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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 COMMITTEES ON WATER AND LAND, AND
JUDICIARY AND LABOR**
Monday, February 6, 2017
2:45 PM
State Capitol, Conference Room 224

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

Chairs Rhodes and Keith-Agaran, Vice Chairs Gabbard and Rhodes, and Members of the Senate Committees on Water and Land, and Judiciary and Labor.

The Office of Planning (OP) supports the intent of Senate Bill 629. 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.

The current rules require that if a project will take more than 10-years to be substantially complete, then an incremental development plan in 10-year increments must be part of the petition filings, which the LUC can then determine whether to approve the project in total or in increments.

Thank you for the opportunity to testify on this matter.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
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Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
Senate Committee on Water and Land
and
Senate Committee on Judiciary and Labor
Monday February 6, 2016
2:45 PM
State Capitol, Conference Room 224

In consideration of
SB 0629
RELATING TO THE LAND USE COMMISSION

Chairs Rhoads and Keith-Agaran, Vice Chairs Gabbard and Rhoads, and members of the Committees on Water and Land; and Judiciary and Labor:

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 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 gives an 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.

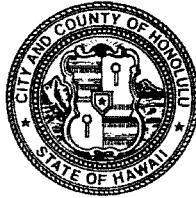
It is important to note that this measure only allows enforcement of conditions that are within the public trust, concern State expenditures or have cultural or environmental significance. The counties will continue to enforce conditions relating to county concerns.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KATHY K. SOKUGAWA
ACTING DIRECTOR

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ACTING DEPUTY DIRECTOR

February 6, 2017

The Honorable Karl Rhoads, Chair,
and Members of the Committee on Water and Land
The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee on Judiciary and Labor
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

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

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

The Department of Planning and Permitting (DPP) offers **comments** on Senate Bill No. 629, 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

The Honorable Karl Rhoads, Chair,
and Members of the Committee on Water and Land
The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee on Judiciary and Labor
Senate Bill No. 629
February 6, 2017
Page 2

205-4(e) with regards to boundary amendments. Perhaps the same approach should be used in the reconsideration process.

Unless modified as requested above, Senate Bill 629 should be filed.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathy Sokugawa', written in a cursive style.

Kathy Sokugawa
Acting Director