

DAVID IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LOUIS P. SALAVERIA
Director

MARY ALICE EVANS
Acting Deputy Director



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

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner
SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission
Before the
Senate Committee on Water & Land
Senate Committee on Agriculture
February 2, 2015
2:45 PM
State Capitol, Conference Room 224

In consideration of
SB 511
RELATING TO THE LAND USE COMMISSION

Chairs Thielen and Ruderman, Vice Chairs Galuteria and Riviere, and members of the Committee on Water and Land and the Committee on Agriculture:

The Land Use Commission supports SB 511 in that it provides the Land Use Commission (LUC) with much needed enforcement powers.

Currently, the Land Use Commission has only the remedy of reversion if there is a violation of an LUC decision and order. Reversion of land back to its original classification is an extreme measure and often not in the best interest of the community. Under recent Supreme Court decisions it may not even be allowable if a developer has begun construction, even if the development is in direct violation of an LUC order.

Recognizing that most, if not all, of the conditions contained in LUC orders are designed to either protect the public interest under the umbrella of the public trust doctrine, or are designed to protect this body and the taxpayer from having to provide infrastructure improvements to the benefit of private developers, the lack of enforcement capabilities and the inability to craft appropriate remedies is troublesome. Given recent changes to Chapter 205 HRS that allow commercial solar activity on agricultural land under specific conditions, the ability to enforce provisions is critical to protecting the long term viability of agricultural land.

Currently the LUC must rely on the county planning departments to enforce conditions. This has proven problematic in that counties do not often have the motivation or resources to enforce conditions. In addition, the county process does not allow interested parties to contest its failure to enforce a condition. The LUC allows an

aggrieved party, including members of the public at large, to bring a request for an “order to show cause” before the commission and to have its grievance heard and present evidence to support its claim. This measure would allow the LUC the ability to fairly and beneficially deal with violations as they arose.

We would suggest however, that in light of the recent Supreme Court decision in the DW/Bridge AinaLea case the language in the new subsection (i) should be modified to provide that the LUC can, without going through the district boundary amendment procedures of subsections (a) through (h), vacate, void, modify or amend a district boundary amendment if it finds there has been a failure to substantially conform with conditions. Also with respect to the new subsection 205-6(g), it should be made clear that the LUC can take action to enforce the conditions of a special permit without the counties holding a hearing first.

Thank you for the opportunity to testify on this matter.