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Lieutenant Governor

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Director



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Bert K. Saruwatari
Planner

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

RASMI AGRAHARI
Planner

FRED A. TALON
Drafting Technician

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

Statement of
Daniel E. Orodener
Executive Officer
State Land Use Commission

Before the
Senate Committees on
Ways and Means
and
Judiciary

Wednesday February 26, 2020
1:10 PM
State Capitol, Conference Room 211

In consideration of
SB 2214 SD1
RELATING TO HOUSING

Chairs Dela Cruz and Rhoads; Vice Chairs Keith-Agaran and Keohokalole; and members of the Senate Committees on Ways and Means; and, Judiciary:

The Land Use Commission (LUC) provides comments on SB2214 SD1 intended to require state or county agencies to issue discretionary permits for housing development projects meeting certain requirements within 60 days. Under the current statutory language (HRS §§201H-38 and 205-4) the LUC is required to review and act upon boundary amendments over 15 acres for affordable housing projects within 45 days. The LUC has consistently met this expedited time frame in its approval of all §201H-38 affordable housing projects that have come before it.

The LUC comments are limited to the proposed language in Section 1 of SB2214 SD1 (page 3 lines 4-7) that reads:

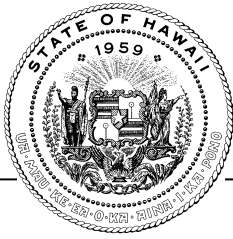
“...; provided that the state or county permitting agency is prohibited from imposing any non-code related condition or exaction on projects processed pursuant to this section.”

We are concerned that this language may be interpreted to prevent the LUC or appropriate county agencies from conditioning approvals on projects that may negatively impact

public infrastructure or public trust resources. We believe that this may violate the public trust doctrine pursuant to significant existing case law. We would recommend that this clause be removed as not in the best interest of sound public planning or policy.

Should the measure pass and the various State and county agencies be unable to place conditions on the granting of permits to protect water resources, cultural resources, access rights, the environment and other public trust resources; agencies may have to deny permits rather than approve projects without such protective conditions.

Thank you for the opportunity to testify on this matter.



OFFICE OF PLANNING STATE OF HAWAII

LATE

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
SENATE COMMITTEE ON WAYS AND MEANS
AND
SENATE COMMITTEE ON JUDICIARY

Wednesday, February 26, 2020
1:10 PM
State Capitol, Conference Room 211

in consideration of
SB 2214, SD 1
RELATING TO HOUSING.

Chairs Dela Cruz and Rhoads, Vice Chairs Keith-Agaran and Keohokalole, and Members of the Senate Committees on Ways and Means and Judiciary.

The Office of Planning (OP) has **comments** and concerns about several elements of SB 2214, SD 1, and does not support the measure as written. SB 2214, SD 1 would require State or County agencies to issue discretionary permits for high-density housing projects within county-designated transit-oriented development (TOD) zones within sixty days of receipt of a permit application deemed to be complete by the receiving agency. Agencies may review the permit application for compliance with underlying codes and ordinances and consistency with surrounding projects. The measure provides for automatic approval of an application if the permitting agency fails to provide, within thirty days of the application, written documentation of conflicts with planning standards and reasoning for that determination.

As lead agency for State TOD and smart growth efforts, OP strongly supports provision of dense, affordable housing in walkable, mixed-use TOD communities. However, OP has concerns regarding the fast-tracking of housing development permitting as proposed in the bill—in particular, the fast-tracking of all discretionary permits and the provisions for unit buyers in proposed subsection (b)(5). We offer the following suggested changes.

1. **Discretionary permits.** The measure should clearly define discretionary permits, so that the review and approval processes being proposed for fast-tracking are understood. Discretionary permits can include county plan amendments and zone changes, which afford the public, county planning commissions, and county councils the opportunity to weigh in on the suitability of a proposed project at a

particular site and require appropriate measures that may need to be taken to mitigate impacts on adjoining properties and the surrounding community. While the bulk of housing applications in county-designated TOD zones are likely to align with the underlying county plan designation and zoning, housing applications at the density required under the proposed measure may not be suitable for a particular parcel. This raises the question as to how concerns about project suitability and impacts at a specific site will be resolved under this proposal.

2. **Unit buyer provisions.** The measure should include a buyer income qualification. In SD 1, the sales of housing units are prohibited from being income-indexed, provided the units are sold to Hawaii residents who are owner-occupants and do not own other real property. This allows residents at any income level to purchase units priced for moderate- and low-income households. OP is concerned that, in an open housing market, without restrictions on the resale of these units, the measure as written may not contribute materially to the maintenance of an expanded affordable housing stock over the long-term.

SD 1 will strain under-resourced public agencies to process these applications and it will also place an added burden on these same agencies to monitor and enforce compliance with the unit sales requirements. The public should be assured that a proposal to fast-track housing permitting will provide long-term solutions to Hawaii's affordable housing needs.

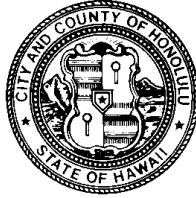
Thank you for this opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

LATE

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 26, 2020

The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways and Means
The Honorable Karl Rhoads, Chair
and Members of the Committee on Judiciary
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Dela Cruz and Rhoads, and Committee Members:

**Subject: Senate Bill No. 2214, SD 1
Relating to High-Density Housing**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2214, SD 1, which would require discretionary permits to be issued within 60 days from receiving a complete application for high density projects. It would also require units in these projects to be priced for households in the 100 percent or below area median income (AMI) group, but available for sale to all income groups provided they are Hawaii residents, owner-occupants, and do not own any other real property, residential or non-residential.

1. Bill language is confusing. The Bill amends Chapter 201H, HRS, by adding a new section, but makes no link to other programs under this chapter. Is it intended to override Section 201H-38 "Housing development; exemption from statutes, ordinances, charter provisions, and rules"?

Under Sec 201H-38, the county councils have 45-days to approve project proposals. How does Senate Bill No. 2214, SD1, affect this long-standing program?

The first sentence of the Bill requires a 60-day process for "every discretionary permit . . . for any high-density . . . project". The second sentence establishes 6 eligibility criteria for high-density housing projects to be exempt from a conditional use permit requirement (CUP), if there is a CUP requirement. Does this mean that projects that don't need a CUP wouldn't need to comply with the 6 criteria?

2. This Bill will slow down the overall discretionary permit process, if ever used. It means review information normally required by city, state and federal laws that cannot be accommodated in the 60 days will have to be addressed before the department can even accept the application, before the mandated 60-day turnaround

The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways and Means
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begins. This is especially important given the proposed provision that conditions of approval are prohibited. Two examples of department reviews that will be difficult to process within 60 days: Historic and archeological sites review, and assessment of infrastructures' capacity to support the project.

3. There will be undue competition for these lower-priced units. While the Bill requires unit prices to be fixed at prices affordable to households with up to 100 percent AMI, anyone can buy them as long as they meet the criteria unrelated to income. Those with a higher income and thus better able to afford down payments and mortgages, may have a better chance of being sold a unit.
4. TOD principles could be ignored. While one of the CUP eligibility criteria is that projects must be located in a TOD zone, the Bill ignores TOD principles, such as enhancing the public realm with public plazas, open space, better circulation, and active streetscapes. Very often these policies are administered through a discretionary permit review process. As we are committed to TOD principles, DPP will have to assure that they are reflected in applications before applications are filed, as this work cannot be done in less than 60 days, nor added as conditions of approval.
5. Applicability is questionable. These requirements raise expectations, but will not deliver on those expectations as they may be rarely used. The required minimum density, 250 units per acre, far exceeds zoning density limits. On a 10,000 square-foot property, 250 dwelling units per acre translates to 57 units. Using a gross floor area of 700 square feet per dwelling, this translates to a floor area ratio (FAR) of almost 4.0, which is the density limit on our central business district, far higher than the limits on our apartment-zoned neighborhoods. With far higher densities than city zoning allows, supportive infrastructure may not be available.

We believe our efforts, which include working closely with the State in planning and prioritizing investments in affordable housing and TOD infrastructure, will add significant affordable housing inventory throughout the county. Accordingly, we ask that Senate Bill No. 2214, SD1, be held in Committee.

Thank you for the opportunity to testify.

Very truly yours,



Kathy K. Sokugawa
Acting Director