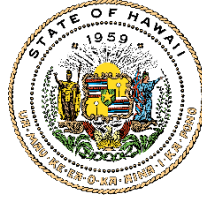


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
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January 10, 2024

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LAND
STATE PARKS

Mr. Dan Giovanni, Chair
State of Hawai'i Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359



SUBJECT: Comments on the 2023 Proposed Administrative Rules

Dear Chair Giovanni:

Land Division Staff has reviewed the proposed Land Use Commission (LUC) rule amendment and offers the following comments:

1. For the Amendment and Compilation Summary section (pages 15-1 through 15-4), we note that amendments were made to §15-15-95 (b), §15-15-109 (d), §15-15-109 (e), §15-15-127 (f), and §15-15-128 (b) and should be included accordingly.
2. Please check formatting throughout document. Specific examples include the following:
 - For the "table of contents" on page 15-7, the third line for the reference to §15-15-127 should be indented to align with previous lines.
 - In §15-15-22(c)(2), §15-15-22 should be deleted and *shoreline surveys, and subdivision maps* line should be moved up.
 - In §15-15-22(e)(1), remove indentation to align with numbers (2) and (3).
 - In §15-15-50(c)(25)(A), (A) should start on its own line.
3. In §15-15-07 there is a strikeout of the word "to" in the second sentence which makes the sentence grammatically incorrect.

4. In §15-15-37, we believe the word “compliant” was accidentally struck out. We suggest reinserting it for consistency purposes.
5. Staff notes that some of the proposed amendments to §15-15-50 appear to be duplicative of county zoning and permitting requirements. Rather than creating additional procedural requirements that will increase applicant time and effort for an already complex process, we believe it to be more important for the LUC to focus on the appropriateness of the petition as it relates to the coinciding State Land Use District Boundary rather than the minutiae of a project/request.

Specifically, §15-15-50(c)(13) is proposing to require certification or approval from the Commission on Water Resource Management (CWRM). For projects/petitions that are intended to connect to the public water system, this requirement would appear duplicative as it is the County who determines availability of source and service.

Further, CWRM provided testimony at the November 15, 2023, LUC meeting in which they stated that *“we cannot provide certification or approval of water for future projects, nor can we guarantee water for future projects. Approval of water for projects from CWRM may come in the form of water use permit allocations in designated water management areas, water reservations, and approved well and stream diversion permits in areas which are not designated as water management areas. CWRM can provide a statement of current water resource availability describing the affected hydrologic unit’s sustainable yield or interim instream flow standard, current withdrawals, and available unused sustainable yield or interim instream flow standard. CWRM can also attest to whether the proposed project is consistent with the respective county WUDP [Water Use and Development Plan] (which has been adopted by CWRM)”*. Therefore, we recommend either removing this requirement or amending the requirement as requested by CWRM in their November 15, 2023, written testimony which we have included as an attachment.

In addition, §15-15-50(c)(27) requires *“certification or approval by the state office of planning and sustainable development’s state sustainability coordinator that all issues identified in §15-15-50(c)(25) and (26) have been adequately addressed and climate adaptation and mitigation measures identified.”* The LUC is composed of nine (9), highly qualified members, that are appointed to make independent determinations based on the merits of a proposal. We believe that it would be unwise to set a precedent potentially allowing staff to govern approvals that should be vetted and decided by the Commission. A contrarian decision by staff could bar the Commission from acting on a petition despite its ultimate decision-making power over Boundary Amendments and the like. Further, §15-15-50(c)(25) and (26) applies to infrastructure improvements and mitigation measures which would require a background in engineering. It is unclear if the State Sustainability Coordinator possesses such expertise. Moreso, we query rather than an approval from the State Sustainability Coordinator whether the State’s Climate Change Mitigation and Adaptation Commission would be more appropriate.

6. It is unclear at which point of the hearing process as outlined in §15-15-59, would §15-15-70(l) and §15-15-77(f) be initiated. We ask that this be clarified and would further request that such determination be made after all witnesses have been heard and cross examined. In addition, it is also unclear if public testimony would be included before such a decision is made and thus request additional further clarification on this matter as well.
7. Regarding amendments to §15-15-90(e)(9) and §15-15-94(b), please see attached comments from CWRM and regarding amendments to §15-15-90(e)(20) and (25) and §15-15-94(c), please see our comments above (No. 3).

Should you have any questions regarding this correspondence, please contact Ms. Lauren Yasaka at (808) 587-0431.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dawn N.S. Chang', with a stylized, looped initial 'D' and a horizontal line extending to the right.

Dawn N.S. Chang *RT*
Chairperson

Attachments

c: CWRM
OPSD