



**The Chamber of
Commerce of Hawaii**
Since 1850

TESTIMONY TO THE SENATE COMMITTEE ON WATER AND LAND
MONDAY, FEBRUARY 11, 2008, AT 2:30 P.M.
ROOM 414, STATE CAPITOL

RE: S.B. 1368 Relating to Land Use

Chair Hee, Vice Chair Kokubun, and Members of the Committee:

My name is Christine H. Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii is in opposition to SB No. 1368.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. 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.

S.B. No. 1368 provides for the development of a use-it-or-lose-it mechanism in Chapter 205 HRS to ensure more effective timing of development of planned or approved urban or rural capacity.

The bill states that the legislature is concerned that in some cases conditions have changed so significantly that the development proposal as originally conceived may warrant review and reconsideration. The legislature also finds that premature urban or rural classification encourages speculative land banking and creates uncertainty in the build-out of planned urban or rural capacity and associated infrastructure.

The land use entitlement process in Hawaii is a very lengthy and cumbersome process involving both the State (Land Use Commission) and County (Council-Zoning and Administration-Subdivision).

The legislature's finding that ". . . premature urban or rural classification encourages speculative land banking and creates uncertainty in the build-out of planned urban or rural capacity and associated infrastructure" shows the lack of clarity in the role and responsibility of the State and Counties in land use decisions in Hawaii.

Hawaii was the first state to enact comprehensive land use planning in the early 1960's. At the time, Hawaii's landscape was made up of the urban areas (towns and cities); the agricultural areas (sugar and pineapple plantations); and the conservation areas (forest reserves and restricted watersheds). Those existing land use patterns in the 1960's were not contiguous. There were areas between the recognized land use patterns that were not being used in a specific land use at the time. These "unused" areas were absorbed into either the Conservation or Agricultural districts simply because they did not fit anywhere else

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The Chamber of Commerce of Hawaii Testimony on SB 1368
February 11, 2008

at the time. The rural district was not originally part of the comprehensive land use districts but came about later.

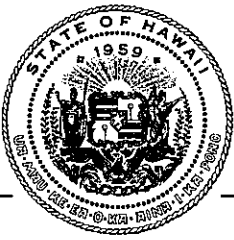
In the administration of these land use districts, there were also some questionable land use decisions made by the Counties that begged for more state oversight. For example, the large "paper subdivision" on "lava land" on the island of Hawaii were done without appropriate consideration of the need for infrastructure. These concerns of the county's ability to review and approve subdivisions probably lead to the existing entitlement system which provided for state oversight on land use decisions.

Since that time, the Counties have become experienced and better able to deal with urban land use planning. However, the process has not changed. As a result, we have a dual, overlapping system of entitlements in Hawaii. Rather than have the LUC look at the details of a particular project, the LUC should be reclassifying lands in advance of the need and allow the Counties to rezone and subdivide lands as the market conditions change. In considering reclassification of lands among the four land use districts: Urban, Rural, Agricultural and Conservation, the LUC should focus only on the broader public policy issues (as mandated in the State Constitution) such as providing for: housing (Article IX, Section 5); healthy environment (Article IX, Section 8); education (Article 10, Section 1); conservation and development of resources (Article XI, Section 1); agricultural lands (Article XI, Section 3); and, most importantly, the rights of individuals (Article 1, Section 2).

The Counties then would determine the urban and rural zoning issues as the next step in the entitlement process. Zoning and subdivision should follow investment in infrastructure to these identified areas of growth.

Real estate development is a dynamic business that is driven by the market. No one can predict the consumer demand or the supply of capital for future projects. The proposed bill would create more uncertainty in the real estate market and probably discourage future investment in Hawaii.

Thank you for this opportunity to express our views.



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

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Statement of
MARY LOU KOBAYASHI
Planning Program Administrator, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WATER AND LAND
Monday, February 11, 2008
2:30 PM
State Capitol, Conference Room 414

in consideration of
SB 1368
RELATING TO LAND USE.

Chair Hee, Vice Chair Kokubun, and Members of the Senate Committee on Water and Land.

The Office of Planning (OP) supports SB 1368 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 county plans or a boundary review. The LUC must adopt rules for the use-it-or-lose-it policy before December 31, 2008.

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.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 11, 2008

COMMITTEE ON WATER AND LAND HEARING

2:30 p.m.

CONFERENCE ROOM 414

The Honorable Senator Clayton Hee, Chair and Members
Committee on Water and Land
State Senate, Room 414
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill No. SB 1368 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 opposed to S.B. No. 1368.

S.B. No. 1368 provides for the development of a use-it-or-lose-it mechanism in Chapter 205 HRS to ensure more effective timing of development of planned or approved urban or rural capacity.

The bill states that the legislature is concerned that in some cases conditions have changed so significantly that the development proposal as originally conceived may warrant review and reconsideration. The legislature also finds that premature urban or rural classification encourages speculative land banking and creates uncertainty in the build-out of planned urban or rural capacity and associated infrastructure.

The land use entitlement process in Hawaii is a very lengthy and cumbersome process involving both the State (Land Use Commission) and County (Council-Zoning and Administration-Subdivision).

The legislatures finding that “. . . *premature urban or rural classification encourages speculative land banking and creates uncertainty in the build-out of planned urban or rural capacity and associated infrastructure*” shows the lack of clarity in the role and responsibility of the State and Counties in land use decisions in Hawaii.

Hawaii was the first state to enact comprehensive land use planning in the early 1960's. At the time, Hawaii's landscape was made up of the urban areas (towns and cities); the agricultural areas (sugar and pineapple plantations); and the conservation areas (forest reserves and restricted watersheds). Those existing land use patterns in the 1960's were not contiguous. There were areas between the recognized land use patterns that were not being used in a specific land use at the time. These “unused” areas were absorbed into either the Conservation or

Agricultural districts simply because they did not fit anywhere else at the time. The rural district was not originally part of the comprehensive land use districts but came about later.

In the administration of these land use districts, there were also some questionable land use decisions made by the Counties that begged for more state oversight. For example, the large “paper subdivision” on “lava land” on the island of Hawaii were done without appropriate consideration of the need for infrastructure. These concerns of the county’s ability to review and approve subdivisions probably lead to the existing entitlement system which provided for state oversight on land use decisions.

Since that time, the Counties have become experienced and better able to deal with urban land use planning. However, the process has not changed. As a result, we have a dual, overlapping system of entitlements in Hawaii. Rather than have the LUC look at the details of a particular project, the LUC should be reclassifying lands in advance of the need and allow the Counties to rezone and subdivide lands as the market conditions change. In considering reclassification of lands among the four land use districts: Urban, Rural, Agricultural and Conservation, the LUC should focus only on the broader public policy issues (as mandated in the State Constitution) such as providing for: housing (Article IX, Section 5); healthy environment (Article IX, Section 8); education (Article 10, Section 1); conservation and development of resources (Article XI, Section 1); agricultural lands (Article XI, Section 3); and, most importantly, the rights of individuals (Article 1, Section 2).

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Thank you for this opportunity to express our views.

Karen I. Nakamura

testimony**LATE TESTIMONY**

From: Jeannine Johnson [jeannine@hawaii.rr.com]
Sent: Sunday, February 10, 2008 5:45 PM
To: testimony
Cc: Rep. Barbara Marumoto; Rep. Lyla B. Berg; Rep. Gene Ward; Sen. Fred Hemmings; Sen. Sam Slom; 'Alyssa Miller'; 'Donna Wong HTF'
Subject: Testimony in strong support of SB1368 (land use), SB2871 (aquatic resources) and SB3225 (fishing)

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun, Vice Chair

SB 1368 RELATING TO LAND USESB 2871 RELATING TO AQUATIC RESOURCESSB 3225 RELATING TO FISHING

DATE: Monday, February 11, 2008

TIME: 2:30 p.m.

PLACE: Conference Room 414

Aloha Chair Hee and Vice Chair Kokubun:

I wanted to express my strong support for each of the above-stated bills.

- SB1368 would establish a much-needed process for determining when land use classifications should be rescinded because they have not been exercised. The City's Department of Planning and Permitting has allowed projects like Kuilima Resort Company's massive expansion project on Kawela Bay based on a 20 year old agreement and land use permit. This bill would provide for a use-it-or-lose-it mechanism to ensure more effective timing of development of planned or approved urban or rural capacity.
- SB2871 encourages the DLNR to work with local communities to manage near shore reef resources through the maka'i o ke kai program based on the Miloli'i community's efforts.
- SB3225 imposes bag limits on certain ornamental fish and prohibits catching of certain ornamental fish.

My father was a fisherman from Miloli'i and he took me along on several fishing trips during the summers I spent growing up at our ahupua'a in the 70s. The beauty of the fish and reefs near Miloli'i were incomparable then. It's my understanding that the aquarium fish collectors caused significant reductions in the abundance of fish and their destructive fishing practices destroyed the reefs all along the Kona coast. On O'ahu, Mālama Maunalua, a community-based alliance dedicated to creating a more culturally and ecologically healthy Maunalua Bay, has worked for several years to mitigate the pollution and sedimentation of our storm water run-off into the Bay. Communities familiar with their resources should be given the opportunity to kuleana them.

E ola ke kai, e ola kakou (as the ocean thrives, so do we.) Please kōkua and help protect and preserve our valuable resources that we have left so that our keiki and mo'opuna will be able to fish like our kupuna.

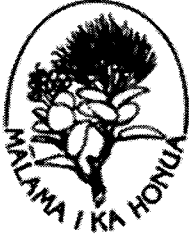
Mahalo piha,

Jeannine

2/10/2008

Jeannine Johnson
5648 Pia Street
Honolulu, Hawai'i 96821
Ph: 373-2874 / 523-5030 (w)
Email: jeannine@hawaii.rr.com
"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)

LATE TESTIMONY



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

LATE TESTIMONY

SENATE COMMITTEE ON WATER AND LAND

February 11th, 2008, 2:30 P.M.

(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 1368

Chair Hee and members of the Committee:

The Sierra Club, Hawai'i Chapter, with over 5500 dues paying members statewide, strongly supports SB 1368, 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. Waiawa on O'ahu is a prime example, where planning was completed in the 1980s 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.

SB 1368 supports the original intent of Hawaii'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, HRS § 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 Haw. 384, 396 (1999), 978 P. 2d 822, 834.

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 SB 1368, 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.