

NEIL ABERCROMBIE
GOVERNOR



LATE TESTIMONY

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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 20, 2013
10:00 a.m.
State Capitol, Conference Room 016

SB 1026 RELATING TO THE LAND USE COMMISSION

Senate Committee on Judiciary and Labor

The DOT **supports** S.B.1026 which is an Administration bill.

As it currently stands, the Land Use Commission only recourse for a violation of its decision and order is to have the land that was approved for rezoning revert back to its original classification. Under this bill, the Land Use Commission will have other avenues for enforcing violations by utilizing more efficient and varied methods of dealing with these situations. This will provide the Land Use Commission the option of providing more appropriate means to address the violation.

Thank you for the opportunity to testify on this matter.



LATE TESTIMONY

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 20, 2013

TO: HONORABLE CLAYTON HEE, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **SUPPORT OF S.B. 1026, RELATING TO THE LAND USE COMMISSION.**
Provides the Land Use Commission with more efficient and varied methods of dealing with situations where a petitioner has violated the conditions contained in a decision and order.

HEARING

DATE: Wednesday, February 20, 2013
TIME: 10:00 a.m.
PLACE: Capitol Room 016

Dear Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in **support** of S.B. 1026, Relating to the Land Use Commission, proposes to amend Section 205-4, Hawaii Revised Statutes, by providing the Land Use Commission (LUC) with the power to amend, revise, or modify a decision and order granting a district boundary amendment where there has been a finding that a petitioner or its successors or assigns has not adhered to the conditions of the commission.

GCA supports S.B. 1026, as it would provide the Land Use Commission with more efficient and varied methods of dealing with situations where landowners may not be in compliance with the conditions contained in a decision and order. Currently, the only remedy available to the LUC for non-compliant landowners is a reversion to its original classification. This measure makes economic sense due to the extended period of time it takes for a development to be fully built out and given the numerous state and county permitting regulatory requirements that a developer must comply with.

Over the years, the LUC's detailed timing deadlines and other specific requirements and conditions have been at issue. Additionally, questions have been raised regarding the LUC's continued monitoring and enforcement of conditions which involve detailed development issues and requirements which the counties are responsible to establish and enforce under Chapter 205, Hawaii Revised Statutes and county laws. This measure provides better assurance that a development can reach its full potential. For these reasons, GCA respectfully requests that this measure be passed out by this Committee.

Thank you for this opportunity to present our views on this measure.



Sierra Club Hawai'i Chapter

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SENATE COMMITTEE ON JUDICIARY AND LABOR

February 20, 2013, 10:00 A.M.
(Testimony is 2 pages long)

TESTIMONY IN OPPOSITION TO SB 1026 WITH PROPOSED AMENDMENT

Aloha Chair Hee and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, respectfully *opposes* SB 1026. This bill would put pressure on the Land Use Commission to avoid enforcing existing promises and representations made by the developer in order to get approval to proceed forward.

This measure is misdirected. If anything, the LUC should be required to strictly enforce its conditions in a timely fashion because all too frequently the LUC fails to do so.

As an initial matter, it should be noted that the LUC already has the authority to amend its conditions. The LUC uses this authority frequently.

On the other hand, the LUC has no particular obligation to enforce its own conditions unless a petition is brought. The Turtle Bay case is a good example of how this works.¹ In 1986, the Land Use Commission reclassified 236 acres in Kahuku based on a fifteen year market analysis and representations by Kuilima Development Company that the project would be completed by 2000.² Kuilima repeatedly promised that thousands of new jobs would be created "over the next 20 years." Dozens of residents testified in support of the project based largely on the promise of new jobs and affordable homes.

Unfortunately, Kuilima misled the Commission. Upon receiving this reclassification, ownership interest in the property exchanged hands several times. Little or no development on the property occurred. *No* new jobs. *No* new affordable housing.

¹ In the spirit of complete disclosure, Robert Harris previously represented Defend O'ahu Coalition, a petitioner that requested the Land Use Commission consider this matter. He has no current relationship with Defend O'ahu Coalition.

² The Environmental Impact Statement indicated the project would be completed by 1994-1995.

Over twenty years elapsed. Few of the conditions imposed by the Land Use Commission were followed. For example, it is relatively uncontested that:

- A 4.8 acre park at Kawela Bay was never dedicated to the County;
- A 2-acre privately owned park was never opened to the public;
- Full-service hotels were never finished;
- Low and moderate income housing was never built;
- Improvements to Kamehameha Highway were never finished; and
- Continuous pedestrian access along the shoreline was never provided.

A petition was brought to enforce the LUC's conditions in 2008. To date, the LUC still has yet to rule on this petition.

As a result of the LUC's failure to enforce its conditions, critical services were not provided to the community. This has a real and measurable impact on long term planning. How can others determine if the project will ever proceed forward? What if additional development projects offer the same services?

If this bill were passed, one could see the LUC being pressured simply to eliminate or substantially alter the conditions imposed at the time of development. This would cause a lack of trust in the process and a fear that representations made at the time of land reclassification would simply be broken later. In short, not only is this bill unnecessary, but it addresses the wrong problem.

To the extent this measure were to continue, we suggest the following amendment on page 2:

; provided that, if the commission finds that a portion of the property has already been developed according to representations, the commission may require the petitioner to subdivide the property and revert the undeveloped portions of the property back to the land's former land use classification as well as seek other penalties as specified under Chapter 92.

Mahalo for the opportunity to testify.