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Coastal Zone  
Management  
Program

Environmental Review  
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Land Use Commission

Land Use Division

Special Plans Branch

State Transit-Oriented  
Development

Statewide Geographic  
Information System

Statewide  
Sustainability Branch

DTS202311081455SE

November 9, 2023



Dan Giovanni  
Chair  
State of Hawaii Land Use Commission  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

Dear Chair Giovanni and members of the Commission:

Subject: Testimony for the November 15, 2023 Hearing

The Office of Planning and Sustainable Development (OPSD) submits this written testimony for the Land Use Commission's (LUC) November 15, 2023 hearing.

**OPSD Concerns**

The proposed rule amendments were posted on the LUC website on November 7, 2023, five business days prior to the hearing. Consequently, OPSD has not had sufficient time to complete its review of the amendments or to consult with State agencies on the substance and language of the proposed changes.

Based on our preliminary review, OPSD has the following concerns:

Discrepancies Between the Ramseyer Version and the Summary Spreadsheet

There are discrepancies between the Ramseyer Version of the proposed amendments and the summary spreadsheet posted on the LUC's website which creates confusion as to the substance of the proposed changes, e.g., § 15-15-77 (e), § 15-15-95 (b), etc.

Certifications/Approvals from Commission on Water Resource Management (CWRM)

Approval, or sign-off is required from CWRM regardless of whether the proposed action occurs within a Water Management Area, e.g., § 15-15-50 (c) (13), § 15-15-90 (e) (9).

Certifications/Approvals from the State Sustainability Coordinator

Requiring the State Sustainability Coordinator to review and approve drainage improvement mitigation measures e.g., § 15-15-90 (e) (20) duplicates County

requirements. It is also unclear as to why certification of drainage and water is necessary while certification of other infrastructure, such as wastewater and electricity, is not.

#### Dismissal of Motions/Petitions Without County or State Comment

Summary dismissal of motions or petitions without county or OPSD comment may preclude the county or the State from having the opportunity to remedy deficiencies in the petition. Also, would public testimony be precluded? If not, there is an issue of equity between the public's concerns and county and State interests, e.g., § 15-15-70 (l), § 15-15-77 (f).

#### Purpose and Effect of Amending Special Permit Guidelines Is Unclear

Amendment of § 15-15-95 (c) appears to replace the guidelines for determining what constitutes an "unusual and reasonable use" with criteria for determining whether an "unusual and reasonable use" is allowed. Additional time is needed to research the impact of this amendment and its legal implications. In addition, it is currently unclear to what extent the amendments of §§ 15-15-95 (c) (2), (4), and (5) are necessary to satisfy recent court decisions or any unintended consequences of the wording of the proposed changes.

#### Purpose and Effect of New Definition Is Unclear

A definition of "adverse environmental effects" is proposed to be added to § 15-15-03. The purpose of the addition and its impact on the standards for determining Urban District boundaries should be consistent with Chapter 343, Hawaii Revised Statutes (HRS) and HAR 11-200.1-13.

#### Correctness of Word Replacements

There are several amendments to replace a word with presumably a more modern term. However, the replacement word may not be grammatically correct or necessary, e.g., § 15-15-50 (c) (20).

#### Opportunity for Other Amendments

Given that the LUC wishes to amend its rules, a process that does not occur frequently, state agencies may offer additional revisions if given additional time.

For example, the Governor's emergency proclamations have identified the need to increase housing production. The LUC's rules could facilitate that goal and help to alleviate the out-migration of working families while protecting public trust assets.

This may be an opportunity to have important conversations regarding the process of allocating lands for the uses they are best suited for by the State Land Use Commission.

#### More Information on the Proposed Amendments Needed

We understand that the proposed amendment of the administrative rules needs to comply with Administrative Directive No. 18-2. There are components required by the Directive that would

provide useful information to the Commissioners and facilitate a more informed discussion prior to a vote on this matter. Some of the information required includes:

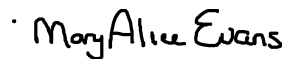
- Identification of the problem the rule change is meant to solve.
- The impact of changes –
  - o How the rule change addresses the problem.
  - o Positive and negative impacts on stakeholders.
  - o Identification of the potential problems with the rule change.
  - o The fiscal impact and economic impact to the State.
- The consequences if changes are not made.

**OPSD Request to Defer Approval to Submit Amendments for Public Hearings**

Based on the preliminary concerns summarized above, OPSD requests that the Commission defer action on Item V on the November 15, 2023 agenda so that LUC staff may have sufficient time to correct discrepancies in the posted materials and draft additional useful information on the proposed amendments that is required by Administrative Directive No. 18-2.

Deferral would also provide time for OPSD to complete its review of the proposed amendments and consult with State agencies. Having the comments of State agencies on the proposed rule changes in a consolidated statement prior to submission to the Department of Business, Economic Development, & Tourism and the Governor for public hearings would benefit the Commissioners and the public.

Mahalo,



Mary Alice Evans  
Interim Director