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HB-2539-HD-1

Submitted on: 3/19/2018 10:09:04 PM

Testimony for PSM on 3/20/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Testifying for Ho`omana Pono, LLC	Support	Yes

Comments:

In STRONG SUPPORT.

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HB-2539-HD-1

Submitted on: 3/20/2018 1:31:30 PM

Testimony for PSM on 3/20/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Testifying for Land Use Research Foundation of Hawaii	Oppose	No

Comments:

The Land Use Research Foundation of Hawaii (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, this bill will not solve their problems and there are available alternatives and remedies other than the public hearing triggered by a proposed sale of property, as proposed in HB 2539, HD1.

While this measure may be well-meaning, it has several fatal flaws and could subject the State, the City and other individuals to personal liability for tortious interference with contractual or business relations, based on the following:

- **A mandatory public hearing when changes in a master plan occurs, will not solve the problems described in the bill. Only county or state enforcement, or a lawsuit can prevent a change in illegal land use.**
- **It appears that the intent of this measure and the mandatory public hearing is to affect the proposed sale of lands, which could subject the government body requiring the public hearing to a lawsuit for tortious interference with contract, or business relations.** It appears that the timing described in HB 2539, HD1 (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 owned by Ukumaruku Corporation. As a result of the Manoa Neighborhood Board public meeting and letters, the bank that had signed a contract for the lease of the building, cancelled the contract. Ukumaruku brought a lawsuit against the Manoa Neighborhood

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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, which legal, and were outside the scope of their authority. As a result of that case, a City policy was established whereby City boards and employees were instructed to refrain from any actions that could be interpreted as interfering with a private contract or business relations. The lawsuit was settled by personal payments by the Manoa Neighborhood Board members to Ukumaruku.

- **Land uses in master-planned communities are governed by the homeowners' covenants, conditions and restrictions (CC&Rs). Imposing a mandatory 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, master plan, CC&Rs, deed documents, or CC&Rs and a violation of private property rights.**
- **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.**
- **Alternative: Consider filing a complaint with the City for violation of zoning or other City plans.** If there is a land use that is occurring within the master planned community that violates the existing zoning, residents can make a complaint with the county planning agency and that county agency is required to investigate and enforce against any violation.
- **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 regarding the use of the lands in question.** This bill cites problems with a master-planned community in Central Oahu. If the actions of a developer are inconsistent with the marketing materials or sales representations, the terms in a deed, or community association master plan, 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 harbor.
- **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 order to confirm that the proposed use of the property is identical to the master plan, or other related documents.**

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

Thank you for the opportunity to provide comments, concerns and OPPOSITION relating to this measure. Please feel free to contact David Arakawa, LURF Executive Director, if there are any questions.

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HB-2539-HD-1

Submitted on: 3/19/2018 3:56:07 PM

Testimony for PSM on 3/20/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Individual	Support	No

Comments: