

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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February 24, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair,
and Members of the Committee on Judiciary and Labor
The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Ways and Means
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Tokuda, and Committee Members:

Subject: Senate Bill No. 2355, SD1
Relating to the Land Use Commission

The Department of Planning and Permitting (DPP) offers **comments** on Senate Bill No. 2355, SD1, which provides the Land Use Commission (LUC) authority to modify boundary amendment approvals and special permit approvals, and to fine parties who fail to comply with conditions.

The Bill proposes to gauge a project's progress by defining "substantial commencement" of infrastructure and private improvements that are usable or habitable. The term "substantial commencement" remains both vague -- posing difficulties to determine and enforce -- as well as overly harsh, in that "commencement" would include completion of all required infrastructure.

Rather than allowing "interested parties" to participate in a reconsideration proceeding, perhaps the Bill should refer to "intervening parties." The LUC already has the means to decide if an intervening party has standing under Section 205-4(e) with regards to boundary amendments. Perhaps the same approach should be used in the reconsideration process.

Section 205-6(g), does not differentiate between projects greater than 15 acres and less than 15 acres. Projects less than 15 acres in size are reviewed and decided by the county planning commissions. Therefore, Senate Bill 2355, SD1, should be

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Re: SB2355 SD1
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revised to involve the planning commission in any reconsideration process on proposals they approved.

Thank you for the opportunity to testify.

Very truly yours,



George I. Atta, FAICP
Director

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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Testimony to the Senate Committees on Judiciary & Labor; and Senate Committee on Ways & Means Wednesday, February 24, 2016 10:00 a.m. State Capitol - Conference Room 211

RE: SB 2355 SD1: Relating to Land Use Commission.

Dear Chairs Keith-Agaran & Tokuda, Vice-Chairs Shimabukuro & Dela Cruz, and members of the Committees:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA Hawaii is opposed to S.B. 2355 SD 1, which would authorize the state land use commission to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes, by motion of the commission or of any interested party. Allows the land use commission to fine parties who fail to comply with conditions of direct state concern after they have been notified of violations of the conditions. Adds a definition for "substantial commencement" in section 205-4(g), HRS.

The Bill finds that additional tools are necessary for the Land Use Commission to enforce conditions and requirements of land use district boundary amendments and special permits in a manner that ensures that the interests of the State, counties, and public are protected. As such, the bill proposes to:

- Insert a definition for the term "substantial commencement" in section 205-4(g), Hawaii Revised Statutes, to mean completion of all public improvements and infrastructure required by conditions imposed, both within and outside the project area, and completed construction of twenty percent of the physical private improvements such that they are usable or habitable.
- Insert language to allow the Land Use Commission on its own motion or on the motion of any interested party to vacate, void, modify, or amend boundary amendment approvals and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes.
- Insert language to allow the Land Use Commission on its own motion or on the motion of any interested party to vacate, void, modify, or amend any special permit and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes.
- Require conditions of direct state concern relating to boundary amendments and special permits to include conditions that protect the state marine and terrestrial environment and protect archaeological features and burial grounds, and conditions relating to the public trust doctrine.
- Increase the maximum fine for failure to substantially meet the conditions of direct state concern relating to boundary amendments and special permits from \$10,000 to \$50,000 per day.

The two-tiered land use entitlement system in Hawaii is cumbersome and complicated. Viewing the State LUC reclassification process independent from the Counties zoning process gives policy makers the impression that each system is independent from each other, and thus forcing compliance at the State level is necessary to insure the State imposed conditions are implemented.

The land use entitlement process has morphed over time and created more and more risks and uncertainty. There needs to be a recognition and acceptance of the roles and responsibilities of both the State and Counties in the entitlement process.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County. The State's role in the process should be limited to "State" interests such as natural resource management, maintaining and protecting our water resources, and regional transportation and public educational issues. If there are no issues of direct state concern in the County's plans for directed growth, the State Land Use Commission should reclassify these lands to urban once the County plans have been adopted. Once the LUC reclassifies lands based on the County's identification of future growth areas, the County's would be responsible for rezoning the lands based on their respective plans.

The proposed bill would "vacate" the LUC's reclassification action at any point in a projects development if there was a "direct state concern." It also would define substantial commencement as completion of all public improvements and infrastructure required by the LUC. It would appear that based on this definition all public infrastructure (i.e. roads, utilities, drainage, etc.) and improvements (i.e. public parks, schools, fire stations, etc.) would need to be constructed first to meet the new definition of "substantial commencement." This would be difficult for large master planned projects or any project that is phased in over time. Requiring all public infrastructure and improvements places a significant financial burden on the project with little or no revenue being generated.

With the median price of houses on Oahu at \$730,000.00, elected officials need to seriously consider how proposed changes to the existing land use entitlement process will either help or hurt Hawaii's residents. We are opposed to SB 2355 SD 1, as it would create too much risk and uncertainty in the land use entitlement process.

Thank you for the opportunity to express our views on this matter.



February 23, 2016

Senator Gilbert S.C. Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Strong Opposition and Proposed Amendments to SB 2355, SD1, Relating to the Land Use Commission. (Authorizes the Land Use Commission to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes, by motion of the commission or of any interested party. Allows the Land Use Commission to fine parties who fail to comply with conditions of direct state concern after they have been notified of violations of the conditions. Adds a new definition for "substantial commencement" in section 205-4(g), HRS.)

JDL/WAM Hearing: Wednesday, February 14, 2016, 10:00 a.m., CR 211

The Land Use Research Foundation of Hawaii (LURF) is 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 appreciates the opportunity to express its **strong opposition to the current version of SB 2355, SD1, and to offer comments and amendments.** LURF's opposition is based on the following:

- **This bill is premature – The State Office of Planning (OP) has worked with stakeholders to prepare a Draft State Land Use System Review Report, dated May 2015, which concluded that *“future efforts will need to work with stakeholders to examine a range of options to craft system improvements that will address the concerns and***

interests of stakeholders in achieving shared community goals and system objectives.”

- **SB 2355, SD1, is not consistent with the current law relating to the two-tiered (State/County) system of land use approvals established by Hawaii Revised Statutes (“HRS”) Chapter 205, in particular, HRS § 205-12, which provides that the counties shall enforce the land use classification districts adopted by the LUC and the restrictions on use and conditions.**
- **This measure is not consistent with the intent and application of HRS Chapter 205 and its two-tiered (State/County) government land use approval process; the state land use district boundary amendment process; the county processes relating to general plans, development/sustainable communities’ plans, zoning, subdivision, and other permits;**
- **This bill doesn’t include any introductory preamble or facts showing the magnitude of harm to be addressed and lacks a purpose clause – that is because it is so illegal and improper, that it cannot be justified.**
- **SB 2355, SD1 is really just an “end run” to avoid complying with the Hawaii Supreme Court in the recently decided *Aina Lea* case;¹ is not consistent with the long line of Hawaii case law relating to the LUC; and inconsistent with land use legal treatises (including “*Regulating Paradise – Land Use Controls in Hawaii*”, Second Edition by David L. Callies);**
- **This measure ignores the reality of development projects and enforcement of conditions; the reasons for delays in compliance with conditions (including force majeure occurrences and permitting delays, etc.); and fails to recognize the very important fact that the counties presently possess staffing, funding, expertise and experience to address such matters; and**
- **This bill will generate legal proceedings, lawsuits and additional costs for the State – it will cause a substantial increase the LUC’s workload, personnel and budget, and will increase the time and staff demands for other state agencies. Another unfortunate consequence is that it would allow repeated quasi-judicial hearings that would paralyze development projects which could deliver needed affordable housing.**

¹ *DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC*, 339 P.3d 685 (November 25, 2014)

- **LURF’s Comments and Suggested Revisions:** If the desire is to pass a portion of this measure, LURF would respectfully recommend the following:
 - **DELETE** the new definition of “substantial commencement,” because it is unreasonable and inconsistent with the currently used definition of substantial commencement and judicial decisions in Hawaii, including the *Aina Lea* decision by the Hawaii Supreme Court (p. 6);
 - **ADD** the legal holding from the *Aina Lea* decision that the LUC cannot void, modify or amend any boundary amendment, if the property owner has “substantially commenced” development of the property (p. 6);
 - **DELETE** the provision allowing “any interested party” to make a motion to vacate, modify or amend any boundary amendment of condition of state concern; and limit it to the parties to the original petition for boundary amendment. Other parties already have a right to bring a lawsuit relating to the violation of conditions. (pp. 6-7 and 12);
 - **ADD** that the only parties that are authorized to bring an action to void, modify or amend any boundary amendment, are the LUC, or any person or party to the original proceedings that resulted in the original reclassification (pp. 6-7 and 12);
 - **RETAIN** the provisions that describe the LUC’s “*conditions of direct state concern*” (pp. 6-7, and 12);
 - **DELETE** the provisions relating to \$50,000 per day fines (pp. 7-8, and 13);
 - **DELETE** the “*end-run*” around the Hawaii Supreme Court’s *Aina Lea* decision; delete the provision which provides that the LUC is not obligated to repeat, comply with, and satisfy all of the statutes, and its own boundary amendment rules and procedures which are required to change a property’s land use classification (p. 8);
 - **ADD** the holding from the *Aina Lea* case - that if vacating, voiding, modifying or amending any boundary amendment, the LUC must follow its own laws, rules and procedures to amend a district boundary classification (p. 8);
 - **ADD** the legal requirements from the *Aina Lea* case that to vacate, void, modify or amend any boundary amendment, “the LUC must prove that there has been a failure to substantially comply with the condition” and that such failure significantly and adversely impacts compelling areas of direct state concerns (p. 8); and
 - **ADD** requirements, as stated in the *Aina Lea* decision, that the LUC must make specific findings of facts and conclusions of law to justify its decision to vacate, void, modify or amend any boundary amendment (p. 8). and

SB 2355, HD1. This bill proposes to:

- Authorize the State Land Use Commission (LUC) to amend, modify, or vacate boundary amendment approvals, special permit approvals, and *conditions of*

direct state concern granted pursuant to Chapter 205, Hawaii Revised Statutes (HRS), by motion of the LUC, or by motion of any interested party.

- Provides that *conditions of direct state concern* shall include, but not be limited to:
 - (1) Conditions that relate to or require the installation of state infrastructure, including but not limited to public schools, state highways, or state facilities; and
 - (2) Conditions that promote or protect specific state policies, including but not limited to the preservation of state agricultural lands, increasing state agricultural production, protecting or enhancing the state marine and terrestrial environment, protecting traditional and cultural practices, and protecting archaeological features and burial grounds, and conditions relating to the public trust doctrine.
- Allows the LUC to impose finer of not more than \$50,000 a day on parties who fail to substantially meet the *conditions of direct state concern* after they have been notified of violations of the conditions.
- Adds the following new definition for "substantial commencement" in section 205-4(g), HRS, which is **unreasonable and inconsistent with the currently used definition of substantial commencement, the Aina Lea decision, and judicial decisions in Hawaii:**

"For the purposes of this subsection, "substantial commencement" means the completion of all public improvements and infrastructure required by conditions imposed pursuant to this chapter, both within and outside the project area, and completed construction of twenty per cent of the physical private improvements such that they are usable or habitable."
- Includes an **"end-run" around the Hawaii Supreme Court's Aina Lea decision**, by exempting the LUC from complying with and satisfying all of the statutes, and its own boundary amendment rules and procedures that are required to change a property's land use classification.

Background. The LUC was intended to be a long-range land use planning agency guided by the principles of HRS 205-16 and 17. Therefore, pursuant to HRS Chapter 205, the LUC is charged with grouping contiguous land areas suitable for inclusion in one of the four major State land use districts (urban, rural, agricultural and conservation); and determining the land use boundaries and boundary amendments based on applicable standards and criteria.

After the LUC approves a district boundary amendment for an urban land use (with certain conditions), it is the **counties' responsibility** to control the specific uses, development and timing through detailed county ordinances, zoning, subdivision rules and other county permits.

The counties review and approve/disapprove the zoning (with additional specific conditions); approve or disapprove subdivisions (with additional specific conditions); and approve or disapprove other development permits (with additional specific

conditions) to address health, safety and environmental issues related to the development. The various county development approval and permitting processes require review, approval and imposition of specific conditions by county councils and/or planning commissions, as well as the county administrations and numerous county departments, which employ hundreds of employees, planners, architects and engineers who are knowledgeable and experienced with health, safety and environmental requirements and the nature of development and associated delays.

LURF understands that in some cases, the City and County of Honolulu (City) and some of the other counties have not imposed strict “deadline” dates in their zoning approvals, and instead have addressed the development of master-planned projects in a sequential manner; by reasonably requiring the satisfaction of certain specific conditions before subsequent permits will be granted.

Over the years, issues have arisen relating to the LUC’s imposition of detailed timing deadlines and other specific requirements and conditions, as well as the LUC’s continued attempts to monitor and enforce conditions which involve detailed development issues and requirements which the **counties** are rightfully responsible to establish and enforce under HRS Chapter 205 and county laws.

LURF’s Position. Given the statutory mandate that the **counties** be afforded the responsibility to control and enforce the specific uses and development relating to boundary amendments once approved by the LUC, together with the fact that the counties are in fact the recognized enforcement agency for LUC district boundary amendments and conditions relating thereto, LURF **strongly opposes SB 2355, SD1**, as explained in more detail below:

- 1. This bill is premature – The State Office of Planning (OP) has prepared a Draft State Land Use System Review Report, dated May 2015.** OP anticipates convening stakeholders to work further on the State land use system, and its *Summary Observations and Conclusions*, state, in part: *“Future efforts will need to work with stakeholders to examine a range of options to craft system improvements that will address the concerns and interests of stakeholders in achieving shared community goals and system objectives.”*
- 2. SB 2355, SD1, is Not Consistent with the Two-tiered (State/County) System of Land Use Approvals Established by HRS Chapter 205.** This bill would allow the LUC, based solely on its own findings of failure to substantially conform with conditions or requirements of the Commission’s order, the right to go back and unilaterally amend existing conditions or legally challenge and impose additional conditions on a project that may have subsequently been granted county zoning, county subdivision approval, county building permits, and on projects which may even be already developed.

After an LUC reclassification, and boundary amendment and reclassification, it is the **counties'** responsibility to thereafter enforce the LUC conditions. The relevant HRS provision is as follows:

§205-12 Enforcement. *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 to agricultural districts under section 205-4.5 and shall report to the commission all violations.*

The counties are, in fact, the recognized enforcement agency for LUC district boundary amendments and requirements/conditions relating thereto. The counties possess the experience, expertise, capability and staffing to not only enforce the LUC conditions, but already do so for all county zoning permits, rules and regulations. The LUC lacks the necessary experience, expertise, capability and staffing to equitably enforce conditions on a statewide basis. LURF understands that the LUC staff is composed of only five staff members. Any effort to empower the LUC to take on and perform the proposed enforcement role would be duplicative, a waste of limited government resources, and result in the need for additional staff and funding.

- 3. This Measure is Not Consistent with Currently Existing Hawaii Administrative Rules (HAR) Section 15-15-93.** Section 15-15-93, HAR, already contains an order to show cause provision which provides an adequate means of addressing the failure to substantially conform to the conditions or requirements of a district boundary amendment. Pursuant to that provision, the LUC, following an evidentiary hearing on the matter, has the authority to decide whether the property should revert to the former land use classification, or to a more appropriate classification. Any modification or repeal of a permit or entitlement (e.g., downzoning) must therefore be based on a process or evidentiary hearing **which is at the very least, equivalent to that contained in HAR 15-15-93, to prove and justify the removal or amendment of any permit right previously granted.**

In short, the process required to change a land use classification of property should be the same for any party, including the LUC. Any petitioner desirous of changing a property's land use designation should be required to demonstrate why the property should be more appropriately designated in another land use district classification. This process should consider the petition's conformance with the LUC's decision-making criteria and its consistency with state land use district standards.

The LUC's unilateral and unjustified actions are not sufficient to justify a change of designation and may even amount to an illegal taking of the petitioner's property.

- 4. This Bill is Not Consistent with the Intent and Application of HRS Chapter 205 and the Two-tiered (State/County) Government Land Use Approval Process.** Contrary to prudent land use planning principles and law, this bill would allow the LUC to re-open any LUC decision and order relating to boundary amendment reclassifications, based on **any request**, and arguably vague and biased findings. As a result, this bill may therefore generate legal proceedings and lawsuits that would paralyze projects and result in more unnecessary costs and time for the LUC, its staff and other state agencies.

Most State agencies and all of the counties operate with the understanding that the LUC should perform its duties under the law and take a broad focus of State land use issues and the four State land use districts, while deferring the issues relating to specific project development details and timing, specific conditions and enforcement to the counties. The more itemized, specific and detailed the LUC conditions are, the more chance of conflicts with county laws, procedures and policies, thereby creating greater uncertainty in the land use process.

This position conforms with HRS Chapter 205; the state land use district boundary amendment process; the county processes relating to general plans, development/sustainable community plans, zoning, subdivisions, and other permits; and is also consistent with Hawaii case law, land use legal treatises (including *“Regulating Paradise – Land Use Controls in Hawaii”*, Second Edition, by David L. Callies); and the recent Hawaii Supreme Court decision in the *Aina Lea* case.

- 5. SB 2355, SD1, Directly Contradicts the Hawaii Supreme Court’s Decision in the Aina Lea Case.** The Hawaii Supreme Court in *Aina Lea* essentially ruled that if *“substantial commencement”* of use of the land for the proposed development has not begun, the LUC could revert the land to its former classification, however, if the landowner had *substantially commenced* use of the land for the development, the LUC must comply with and satisfy all of the statutes, and its own boundary amendment rules and procedures (including HRS 205-4, 16, and 17) in order to change a property’s land use classification.

The amendment to HRS Section 205 now being proposed by this bill, however, directly contradicts the Hawaii Supreme Court’s decision in *Aina Lea*, as it would allow the LUC to change a property’s land use classification under the vaguest of criteria, based on its own biased findings, literally at any time, and for any reason, regardless of whether the development has substantially commenced,” as defined under Hawaii case law and the LUC’s prior interpretation.

6. This Measure Ignores the Reality of Development Projects, County Enforcement of Conditions, the Reasons for Delays in Compliance with Conditions and the Expertise and Experience of the Counties to Address Such Matters.

a. Determinations as to whether there has been a failure to “substantially conform” to conditions or requirements of an amendment or permit should be made by government officials with expertise and experience in planning and development. Given their extensive expertise and experience, the appropriate county officials who understand the planning and development process would be in the best position to determine whether “there has been a failure to substantially conform with the conditions or requirements of the order granting the special permit.” Such determinations should not be made at a later date by the LUC, or by a court as a result of a lawsuit.

b. Any determination as to whether there has been a failure to substantially meet conditions must address the reality of development delays which are beyond the control of the land owner or developer. It is common knowledge that many master-planned projects or areas that have developed (or are still being developed) over the span of many years result in very viable and sustainable projects which provide affordable housing and jobs for Hawaii’s residents (Mililani, Kakaako, the Second City of Kapolei, etc.). Development delays may nevertheless occur based on the following:

- 1) *Force Majeure* (“greater force”).** These are actions that cannot be predicted or controlled, such as war, strikes, shortage of construction materials or fuel, etc., government action or inaction, or being caught in a bad economic cycle; and which include “Acts of God”, which are unpredictable natural events or disasters, such as earthquakes, storms, floods, etc.
- 2) Certain permit conditions can also actually delay projects.** There are instances where a developer is unable to commence development until a certain condition is met, and sometimes the satisfaction of that condition is dependent upon the action of a third party, including government agencies, over which the developer has no control.
- 3) This bill will likely have a negative impact on project financing.** Lenders will not be agreeable to provide funding for major projects in Hawaii given the potential that boundary amendments may be modified or vacated at what will essentially be the LUC’s unilateral discretion. Investors will likewise be hesitant to commit to financing projects for which entitlements may be amended or repealed due to what the LUC finds to be non-conformance of a condition or requirement.

- 7. This bill will generate legal proceedings, lawsuits and additional costs for the State** – it will cause a substantial increase the LUC’s workload, personnel and budget, and will increase the time and staff demands for other state agencies. Another unfortunate consequence is that it would allow **repeated quasi-judicial hearings that would paralyze development projects which would deliver needed affordable housing.**

Conclusion. It is a well-recognized fact that the LUC’s role was always intended to be a long-range land use planning agency guided by the principles of HRS 205-16 and 17, however, proponents of this bill attempt once again to transform the LUC’s established function into a development manager, or enforcer with a big stick. Imposing \$50,000 a day fines for “*failure to substantially meet the conditions of direct state concern,*” or risk vacating, voiding, modifying, or amending any boundary amendment, permit ore related conditions (based, no less, upon the LUC’s unilateral, arbitrary and capricious decision, and without the Commission being obligated to follow its own boundary amendment procedures or requiring a county planning commission action in doing so) would be unjust and unreasonable; will undoubtedly result in unnecessary lawsuits and litigation; and otherwise negatively impact project financing and development, as well as the overall economy in Hawaii.

Based on the above, it is respectfully requested that **SB 2355, SD1 be held by this Committee; and that OP convene the land use experts and stakeholders, as it suggests in its 2015 Draft Report, to review the issues in the legislative interim and make recommendations.**

In the alternative, LURF would be willing to work with the Legislature on incorporating LURF’s recommendations regarding amendments to this measure.

Thank you for the opportunity to present comments in opposition to this measure and for amendments.



SIERRA CLUB OF HAWAII
MĀLAMA I KA HONUA. *Cherish the Earth.*

SENATE JOINT COMMITTEE ON JUDICIARY AND LABOR, WAYS AND MEANS

Wednesday February 24, 2016 10AM Room 224

In Support SB2355 Relating to Land Use Commission

Aloha Chairman Sen. Keith-Agaran, Chairwoman Sen. Tokuda and Members of the JDL and WAM Committees,

On behalf of our 12,000 members and supporters, the Sierra Club of Hawai'i **strongly supports** SB2355 to authorize the Land Use Commission to enforce its decisions related to land use boundary designations.

To ensure that the interests of the public are protected, the State has a mandate to manage natural resources, education, health and housing. To do so, the LUC needs a variety of tools to enforce land use conditions imposed during the boundary amendment and special permit process. This bill would allow for better preservation and protection of Hawaii's lands by promoting the best use of the land and to deter violations of land use conditions.

What SB2355 will do

In the face of several recent court decisions casting doubt on the extent of the LUC's authority, this bill provides certainty to developers, as well as advocates for the public interest, by clarifying that the LUC has the power to enforce its own decisions.

We also offer several friendly amendments.

Amendment 1: increase fines

The penalty structure is insufficient to ensure compliance. The Sierra Club is concerned about large construction projects that could earned developers millions upon millions of dollars. To avoid become a simple cost of doing business, penalties imposed by the LUC should be a percentage of the projected value of the project.

Amendment 2: define substantial commencement

As it is currently worded, there is insufficient guidance as to what the LUC, a court, or the community should consider as "substantial commencement" of a project. This Committee should provide guidelines to assess whether a developer has done enough to avoid penalties for failure to act on a boundary designation amendment. This guidance should include completion of all public use improvements (such as roads and utilities), and more than half of the actual private improvements approved by the LUC (such as the housing subdivision).

Without this guidance, it would be possible for developers to contend that any dollar spent on improving a project site demonstrates "substantial commencement" of a project.

This is an important measure to improve the functioning of our land use system. That is why we urge you to advance this bill to the next joint committee. Thank you for the opportunity to testify on this measure.

Mahalo,

A handwritten signature in black ink, appearing to read "M. J. d.", is positioned above the typed name. The signature is fluid and cursive.

Martha Townsend
Director