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Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission
Before the
Senate Committee on Ways and Means

Thursday February 23, 2017
1:30 PM
State Capitol, Conference Room 211

In consideration of
SB 0629 SD1
RELATING TO THE LAND USE COMMISSION

Chair Tokuda, Vice Chair Dela Cruz, and members of the Committee on Ways and Means:

The Land Use Commission (LUC) strongly supports this measure which would provide the LUC with the power to amend, revise, or modify a decision and order after there has been an evidentiary hearing and a finding that a petitioner or its successors has not adhered to conditions of approval that protect important State interests and the public trust. It is important to note that LUC proceedings provide significant due process protections that allow a developer/petitioner to provide evidence that there was no violation or that there were legitimate reasons for an alleged violation.

The measure also provides a definition of the term "substantial commencement." This is a key provision which provides certainty to developers and the Land Use Commission in determining the level of compliance with a condition and the appropriateness of a proceeding.

The LUC already has an enforcement power, just not one sufficient or flexible enough to address the varied compliance issues it must confront. Currently the LUC does not have the ability, except in extremely limited circumstances to enforce its decisions, before there has been substantial commencement, and it only has one penalty it may assess, reversion to the former land use classification.

Under section 205-12, Hawai'i Revised Statutes (HRS), the counties are supposed to enforce conditions and notify the LUC of violations. Unfortunately the counties do not or cannot enforce conditions for various reasons. This results in a situation that has detrimental economic impacts in some cases and gives unfair advantages to developers who do not conform to LUC

decisions. This measure gives the LUC the power to enforce conditions which are of State interest, providing more certainty to developers and the public that conditions will be enforced while also ensuring that projects would not be halted for inconsequential errors in compliance.

Once a project has been approved it can be assumed the LUC has determined the project has significant value to the community. Conditions are placed on the development of the project to protect the public's interests and prevent the State from assuming infrastructure costs as well as to protect county interests. For the most part developers adhere to the conditions. When they do not, significant impacts to water resources, the environment, cultural resources and practices, and statewide infrastructure can occur; all to the economic benefit of the developer.

From an economic standpoint it is not beneficial to completely halt or revoke a projects' permits when a violation occurs. The State has a social and economic interest in seeing projects completed. It is a benefit to both the construction industry and the pressing need for housing. This measure will allow the LUC to remedy a violation without having to revoke permits and stop a project while still protecting the public's interests. This measure would not allow the LUC to arbitrarily change conditions or reclassify land.

It is important to note that this measure only allows enforcement of conditions that are within the public trust, concern State expenditures or have cultural or environmental significance. The counties will continue to enforce conditions relating to county concerns.

Thank you for the opportunity to testify on this matter.



SB629 SD1
RELATING TO THE LAND USE COMMISSION
Senate Committee on Ways and Means

February 23, 2017

1:30 p.m.

Room 211

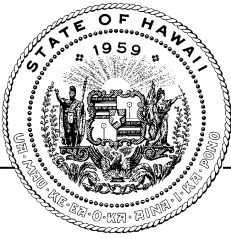
The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB629 SD1, which seeks to address long-standing compliance challenges relating to district boundary amendments and conditions of approval, by providing the Land Use Commission (LUC) with a variety of flexible, alternative enforcement tools.

Conditions of approval are a critical means by which the LUC can fulfill its obligations to Native Hawaiians. Pursuant to Hawai'i's Constitution, various statutes, and judicial decisions, the State has an affirmative duty to preserve and protect Native Hawaiian traditional and customary practices, while reasonably accommodating competing private and governmental interests.¹ Participating in land use processes, including in LUC district boundary amendment decision-making, is sometimes the only way that Native Hawaiians have been able to ensure that the State actually upholds this duty in its land use decisions. Notably, LUC conditions of approval for district boundary amendments often include mitigation measures that preserve and protect traditional and customary practices, as well as the natural and cultural resources they rely upon. The effective enforcement of LUC conditions and other lawful orders can therefore be critical to enforcing the rights of Native Hawaiians, and perpetuating the Hawaiian culture.

SB629 SD1 will enhance the enforceability of LUC conditions of approval and other orders. By providing the LUC with clear yet flexible enforcement tools, and by authorizing the LUC to impose a variety of penalties for violations of HRS Chapter 205 or LUC conditions of approval, this bill will allow and encourage the LUC to more effectively ensure that its conditions of approval are complied with. The enforcement authorities in this measure may also promote accountability in representations made to the LUC by district boundary amendment petitioners. This bill will therefore help to uphold the integrity of LUC decisions and orders, and thereby perpetuate the natural and cultural resources and practices the State is obligated to protect.

Accordingly, OHA urges the Committee to **PASS** SB629 SD1. Mahalo for the opportunity to testify on this measure.

¹ As discussed in *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31 (2000).



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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, February 23, 2017
1:30 PM
State Capitol, Conference Room 211

in consideration of
SB 629, SD 1
RELATING TO THE LAND USE COMMISSION.

Chair Tokuka, Vice Chair Dela Cruz, and Members of the Senate Committee on Ways and Means.

The Office of Planning (OP) supports the intent of Senate Bill 629, SD 1. This bill would give the Land Use Commission (LUC) additional tools for enforcing the conditions or requirements of a land use district boundary amendment by allowing the LUC to impose fines, and amend, modify, or vacate conditions of these entitlements granted pursuant to Hawaii Revised Statutes (HRS) Chapter 205.

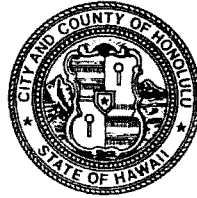
Currently, the LUC's only remedy for a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, is the granting of an order to show cause pursuant to Hawaii Administrative Rules (HAR) § 15-15-93. The approved boundary amendment decision and order could then be subject to reversion, whereby the land is reverted to its former land use classification or changed to a more appropriate classification. In some cases, reversion is not the most appropriate mechanism for addressing violations and prevents the LUC and the parties from developing a more practical solution.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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February 23, 2017

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 Chair Tokuda and Committee Members:

Subject: Senate Bill No. 629, SD 1
Relating to the Land Use Commission

The Department of Planning and Permitting (DPP) **opposes, as drafted**, Senate Bill No. 629, SD 1, which would provide the Land Use Commission (LUC) authority to amend, revise, or modify a decision and order, and to fine parties who fail to comply with conditions. As written, it is unclear the extent to which the counties would be obligated to enforce this law.

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. The provisions make no allowances or acknowledgement of circumstances beyond the control of the developer or landowner that result in delays or changes. The "substantial commencement" clause would be overly burdensome on master planned communities that may take several decades to complete.

Rather than allowing "any party or interested person" 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.

The Honorable Jill N. Tokuda, Chair,
and Members of the Committee on Ways and Means
Hawaii State Senate
Senate Bill No. 629, SD 1
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Unless modified as requested above, Senate Bill 629, SD 1, should be filed.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Sokugawa". The signature is written in a cursive, flowing style.

Kathy Sokugawa
Acting Director

LATE



February 22, 2017

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

Opposition to SB 629 Relating to the Land Use Commission. (Provides the Land Use Commission [LUC] with the power to amend, revise, or modify a decision and order granting a district boundary amendment, or fine a petitioner, when there has been a finding by the Land Use Commission that a petitioner or its successors or assigns have not adhered to the conditions imposed by the commission.)

WAM Hrg: Thursday, February 23, 2017, 1:30 p.m., Conf. Rm. 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 **strongly opposes SB 629, SD1**, which proposes to, without any factual basis or justification, unnecessarily and unfairly expand the enforcement powers of the LURF, which will result unlimited orders to show cause, contested case hearings, \$50,000 ad day fines, Hawaii Supreme Court appeals; and **substantial uncontrollable, unknown and unpredictable costs affecting several state departments and the State Budget (right now, the counties enforce the LUC conditions at no charge to the State)**. This measure, which is purportedly well-meaning, violates existing State law and Hawaii Supreme Court case law, violates the LUC's own rules; unfairly "*changes the rules in the middle of the game*" and violates the *vested rights* of land owners who have "*substantially commenced*" the use of their lands.

LURF respectfully urges your Committees to **DEFER and HOLD** this measure in your Committee. At the very least, it is necessary and prudent that the Legislature require a study or report which would (1) validate the alleged need for SB 629, SD1, by providing examples of active examples of violations of LUC conditions and corresponding refusals of the counties to enforce the LUC conditions; (2) provide an accurate cost estimates of

the State departments (to hear unlimited orders to show cause, unlimited contested case hearings, collection of \$50,000 a day fines, and Hawaii Supreme Court appeals); and (3) an evaluation of how this measure will cause delays of affordable and other housing projects such as Ho'opili and Koa Ridge, and other lands which are subject to LUC conditions and have opponents.

LURF **opposes SB 629, SD1**, based on, among other things, the following:

- 1. Uncontrollable, unknown and unpredictable costs affecting several state departments, the Judiciary and the State Budget (for LUC to handle County enforcement duties; hold unlimited and repeated orders to show cause filed by “any interested persons,” contested case hearings; collection of \$50,000 a day fines; and appeals to the Hawaii Supreme Court).**
- 2. The unlimited orders to show cause and contested case hearings generated by opponents to major housing projects will obstruct, delay, and may even derail needed affordable housing projects.**
- 3. No justification for this bill and no factual evidence of any compelling need (no evidence of any projects violating LUC conditions, that are not being enforced by the county) for the LUC to increase its enforcement powers.**
- 4. Not consistent with the existing state laws which created the existing two-tiered (State/County) land use system and county enforcement process for the state land use district and LUC conditions; and directly conflicts with Section 205-12, Hawaii Revised Statutes (HRS) and the Hawaii Supreme Court decision in the *Aina Lea* case;¹ which both specifically state that the counties are responsible for enforcing the LUC conditions.**
- 5. Ignores the LUC's lack of land use enforcement expertise and experience and fails to defer to the counties' superior expertise and daily experience in application and enforcement of land use laws and LUC conditions.**
- 6. An “end-run” attempt to circumvent the Hawaii Supreme Court's *Aina Lea* decision, a prior, significant land use case, and legal treatises regarding land use_ (including “*Regulating Paradise – Land Use Controls in Hawaii*,” Second Edition by David L. Callies).**

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

7. **Unsuitably and inappropriately affords the LUC new enforcement powers that lawmakers never intended or envisioned the LUC to wield, by transforming the LUC from a what was intended to be a limited planning agency into an enforcement and fining agency (imposing fines of up to \$50,000 a day).**
8. **Unnecessary – the LUC currently has the ultimate “*death penalty*” enforcement power to revert the property to its former land use classification, or change it to a more appropriate classification.**
9. **Directly contradicts the Hawaii Supreme Court’s findings and significance of the term “*substantial commencement*” in the *Aina Lea* case.**
10. **All four county planning departments opposed a similar bill in 2016.**
11. **LUC petitioners, landowners, housing developers, the building industry and Chamber of Commerce have opposed a similar proposed legislation in 2016.**
12. **This bill ignores the reality of development projects, Counties’ responsibility to enforce LUC conditions, the reasons for delays in compliance with conditions and the expertise and experience of the Counties to address such matters.**
13. **Proponents failed to consult, or seek any input from the parties which would be most affected by this legislation – the counties and the landowners which have obtained LUC approvals.**

LURF also opposes this bill based on the following **unintended negative consequences** of this bill, including, without limitation:

- **Confusion and conflicting enforcement by the counties and LUC.** Under the current law, the counties are responsible for enforcing LUC conditions, and the counties’ long-time interpretations of and precedents relating to certain conditions could differ from a new LUC interpretation and/or enforcement.
- **Based on the fact that the LUC has lost a majority of its Hawaii Supreme Court appeals (on issues it has experience in); it is likely that the LUC will lose future Supreme Court appeals relating to new enforcement powers, because it lacks the staff, expertise and experience in enforcement and imposing fines.,**
- **The LUC will be required to increase its budget for additional staff, specialized enforcement training, and new processes to determine appropriate fines and collect up to \$50,000 a day in fines.**

- Unlimited LUC contested case hearings and appeals to the Supreme Court. Based on unlimited motions for order to show cause by any party or interested persons, this bill will result in further unnecessary and unwarranted opportunities for contentious harassment and litigation against landowners and developers with LUC approvals (petitioners);
- Delays in housing. By allowing opponents to development projects the opportunity for unlimited LUC contested case hearings and appeals on the same project, this measure will add greater delays, uncertainty and hindrances to the entitlement and post entitlement process for affordable housing, market housing and other development projects; and
- Impediment to financing of housing and other developments. The uncertainty and delays caused by this bill will impede and negatively impact financing and construction of affordable housing, housing for all income levels and other projects which could support Hawaii's economy.

SB 629, SD1. This measure would illogically and unreasonably give the LURF new, expanded enforcement powers, as follows:

- ✓ Allows any party or any interested person to file an unlimited number of order to show cause motions to initiate an unlimited number of quasi-judicial hearings;
- ✓ Allows such motions regardless of whether or not there has been "substantial commencement of use of the land" (this means that projects with opponents could be subject to continuous;
- ✓ changes the definition of "substantial commencement" means 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." (
- ✓ to exercise new powers to modify existing conditions, or impose new conditions and change the terms of development conditions pursuant to vague standards;
- ✓ new powers to impose administrative fines of up to \$50,000 per day plus the costs of enforcement including, but not limited to associated hearing expenses, until such time as the party bound by the condition provides evidence to the commission showing that the violation has been cured and is not likely to be repeated; and the maximum fine for a person convicted of murder in the first degree, murder in the second degree, or a Class A Felony (the most heinous sex offenders and biggest drug dealers), is a one-time fine of \$50,000. Without specific justification or facts, it is hard to understand why the LUC would need to impose daily fines that are more punitive than for murderers and the most heinous sex offenders and biggest drug dealers.

Background. The LUC was intended to be a long-range land use planning agency guided by the principles of HRS 205-16 and 17; and 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 LUC standards and criteria.

Pursuant to HRS 205-12, after the LUC approves a district boundary amendment, it is the counties' responsibility to control and enforce LUC conditions, as well as the specific state land uses in the urban, rural and agricultural districts, LUC conditions, development and timing through detailed county ordinances, zoning, subdivision rules and other county permits.

The counties review, approve and impose specific conditions for zoning; subdivisions; and other development permits, to address land use planning, 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 “enforced and assisted the development of LUC petition areas by not “punishing” landowners based on strict deadline dates in their LUC or 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 and specific timing deadlines and other specific requirements and conditions which are the responsibility of other State or Federal agencies, 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 (LUC), Chapter 46 (county government), HRS 46-4 (county zoning) and other county laws, rules and regulations. The counties work with the developers through all the stages of development; the counties understand the process and have the knowledge and tools to provide assistance and county services to bring projects to successful completion.

LURF's Position. LURF **opposes SB 629, SD1** based on 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 have the expertise, experience, staff and funding

to enforce LUC district boundary amendments and conditions relating thereto, as explained in more detail below:

- 1. Uncontrollable, unknown and unpredictable costs for the State Budget – For LUC to handle County enforcement duties; hold unlimited and repeated contested case hearings; impose and collect \$50,000 a day fines; and appeals to the Supreme Court.** The law allows unlimited and repeated LUC contested case hearings brought by any person who opposes a development project with an LUC approval. This means additional costs for various state agencies: LUC staff, Office of Planning, Department of the Attorney General. The proponents of this bill, LUC and OP should have a realistic projection of the costs of handling the orders show cause requests, investigations, contested case hearings, \$50,000 a day fine collections, and Supreme Court appeals will be handled. The LUC will probably not be able to determine such a budget figure, because it was never intended to be an enforcement agency and has not experience (Under the law, the counties are already tasked with enforcement of LUC conditions).
- 2. There is no justification for this bill and no factual evidence of any compelling need for the LUC to increase its enforcement powers.** Based on discussions with the county Planning Directors, the Land Use Commission (LUC) and the Office of Planning, LURF understands that the LUC has not transmitted any enforcement complaints to the counties, and the counties are unaware of any current LUC violations or complaints that would justify this measure.
- 3. The Counties are statutorily responsible for the enforcement of LUC conditions; impose zoning conditions which incorporate the LUC conditions; and the Counties possess the experience, expertise, capability and staffing to enforce the LUC conditions.** 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 substantially 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.

By statute, and as confirmed in the *Aina Lea* case, 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.

On the other hand, 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 enhance the LUC to take on and perform the proposed enforcement role would be duplicative and a waste of limited government resources.

- 4. This Bill is Unnecessary, Because the LUC Already has the Authority to Impose the Most Severe Penalty – Reversion of the Property to its Former Classification.** 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. If the LUC is desirous of changing a property's land use designation, it 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 finding of failure to meet any representation or condition of LUC's approval (as provided in this bill) is 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 Enforcement 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 its own, arguably biased findings of noncompliance with permit conditions or requirements. 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 communities 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.

- 6. SB 629, SD1 directly Contradicts the definition and significance of “Substantial Commencement” in 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, rules and procedures (including HRS 205-4, 16, and 17) in order to change a property’s land use classification.

In *Aina Lea*, the Hawaii Supreme Court determined that some vertical construction of units (none completed) and the construction of a portion of the infrastructure for the project satisfied the “*substantial commencement*” requirement. In the *Save Sandy Beach* case, a Circuit Court Judge (now Supreme Court Justice), concluded that over \$100,000 in consultant fees was sufficient to satisfy “*substantial commencement*.”

The amendment to HRS Section 205-4 now being proposed by this measure, 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 many times, regardless of whether the development has substantially commenced, or even if portions of the project are already completed.

7. 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 representations made, 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. Determination of a failure to substantially conform 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 provide funding for major projects in Hawaii given the potential that boundary amendments may be modified or based on unlimited motions for *orders to show cause* by opponents to the projects and 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 representation or condition.

8. Proponents failed to consult, or seek input from the most affected parties, prior to introducing this bill. Despite the major negative consequences of this bill, proponents of this bill failed to seek any input whatsoever from the parties which would be most affected by this legislation – the counties and the landowners which have obtained LUC approvals.

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, and the counties are the government agencies who are tasked with enforcing the LUC conditions and urban, agricultural and rural districts. However, the proponents of SB 629, SD1 are attempting a "*power grab*" to transform the LUC's established *planning function* into an *enforcer with a big stick*.

The effects of the bill would be illogical, unjust and unreasonable and will undoubtedly result in unintended negative consequences, including, among other things, unnecessary **and substantial costs to the State and its departments;** and **delays in the development, much-needed affordable housing.**

Based on the above, it is respectfully requested that **SB 629, SD1, be held** by your Committee.

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