



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

**TESTIMONY OF THE CHAIRPERSON
OF THE COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES**

on Senate Bill 2832 – Relating To Sustainability

**BEFORE THE SENATE COMMITTEE
ON
COMMERCE, CONSUMER PROTECTION AND AFFORDABLE HOUSING**

February 11, 2008

The purpose of Senate Bill 2832 is to establish a process by which developers of residential communities may elect to develop sustainable communities in the State, and to provide incentives for doing so, including the expediting of permit application processes and approvals. The Department of Land and Natural Resources (Department) comments are limited to § -8 relating to water conservation management. While the Department supports the intent of this measure to encourage the development and implementation of water conservation plans and practices, the Department nonetheless has major concerns regarding the time limit for permit applications by the Department's Commission on Water Resource Management (Commission). In as much, the Department offers the following comments.

The Commission is subject to contested case hearings on various permit applications. In these cases, time limits should not apply. The Department suggests that a provision be added to exempt the maximum time period established pursuant to this section (§ -8) if the Commission is required to conduct a contested case hearing on an application. This is an especially grave concern for contested case hearings where other parties have substantive due process rights that would be negatively affected by the automatic granting provision in this bill. It is the Commission's experience that water disputes are very complicated and fact specific. Fact-finding can be a lengthy process often requiring highly technical and scientific studies on the effect of any proposed project on the water resource. Without additional time, the Commission would be forced to either make decisions on insufficient information and possibly jeopardize the resource or summarily deny the application because it had insufficient information for a decision. Such denials would create added expense in money and time for both the applicant and the Commission.

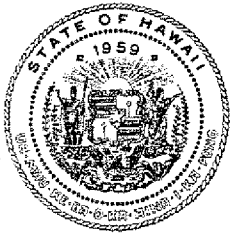
Given the unique and specialized nature of the work of the Commission and the fact that rights are involved, we respectfully request that the three hundred sixty-day time period requirement of

this bill not apply for contested case hearing situations and offer the following amendment to paragraph (c) on page 11 of Senate Bill 2832:

(c) Notwithstanding any provision relating to permits under chapter 174C or any other applicable section to the contrary, the commission on water resource management shall expedite the application process for any permit application from a developer of a residential community who has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application, and no decision has been rendered, and no request for contested case hearing has been filed, the permit shall be deemed approved.

Regarding the development of a water conservation plan, the State Water Code gives authority to the Commission to plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water. Therefore, we recommend that the bill be amended to specify that the determination of feasible conservation programs rests with the Chairperson of the Commission, rather than the Board of Land and Natural Resources. This would clarify agency jurisdictional issues related to water conservation planning.

The Department continues to support the concept of sustainable communities and the reasonable and beneficial use and conservation of our State's water resources. The Department's policy is that water should be put to its best and highest use and advocates the application of non-potable water to meet non-potable water demands. In keeping with this policy, the Department supports the development and use of alternative water supplies, such as recycled wastewater and stormwater reclamation and reuse.



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

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND AFFORDABLE HOUSING
Monday, February 11, 2008
9:00 a.m.
State Capitol, Conference Room 229

in consideration of
SB2832
RELATING TO SUSTAINABILITY.

Chair Kokubun, Vice Chair Ige, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) opposes SB2832 in its present form. This bill establishes sustainable communities in Hawaii with the combined effort of state departments and agencies. In particular, SB2832 requires the Director of DBEDT to:

- receive detailed project development plans from project developers;
- enter into "sustainability agreements" with project developers;
- advise and coordinate with other state departments and agencies and a developer ... to develop a plan on a case-by-case basis that will enable a residential community ... to generate at least fifty per cent of all of its energy requirements for the entire community under development;
- develop a plan for the developer's implementation that explores all types of energy resources, as defined under section 196-2¹, and determine which resources are the most feasible for the community under development to use to meet its energy needs and energy generating requirements...

¹ "Energy resources" means and includes fossil fuel, nuclear, geothermal, solar, hydropower, wind, and other means of generating energy.

- cooperate and coordinate with any state department or agency to expedite the application process for any permits relating to generating energy;
- adopt rules in accordance with Chapter 91;
- convene *ad hoc* development advisory committees to determine the feasibility of developing an integrated plan for a sustainable residential community;
- prepare an executed development agreement resulting from the *ad hoc* development advisory committee and the developer;
- monitor the developer's and community's compliance;
- impose a fine or require the suspension of development if the developer is found to be not in compliance;
- enforce requirements against the community's association if the development is found to be in noncompliance one year after completion of the project; and
- establish fines and penalties for noncompliance under rules adopted pursuant to Chapter 91.

Although the overall concept of this bill includes initiatives supportive of our goals and objectives, we are very concerned about the new role and responsibilities assigned to DBEDT, the cost implications generated by this proposal, and the diversion of effort away from statewide policies and programs to an extremely complex, site-specific projects with requirements which may conflict with existing statutes.

For example, the requirement that the community generate its own power raises the question of transmission of the power from the generating station, across property lines, to the users. This is a function reserved for the electric utility company and under the purview and regulation of the Public Utilities Commission.

The time, effort, and complexity involved -- to identify and carve out exceptions to all the otherwise applicable State laws, rules, and regulations -- may be better utilized to increase the

sustainability, energy efficiency, regulatory effectiveness, and renewable energy potential of all of Hawaii.

Sustainable communities are a desirable objective, but as currently drafted, this bill would have profound impacts on the operations of DBEDT and the Energy Resources Coordinator. We have two main concerns: The first is that it would fundamentally change the operations of our department from coordinator, to regulator, and is inconsistent with the function of the Energy Resources Coordinator in HRS Chapter 196. Second, DBEDT is not staffed to support the newly proposed responsibilities of the Energy Resources Coordinator.

Thus we must oppose the bill.

Thank you for the opportunity to provide this testimony.



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

**Testimony to the Senate Committee on Commerce, Consumer Protection, and
Affordable Housing
Monday, February 11, 2008 at 9:00 a.m.
Conference Room 229, State Capitol**

RE: SENATE BILL NO. 2832 RELATING TO SUSTAINABILITY

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

My name is Christine Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber is opposed to SB 2832 as presently drafted.

The Chamber is the largest business organization in Hawaii, representing 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. 2832 proposes to establish a process by which developers of any residential community with a development plan for fifty or more residential units for which general planning, development, and construction has commenced after December 31, 2008 may elect to develop sustainable communities in the State and to provide incentives to encourage sustainable development. The bill identifies the following eight (8) objectives, criteria for achieving the objectives, and incentives for development of sustainable communities:

1. Generate their own energy onsite by utilizing alternative energy sources to fulfill a large percentage of their energy requirements, and become less reliant on imported fossil fuels;

Criteria:

Generate at least fifty per cent (50%) of all of its energy requirements for the entire community under development, including but not limited to residential homes and areas and services provided for and used by the entire community under development.

Incentive:

Each state department and agency shall cooperate and comply with any request made pursuant to this chapter from the energy resources coordinator. The department or agency shall prioritize the energy resources coordinator's request and expedite the processing thereof.

2. Implement extensive recycling programs for their solid waste management and avoid adding more

Page 2 of 4
The Chamber of Commerce of Hawaii Testimony on SB 2832
February 11, 2008

waste to landfills, that can result in further pollution and other harmful affects to the environment;

Criteria:

The purpose of the plan shall be to enable the community to *divert at least seventy-five per cent of its solid waste from the landfills.*

Incentive:

The department of health shall expedite the application process for any permit application from a developer of a residential community that has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

3. Implement an extensive wastewater recycling and treatment management system that will enable the communities to conserve water and protect waters in and around the State;

Criteria:

The purpose of the plan is to enable the community under development to treat and recycle all of its wastewater for landscaping water requirements onsite of the community and any agricultural water irrigation requirements offsite of the community.

Incentive:

The department of health shall expedite the application process for any permit application from a developer of a residential community who has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

4. Implement an extensive water conservation management system that will enable the communities to conserve water and protect waters in and around the State;

Criteria:

The purpose of the plan is to enable the community under development to conserve water by using various methods, including but not limited to rain water harvesting to use for landscaping, non-potable uses, low flow toilets and showers.

Incentive:

The commission on water resource management shall expedite the application process for any permit application from a developer of a residential community who has agreed to be subject to this chapter and

Page 3 of 4
The Chamber of Commerce of Hawaii Testimony on SB 2832
February 11, 2008

have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

5. Protect and preserve open space; and
6. Promote and encourage visitation to any nearby cultural or historic sites, public beaches, shores, trails, and other outdoor recreational areas by not restricting public access to these areas;

Criteria:

The development plan for the residential community shall include but not be limited to:

1. Designate at least fifty per cent (50%) of the entire tract of land for the residential community for open space; provided that:
 - a. Open space shall not include areas designated for golf courses; and
 - b. Open space shall include the shoreline, if the planned community abuts and includes shoreline space;
2. Be designed with the intent to be accessible by the public and shall not be designed to be a gated community; and
3. Allow free and open access to any nearby cultural or historic sites, public beaches, shore, parks, trails, or other public recreational areas.

Incentive:

The land use commission may amend any existing urban or rural land use designation of land on which the residential community is planned to be situated on to provide for the open space requirements under subsection (b) within three hundred sixty-days from the filing of the request to amend the land use designation. If the three hundred sixty-day time period has expired and no decision has been rendered, the amendment to the land use designation shall be deemed approved.

7. Provide affordable housing units for residents to enable them to stay in Hawaii and provide shelter for their families; and

Criteria:

The developer shall cooperate and coordinate with the Hawaii housing finance and development corporation, as necessary, to develop and implement a residential housing plan that will designate and reserve at least thirty per cent (30%) of all of its residential units within the planned community for affordable housing units.

Incentive:

The Hawaii housing finance and development corporation shall coordinate with any state department or

Page 4 of 4
The Chamber of Commerce of Hawaii Testimony on SB 2632
February 11, 2008

agency to expedite the application process for any permit application of a residential community that is subject to this chapter and relating to affordable residential unit development to allow any department or agency subject to the three hundred sixty-day permit processing time period imposed under this chapter to review and decide on a permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

8. Educate and promote awareness that sustainability is more than a concept, but a lifestyle that can be achieved and implemented in the daily lives of Hawaii residents.

While we understand and support the intent of providing incentives to encourage sustainable development in the future, we are concerned that the incentives may not go far enough to achieve the criteria and objectives. As drafted, the incentives identified are all state permits or approvals. The bulk of permitting on residential developments occur at the County level, both ministerial and discretionary permits.

Furthermore, the bill does not seem to recognize how the counties currently approach land use planning. For example, to preserve open space, the bill requires at least 50% of the project area be dedicated as open space. Most of the counties in Hawaii have adopted some form of Smart Growth management which established "urban growth boundaries" and/or "agricultural preservation zones." The purpose is to focus and compact growth and density within the urban growth boundaries to preserve the agricultural lands outside of the urban growth boundaries. To require developments within the urban growth boundary to dedicate 50% or more of the project area to open space seems to be contrary to the smart growth objective of compacting density and growth within the urban growth boundaries.

We would strongly suggest that the legislature coordinate efforts with the Counties to provide meaningful incentives, such as funding infrastructure capacity within identified growth areas, providing density bonuses, and encouraging more mixed uses to create employment and entertainment opportunities near where people live. We believe that these types of coordinated incentives at the state and county level will stimulate interest in developing more sustainable communities.

Thank you for this opportunity to express our views.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 11, 2008

9:00 a.m.

Conference Room 229

COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND AFFORDABLE HOUSING

The Honorable Senator Russell Kokubun, Chair and Members
Committee on Commerce, Consumer Protection and Affordable Housing
State Senate, Room 229
Honolulu, Hawaii 96813

Dear Chair Kokubun and Members:

Subject: Senate Bill No. SB 2832 Relating to Sustainability

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. 2832 as presently drafted.

S.B. No. 2832 proposes to establish a process by which developers of any residential community with a development plan for fifty or more residential units for which general planning, development, and construction has commenced after December 31, 2008 may elect to develop sustainable communities in the State and to provide incentives to encourage sustainable development. The bill identifies the following eight (8) objectives, criteria for achieving the objectives, and incentives for development of sustainable communities:

1. Generate their own energy onsite by utilizing alternative energy sources to fulfill a large percentage of their energy requirements, and become less reliant on imported fossil fuels;

Criteria:

Generate at least fifty per cent (50%) of all of its energy requirements for the entire community under development, including but not limited to residential homes and areas and services provided for and used by the entire community under development.

Incentive:

Each state department and agency shall cooperate and comply with any request made pursuant to this chapter from the energy resources coordinator. The department or agency shall prioritize the energy resources coordinator's request and expedite the processing thereof.

2. Implement extensive recycling programs for their solid waste management and avoid

adding more waste to landfills, that can result in further pollution and other harmful affects to the environment;

Criteria:

The purpose of the plan shall be to enable the community to *divert at least seventy-five per cent of its solid waste from the landfills.*

Incentive:

The department of health shall expedite the application process for any permit application from a developer of a residential community that has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

3. Implement an extensive wastewater recycling and treatment management system that will enable the communities to conserve water and protect waters in and around the State;

Criteria:

The purpose of the plan is to enable the community under development *to treat and recycle all of its wastewater for landscaping water requirements onsite of the community and any agricultural water irrigation requirements offsite of the community.*

Incentive:

The department of health shall expedite the application process for any permit application from a developer of a residential community who has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

4. Implement an extensive water conservation management system that will enable the communities to conserve water and protect waters in and around the State;

Criteria:

The purpose of the plan is to enable the community under development *to conserve water by using various methods, including but not limited to rain water harvesting to use for landscaping, non-potable uses, low flow toilets and showers.*

Incentive:

The commission on water resource management shall expedite the application process for any permit application from a developer of a residential community who has agreed to be subject to this chapter and have three hundred sixty days to review and decide on the permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

5. Protect and preserve open space; and
6. Promote and encourage visitation to any nearby cultural or historic sites, public beaches, shores, trails, and other outdoor recreational areas by not restricting public access to these areas;

Criteria:

The development plan for the residential community shall include but not be limited to:

1. Designate at least fifty per cent (50%) of the entire tract of land for the residential community for open space; provided that:
 - a. Open space shall not include areas designated for golf courses; and
 - b. Open space shall include the shoreline, if the planned community abuts and includes shoreline space;
2. Be designed with the intent to be accessible by the public and shall not be designed to be a gated community; and
3. Allow free and open access to any nearby cultural or historic sites, public beaches, shore, parks, trails, or other public recreational areas.

Incentive:

The land use commission may amend any existing urban or rural land use designation of land on which the residential community is planned to be situated on to provide for the open space requirements under subsection (b) within three hundred sixty-days from the filing of the request to amend the land use designation. If the three hundred sixty-day time period has expired and no decision has been rendered, the amendment to the land use designation shall be deemed approved.

7. Provide affordable housing units for residents to enable them to stay in Hawaii and provide shelter for their families; and

Criteria:

The developer shall cooperate and coordinate with the Hawaii housing finance and development corporation, as necessary, to develop and implement a residential housing plan that will designate and reserve at least thirty per cent (30%) of all of its residential units within the planned community for affordable housing units.

Incentive:

The Hawaii housing finance and development corporation shall coordinate with any state department or agency to expedite the application process for any permit application of a residential community that is subject to this chapter and relating to affordable residential unit development to allow any department or agency subject to the three hundred sixty-day permit processing time period imposed under this chapter to review and decide on a permit application. If the three hundred sixty-day time period has expired on a permit application and no decision has been rendered, the permit shall be deemed approved.

8. Educate and promote awareness that sustainability is more than a concept, but a lifestyle

that can be achieved and implemented in the daily lives of Hawaii residents.

While we understand and support the intent of providing incentives to encourage sustainable development in the future, we are concerned that the incentives may not go far enough to achieve the criteria and objectives. As drafted, the incentives identified are all state permits or approvals. The bulk of permitting on residential developments occur at the County level, both ministerial and discretionary permits.

Furthermore, the bill does not seem to recognize how the counties currently approach land use planning. For example, to preserve open space, the bill requires at least 50% of the project area be dedicated as open space. Most of the counties in Hawaii have adopted some form of Smart Growth management which established “urban growth boundaries” and/or “agricultural preservation zones.” The purpose is to focus and compact growth and density within the urban growth boundaries to preserve the agricultural lands outside of the urban growth boundaries. To require developments within the urban growth boundary to dedicate 50% or more of the project area to open space seems to be contrary to the smart growth objective of compacting density and growth within the urban growth boundaries.

We would strongly suggest that the legislature coordinate their efforts with the Counties to provide meaningful incentives, such as funding infrastructure capacity within identified growth areas, providing density bonuses, and encouraging more mixed uses to create employment and entertainment opportunities near where people live. We believe that these types of coordinated incentives at the state and county level will stimulate interest in developing more sustainable communities.

Thank you for this opportunity to express our views.

Karen I. Nakamura