

karamatsu1-Kenji

From: pc committee [pc.committee@mauicounty.us]
Sent: Monday, February 15, 2010 12:19 PM
To: JUDtestimony
Cc: Rep. Joe Bertram III; Rep. Mele Carroll; Rep. Gilbert Keith-Agaran; Rep. Angus McKelvey; Rep. Joseph Souki; Rep. Kyle Yamashita; Sen. Roz Baker; Sen. J. Kalani English; Sen. Shan Tsutsui
Subject: TESTIMONY IN OPPOSITION TO HB 2904, RELATING TO COUNTY GENERAL PLANS

TO:
The Honorable Jon Riki Karamatsu, Chair
Judiciary Committee

FROM:
Councilmember Sol P. Kaho`ohalahala
Chair, Planning Committee
Maui County Council

SUBJECT:
HEARING OF FEBRUARY 16, 2010; TESTIMONY IN OPPOSITION TO HB 2904, RELATING TO COUNTY GENERAL PLANS

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to deny legal effect to the county general plans.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council and as Chair of the Council's Planning Committee, which has been reviewing draft Maui County General Plan documents throughout this term.

I oppose this measure for the following reasons:

1. This measure would dramatically and unjustly usurp the counties' home rule authority with respect to long-range planning - a quintessential municipal function. Each county faces unique challenges related to housing, infrastructure, natural resource protection, and economic opportunities. The best land use decisions are those made at the local level of government, as the Legislature has recognized for more than 30 years by mandating the enactment of county general plans and development plans.

2. The Maui County General Plan is comprised of the Countywide Policy Plan, the Maui Island Plan, and various community plans. For several years, the County's Department of Planning and volunteer General Plan Advisory Committee and Planning Commission members representing a cross-section of the community have engaged in time-consuming work to overhaul the County's General Plan. This process has been conducted pursuant to the Maui County Code, the Maui County Charter, and State law. Since early 2009, I have overseen an intensive public review of the Countywide Policy Plan and Maui Island Plan by the Council's Planning Committee. The Countywide Policy Plan is scheduled to be heard by the Council on second and final reading on February 19, 2010. The Maui Island Plan was debated by the Planning Committee as recently as February 12, 2010, is tentatively scheduled to be considered again on February 22, 2010, and must be passed by October 18, 2010. Negating the legal effect of the Maui County General Plan ordinances at this late stage would constitute a monumental waste of volunteer and other resources. It would justifiably breed contempt for both State and County government.

3. This measure is openly touted by its proponents as a means of forum shopping. Testimony received by the prior House committee candidly expressed criticism of the County of Maui's draft Maui Island Plan. The critics seek relief from the State government for a matter that is traditionally and appropriately within the purview of county governments--instead of submitting testimony to the Council's Planning Committee. The Legislature should not sanction this maneuver.

Voluminous testimony has been received on the Maui Island Plan, and there will be many more opportunities to testify about it. As Chair of the Planning Committee, I welcome criticism of the Maui Island Plan.

Indeed, I have issued multiple press releases and public meeting notices to invite concerned members of the public to testify. I have also offered my own critiques of and amendments to the document. The Planning Committee is the appropriate venue to debate the merits of the Maui Island Plan - not the Legislature.

4. This measure would weaken the Coastal Zone Management Act (CZMA) and the Hawai'i Environmental Protection Act (HEPA). The CZMA requires developments in the Special Management Area to be consistent with the relevant county general plan. If the general plans are denied legal effect, that requirement would be nullified. HEPA requires an environmental assessment (EA) for amendments to the county general plans. If the county general plans lack legal effect, there will be no need to seek general plan amendments, and projects will proceed without EAs.

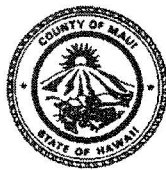
For the foregoing reasons, I oppose this measure.

cc: Maui County Delegation to the State Legislature

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

February 12, 2010

Honorable Charmaine Tavares
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Representative Jon Riki Karamatsu, Chair
Honorable Representative Ken Ito, Vice Chair
House Judiciary Committee

**SUBJECT: HB 2904 AMENDING HRS 226-58, CONCERNING COUNTY
GENERAL PLANS AND COMMUNITY PLANS**

This letter is to inform the State Legislature of the Department of Planning's opposition to HB 2904. The Department of Planning strongly urges the committee to

VOTE NO on HB 2904.

The bill could affect each county's home rule abilities in regard to the intent and implementation of their own general plans and community plans. The effect and implementation of general plans and community plans should be left up to each county council as the elected representatives of that county. The county council is also the appropriate body to resolve situations where a community plan and a zoning designation do not exactly match.


The bill could impact existing review of development projects that are currently subject to review for compliance with general plans and community plans. This would eliminate valuable tools that a county has chosen to adopt in regard to managing growth.

The new language in the proposed bill is ambiguous and will certainly lead to problems in the future administration of the law. The new language also conflicts with existing language in HRS 226-58(b)(2) that provides for general plans to contain "land use maps", "regulatory measures, standards and principles".

Honorable Charmaine Tavares, Mayor
For Transmittal to
Honorable Representative Jon Riki Karamatsu, Chair
Honorable Representative Ken Ito, Vice Chair
February 12, 2010
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Thank you for your consideration. Please feel free to contact me at 808-270-7735 to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Hunt". The signature is fluid and cursive, with a long horizontal stroke at the end.

JEFFREY S. HUNT
Director of Planning

xc: Marian Feenster, Mayor's Office
Kathleen Aoki, Deputy Planning Director
Aaron Shinmoto, Zoning Administration & Enforcement Program Administrator
Clayton Yoshida, Planning Program Administrator

JSH:atw

General File

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LAND USE RESEARCH
 FOUNDATION OF HAWAII
 700 Bishop Street, Ste. 1928
 Honolulu, Hawaii 96813
 Phone 521-4717
 Fax 536-0132



Via: JUDTestimony@Capitol.hawaii.gov

February 16, 2010

**Strong Support of HB 2904 Relating to County General Plans
 (Prohibits the use of county general and development plans from serving as,
 or replacing the county regulatory powers)**

Honorable Chair Jon Riki Karamatsu, Vice Chair Ken Ito and
 Members of the House Judiciary Committee,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF **strongly supports HB 2904**, which would amend HRS 226-58, by prohibiting the use of county general and development plans from serving as, or replacing the county regulatory powers. This bill will clarify that county regulatory powers and process (zoning ordinances and land use and subdivision rules and regulations) will take precedence, when various county plans, zoning ordinances and land use and subdivision rules and regulations do not identically match each other.

BACKGROUND. Under the land use regulatory process explained in HRS Section 226-58, the county general and development plans contain "objectives" to be achieved and "policies" to be pursued" and contain "priorities and actions" to carry out such policies and objectives. While the county plans set forth these objectives, policies, priorities and actions, they are not specific implementation instruments, but function as guides to implementing the county zoning ordinances, and county land use and subdivision regulations.

The county regulatory powers and process (zoning ordinances and land use and subdivision regulations), are the specific land use instruments to implement the objectives, policies and implementation priorities and actions set forth in the county general plans, development plans and various other plans.

We understand that this legislation was meant to confirm that the county regulatory powers and process (zoning ordinances, land use and subdivision rules and regulations) would take precedence over the general guidelines set forth in the various county plans, especially in situations where the various county plans are not exactly identical to each other, as well as when the various government land use designations do not identically match each other, or do not identically match with county zoning ordinances and land use and subdivision rules and regulations.

While this is currently a problem on Maui, it is a **state-wide issue**, because **HRS §226-58** provides the state-wide definition and scope of County General Plans, and the above-referenced “conformity” interpretation and problems could spread to other counties and stop or delay and needed public infrastructure, affordable housing and other residential housing projects and responsible economic development projects.

EXAMPLES.

In a situation where an **Agricultural farming operation** is proposed on land in Maui county which is:

- State Land Use Classification – **Agriculture** (Agriculture is an allowed use)
- Community Plan – **Open Space** (Agriculture is an allowed use)
- Zoning – **Rural** (Agriculture is an allowed use)
- Agricultural use is **allowed** within all three designations on Maui. However, a subdivision for an Agricultural farm would be **denied**, based on the fact that all the three land use designations do not “identically match.” Based on Maui’s current interpretation that the General Plan and all other plans and land use designations should conform with each other – “**If the three designations don’t match, then one or more of the designations would need to be amended.**”
- Thus, to subdivide and operate a farm on Maui, a farmer would be required to change two of the land use designations until they are “identical” and “exactly match.” It could take years and thousands of dollars to obtain such approvals.

The following problems were recently described by the Maui County Departments of Planning and Public Works. Our summary of their presentation is as follows:

In a situation where a **School** is proposed on land in Maui county which is:

- State Land Use Classification – **Urban** (School is an allowed use)
- Community Plan – **Public-Quasi-Public** (School is an allowed use)
- Zoning – **R-1 Residential** (School is an allowed use)
- “Although school use is allowed within all three designations, a conformity requirement **would not allow a subdivision (for a school) to be approved.**” Based on Maui’s current interpretation that the General Plan and all other plans and land use designations should conform and “identically match” with each other – “**If the three designations don’t match, then one or more of the designations would need to be amended.**”
- Thus, to build a school on Maui, the State Department of Education would be required to change two of the land use designations until they are “identical” and “exactly match.” This could take years and thousands of taxpayer dollars to obtain such approvals.

Yet another example: If **single family residential home** is proposed on land which is:

- State Land Use Classification – **Urban** (Single family residential is allowed)
- Community Plan – **Single Family Residential** (Single family residential is allowed)
- Zoning – **A-2 Apartment District** (Single family residential is allowed)
- “Although single family residential is allowed within all three designations, a conformity requirement would not allow a subdivision (for a residence) to be approved.” Based on Maui’s current interpretation that the General Plan and all other plans and land use designations should conform and “identically match” with each other – “**If the three designations don’t match, then one or more of the designations would need to be amended.**”
- Thus, in order to build a single family home on Maui, current landowners would be required to change two of the land use designations until they “identically match.” It could take years and thousands of dollars to obtain such approvals.

CONCLUSION. LURF is in **strong support of HB 2904**, because it provides the legislative direction and guidance necessary to resolve situations where the county plans do not identically match each other, or when county officials would require that all of the state and county land use designations identically match each other. HB 2904 will confirm the intent that the various county plans serve as guidelines, and that they should not serve as, or replace the county regulatory powers. While HB 2904 is not a Construction Industry Task Force bill, it is consistent with the intention and recommendations of the Legislature’s SCR 132 (2009) Task Force.

We appreciate the opportunity to express our **support for HB 2904**.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 16, 2010

Honorable Jon Riki Karamatsu, Chair
Committee on Judiciary
State Capitol, Room 325
Honolulu, HI 96813

RE: HB2904 Relating to County General Plans

Chair Karamatsu and Members of the Committee on Judiciary:

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 strongly supports HB 2904, which would amend HBS 226-58, by prohibiting the use of county general and development plans from serving as, or replacing the county regulatory powers. This bill will clarify that county regulatory powers and processes (zoning ordinances and land use and subdivision rules and regulations) will take precedence, when various county plans do not identically match each other; and when the various government and county plans do not identically match the zoning ordinances and land use and subdivision rules and regulations

Under the land use regulatory process explained in HRS Section 226-58, the county general and development plans contain “objectives” to be achieved and “policies” to be pursued” and contain “priorities and actions” to carry out such policies and objectives. While the county plans set forth these objectives, policies, priorities and actions, they are **not** specific implementation instruments, but function as **guides** to implementing the county zoning ordinances, and county land use and subdivision regulations.

The county regulatory powers and processes (zoning ordinances and land use and subdivision regulations), are the specific land use instruments to implement the objectives, policies and implementation priorities and actions set forth in the county general plans, development plans and various other plans.

BIA-Hawaii is in **strong support of HB 2904**, because it provides the legislative direction and guidance necessary to resolve situations where the county plans do not identically match each other, or when county officials would require that all of the state and county land use

designations identically match each other. HB 2904 will confirm the intent that the various county plans serve as guidelines, and that they should not serve as, or replace the county regulatory powers. While HB 2904 is not a Construction Industry Task Force bill, it is also consistent with the intention and recommendations of the Legislature's SCR 132 (2009) Task Force.

Thank you for the opportunity to express our views.

A handwritten signature in cursive script that reads "Karen I. Nakamura".

Chief Executive Officer
BIA-Hawaii

February 13, 2010

Honorable Representative Jon Riki Karamatsu, Chair
Honorable Representative Ken Ito, Vice Chair
and Members
Judiciary Committee
House of Representatives
State Capitol
State of Hawaii
Honolulu, Hawaii

Re: House Bill No. 2904, A Bill For An Act Relating to County General Plans.

Thank you for the opportunity to provide testimony on House Bill No 2904. I strongly support the bill as it will clarify the importance of maintaining the hierarchy of the land use planning process where a County General Plan provides broader directional statements rather than mandates specific land use regulation.

I believe the bill will have a positive result in terms of clearly defining the role of general plans and development plans as visions of community goals which then guide the formulation of land use regulatory provisions. The bill is a positive step in potentially reducing litigation pertaining to use of general guidelines as regulatory and administrative land use provisions.

Sincerely,



Clyde Murashige AICP
11 Wahelani St.
Kula, HI 96790

THE COMMITTEE ON JUDICIARY

Representative Jon Riki Karamatsu, Chair, Representative Ken Ito, Vice Chair

I **OPPOSE** HB 2904 for the following reasons:

- The proposed provision to amend §226-58(b)(2) HRS is unnecessary and would serve to confuse a process that has long been successfully followed by the counties when planning “objectives to be achieved and policies to be pursued [] for the coordinated development of” each county and regions within the counties. §226-58(b)(1).
- Even a cursory review of the testimony submitted to the Committee on Water, Land and Ocean Resources reveals that much of it is less than factually accurate, and exposes a disturbing interpretation of the desired consequence of the proposed amendment – the evisceration of the local community planning process. This is the single most vital avenue our communities have to devise their own future and should not be subjected to the influence of special interests outside of the established public review process.
- Moreover, the testimony submitted confirms that the proposed amendment targets a specific County – Maui – and does not address a statewide concern. With respect to Maui County, this Committee should be aware that in August, 2009, the Departments of Public Works and Planning provided the various Planning Commissions in Maui County with a thoughtful and comprehensive presentation on ways in which to streamline the permitting process by focusing on the consistency of the uses allowed under state, county and community plan zoning, eliminating the costly and cumbersome requirement to apply for a CIZ (change in zoning), DBA (district boundary amendment), and/or a community plan amendment now required to reach “conformity.”
- The resulting proposed Bill for an Ordinance amending Title 18.04 of the Maui County Code that would allow “consistent uses” within all three zoning districts and eliminate the need for conformity is now before the Maui County Council.
- Lastly, a review of the testimony previously submitted reveals that much of it is not only blatantly self-dealing, but essentially asks the legislature to override the intent of the Maui Island Plan which was prepared after full public review and input. It should not be the business of the state legislature to heed the monetary interests of those seeking personal gain at the cost of a community’s vision for its future.

In sum, the proposed amendment would have a negative impact on existing, well-established state and county planning procedures. I **OPPOSE HB 2904** and urge this Bill be filed.

Thank you for this opportunity to testify to your Committee.

Sally Kaye
P.O. Box 631313
511 Ilima Avenue
Lana‘i City, HI 96763