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SHAN S. TSUTSUI
Lieutenant Governor

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Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on Water and Land
Friday February 3, 2017
9:00 AM
State Capitol, Conference Room 325

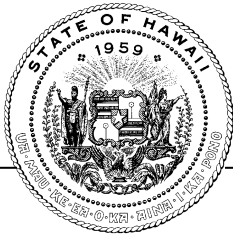
In consideration of
HB 0517
RELATING TO LAND USE

Chair Yamane, Vice Chair Kong, and members of the Committee on Water and Land:

The Land Use Commission (LUC) supports this measure which would allow the counties to submit their adopted amended general and development plans to the Commission for review and request district boundary amendments in conformance with their general or development plans. These proposed boundary amendments based on adopted county general or development plans would be required to follow section 205-4, Hawai'i Revised Statutes (HRS), which insures that State interests, public trust and due process issues would be addressed.

The LUC has similar concerns as the State Office of Planning (OP) with transferring the responsibility of the periodic boundary review to the LUC. The separation of responsibilities, with OP conducting the boundary review and authorized to bring petitions; and the LUC as decision-making body in a contested-case proceeding, preserves the objectivity necessary in the decision-making process. A dual role for the LUC as both petitioner and decision-maker may not be constitutionally viable.

Thank you for the opportunity to testify on this matter.



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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
HOUSE COMMITTEE ON WATER AND LAND
Friday, February 3, 2017
9:00 AM
State Capitol, Conference Room 325

in consideration of
HB 517
RELATING TO LAND USE.

Chair Yamane, Vice Chair Kong, and Members of the House Committee on Water and Land.

The Office of Planning (OP) does not support HB 517 as written, and offers the following comments. HB 517 amends Hawaii Revised Statutes (HRS) Chapter 205 to: (1) allow the county land use decision-making authority to petition the State Land Use Commission (LUC) for approval of district boundary amendments required by an adopted general plan or development plan; and (2) transfer authority for periodic review of the districts to the LUC rather than OP, and allow the LUC to initiate district boundary amendments as it deems appropriate.

OP supports the concept of regional district boundary amendments that arise from the recommendations of a periodic comprehensive update of county plans or the State's five-year boundary review conducted pursuant to HRS § 205-18. However, as private and public stakeholders know, there would be significant costs in preparing and hearing a petition for multiple parcels on a regional scale under the filing and procedural requirements in current LUC rules. This has been the major impediment to State and county use of their existing authority under HRS § 205-4 to petition for multi-parcel boundary amendments.

OP offers the following comments for your consideration:

- The adoption of county plan-based boundary amendments would be facilitated if accomplished pursuant to a set of rules tailored to this particular type of petition. Separate rules for the submittal and conduct of regional boundary amendments would provide greater clarity and certainty to all parties as to the content and procedural requirements for such a petition, and provide the necessary safeguards to ensure that the State's obligations under the State Constitution and State agency and community interests are addressed in the process. A provision for LUC rule-making to provide

for a regional, multi-parcel or plan-based boundary amendment process would be an important element in the bill.

- Transferring responsibility for the periodic boundary review to the LUC would result in the LUC being both petitioner and decision-maker for subsequent boundary amendments in a contested case proceeding under current rules. Retaining responsibility for the periodic boundary review with OP preserves this separation of responsibilities, and the decision-making process for subsequent boundary amendments will be more objective.
- The authority to use a regional, multi-parcel process should be expanded to the State as well, to enable the Office of Planning or State agencies to use the multi-parcel boundary amendment process pursuant to the periodic boundary review.
- The more appropriate county entity to petition the LUC is the county planning department. The city and county councils are the designated land use decision-making authorities, but as legislative bodies, they typically don't perform the function of petitioner or applicant, which is generally the responsibility of a county executive agency.

Thank you for the opportunity to testify on this measure.



HB517
RELATING TO LAND USE
Committee on Water and Land

February 3, 2017

9:00 a.m.

Conference Room 325

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **COMMENT** on HB517, which would authorize the counties to petition the Land Use Commission (LUC) for “regional” district boundary amendments required by the adoption of their county plans. **OHA questions whether the constitutionally-protected traditional and customary rights of Native Hawaiians will be adequately protected, if the LUC were asked to review and approve district boundary amendments for myriad, non-contiguous, and potentially sizeable areas of land at a single time, pursuant to a county petition.**

The submittal of a county petition under this measure would require the LUC to carefully scrutinize and make specific findings regarding natural and cultural resources and associated Native Hawaiian traditional and customary practices, for a myriad of parcels spanning a potentially vast area. In *Ka Pa‘akai o ka ‘Āina v. Land Use Comm’n*, the Hawai‘i Supreme Court stated that LUC decisionmaking must at a minimum include specific findings and conclusions as to 1) the identity and scope of “valued, cultural, historical, or natural resources,” 2) the extent to which those resources – including Native Hawaiian traditional customary rights – will be affected, and 3) the feasible action that the LUC can take to reasonably protect Native Hawaiian rights. Through this *Ka Pa‘akai* analysis, the LUC is generally able to place conditions on district boundary amendments for specific parcels of land, to mitigate impacts to Native Hawaiian traditional and customary practices and the resources they rely upon. In contrast, it is unclear whether county general plan decision-making specifically considers the potential impacts of proposed land use changes on the valued, cultural, historical, or natural resources of particular locations throughout the county, or the extent to which those resources and any associated Native Hawaiian traditional customary rights will be affected. Accordingly, county petitions for regional district boundary amendments involving land use changes throughout an entire county may place an enormous burden on the LUC, with regards to its fact finding and analytical duties under *Ka Pa‘akai*.

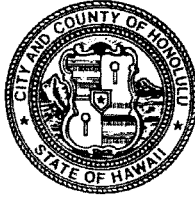
It is unclear whether the LUC would be able to practically and adequately protect Native Hawaiian traditional and customary rights in its approval of a county petition. For example, a regional boundary amendment petition submitted by a county has the potential to draw an overwhelming number of interested parties, who may have information regarding Native Hawaiian cultural and historical resources and practices located in each of the land areas at issue. In addition to receiving and processing such information, the LUC would also be potentially tasked with fact-finding and placing separate conditions on district boundary amendments for a myriad of non-contiguous parcels. **The burden of carrying out such tasks may heavily impact the LUC’s decision-making economy, significantly reducing its ability to adequately protect the valued resources and traditional and customary practices of the Native Hawaiian community.**

Mahalo for the opportunity to testify on this measure.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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ACTING DEPUTY DIRECTOR

February 3, 2017

The Honorable Ryan I. Yamane, Chair
and Members of the Committee on Water and Land
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Yamane and Committee Members:

Subject: House Bill No. 517
Relating to Land Use

The Department of Planning and Permitting (DPP) **supports** House Bill No. 517, which would allow the counties to petition the Land Use Commission (LUC) for regional boundary amendments required by the adoption of the county general plan or development plans.

We take no position on whether the LUC, rather than the State Office of Planning, should conduct the 5-year boundary review. The Bill may want to clarify whether the intent is to have the county council file the petition or the applicable county department.

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy K. Sokugawa".

Kathy K. Sokugawa
Acting Director

**HB 517
RELATING TO LAND USE**

**PAUL OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 3, 2017

Chair Yamane and Members of the House Committee on Water & Land:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 517, “A BILL FOR AN ACT RELATING TO THE LAND USE COMMISSION.” We support this bill.



This bill includes provisions to authorize the Counties to submit their General Plans to the Land Use Commission and request district boundary amendments in accordance with those plans. This bill also authorizes the Land Use Commission to conduct five year boundary reviews of the classification and districting of all lands in the State. Following this review, the Land Use Commission is also authorized to initiate land use boundary amendments to conform to the Hawaii State Plan, County General Plans, and County Development Plans.

We believe that this bill will enhance efficiencies and lessen duplication between the State and the Counties in land use planning. Clear lines of responsibility for land use decision making will be established, with the collaborative land use planning system established by this bill. With the Counties presently equipped with land use planning systems and procedures along with numerous opportunities for public participation and

input, this bill will further empower the Counties with the overall responsibility and authority to assess and fashion land use planning decisions for the future.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.



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February 3, 2017

The Honorable Ryan I. Yamane, Chair
House Committee on Water & Land
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 517, Relating to Land Use

HEARING: Friday, February 3, 2017, at 9:00 a.m.

Aloha Chair Yamane, Vice Chair Kong, and Members of the Committee.

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,000 members. HAR **supports** H.B. 517 which authorizes the counties to petition the land use commission for regional boundary amendments required by the adoption of the county general plan or development plans, and requires the land use commission to conduct the 5-year boundary review.

The Land Use Commission (LUC) was created in 1961 to address the need for a more comprehensive assessment of rezoning lands in the state. There was a need to ensure that there were adequate municipal facilities and infrastructure available to support any urbanization of lands in each county. While the LUC served this purposes in the years and decades following statehood, counties have also improved and, in some instances, surpassed the LUC in matters dealing with urban planning.

H.B. 517 will allow Counties to lead the effort in identifying areas of urban expansion and amendments to their own development/community plans. The LUC's role will be to review the proposed changes in light of broader state concerns such as public schools, protection of watersheds, and insure sufficient sources of water to support the planned growth.

The process will provide more certainty in the land use entitlement process and identify areas of planned growth to address our housing supply crisis.

Mahalo for the opportunity to testify in support of this measure.



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Testimony to the House Committee on Water & Land
February 3, 2017
9:00 am
Conference Room 325

RE: HB 517 – Relating to Land Use

Chair Yamane, Vice-Chair Kong, and members of the committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII is in strong support of H.B. 517 which authorizes the counties to petition the land use commission for regional boundary amendments required by the adoption of the county general plan or development plans. Requires the land use commission to conduct the 5-year boundary review.

The bill proposes to address a glaring problem in Hawaii's land use entitlement process. The Land Use Commission was initially created in 1961 a few years after Statehood to address the need for a more comprehensive assessment of rezoning lands in the state. There was a need to insure that there were adequate municipal facilities and infrastructure available to support any urbanization of lands in each county. While the Land Use Commission (LUC) served this purposes in the years following statehood, the counties have improved and, in some instances, surpassed the LUC in matters dealing with urban planning.

The Counties amendments to their development plans and community plans provide a "grass roots" approach to identifying future areas of urban expansion to accommodate projected growth in each county. The process is inclusive and transparent, and affords the public and other interested parties with ample opportunity to express their views in support or in opposition to proposed changes.

The proposed bill will allow the Counties to lead the effort in identifying areas of urban expansion. The LUC's role will be to review the proposed changes in light of broader state concerns such as public schools, protection of watersheds, and insure sufficient sources of potable water are available to support the planned growth.

The process will provide more certainty in the land use entitlement process and identify areas of planned growth to address our housing supply crisis.

We strongly support H.B. 517. We appreciate the opportunity to provide our input on this important legislation.



**Testimony to the House Committee on Water & Land
Friday, February 3, 2017 at 9:00 A.M.
Conference Room 325, State Capitol**

RE: HOUSE BILL 517 RELATING TO LAND USE

Chair Yamane, Vice Chair Kong, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 517, which authorizes the counties to petition the land use commission for regional boundary amendments required by the adoption of the county general plan or development plans; requires the land use commission to conduct the 5-year boundary review.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The bill proposes to address a glaring problem in Hawaii's land use entitlement process. The Land Use Commission was initially created in 1961 a few years after Statehood to address the need for a more comprehensive assessment of rezoning lands in the state. There was a need to insure that there were adequate municipal facilities and infrastructure available to support any urbanization of lands in each county. While the Land Use Commission (LUC) served this purposes in the years following statehood, the counties have improved and, in some instances, surpassed the LUC in matters dealing with urban planning.

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The process will provide more certainty in the land use entitlement process and identify areas of planned growth to address our housing supply crisis.

We appreciate the opportunity to provide our input on this important legislation.



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

LATE

HOUSE WATER AND LAND COMMITTEE

Friday, February 3, 2017 9:00 AM Room 325

In OPPOSITION HB517 Relating to Land Use

Aloha Chairman Yamane and members of the House Water and Land Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i opposes HB517 for concern that it could further undermine the land use designation process and inadvertently facilitate the ill-advised urbanization of agricultural lands.

For nearly 50 years, the Sierra Club of Hawai'i has helped people explore, enjoy, and protect the Hawaiian Islands. The work of our volunteers spans the spectrum of community engagement, including outdoor education, lobbying, and elections. We have been engaged in many Land Use Commission decisions and county planning processes. We appreciate this Committee's efforts to make improvements.

The Sierra Club generally supports county-level planning through the community development plan process. However, these processes vary significantly between the counties. Some are thorough and fully engage residents of a district in mapping out the future of our their community, but others are not, focusing instead on the desires of individual landowners for specific TMKs. Without uniformed high standards for the county-level planning process, amending our land use law in this way introduces new risks to the integrity of our agricultural districts.

State law already directs the Land Use Commission to facilitate the 5-year boundary review process through the Office Planning. It is not clear how removing the Office Planning and thereby reducing the number of people available to work on such a significant project, helps speed up the process. The LUC does not have the staff or resources to conduct the 5-year boundary review itself. Funding and staff is what is really needed to complete it.

Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,

Marti Townsend
Director