

From: [Blake Berte](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] i do not support improper use of crown lands
Date: Thursday, September 23, 2021 4:06:53 PM

a private developer should not take control of the crown lands

From: [Kanoë Lee](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL]
Date: Thursday, September 23, 2021 9:05:26 AM

Aloha,

My name is Kanoë Grace and I am a resident of Hilo. I am testifying in opposition to items D4 and D5 which would approve Tower Development's renovation proposal for Uncle Billy's and Country Club on Banyan Drive.

Hilo DOES NOT NEED MORE HOTELS. We NEED AFFORDABLE HOUSING. It is unconscionable for the state to subsidize extractive tourism while the people, many NATIVE HAWAIIANS, are on the street due to lack of affordable housing. I am aware that Tower Development is under Ed Bushor who is the CEO, and currently is forcing and pushing out long time low income residents and families who live in the nearby Waiakea Villas apartment complex- with no alternative housing. This is not pono.

To top it off a 65 year lease?? This does not help native Hawaiians, nor our community at all. This continued disregard for the people must stop. Hawaii will not be Hawaii should you continue to put the people last.

Mahalo
Kanoë Grace

From: [Haunani Kane](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Oppose Agenda Items D4 and D5
Date: Thursday, September 23, 2021 12:35:56 PM

Aloha e Chairperson Suzanne Case; State of Hawai'i Board of Land and Natural Resources; et al.

I, Haunani Kane, a resident of Hilo, Hawai'i and a Native Hawaiian beneficiary OPPOSE plans to redevelop the former Uncle Billy's Hilo Bay Hotel AND the former Country Club Condominium Hotel in Hilo, Hawai'i.

According to the NOAA sea level rise maps and current rates of sea level rise, Banyan Dr. will be completely inundated at both at Liliuokalani Garden and Reeds Bay beachpark within the next 100 years due to sea level rise. Current infrastructure within Hilo does not have the capacity to accommodate additional large scale commercial infrastructure. As an assistant professor with Arizona State University's Center for Global Discovery and Conservation Science in Hilo I am personally committed to assuring that development does not further impede coastal access and the health of coastal resources.

Furthermore the proposed action would effectively alienate public and "ceded" lands from a trust established to, among other express purposes, serve Native Hawaiian beneficiaries; not divest them of historical land claims, drain their land trust inventory, and diminish the revenue otherwise available to better their conditions—all of which would happen if these properties were utilized for hotel developments and transient accommodation housing. These reasons alone counsel against supporting this measure.

The State has long been complicit in efforts to transfer certain parcels of "ceded" lands to third parties for the purpose of facilitating private, commercial development, and all too often to the detriment of Native Hawaiians. The trust vested in the Department of Land and Natural Resources (DLNR) to manage and administer the "ceded" lands subject to the trust obligations articulated in section 5(f) of the Admission Act—among them, "for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended"—is no less fulsome in 2021 than it was in 1959. The fact that approximately 30,000 native Hawaiians have been languishing on the Department of Hawaiian Home Lands (DHHL) waitlist for decades evidence unmet trust obligations deserving of more meaningful consideration with respect to the State's disposition of "ceded" lands.

In addition, the stark fact that a competing offer was submitted for an affordable housing development for kūpuna, and not considered for selection, proves again that the State fails the duties they are entrusted with as managers and administrators of "ceded" lands.

So long as native Hawaiian claims to ownership of the "ceded" lands remain outstanding and unresolved, and so long as there remains manifold evidence of the State's failure to meet its trust obligations to Native Hawaiians, prudence demands that the State's management and administration of the "ceded" lands trust inventory manifest, at all times, its fiduciary duties of due diligence and undivided loyalty to its beneficiaries. The plans in consideration here fail to accomplish that and underestimates the will and determination of the Native Hawaiian community to preserve, develop, and transmit to future generations their ancestral territory.

Haunani Kane, PhD
Assistant Professor, Arizona State University

Testimony of
Pacific Resource Partnership

State of Hawaii
Board of Land and Natural Resources
Suzanne D. Case, Chairperson

Agenda Items No. 4 and 5—Proposal Submitted by Tower Development, Inc.
Friday, September 24, 2021
9:00 A.M.

Aloha Chairperson Case and BLNR Members:

Pacific Resource Partnership (PRP) wishes to express its concerns in response to the Evaluation Committee’s Recommendations for Selection of Proposal Submitted by Tower Development, Inc. for the redevelopment of the former Country Club Condominium Hotel and former Uncle Billy’s Hilo Bay Hotel.

An Environmental Assessment (EA)/Environmental Impact Statement (EIS) should be required for the redevelopment of these parcels to ensure compliance with Chapter 343, Hawaii Revised Statutes.

The BLNR should not issue a lease to redevelop state-owned parcels without first completing an EA/EIS. If approved, state lands will be leased by Tower Development, Inc., a private company, to redevelop and profit from the use of these parcels. The use of State lands is clearly a trigger for an EA/EIS under Chapter 343, HRS, and an EA/EIS environmental review process is necessary for integrating citizen concerns into the planning process and forewarning decision makers, including BLNR, of potential significant environmental effects related to the redevelopment of these parcels.

To our knowledge, an EA/EIS has never been completed for these parcels. The former Country Club Condominium Hotel and former Uncle Billy’s Hilo Bay Hotel were built between 1966 and 1970, before the 1974 enactment of Chapter 343, HRS, and the Banyan Drive Hawaii Redevelopment Agency (BDHRA) has yet to produce an EA/EIS to facilitate a master plan for the Waiakea Peninsula. As such, the decision-making process thus far has failed to consider environmental impacts, something that is inconceivable now.

Additionally, since environmental realities have changed significantly since these parcels were first developed, the State or the developer should be required to complete an EA/EIS prior to the issuance of a lease to redevelop these parcels. Hawaii’s status as a visitor destination has changed greatly since the properties were built. In 1975, visitor arrivals to Hawaii numbered less than three million; in 2019, the total surpassed ten million.



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Current rules for Hawaii’s environmental review process require incorporating climate change and sea level rise considerations in an EA/EIS. These state-owned parcels are located within an environmentally sensitive area, and any redevelopment designed to accommodate visitors and residents there may impact the shoreline environment or be vulnerable to the potential effects of climate change and sea-level rise due to their proximity to coastal waters.

Special Management Area (SMA) Use Permit is required for the redevelopment of these parcels.

The subject parcels are within a Special Management Area, and, to our knowledge, SMA Use Permits were never issued for them. As with the enactment of EA/EIS laws, SMA Use Permits became a requirement after the former Country Club Condominium Hotel and former Uncle Billy’s Hilo Bay Hotel were built between 1966 and 1970. Given the size of the proposed projects and location within a SMA, the development agreement should clarify that the developer is required to obtain a SMA Use Permit.

The Department and Board should find ways to maximize the financial return to the State.

We recommend the Board consider lease requirements that will maximize the financial return to the State for the developer’s long-term use of state-owned shoreline parcels. The developers propose paying rent to the State beginning in year 2 of the lease. They propose rental payments at \$75,000 per year for the first 10 years with annual 1.5% increases beginning in year 11. The Board should consider requiring, at a minimum, a base rent and a percentage of gross revenues generated from these parcels.

Development Agreement should clarify that developer or his/her contractors are responsible for complying with Chapter 104, HRS requirements.

Chapter 104, HRS requires developers or contractors to pay laborers and mechanics not less than prevailing wages for performing work on the job site for the construction of a “public work” project. The prevailing wage is a “living wage” for Hawaii’s workforce, allowing them to live and raise a family in Hawaii.

Chapter 12-22, Hawaii Administrative Rules, Department of Labor and Industrial Relations (DLIR), relating to Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes (HRS) provides DLIR’s definition of a “public work” as follows:

Any building, structure, road, or real property, the construction of which is undertaken:

- (A) By authority of; and
- (B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board . . . or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency.

HAR § 12-22-1 (emphasis added).

The DLIR’s definition allows for a public work to be undertaken not only through direct public funds, but also through the use of public “land, or other resources.” The redevelopment of the former Country Club Condominium Hotel and the former Uncle Billy’s Hilo Bay Hotel satisfies this condition because the

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construction will be undertaken through the use of land owned by and leased from the State. As such, we recommend that the Board require that the development agreement for the redevelopment of these parcels clarify that the developer and his/her contractors are responsible for complying with Chapter 104, HRS requirements.

Allegations against Tower Development indicate a lack of oversight and control over its projects.

PRP is concerned with Tower Development and their history at the Grand Naniloa Hotel on Banyan Drive.

Workers on this project alleged potential violations concerning misclassification of employees as independent contractors, employment and labor law violations, safety and health violations, and unlicensed activities occurring on the jobsite. These allegations are a reflection of Tower Development's apparent lack of oversight and control over its projects and its subcontractors. PRP believes that contractors who do not follow industry laws and regulations and participate in unlawful and unsafe business practices create an unfair competitive environment, depress local workforce and wages, and promote a dangerous working environment for our local trades. The following are some of the allegations brought to our attention by workers who were involved with the Grand Naniloa Hotel renovation in 2016.

Workers informed us of alleged employment, labor, and health and safety violations occurring at the Grand Naniloa Hotel renovation project. The general contractor and developer of the \$16 million renovation was Tower Construction/Tower Development. PRP received information that Lincoln Builders LLC, a subcontractor of Tower Construction, may have intentionally misclassified its employees as independent contractors. A worker on the project said he was hired at a wage of \$23/hour and filled out a W-2 form and other company documents at the time of his hiring. But upon receiving his first paycheck, the worker was handed a 1099 form, told he needed to obtain his own general excise and contractor's licenses, and would need to pay his own taxes. A complaint was filed with the U.S. Department of Labor—Wage and Hour Division; and the Department of Labor and Industrial Relations—Disability Compensation Division and Unemployment Insurance Division.

We are also aware of a lawsuit filed on January 16, 2018 by a subcontractor, Lincoln Builders LLC, who worked on the Grand Naniloa Hotel construction project suing the hotel, its developer, and project's general contractor, claiming nonpayment of \$754,000 for work it performed on the Grand Naniloa Hotel. Tower Development Inc, the managing partner of WHR LLC; several related entities under the Tower name; Tower Development CEO Edward Bushor were some of the defendants named in the lawsuit. (see Hawaii Tribune Herald, January 25, 2018 article as an attachment)

Additionally, PRP was also informed of safety concerns regarding Protex Painting, another Tower Construction subcontractor working on the Grand Naniloa Hotel. Workers complained that they were not provided the appropriate personal protective equipment as they worked in an environment filled with noxious fumes. Workers also complained about alcohol being consumed on the project as nearly every floor was littered with empty beer cans. There were also reports of alcohol and drug use by workers on the project site. A complaint was filed with Hawaii Occupational Safety and Health.

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In 2016, PRP was also informed about allegations related to an unlicensed contractor, “Hui’s Drywall”, hired by Tower Construction. Concerns were raised to the Regulated Industries Complaint Office (RICO) about this unlicensed activity occurring under Tower Construction’s oversight of the project. Concerns were also raised that since Tower Construction hired an unlicensed contractor on this project, they may have been aiding or abetting an unlicensed person to evade the contractor licensing laws. Based on our research, we were unable to locate any tax, business registration, or licensing information for “Hui’s Drywall”.

PRP is also aware of other alleged labor, wage, safety, and licensing violations at the Grand Naniloa Hotel by a subcontractor, C.R. Construction, hired by Tower Construction/Tower Development. Workers informed us that they were flown in from Maui and worked on the project for nearly 3 weeks. We were told that the crew worked 11 to 12-hour days, seven days a week, at a wage rate of \$35/hour. A worker also informed us that the crew was living on the 3rd floor of the hotel and were instructed that they were not able to leave the hotel grounds under any circumstance.

With regards to licensing violations, we were informed that Tower Construction employees may have operated outside of their scope of their B general building contractor license. We were told that Tower Construction employees were laying floor and bathroom tiles throughout the renovated rooms. It is our understanding that a C-51 license is required to do tile work and it is not one of the specialty licenses that are automatically granted as a licensed B general building contractor. We were also informed that C.R. Construction was operating outside of the scope of the B general contractor’s license when their employees were laying floor and bathroom tiles. Several employees informed us that they were performing some plumbing work which would have required C.R. Construction to have a C-37 license. At that time, according to the Professional and Vocational Licensing, C.R. Construction only held a B general contractor’s license. A complaint was filed with the U.S. Department of Labor—Wage and Hour Division; and the Department of Labor and Industrial Relations—Disability Compensation Division, Unemployment Insurance Division, and Hawaii Occupational Safety and Health; and RICO.

It should also be noted that C.R. Construction has recently been subject to a Federal Department of Labor Investigation in 2020 for a project in Maui where workers allegedly were again misclassified as independent contractors and not paid appropriate wages including overtime and holiday pay. Hawaii’s State RICO also has an open investigation looking into allegations of C.R. Construction aiding and abetting unlicensed contractors on that job.

More recently, The Hawaii Tribune Herald reported that the Edmund C. Olson Trust filed a lawsuit against Ed Bushor and Steward Miller, who are the CEO and president of Tower Development Inc. respectively, stating that they violated an agreement with Olson/Naniloa LLC. (See Hawaii Tribune Herald, September 23, 2021, as an attachment)

Given the above, we respectfully recommend that the Board deny Tower Development’s proposals to redevelop the former Country Club Condominium Hotel and former Uncle Billy’s Hilo Bay Hotel. We also recommend that the Board reevaluate the criteria and requirements related to the redevelopment of these

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parcels to ensure that the use of these public lands comply with state and county laws and serve and protect the public's interest.

Thank you for this opportunity to submit written testimony.

Olson Trust lawsuit alleges Tower Development execs violated noncompete agreement

By [MICHAEL BRESTOVANSKY Hawaii Tribune-Herald](#) | Thursday, September 23, 2021, 12:05 a.m.



KELSEY WALLING/Tribune-Herald Brush grows Wednesday on the roof of the defunct Uncle Billy's on Banyan Drive. Tower Development has submitted proposals for redevelopment projects on Uncle Billy's and the former Country Club Condominium Hotel.

The Edmund C. Olson Trust has filed a lawsuit against two corporate officers of Tower Development Inc. for pursuing redevelopment projects on Banyan Drive.

A lawsuit filed Tuesday in the Third Circuit Court alleges that Ed Bushor and Stewart Miller, respectively the CEO and president of Tower Development Inc. — and a partner of the corporate entity that owns the Grand Naniloa Hotel on Banyan Drive — pursued a pair of redevelopment projects in violation of an agreement with Olson/Naniloa LLC.

According to the suit, Tower and Olson/Naniloa partnered to form WHR LLC, which owns the Grand Naniloa. In doing so, Bushor and Miller signed an agreement prohibiting Tower from acquiring, developing or owning any potential competitive properties — defined as “a hotel project of more than 50 rooms within a 30-mile radius of the Naniloa.”

However, last year, Tower submitted to the state Department of Land and Natural Resources two proposals for redevelopment projects on Banyan Drive — one, to

partially demolish and replace the defunct Uncle Billy's Hilo Bay Hotel and the other to renovate the former Country Club Condominium Hotel.

Both proposals would replace the two sites with Hilton franchises, which would, under the terms of the agreement, directly compete with the Grand Naniloa.

Emails submitted with the lawsuit indicate that Olson Trust President Ed Olson expressly gave disapproval for Tower's potential interest in Uncle Billy's and the Country Club as early as 2016.

The lawsuit alleges Tower submitted the development plans to the DLNR without providing any notice to Olson/Naniloa, which only discovered the plans from a newspaper article earlier this month about a DLNR committee's decision to recommend that the Board of Land and Natural Resources approve Tower's proposals for the Uncle Billy's and Country Club properties.

"The idea of Tower becoming involved in the redevelopment of Uncle Billy's has been floated for years," read a letter sent Sept. 16 to Bushor and Miller on behalf of Olson/Naniloa. "At every point, Mr. Olson has clearly stated his objections. He thought it was a dead issue until recent newspaper articles revealed that you have been pursuing this project without disclosing your plans to the members of WHR. To make matters worse, the documents found on the DLNR website reveal that you are using WHR's assets to enhance Tower's bids. The entire situation is outrageous, for it reflects a blatant and inexcusable disregard for your fiduciary duties toward the members of WHR."

The letter went on to criticize Bushor and Miller's general management of Tower, noting that WHR came within days of defaulting on its Grand Naniloa lease with the state earlier this year.

"As we all know, WHR is insolvent and teetering on the edge of a bankruptcy filing and/or a foreclosure," the letter read. "You have done your best to keep the investors apart, uninformed, and divided in their views about your leadership. The fact that WHR came within days, not just weeks, of a fatal lease default is inexcusable.

"Aside from demonstrating an unsurpassed ability to wheedle money from investors with false budgets, misleading projections and plans, and sweet talk, you have done nothing worthy of note," the letter went on.

The letter concluded by demanding that Bushor and Miller withdraw their proposals by this past Monday. After the two evidently failed to do so, Olson/Nanihoa filed the suit Tuesday — three days before the BLNR is scheduled to discuss proposals for the two properties, including Tower's, on Friday

Based on these complaints, Olson/Nanihoa accused Bushor and Miller of breach of fiduciary duty and tortious interference with a contract. The suit calls for the court to order the defendants to halt their redevelopment projects and seeks additional damages to be proven at trial.

Email Michael Brestovansky at mbrestovansky@hawaiitribune-herald.com.

<https://www.hawaiitribune-herald.com/2021/09/23/hawaii-news/olson-trust-lawsuit-alleges-tower-development-execs-violated-noncompete-agreement/>

Subcontractor sues Naniloa's general contractor, developer



By JOHN BURNETT Hawaii Tribune-Herald | Thursday, January 25, 2018, 12:05 a.m.

HOLLYN JOHNSON/Tribune-Herald The Mauna Loa Tower stands tall at the right Wednesday at the Grand Naniloa Hotel in Hilo.

A subcontractor who worked on the Grand Naniloa Hotel construction project is suing the hotel, its developer and the project's general contractor, claiming nonpayment of \$754,000 for work it performed during the Banyan Drive property's makeover.

The civil lawsuit was filed Jan. 16 in Hilo Circuit Court by Lincoln Builders LLC, a Honolulu construction firm.

The defendants include WHR LLC, the hotel's owner; Tower Development Inc., the managing partner of WHR LLC; several related entities under the Tower name; Tower Development CEO Edward Bushor, President Stuart Miller, Vice President Noel Ross and Secretary-Treasurer Lynn Bushor.

Also named as defendants are general contractor Tower Construction Hawaii Inc.; Aaron Molinar, president of Tower Construction and CEO of Molinar Construction, which is also named; Chris Molinar, vice president of Tower Construction Hawaii and president of Molinar Construction; and Mark Mansheim, vice president of Molinar Construction, which is located in San Diego.

The complaint accuses all defendants of breach of contract, breach of good faith and fair dealing, conversion, fraud, intentional interference with business relations, and unjust enrichment. Lincoln Builders is seeking compensatory and special damages,

triple damages under Hawaii contract law, punitive damages, and attorneys' fees and court costs.

According to the lawsuit, the original contract agreed to on Aug. 27, 2015, called for Lincoln Builders to be paid \$460,000 for remodeling work to rooms in the hotel's Mauna Loa Tower. The original job was "augmented with additional work described in verbal and written change orders," which "provided for payment of additional monies to plaintiff."

The suit claims change orders brought the final total of work performed by Lincoln Builders to \$754,000.

The suit claims defendants "had no intention of paying plaintiff for all of the services, labor, equipment and materials it provided" and falsely asserted "their intent of fulfilling their contractual duties, in order to induce plaintiff to provide services, labor, equipment and materials ... for which defendants knew they would not pay."

The complaint also alleges the defendants hired or attempted to hire Lincoln Builders' laborers and independent contractors by "falsely advising the independent contractors and/or laborers that they would not continue to have secure jobs unless they breached their obligations to plaintiff and began working directly with defendants."

Also claimed is the defendants "failed to provide accurate plans and specifications for the work to be performed under the subcontractor agreement" and that Lincoln was "provided ... with defective plans and specifications."

In addition, the lawsuit claims the defendants delayed required inspections and "removed materials necessary for the completion of plaintiff's work."

Lincoln Builders also has a mechanic's lien pending against WHR LLC, Tower Construction Hawaii Inc., Tower Development, Tower Hotels Hilo LLC, Tower Hotels LLC and Molinar Construction. According to court records, trial is set in that case at 8 a.m. May 25 before Hilo Circuit Judge Henry Nakamoto.

Bushor said in a Wednesday text message the hotel and Tower Development "have no ownership of Tower Construction entity," and that he had "no contract or ever had dealings with" Lincoln Builders.

Bushor said there is “no basis” for the suit against the him, the hotel or Tower Development, and referred questions to Aaron Molinar, who didn’t return a phone call by press time.

Sheri Tanaka, Lincoln Builders’ attorney, also didn’t return a call seeking comment.

Email John Burnett at jburnett@hawaiitribune-herald.com.

<https://www.hawaiitribune-herald.com/2018/01/25/hawaii-news/subcontractor-sues-naniloas-general-contractor-developer/>