

LINDA LINGLE
Governor

JAMES R. AIONA, JR.
Lieutenant Governor

THEODORE E. LIU
Director

MARK K. ANDERSON
Deputy Director



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

ORLANDO "DAN" DAVIDSON
Executive Officer

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Drafting Technician

Statement of
ORLANDO "DAN" DAVIDSON
Executive Officer
LAND USE COMMISSION
Department of Business, Economic Development, and Tourism
before the
House Committee on Water, Land, & Ocean Resources
Monday, February 9, 2009
9:00 a.m.
State Capitol, Conference Room 325

in consideration of
HB 1055
Relating to Land Use

Chair Ito, Vice-Chair Har, and Members of the House Committee on Water, Land, and Ocean Resources.

HB 1055 amends Chapter 205, HRS by adding a new section which would require the State Land Use Commission to impose a condition on petitions for land use reclassification that would provide for an automatic reversion to its original land use classification, if substantial commencement of the use of the land has not occurred within ten years.

The Land Use Commission does not support the use of automatic reversion as a land use policy tool. Project delays can occur for many different reasons, and the Commission needs to retain the authority and discretion to deal with each situation on its own merits. Requiring status reports from developers or, in more serious circumstances, issuing Orders to Show Cause why property should not be reverted to its prior classification are mechanisms that exist under current law and have recently been employed by the Commission in appropriate circumstances.

Since mechanisms exist under current law and in the Commission's Administrative Rules to compel performance from developers who are slow to develop or are developing contrary to conditions and representations, the Commission does not believe that HB 1055 is needed. Accordingly, we ask that you hold the bill.

Thank you for this opportunity to express our views.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
ABBEY SETH MAYER
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

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Statement of
ABBEY SETH MAYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON WATER, LAND,
AND OCEAN RESOURCES**
Monday, February 9, 2009
9:00 AM
State Capitol, Conference Room 325

in consideration of
HB 1055
RELATING TO LAND USE

Chair Ito, Vice Chair Har, and Members of the House Committee on Water, Land, and Ocean Resources.

The Office of Planning strongly urges your support for HB 1055, Relating to Land Use. This Administration bill amends Chapter 205, HRS, by adding a new section which would require the State Land Use Commission to impose a condition on petitions for land use reclassification that would provide for an automatic reversion to the original land use classification, if no development has occurred within ten years.

The Commission would be allowed to grant one extension up to five years upon request by the Petitioner. This use-it-or-use-it provision would not apply to county reclassifications of fifteen acres or less, nor would it apply to any petition initiated by the state or county for a regional boundary amendment. It would not be retroactive.

Thank you for the opportunity to provide testimony on this bill. If there are questions, I would be happy to respond.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
ACTING DIRECTOR

ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 9, 2009

The Honorable Ken Ito, Chair
and Members on the Committee on Water,
Land & Ocean Resources
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: House Bill 1055
Relating to Land Use**

The Department of Planning and Permitting **opposes** House Bill 1055 which would add a standard condition to all future land reclassifications. If there is no "substantial commencement" within ten years of the reclassification, the land reverts to the original classification. State and county initiated petitions would be exempt. The purpose of the bill is to "ensure timely initiation of planned or approval infrastructure."

We believe the role of the state land use districts is to set the broad land use policy and pattern for the state. We do not agree that the purpose of the land use districts is to monitor or regulate the timing of infrastructure. The counties are responsible for infrastructure timing, given that infrastructure improvements are evaluated at the time of county zoning, and tied to subdivision action, which is also a county responsibility. We recognize that there are state infrastructure systems--namely highways and public schools--that must be tied to land development, but their respective departments are already a part of the county zoning and subdivision review processes.

We disagree that a landowner or developer goes through the reclassification process for speculative purposes. The amount of time required, cost, and level of detail that must be provided makes it difficult to believe that petitioners enter the process on a casual basis, particularly since the Chapter 343, HRS, process must be first satisfied.

We are concerned that a project could proceed in good faith on the reclassification approval, proceed with obtaining necessary county approvals, and suddenly lose all entitlements based on an arbitrary deadline. While we appreciate the possible one-time extension of five years, there is no rationale given for the initial ten years, nor the single five-year extension of time. Thus we are concerned about legal challenges that may arise, including punitive damage claims because the project moved forward relying on ministerial permits issued.

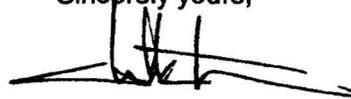
The Honorable Ken Ito, Chair
and Members on the Committee on Water,
Land & Ocean Resources
House of Representatives
Re: HB 1055
February 9, 2009
Page 2

In this time of focusing on economic stimulus strategies, this bill appears to go in the opposite direction. It increases the risk of development, including the cost and acquisition of project financing, as well as adding more government oversight, which is also inconsistent with the desire to expedite permitting.

Please file this bill.

Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'DKT', with a long horizontal flourish extending to the right.

David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT: jmf
hb1055-kst.doc



February 9, 2009

Representative Ken Ito, Chair
Committee on Water, Land & Ocean Resources
Conference Room 325
State Capitol
415 South Beretania Street

Representative Ito:

Subject: **House Bill No. HB 1055 Relating to Land Use**

My name is Dean Uchida, Vice President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HDC is strongly opposed to HB 1055 as proposed.

The bill proposes to provide a use-it-or-lose-it mechanism to ensure timely initiation of planned or approved urban and rural infrastructure. The rationale provided states that there are cases where lands reclassified by the land use commission to the urban district remain undeveloped for many years after the reclassification. In some cases, conditions have changed so significantly that the development proposal as originally conceived may warrant review and reconsideration. Premature urban or rural reclassification may encourage speculative land banking and creates uncertainty in the build out of planned urban or rural infrastructure.

The bill is apparently reacting to the Kuilima situation where land use approvals were granted for the project but due to market and economic issues, the development was never completed.

The proposal fails to recognize that the State of Hawaii has one of the more comprehensive processes for reclassifying lands from agriculture to urban involving both the State and Counties.

Hawaii's centralized land use entitlement system involves the State Land Use Commission and the respective County Planning Commissions, Planning Departments, County Councils and Mayors. The State Land Use Commission (LUC) classifies or designates all of the lands in the State (fast and submerged lands) into one of four land use districts: Urban, Conservation, Rural

and Agricultural. In the Rural and Agricultural Districts, the LUC not only designates the lands within these Districts but also provides management oversight on uses within these two districts.

Urban District (+/-194,000 acres) managed by the Counties through their respective General Plans, Community Plans, Development Plans, Land Use and Zoning maps. Reclassification of 15 acres or less of lands from the Agricultural District is also processed by the County and not the LUC.

Conservation District (+/-1.9 million acres) managed by the State Board of Land and Natural Resources.

Rural District (+/-10,000 acres) managed by both the State Land Use Commission and the Counties.

Agricultural District (+/-1.9 million acres) managed by both the State Land Use Commission and the Counties.

The Counties' General/Development/Community plans are subsets of the State land use districts. Generally, the Counties identify existing and proposed urban areas in their respective General/Development/Community plans. County zoning is used to identify specific land uses within the State Urban Land Use District (i.e. residential, apartment, commercial, industrial, etc.). The Counties also zone uses within the State Conservation Land Use District (i.e. Preservation), and State Agricultural Land Use District (i.e. Agriculture).

The Land Use Commission must consider the County's plans for urban expansion when it considers any reclassification of lands from agriculture to urban. The County's plans for urban expansion are used to plan and prioritize public and private infrastructure that is necessary to accommodate the planned growth.

Currently, it does not appear that any of the land use entitlement approvals have an automatic reversion or use-it-or-lose-it provision as a condition of approval. Because of the cyclical nature of the real estate market, a reversion or use-it-or-lose-it provision would increase the risk and uncertainty to prospective investors for future projects requiring the reclassification of land by the Land Use Commission.

Given the comprehensive nature of the land use entitlement process in Hawaii, reversing planning decisions on future growth areas should be done through the existing process starting with Counties General/Development/Sustainable Community plans.

We respectfully request that HB 1055 be held.

Thank you for the opportunity to share our views with you.



House Committee on Water, Land & Ocean Resources
February 9, 2009
Conference Room 325
9:00 a.m.
State Capitol

Subject: House Bill No. HB 1055 Relating to Land Use

Chair Ito, Vice Chair Har and members of the committee:

My name is Jim Tollefson, President of the Chamber of Commerce of Hawaii. The Chamber of Commerce of Hawaii works on behalf of its members and the entire business community to:

- Improve the state's economic climate
- Help businesses thrive

The Chamber of Commerce of Hawaii is strongly opposed to HB 1055 as proposed.

The bill proposes to provide a use-it-or-lose-it mechanism to ensure timely initiation of planned or approved urban and rural infrastructure. The rationale provided states that there are cases where lands reclassified by the land use commission to the urban district remain undeveloped for many years after the reclassification. In some cases, conditions have changed so significantly that the development proposal as originally conceived may warrant review and reconsideration. Premature urban or rural reclassification may encourage speculative land banking and creates uncertainty in the build out of planned urban or rural infrastructure.

The bill is apparently reacting to the Kuilima situation where land use approvals were granted for the project but due to market and economic issues, the development was never completed.

The proposal fails to recognize that the State of Hawaii has one of the more comprehensive processes for reclassifying lands from agriculture to urban involving both the State and Counties.

Hawaii's centralized land use entitlement system involves the State Land Use Commission and the respective County Planning Commissions, Planning Departments, County Councils and Mayors. The State Land Use Commission (LUC) classifies or designates all of the lands in the State (fast and submerged lands) into one of four land use districts: Urban, Conservation, Rural and Agricultural. In the Rural and Agricultural Districts, the LUC not only designates the lands within these Districts but also provides management oversight on uses within these two districts.

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Given the comprehensive nature of the land use entitlement process in Hawaii, reversing planning decisions on future growth areas should be done through the existing process starting with Counties General/Development/Sustainable Community plans.

We respectfully request that HB 1055 be held.

Thank you for the opportunity to share our views with you.



UNIVERSITY
of HAWAII®
MĀNOA

RL:2227

HB 1055
RELATING TO LAND USE

House Committee on Water, Land and Ocean Resources

Public Hearing – February 9, 2009
900 a.m., State Capitol, Conference Room 325

By
David Callies, Richardson School of Law
Kem Lowry, Urban and Regional Planning
Peter Rappa, Environmental Center

HB 1055 provides for a use-it-or-lose-it automatic reversion of urban or rural district land use reclassifications if development has not commenced within ten years. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

There is some question as to whether this measure is constitutional. An automatic reversion of Land Use Commission (LUC) district classifications is almost certainly unconstitutional. A boundary change amendment is not the same as a land use permit. It's far more like a zone change. The government must demonstrate a substantial change in conditions that warrant changing its mind that land is not suitable for urban use. Lack of development by a landowner is not such a changed condition. The reclassification is only possible after a hearing, upon petition, for a boundary amendment, just like the original petition to classify to urban.

Even if it were constitutional, we don't see the point of a 10-year use-it-or-lose it provision if the person can get an automatic additional 5 years just by requesting it. We suggest that a five year renewal may be approved by the LUC if the applicant seeks a renewal AND the planning commission [or County Council] in the county in which the land is located approves the request. At least, in this case, it would require a determination by the affected county that the land should or should not be used for urban/rural purposes.

Thank you for the opportunity to comment on this bill

**HB 1055
RELATING TO LAND USE**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 9, 2009

Chair Ito and Members of the House Committee on Water, Land & Ocean

Resources:

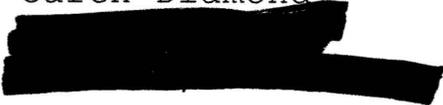
I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 1055, "A BILL FOR AN ACT RELATING TO LAND USE." We respectfully oppose this bill.

This bill requires the State Land Use Commission (LUC) to impose a condition on the reclassification of lands into the urban or rural districts to revert the land to the previous land use classification if no substantial commencement of the use of the land has occurred within a 10 year period. We believe that this bill may introduce additional time, expense, and uncertainty in the land use entitlement process. Following the acquisition of a district boundary amendment from the LUC, projects often require County zone changes, subdivision approvals, appropriate financing, and other items prior to the start of construction. Especially for large projects, a considerable amount of time may be needed to complete planning, design, and permit review following the receipt of the LUC approval. By establishing deadlines for substantial commencement of the use of the land for LUC approved urban or rural petitions, this bill may result in a

project being required to revisit the validity of its previously attained LUC boundary amendment, which will result in additional time, expense, and uncertainty.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify.

Caren Diamond


February 4, 2009

Testimony in Strong Support HB 1055

WLO

Room: 325
2/6/2009
Hearing Date 9:15:00 AM

Aloha Committee Members, Please support the use it or lose it provision. Many development projects have compromised the infrastructure by relying on approvals that were granted over 20 years ago when the same impacts that are felt today did not exist. Mahalo for your support

Caren Diamond