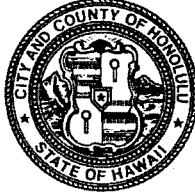


DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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February 16, 2018

The Honorable Sylvia Luke, Chair  
and Members of the Committee on Finance  
Hawaii House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

**Subject:** House Bill No. 2539, HD 1  
Relating to Planned Communities


The Department of Planning and Permitting (DPP) **opposes** House Bill No. 2539, HD 1, which requires counties to designate an agency to inform the public and hold a hearing when lands for purposes other than proposed as part of a master plan for a community are being sold.

The City does not have oversight or direct involvement in real estate transactions between a buyer and seller (unless the City is party to such a transaction). Requiring the City to inform the public and provide a means for community input is misleading. It incorrectly implies that the City has discretionary review and decision-making authority over the sale of real property between two entities.

It is understandable that residents, particularly purchasers of homes in a master planned community, may be opposed to a change in the original intended use of a property. However, albeit it is not perfect, the role of zoning is to allow a range of permitted uses for designated districts, and not to regulate and offer hearings for every change of use. Ironically, developers of "master planned communities," by definition, should plan for acceptable changes in use. House Bill No. 2539, HD 1, represents a threat to property rights, in that a hearing on a sales transaction effectively becomes a political referendum to entitlements already granted. Such action may be grounds for a "takings" challenge.

We ask that House Bill No. 2539, HD 1, be deferred. Thank you for the opportunity to testify.

Very truly yours,

  
Kathy K. Sokugawa  
Acting Director



February 14, 2018

Representative Sylvia Luke, Chair  
Representative Ty J.K Cullen, Vice Chair  
House Committee on Finance

**Comments, Concerns and Opposition to HB 2539, HD1, Relating to Planned Communities (Requires the counties to designate an agency to inform the public and hold a hearing when lands included in a community master plan are proposed for sale and intended to be used for a purpose other than as proposed in the master plan.)**

**Friday, February 16, 2018, 4:00 p.m., in Conference Room 308**

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 provide its **comments, concerns and STRONG OPPOSITION** to HB 2539, HD1, relating to Planned Communities, which would require the counties to designate an agency to inform the public and hold a public hearing when lands included in a community master plan are proposed for sale and intended to be used for a purpose other than as proposed in the master plan.

We can understand the frustration of residents who believe that lands are being used in a manner that is not legally permissible, however, there are other available alternatives and remedies instead of mandating a public hearing triggered by a proposed sale of property, as proposed in this bill. Also, while this measure may be well-meaning, it is unnecessary, could have unintended consequences, and has several fatal flaws and could subject the State, the Counties and other individuals to personal liability for tortious interference with contractual or business relations.

1. **Tortious interference with contract, or business relations.** Since this measure is triggered by a proposal for sale of land and is intended to affect the sue and sale of property, it could result in legal action against government agencies, officials and private individuals for tortious interference with contract

or business relations, based on encouraging, facilitating or participating in actions that interfere with a proposed sale of otherwise legal use of private property. In the late 1990's the Manoa Neighborhood Board took a position in a private business transaction relating to the former Manoa Finance Building. A lawsuit was brought against the Manoa Neighborhood Board members individually, and the City Corporation Counsel at the time refused to defend them, because their actions interfered with a private business transaction and use of private property, and said actions were considered outside the scope of their authority. As a result of that case, a City policy was established whereby City boards and employees refrained from any actions that could be interpreted as interfering with a private contract or business relations.

2. **Land uses in private master-planned communities are governed by the homeowners' covenants, conditions and restrictions (CC&Rs), not by county public hearings.** Imposing a mandatory county public hearing regarding a private property just prior to sale, for alleged changes in a private master plan may be in violation of the procedures under the CC&Rs, private community master plan, or deed documents, and a violation of private property rights.
3. **HB 2539, HD1 is unnecessary, because the counties already have public participation procedures and processes for major zone changes, variances and changes in land uses.**
4. **Alternative: Consider filing a complaint based on a zoning violation with the City.** If there is a land use that violates the existing zoning, residents can make a complaint with the county planning agency.
5. **Alternative: Consider retaining an attorney to file a lawsuit against the developer or homeowners' association that is responsible for enforcing the Master Plan or CCRs.** Usually the marketing materials for master-planned communities include strong "*disclaimer*" language, so that the developer would not be liable for any representations on maps, photos, or written materials which were provided to the buyers. If the actions of a developer are so inconsistent with the marketing materials or sales representations, the terms in a deed, or community association master plan, that it would constitute a *breach of contract*, concerned residents can file a complaint with the community association, or bring a lawsuit for breach of contract. Residents of Ewa Marina filed lawsuits against the developer for building an enclosed lagoon, rather than a boat marina, which was depicted in the original marketing materials.
6. **Unintended consequences: Possibility of multiple unnecessary or vexatious requests for county public hearings each time a parcel is sold.** Pursuant to HB 2539, HD1, neighbors could demand a county public hearing each time a property is sold in that master planned community, and

object if they feel that the proposed use of the property not identical to the original master plan, or other related documents.

7. **Unfunded mandate.** HB 2539, HD1, does not include a State appropriation to reimburse the counties for the funds that would be expended to hold the public hearings required by this measure.

Based on the above, **LURF respectfully requests that HB 2539, HD1, be DEFERRED and HELD by this Committee.**

Thank you for the opportunity to provide comments, concerns and **opposition** relating to this proposed measure.

Please feel free to contact David Arakawa, LURF Executive Director, if there are any questions.

15 February 2018

Albi Mateo  
Royal Kunia Community Assn.  
688-9000  
[albi@royalkuniacommunityassociation.org](mailto:albi@royalkuniacommunityassociation.org)

H.B. No. 2539 Testimony

To the Honorable Chair and Committee members,

I am providing written testimony in support of H.B. 2539.

By way of introduction, my name is Albi Mateo, General Manager for ROYAL KUNIA COMMUNITY ASSOCIATION. Additionally, I am a homeowner and resident of Royal Kunia (RK) subdivision since 1994.

The developer petitioned for parcels of land along the easterly side of Kunia Road to be rezoned from AG-1 to various zoning suitable for a master planned community. *See Exhibit A*  
Phase I of Royal Kunia has been developed as intended, except for approximately 170 acres zoned P-2 in the heart of the subdivision

Due to a lack of public hearing requirement, approximately 130 acres of the 170 acres was CPR'd and sold without notice to the community. The new owners have no intentions of developing a golf course or maintaining the area for open space. As such, the master planned community that was presented to the State Land Use, City Council and applicable governmental agencies to obtain favorable decisions has been altered without public notice and hearing.

The homeowners in Royal Kunia trusted that the designated P-2 land could not be CPR'd, sold and used other than its intended use. I humbly ask for your ardent support, so homeowners are protected when buying into a master planned community that is still in development.

Thank you for your anticipated support.

Sincerely,

//signed//  
Albi Mateo

**HB-2539-HD-1**

Submitted on: 2/15/2018 3:47:21 AM

Testimony for FIN on 2/16/2018 4:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We STRONGLY SUPPORT this bill.

**LATE**

To: House Committee on Finance  
RE: HB 2539, HD1, Relating to Planned Communities

Chair Luke, Vice Chair Cullen, and committee members,

I am a Waipahu resident and member of the Waipahu Neighborhood board, although this testimony is my own and does not reflect the board as a whole. House Bill 2359, HD1, addresses the issue faced by residents of Royal Kunia due to the sale of a parcel of preservation land located within the Royal Kunia master planned community. Prior to the sale, the parcel was designated by the developers to become a golf course. When residents of the Royal Kunia subdivision purchased their homes years ago, they did so with the belief that the parcel would eventually be developed into a golf course. After the purchase of the parcel in the open market, the buyers of the property created Royal Kunia Meadows and proceeded to grade and develop the land.

Desperate to find out what was going on with their community and these new neighbors, the residents asked the neighborhood board for help. The board assisted with several meetings dedicated to the Kunia meadows situation; there were presentations by the Meadows board of directors, City Department of Planning and Permitting, Honolulu Board of Water Supply, and by the residents. Many of the residents raised concerns over the structures erected on the property, dust and noise during non-sanctioned hours, use of unknown materials and chemicals being sprayed or applied close to homes, and in some cases altercations between homeowners and workers on the Meadows property as the homeowners tried to document the activities going on by their new neighbors.

To this day, it remains unclear what the true intention of Meadows owners are with the property. At one point the owners claimed that the property would be used for agriculture and farming, which is a permitted use of the land. But the homeowners have documented structures and other improvements to the land that appear contrary to this specific use. The Meadows owners have refused to provide a detailed plan of what the property would be used for despite repeated attempts by the Waipahu neighborhood board and residents of Royal Kunia to understand what is happening in that community.

HB 2359, HD1, addresses this issue by requiring the new owners to provide a plan to neighboring communities so that residents can understand what the future of their community is headed. While it is too late to help the residents of Royal Kunia, this measure would make sure that any future communities do not face the same uncertainty and receive the information on changes to land or parcels that are being developed into a use not originally intended when the community was built and sold to the residents.

Sincerely,

Cory Chun