

# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of  
**ABBEY SETH MAYER**  
Interim Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
Monday, February 25, 2008  
10:30 a.m.  
State Capitol, Conference Room 211

in consideration of  
**SB 1368, SD1**  
**RELATING TO LAND USE.**

Chair Baker, Vice Chair Tsutsui, and Members of the Senate Committee on Ways and Means.

The Office of Planning (OP) supports SB 1368 SD1, which was introduced by the Administration in 2007. This year, the Administration introduced SB 2997 which builds on last year's bill by specifically authorizing the State Land Use Commission (LUC) to reverse land use district clarification in the urban or rural districts when the current reclassification has not been exercised. We support both bills and would be happy to work with the Committee on either measure.

Under both bills the LUC would conduct a process to develop guidelines, and subsequently adopt rules, for a "use-it-or-lose-it" policy. Under the policy, the LUC will set deadlines in each petition for reclassification to the State Urban or Rural Land Use Districts to define substantial progress in the development of the project, including specific dates by which such progress must be achieved. An approved petition will face reversion to the original land use classification if substantial progress is not being made in project development. The bill requires the LUC to consult with a range of interest groups in the development of guidelines to determine appropriate deadlines and other

requirements necessary to institute a use-it-or-lose-it policy for LUC petitions. The bill exempts State-or county-initiated petitions for multi-parcel, regional boundary amendments based upon a regional boundary review. The LUC must adopt rules for the use-it-or-lose-it policy before December 31, 2009.

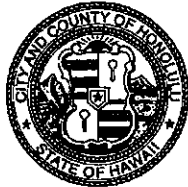
The purpose of the bill is to ensure that projects proposed in a petition are developed within the timeframe represented in the petition, and to avoid projects with entitlements that are undeveloped for decades after the reclassification is granted. These more speculative proposals result in a host of planning, infrastructure, social, and economic problems for the community and public agencies when projects that have been long dormant seek to proceed with development. Entitled projects that remain undeveloped create considerable uncertainty for public agencies responsible for planning and providing infrastructure and services to the surrounding community or region, and make it difficult for agencies to develop and implement plans and schedule capital improvement programs or the provision of services for the surrounding community. Furthermore, conditions in the impacted communities and region are likely to have changed significantly over time, and the development proposal as originally proposed will undoubtedly produce significant impacts that could not have been and were not anticipated when the reclassification was approved.

The Office believes that development and adoption of a “use it or lose it” policy, which requires performance standards for project development and establishes procedures for the LUC to monitor performance and sanction lack of performance with reversion, will result in a more responsive, timely, and predictable development process for all.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING  
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February 25, 2008

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Ways and Means  
Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Baker and Members:

**Subject: SENATE BILL 1368 SD1  
Relating to Land Use**

The Department of Planning and Permitting **offers concerned comments** on Senate Bill 1368, which would require the state land use commission to develop deadlines for substantial progress on development projects receiving boundary amendments.

Our concerns reflect three points: the bill is not necessary, it increases uncertainty in the entitlement process, and may not be the most appropriate vehicle for the purpose of the bill.

The bill is unnecessary because the commission already has mechanisms in place that allow it to revisit previous boundary amendment decisions. Also, in granting boundary amendments, we see no reason why it cannot already impose implementation deadlines.

This bill would introduce significant uncertainty into the land use entitlement process. After lengthy periods, perhaps years, taken to acquire other approvals, such as county zone changes and subdivision approval, and obtaining project financing under sometimes fluctuating market conditions, a project will become vulnerable to revisiting the validity of its boundary amendment based on lack of "substantial progress".

Senate Bill 1368 SD1 provides no guidance on the basis for the deadlines, except to consult with others. We have to acknowledge, in many cases, actual construction of projects is delayed due to delays in getting government approvals, which are beyond the control of the developer. In other cases, market conditions play a significant role in whether a project can obtain financing and move further along into the construction phase. Especially in the case of large projects, a significant amount of time is spent on planning, design and permit review phases. Court challenges can also substantially delay implementation.

The stated purpose of Senate Bill 1368 SD1 is to ensure more effective timing of development. We cannot recall a project that went through the onerous quasi-judicial process of a land use district boundary amendment, without a desire for imminent development.

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Ways and Means  
Senate  
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The purpose of the bill may be more appropriately addressed through a resolution expressing the policy that state boundary amendments give due consideration to the timely implementation of the project as put forward to the commission. This will accomplish the objective with less cost to the state in terms of consulting with others and adopting new rules.

Thank you for this opportunity to comment.

Very truly yours,

  
Henry Eng, FAICP Director  
Department of Planning and Permitting

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