



February 14, 2012

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Committee on Water, Land, and Housing

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Committee on Public Safety, Government Operations, and Military Affairs

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Committee on Judiciary and Labor

Opposition to SB 3069, Relating to Land Use Enforcement. (Allows citizen law suits against a person or party in violation of land uses permissible in the use classification districts established by the Land Use Commission; establishes LUC enforcement authority, designation of an enforcement officer or agency; enforcement proceedings and administrative fines.)

Wednesday, February 15, 2012, 10:50 a.m., in CR 016.

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 opposes SB 3069**, which is unnecessary because it is duplicative with existing administrative and legal alternatives and remedies; it is inconsistent with the State Planning Act and Hawaii Revised Statutes ("HRS"); and without any justification in the bill - changes the primary role of the State Land Use Commission ("LUC") to a law enforcement agency.

SB 3069. This bill creates a new section within Chapter 205 relating to citizen lawsuits; changes the roles and duties of the Land Use Commission ("LUC") – giving the LUC “the power, authority and discretion” to become a *law enforcement agency*, including the right to act in the new roles of the *police* (including a new right to conduct warrantless searches of private property), *prosecutor, judge and jury* (by investigating, prosecuting and punishing violators of Chapter 205); the authority to hire or contract for law enforcement officers or delegate its new law enforcement roles and duties to a law enforcement officer, or other organization or agency; and the LUC may designate any appropriate law enforcement officer or agency to act on behalf of the LUC with respect to county zoning violations and enforcement proceedings and report back to the LUC.

LURF's Position. LURF strongly opposes this measure, based on, among other things:

- **SB 3069 lacks a public purpose statement or a description of a major problem which would justify giving the LUC new law enforcement powers, including the authority to engage in warrantless searches of private property.**
- **The measure would alter the LUC's focus to include handling citizen lawsuits; changing the LUC to a new law enforcement agency with the combined powers of the *police, prosecutor, judge and jury*; and to designate law enforcement officers or agencies to act on behalf of the LUC with respect to in county zoning violations.** Since the LUC was established in 1961, its primary role has been to ensure that areas of state concern are addressed and considered in the land use decision-making process (not as a law enforcement agency). The LUC establishes the district boundaries for the entire State; acts on petitions for boundary changes submitted by private landowners, developers and the state and county agencies; and also acts on requests for special use permits within the agricultural and rural districts." The primary role of the LUC should be land use planning, and not as a law enforcement agency, which acts as the *police, prosecutor, judge and jury* for violations of Chapter 205 and county zoning violations.
- **The citizen lawsuit portion of SB 3069 is unnecessary because it is duplicative of current laws and LUC rules.** Currently, there are several alternatives to challenge and/or enforce matters involving the LUC, including, but not limited to the following:
 - ✓ **HRS §205-12, already provides for enforcement by the counties.** State law recognizes "home rule" and the authority and enforcement capabilities of the counties in the areas of compliance with planning, zoning, building codes and other health and safety requirements relating to the conservation, agricultural rural, and urban districts. HRS §205-12 provides that the appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition relating agricultural districts...and shall report all violations to the LUC.
 - ✓ **HRS §205-13 already provides for penalties for violations of Chapter 205.** Existing law provides that any person who violates any provision under section 205-4.5, or any regulation established relating thereto, shall be fined not more than \$5,000, and any person who violates any other provision of Chapter 205, or any regulation established relating thereto, shall be fined not more than \$1,000. If any person cited for a violation of Chapter 205 fails to remove such violation within six months of such citation and the violation continues to exist, such person shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation. Prior to the issuance of any citation for a violation, the appropriate enforcement officer or agency shall notify the violator and the mortgagee, if any, of such violation, and the violator or the mortgagee, if any, shall have not more than sixty days to cure the violation before citation for a violation is issued.

- ✓ **LUC Rule §15-15-93 already provides for an “order to show cause” hearing and allows the LUC to impose the “death penalty” of reversion of the property to its former land use classification or to a more appropriate classification.** The LUC rules already provide for the enforcement of conditions, representations or commitments, by allowing any party or interested person to file a motion with the commission requesting an issuance of an order to show cause upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of the petitioner. Whenever the LUC has reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, the LUC is required to issue and serve upon the party or person bound by the conditions, representations, or commitments, an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification. The LUC is required to conduct a hearing on an order to show cause; and if the proper criteria are met, it shall amend its decision and order to incorporate the order to show cause by including the reversion of the property to its former land use classification or to a more appropriate classification.

- ✓ **The new citizen suit provision is unnecessary, as citizens and organizations have filed many lawsuits over the years relating to the LUC.** Since the 1970’s Hawaii’s courts have handled many lawsuits relating to LUC and Chapter 205.

- **The proposed new enforcement functions will substantially increase the LUC’s costs of operation; however, no appropriation is requested.** The LUC does not have the staff, training or funding to initiate the major law enforcement functions envisioned by this bill. The bill also lacks any information, estimates, or an appropriation request relating to the additional costs which the LUC will bear as a result of its new law enforcement duties, the employment of law enforcement personnel and the costs of litigation relating to the citizen lawsuits.

For the reasons stated above, LURF is in **opposed to SB 3069**, and respectfully urges your Committees to **hold this bill**.

Thank you for the opportunity to present our testimony regarding this matter.