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Statement of
RODNEY FUNAKOSHI
Planning Program Administrator, Office of Planning
before the
SENATE COMMITTEE ON WATER AND LAND
Wednesday, February 6, 2019
1:15 PM
State Capitol, Conference Room 220
in consideration of
SB 1135
RELATING TO THE LAND USE COMMISSION.

Chair Kahele, Vice Chair Keith-Agaran, and Members of the Senate Committee on Water and Land.

The Office of Planning (OP) supports SB 1135, which would amend Hawaii Revised Statutes (HRS) §205-4 to allow the Land Use Commission (LUC) to consider a motion by any party or interested person or would enable the LUC to consider its own motion to modify existing conditions imposed on the Petitioner or to allow the LUC to impose new conditions to ensure compliance with its Decision and Order.

Currently, during an Order to Show Cause proceeding, the LUC may only enforce their own conditions by a determination as to whether the Petition Area should remain in its current land use designation or revert back to a more appropriate land use district classification, such as its original Agricultural District classification. At times, this has been too severe an action for the Petitioner. However, the LUC does not have the statutory authority to change or modify conditions which could be more appropriate. This measure would give the LUC that authority and provide more flexibility to address deficiencies and non-compliance with conditions and representations that are raised by the Project. It would also allow any parties and interested persons to similarly propose modifications to existing conditions.

OP takes no position on the definition of substantial commencement, as it could vary depending on the circumstances of a particular project.

Thank you for this opportunity to testify.



DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner

SCOTT A.K. DERRICKSON AICP
Planner

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Chief Clerk/Planner

RASMI AGRAHARI
Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission
Before the
Senate Committee on Water and Land

Wednesday February 6, 2019
1:15 PM
State Capitol, Conference Room 229

In consideration of
SB 1135
RELATING TO THE LAND USE COMMISSION

Chair Kahele; Vice Chair Keith-Agaran; and members of the Senate Committee on Water and Land:

The Land Use Commission (LUC) strongly supports this measure which would provide the LUC with the power to amend, revise, or modify a decision and order after there has been an evidentiary hearing and a finding that a petitioner or its successors has not adhered to conditions of approval that protect important State interests and the public trust. It is important to note that LUC proceedings provide significant due process protections that allow a developer/petitioner to provide evidence that there was no violation or that there were legitimate reasons for an alleged violation.

The measure also provides a definition of the term “substantial commencement.” This is a key provision which provides certainty to developers and the Land Use Commission in determining the level of compliance with a condition and the appropriateness of a proceeding. We would like to provide the following alternative wording in the proposed language defining substantial commencement to better align with State goals and public trust responsibilities. The proposed section (1) should be amended to read:

(1) For purposes of this section, “substantial commencement” means completion of all public improvements and infrastructure required by conditions imposed pursuant to this chapter, within and outside the project area, and completed construction of twenty per cent ~~the physical private improvements~~ of any affordable housing requirement such that they are usable or habitable.”

The LUC already has an enforcement power, just not one sufficient or flexible enough to address the varied compliance issues it must confront. Currently the LUC does not have the ability, except in extremely limited circumstances to enforce its decisions, before there has been substantial commencement, and it only has one penalty it may assess, reversion to the former land use classification.

Under section 205-12, Hawai'i Revised Statutes (HRS), the counties are supposed to enforce conditions and notify the LUC of violations. Unfortunately, the counties do not or cannot enforce conditions for various reasons. This results in a situation that has detrimental economic impacts in some cases and gives unfair advantages to developers who do not conform to LUC decisions. This measure gives the LUC the power to enforce conditions which are of State interest, providing more certainty to developers and the public that conditions will be enforced while also ensuring that projects would not be halted for inconsequential errors in compliance.

Once a project has been approved it can be assumed the LUC has determined the project has significant value to the community. Conditions are placed on the development of the project to protect the public's interests and prevent the State from assuming infrastructure costs as well as to protect county interests. For the most part developers adhere to the conditions. When they do not, significant impacts to water resources, the environment, cultural resources and practices, and statewide infrastructure can occur; all to the economic benefit of the developer.

From an economic standpoint it is not beneficial to completely halt or revoke a projects' permits when a violation occurs. The State has a social and economic interest in seeing projects completed. It is a benefit to both the construction industry and the pressing need for housing. This measure will allow the LUC to remedy a violation without having to revoke permits and stop a project while still protecting the public's interests. This measure would not allow the LUC to arbitrarily change conditions or reclassify land.

It is important to note that this measure only allows enforcement of conditions that are within the public trust, concern State expenditures or have cultural or environmental significance. The counties will continue to enforce conditions relating to county concerns.

Thank you for the opportunity to testify on this matter.



**Testimony to the Committee on Water and Land
State Capitol, Conference Room 229
Wednesday, February 6, 2019 at 1:15 P.M.**

RE: SENATE BILL 1135 RELATING TO THE LAND USE COMMISSION

Chair Kahele, Vice Chair Keith-Agaran, and members of the committee:

The Chamber is opposed to SB 1135, which would authorize the state land use commission to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, when there has been a finding by the Land Use Commission that a petitioner or its successors or assigns have not adhered to the conditions imposed by the commission, regardless of whether there has been substantial commencement of use of the land. It also provides a definition for "substantial commencement" in section 205-4(g), HRS.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Bill finds that additional tools are necessary for the Land Use Commission to enforce conditions and requirements of land use district boundary amendments and special permits in a manner that ensures that the interests of the State, counties, and public are protected. As such, the bill proposes to:

- Insert a definition for the term "substantial commencement" in section 205-4(1), Hawaii Revised Statutes, to mean completion of all public improvements and infrastructure required by conditions imposed, both within and outside the project area, and completed construction of twenty percent of the physical private improvements such that they are usable or habitable.
- Insert language to allow the Land Use Commission on its own motion or on the motion of any interested party to vacate, void, modify, or amend boundary amendment approvals and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes.
- Insert language to allow the Land Use Commission on its own motion or on the motion of any interested party to vacate, void, modify, or amend any special permit and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes.



Chamber of Commerce HAWAII

The Voice of Business

- Require conditions of direct state concern relating to boundary amendments and special permits to include conditions that protect the state marine and terrestrial environment and protect archaeological features and burial grounds, and conditions relating to the public trust doctrine.
- Increase the maximum fine for failure to substantially meet the conditions of direct state concern relating to boundary amendments and special permits from \$10,000 to \$50,000 per day.

The two-tiered land use entitlement system in Hawaii is cumbersome and complicated. Viewing the State LUC reclassification process independent from the Counties zoning process gives policy makers the impression that each system is independent from each other, and thus forcing compliance at the State level is necessary to insure the State imposed conditions are implemented.

The land use entitlement process has morphed over time and created more and more risks and uncertainty. There needs to be a recognition and acceptance of the roles and responsibilities of both the State and Counties in the entitlement process.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County. The State's role in the process should be limited to "State" interests such as natural resource management, maintaining and protecting our water resources, and regional transportation and public educational issues. If there are no issues of direct state concern in the County's plans for directed growth, the State Land Use Commission should reclassify these lands to urban once the County plans have been adopted. Once the LUC reclassifies lands based on the County's identification of future growth areas, the County's would be responsible for rezoning the lands based on their respective plans.

The proposed bill would "vacate" the LUC's reclassification action at any point in a projects development if there was a "direct state concern." It also would define substantial commencement as completion of all public improvements and infrastructure required by the LUC. It would appear that based on this definition all public infrastructure (i.e. roads, utilities, drainage, etc.) and improvements (i.e. public parks, schools, fire stations, etc.) would need to be constructed first to meet the new definition of "substantial commencement." This would be difficult for large master planned projects or any project that is phased in over time. Requiring all public infrastructure and improvements places a significant financial burden on the project with little or no revenue being generated.

With the median price of houses on Oahu exceeding \$800,000.00, elected officials need to seriously consider how proposed changes to the existing land use entitlement process will either help or hurt Hawaii's residents. We are opposed to SB 1135, as it would create too much risk and uncertainty in the land use entitlement process.

Thank you for the opportunity to testify.



**TESTIMONY TO THE COMMITTEE ON WATER AND LAND
State Capitol, Conference Room 229
415 South Beretania Street
Wednesday, February 6, 2019
1:15 PM.**

RE: SENATE BILL NO. 1135 RELATING TO THE LAND USE COMMISSION

Chair Kahele, Vice Chair Keith-Agaran, and members of the committee:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities people call home.

BIA Hawaii is opposed to S.B. 1135 SD 1, which would authorize the state land use commission to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, when there has been a finding by the Land Use Commission that a petitioner or its successors or assigns have not adhered to the conditions imposed by the commission, regardless of whether there has been substantial commencement of use of the land. It also provides a definition for "substantial commencement" in section 205-4(g), HRS.

The bill finds that additional tools are necessary for the Land Use Commission to enforce conditions and requirements of land use district boundary amendments and special permits in a manner that ensures that the interests of the State, counties, and public are protected. As such, the bill proposes to:

- Insert a definition for the term "substantial commencement" in section 205-4(1), Hawaii Revised Statutes, to mean completion of all public improvements and infrastructure required by conditions imposed, both within and outside the project area, and completed construction of twenty percent of the physical private improvements such that they are usable or habitable.
- Insert language to allow the Land Use Commission on its own motion or on the motion of any interested party to vacate, void, modify, or amend boundary amendment approvals and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes.
- Insert language to allow the Land Use Commission on its own motion or on the motion of any interested party to vacate, void, modify, or amend any special permit and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes.

- Require conditions of direct state concern relating to boundary amendments and special permits to include conditions that protect the state marine and terrestrial environment and protect archaeological features and burial grounds, and conditions relating to the public trust doctrine.
- Increase the maximum fine for failure to substantially meet the conditions of direct state concern relating to boundary amendments and special permits from \$10,000 to \$50,000 per day.

The two-tiered land use entitlement system in Hawaii is cumbersome and complicated. Viewing the State LUC reclassification process independent from the Counties zoning process gives policy makers the impression that each system is independent from each other, and thus forcing compliance at the State level is necessary to insure the State imposed conditions are implemented.

The land use entitlement process has morphed over time and created more and more risks and uncertainty. There needs to be a recognition and acceptance of the roles and responsibilities of both the state and counties in the entitlement process.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County. The State's role in the process should be limited to "State" interests such as natural resource management, maintaining and protecting our water resources, and regional transportation and public educational issues. If there are no issues of direct State concern in the County's plans for directed growth, the State LUC should reclassify these lands to Urban, once the County plans have been adopted. Once the LUC reclassifies lands based on the counties' identification of future growth areas, the County's would be responsible for rezoning the lands based on their respective plans.

The proposed bill would "vacate" the LUC's reclassification action at any point in a project's development if there was a "direct State concern." It also would define "substantial commencement" as completion of all public improvements and infrastructure required by the LUC. It would appear that, based on this definition, all public infrastructure (i.e. roads, utilities, drainage, etc.) and improvements (i.e. public parks, schools, fire stations, etc.) would need to be constructed first to meet the new definition of "substantial commencement." This would be difficult for large master planned projects or any project that is phased in over time. Requiring all public infrastructure and improvements places a significant financial burden on the project with little or no revenue being generated to support the project.

With the median price of homes on Oahu currently at about \$800,000.00, it is imperative that elected officials seriously consider how proposed changes to the existing land use entitlement process will either help or hurt Hawaii's residents. We are opposed to SB 1135, as it would create too much risk and uncertainty in the land use entitlement process, and will further increase the already high cost of housing in Hawaii.

Thank you for the opportunity to express our views on this matter.

SB-1135

Submitted on: 2/4/2019 12:59:29 PM

Testimony for WTL on 2/6/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Foster	Testifying for Hawaii Advocates For Consumer Rights	Support	No

Comments:

Mahalo for supporting SB1135.

Scott Foster

Communications Director

Hawaii Advocates For Consumer Rights

SB-1135

Submitted on: 2/4/2019 3:42:08 PM

Testimony for WTL on 2/6/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Ching	Individual	Support	No

Comments:

Chair Kahele, Vice Chair Keith-Agaran and members of the committee,

I support SB1135. I have been a part of 2 contested case hearings before the LUC (Koa Ridge and Hoopili). Both developments were approved by the LUC and the Decision and Order for both developments included a list of conditions.

Both Castle & Cooke Homes and D.R. Horton (the developers) knew that the LUC had very little power to enforce the conditions. They could ignore the conditions entirely and would likely pay almost no penalty.

SB1135 helps to give the LUC more enforcement power. This is a very good thing. Please pass SB1135. Developers need to be accountable to the conditions in the D & O imposed by the Land Use Commission.

Mahalo for the opportunity to testify.

Randy Ching

Honolulu (makikirandy@yahoo.com)

SB-1135

Submitted on: 2/2/2019 10:24:23 AM

Testimony for WTL on 2/6/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mio Chee	Individual	Support	No

Comments:

SB-1135

Submitted on: 2/4/2019 6:10:46 PM

Testimony for WTL on 2/6/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Support	No

Comments:

SB-1135

Submitted on: 2/5/2019 12:14:39 PM

Testimony for WTL on 2/6/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments: