotel or resort uses on public lands within a redevelopment area. Moreover, the measure does not explain how a Chapter 53 agency would coordinate with the Waiakea Peninsula Redevelopment District planning committee in formulating a development plan for the area. This could lead to conflicting development goals being established by the planning committee and Chapter 53 for the same lands.<sup>2</sup> In dealings between the Department and BDHRA to date, it

has been understood that BDHRA's role would be to develop a plan for the area and possibly assist in streamlining the County zoning and entitlement process for any redevelopment.<sup>3</sup>

Section 46-80.5, HRS, authorizes the various counties to enact ordinances to create special improvement districts for the purpose of providing and financing such improvements, services, and facilities within the special improvement district as the applicable county council determines necessary or desirable to restore or promote business activity in the special improvement district. This is the same purpose sought by this measure.

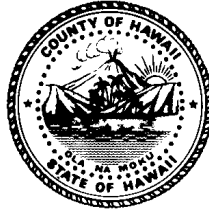
Under the authority of Section 46-80.5, HRS, the County of Hawaii, as an example, enacted Chapter 12 of the Hawaii County Code, which authorizes the County to create improvement districts to construct new, or improve existing infrastructure and facilities, including roadways and utility infrastructure and improvements. It should also be noted that the responsibilities for maintaining such improvements within the proposed redevelopment districts are already vested with the County. Most, if not all, of the public roadways and utility infrastructure within any potentially designated district boundaries have been dedicated to the County.

Thank you for the opportunity to comment on this measure.

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<sup>3</sup> Standing Committee Report No. 1497 explains that "The Banyan Drive Hawaii Redevelopment Authority, while well intentioned, has been unable to accomplish its mandate to redevelop state lands on Banyan Drive. This measure would replace the Banyan Drive Hawaii Redevelopment Authority with a new authority to allow for state funding and control of public lands and help support crucial economic growth and development in the Hilo area and other areas of the State."

**Harry Kim**  
Mayor



**Wil Okabe**  
Managing Director

**Barbara J. Kossow**  
Deputy Managing Director

## County of Hawai'i Office of the Mayor

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April 4, 2019

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran  
Committee on Ways and Means

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

**RE: HB 1219, HD1, SD1 Relating to Public Lands**

Thank you for this opportunity to comment on the latest amended version of HB 1219, HD1, SD1, as it would impact the Waiakea Peninsula in Hilo, Hawai'i.

Simply stated, we continue to support any legislation that will help the revitalization of Banyan Drive and the rest of the Waiakea Peninsula. Virtually everyone familiar with this area agrees that it 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.

Hawai'i County has taken first steps toward revitalizing the peninsula, including the creation of the Banyan Drive Hawai'i Redevelopment Agency (BDHRA); and a conceptual master plan has been created as a starting point. But funds are needed to conduct the environmental impact statements necessary to complete the redevelopment plan and move forward, and those monies are not available.

Under SD1, DLNR would create a new planning committee to oversee Banyan Drive and would require that BDHRA be disbanded. This might mean going back to square one, but the tradeoff is that the bill presumably will provide meaningful funding using current DLNR revenues.

Although we may not agree with all provisions of HB 1219, HD1, SD1, we support a measure that directs resources, both statutory and financial, toward the redevelopment of Banyan Drive while providing some local perspective in decision-making.

Therefore, we ask that you act favorably on the proposed amended version of HB 1219, HD1, SD1, so that a resolution can be hammered out in conference.

Respectfully Submitted,

Harry Kim  
MAYOR



**LATE**



**HB1219 HD1 SD1**  
**RELATING TO PUBLIC LANDS**  
Senate Committee on Ways and Means

April 5, 2019

10:05 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1219 HD1 SD1, which may eliminate safeguards relating to lease lengths, appraisals, renewal options, lease extensions, and public auction requirements, among others, for designated public lands. As described further below, such provisions may result in the indefinite use of public lands by single private lessees, tie the hands of the state and future generations in ensuring the best use of public lands, fail to ensure an appropriate return for the private use of public lands, and lead to the alienation of public and “ceded” lands to private entities. In addition to addressing such concerns, should the Committee choose to move this measure forward, OHA respectfully requests clarifying language to reaffirm Native Hawaiians’ pro rata share of revenues generated from public land trust lands in designated redevelopment districts.

**I. HB1219 HD1 SD1 may authorize leases that violate the State’s fiduciary obligations under the public trust and the public land trust.**

Under Article 11, section 1 of the Hawai‘i State Constitution and Chapter 171, Hawai‘i Revised Statutes (HRS), the State, through the Board of Land and Natural Resources (BLNR), holds in trust approximately 1.3 million acres of public lands, including the natural and cultural resources they contain, for the benefit of present and future generations. Much of these lands are also subject to the public land trust created by Article 12 of the Hawai‘i State Constitution and section 5(f) of the Admission Act, which requires that a portion of revenues derived from public land trust lands be dedicated to OHA, for the purpose of bettering the conditions of Native Hawaiians. The public trust and public land trust status of these lands accordingly imposes upon the BLNR specific fiduciary obligations of due diligence and undivided loyalty, in making the trust corpus productive and maximizing its benefits for trust beneficiaries, including Native Hawaiians and the general public.

**By allowing leases, lease renegotiations, and lease renewals for public and public land trust lands in designated redevelopment districts to be made “notwithstanding any other law to the contrary,” this measure may eliminate important safeguards that help to uphold the BLNR’s fiduciary obligations with respect to such lands.** For example, exempting public land leases in redevelopment districts from the maximum lease length provisions of Chapter 171 may invite century-long leases that substantially inhibit the BLNR from exploring future uses of its trust lands, which may otherwise provide much greater benefits to both Native Hawaiians and the public. Exemptions from Chapter 171’s restrictions on lease renewals and extensions may similarly allow a single private entity to control public lands for generations, again effectively eliminating the BLNR’s ability to carry out its fiduciary duty to maximize the financial and intangible benefits derived from its trust corpus for multiple generations.

Exemptions from Chapter 171's appraisal and public auction requirements may also eliminate important mechanisms ensuring transparency and a fair return for the private use of public lands.

**Accordingly, OHA urges the Committee to ensure that any leases, lease renegotiations, or lease renewals in redevelopment districts comply with all applicable provisions in Chapter 171, or to minimally ensure that such leases, lease renegotiations, and lease renewals are executed in accordance with administrative rules that can ensure a level of transparency and accountability in the disposition of public and public land trust lands.**

**II. Extremely long, multi-generational leases may result in the loss of public and "ceded" lands.**

On a related note, extremely long, multi-generational leases that may be authorized by this measure often lead to a sense of entitlement on the part of lessees that has led and may continue to lead to the alienation of public lands, including "ceded" lands to which Native Hawaiians have never relinquished their claims. **OHA objects to the sale or alienation of "ceded" lands except in limited circumstances, and has significant concerns over any proposal that may facilitate the diminution of the "ceded" lands corpus.** Accordingly, OHA again respectfully urges the Committee to ensure that any leases, lease renegotiations, and lease renewals are subject to maximum aggregate lease terms that do not exceed the limits currently found in Chapter 171, or the length of time necessary to accomplish the intended redevelopment goals, whichever is shorter.

**III. Language regarding the proposed redevelopment district revolving fund's deposits should account for Native Hawaiians' pro rata share of the public land trust.**

OHA notes that redevelopment district designation does not excuse the State's obligations under the public land trust; thus, the revenue generated from public land trust lands in redevelopment districts are subject to Native Hawaiians' pro rata share.<sup>1</sup> However, this measure's revolving fund language requires 50 percent of redevelopment district revenues, income, and receipts to be deposited in a redevelopment district revolving fund, "notwithstanding section 171-19"; HRS §171-19, meanwhile, specifically accounts for the transfer of Native Hawaiians' pro rata share of public land trust revenues to OHA. Accordingly, this revolving fund provision may inadvertently result in the failure to account for and transfer public land trust revenues from redevelopment districts to OHA as required under the public land trust. Accordingly, should the Committee move this measure forward, OHA respectfully requests that the language on page 15, lines 3-5, be amended to read as follows:

"(1) Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, fifty per cent of the revenues,

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<sup>1</sup> The Hawai'i Admission Act and the State Constitution established the public land trust for the betterment of the conditions of native Hawaiians and for the general public. The Hawai'i Constitution entrusts OHA with the responsibility to manage and administer funds derived from the public land trust, and state law sets specifies that 20% of all funds from the Trust should be set aside for expenditure by OHA.

income, and receipts of the department from the public lands in the designated district, notwithstanding section 171-19;"

Mahalo for the opportunity to testify on this measure.