



Sierra Club Hawai'i Chapter

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LATE TESTIMONY

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

February 9, 2009, 9:00 A.M.

(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF HB 1055

Chair Ito and members of the Committee:

The Sierra Club, Hawai'i Chapter, with over 5500 dues paying members statewide, strongly supports HB 1055, establishing a "use-it-or-lose-it" policy for land use reclassifications. This measure would vastly improve "smart growth" policies on our islands, help ensure proper allocation of finite infrastructure resource dollars, and help prevent land speculation by discouraging large landowners from simply seeking to reclassify their land to sell it at a higher value.

Too often, large developments that require the reclassification of agricultural land to urban are approved by the state land use commission (LUC) but then shelved for many years, if not decades, for various reasons. Turtle Bay (Kuilima) on O`ahu is a prime example, where planning was completed in the 1980s based on the presumed need for affordable housing and jobs, but no homes have been built decades later.

When reclassifications are made but the land goes unused, planning becomes difficult, as decisions regarding future growth and infrastructure needs for an area become uncertain. Some developments were planned under conditions different from today, and the conditions applied by the LUC may no longer make sense.

HB 1055 supports the original intent of Hawai'i's venerable Land Use Law. The law was passed in 1961 to protect natural beauty and natural resources, to prevent scattered and premature development, and to limit land speculation of urban areas. 1961 House Journal 855; 1961 Sess. Laws 299; *see also*, Haw. Rev. Stat. § 226-104. As the Hawai'i Supreme Court noted:

In sum, the overarching purpose of the state land use law is to "protect and conserve" natural resources and foster "intelligent," "effective," and "orderly" land allocation and development. See 1961 Haw. Sess. L. Act 187 § 1 at 299 ("[I]n order to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited for the public welfare . . . , the power to zone should be exercised by the State.") See also Pearl Ridge Estates Community Ass'n v. Lear Siegler, Inc., 65 Haw. 133, 144 n.9, 648 P.2d 702, 709 n.9 (Nakamura, J., concurring) ("Thus, conservation lands must be reserved if practicable, agricultural lands should be protected, and urban lands should be developed in orderly fashion.")

Curtis v. Board of Appeals, County of Hawai'i, 90 Hawai'i 384, 396, 978 P. 2d 822, 834 (1999).

The Hawai'i Supreme Court has long observed that the emphasis of the Land Use Law is on controlling growth and protecting resources:

By enacting HRS ch. 205 in 1961, the legislature intended, inter alia, to "[s]tage the allocation of land for development in an orderly plan," H.Stand.Comm.Rep. No. 395, 1st Haw.Leg., 2d Sess., reprinted House Journal 855-56, and to redress the problem of "inadequate controls [which] have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in long-term loss to the income and growth potential of our economy. Act 187, 1961 Haw.Sess. Laws 299.

Neighborhood Board v. State Land Use Commission, 64 Haw. 265, 272-3, 639 P.2d 1097 (1982).

Hawaii's Land Use Law was enacted in an effort to manage growth on islands of limited resources:

Scattered subdivisions with expensive, yet reduced public services; the shifting of prime agricultural lands into non-revenue producing residential uses when other lands are available that could serve adequately urban needs . . . these are evidences of the need for public concern and action.

Act 187, 1961 Haw Sess. Laws 299.

Today, tens of thousands of units have been approved for development but not yet built. In the meantime, tens of thousands of new units are proposed and seeking (or will be seeking) reclassification from the LUC. Without a "use-it-or-lose-it" provision as contemplated in HB 1055, a patchwork of development may occur throughout our islands, diluting our limited public infrastructure dollars, decreasing open space, and increasing speculation on agricultural lands.

Thank you for the opportunity to testify.

LATE TESTIMONY

Testimony from:

Penny Levin
224 Ainahou Place
Wailuku, Maui 96793

TO: Committee on Water, Land and Ocean Resources, Rm325 9:00am

RE: Testimony for HA1055 Relating to Land Use

Aloha Honorable Committee members;

Regarding HB1055 *Relating to Land Use*, I strongly support the proposed use-it-or-lose-it legislation for the reasons described in the bill. However, there are dozens of “banked” rural and urban designations dating to the 1980s on lands purchased for speculative or “future development” purposes. Many no longer have backing or funders; ownership has also changed hands from the original applicants. Older master plans or proposed developments may also no longer have the support of the local community, nor do they fit with changes in goals for local development. They may also no longer be appropriate given our increased knowledge of island resource limitations. A second bill (HB545) currently moving through the legislature proposes to require updated environmental impact statements for projects older than 15 years to address this issue.

I recommend the following amendments be added to this bill for consistency in the legislation and to further reduce the speculative sale of development rights:

(b) the Commission may grant one extension of an additional five years upon request by the petitioner prior to the expiration of the ten year time limit, provided that funding for the proposed development can be shown to have been reasonably secured at the time of extension request; and provided that development begin prior to the last year of the five year extension.

and;

(d) the condition for automatic reversion shall not apply to any petition accepted for filing by the Commission as of the effective date of this Act provided that the developer can show evidence of secured funding for development and completion of an accepted EA or EIS document for the proposed development dated no earlier than 1995; and shall ~~not~~ apply to any petition accepted for filing by the Commission fifteen years or more prior to the effective date of this Act.

(e) the condition for automatic revision shall not apply to any petition accepted for filing by the Commission prior to the effective date of this Act proposing not more than two single-family dwellings by the owner of a single unsubdivided lot.

I urge the members of the Water, Land and Ocean Resources Committee to pass this bill with the proposed amendments.

Respectfully,

Penny Levin
[transmitted by email 8 Feb 2009]

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

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**

I am Karen Nakamura, Chief Executive Officer 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.

BIA-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.

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.



Executive Vice President & Chief Executive Officer
BIA-Hawaii