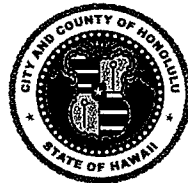


**DEPARTMENT OF PLANNING AND PERMITTING**  
**KA 'OIHANA HO'OLĀLĀ A ME NĀ PALAPALA 'AE**  
**CITY AND COUNTY OF HONOLULU**

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January 17, 2024

2023/ELOG-2326(FK)  
2512377

Ms. Mary Alice Evans  
Interim Director  
State of Hawai'i  
Office of Planning and Sustainable Development  
235 South Beretania, 6th Floor  
Honolulu, Hawai'i 96813



Dear Ms. Evans:

**SUBJECT: Request for Comments on Proposed State Land Use  
Commission Administrative Rule Changes**

Thank you for providing the State Office of Planning and Sustainable Development's (OPSD) testimony regarding concern over the State Land Use Commission's (LUC) proposed rule amendments. The Department of Planning and Permitting (DPP) appreciates your request for comments from our agency.

Your request for comments focuses on three proposed amendments:

1. Requiring approval from the State Commission on Water Resource Management (CWRM) for use of water from a specific aquifer(s) as well as review by State Sustainability Coordinator of any drainage improvements for a project as part of any petition for a district boundary amendment (DBA);
2. The LUC gaining broad discretion to dismiss or deny a motion and to deny a DBA petition at the completion of the petitioner's presentation based on a failure to meet its burden of proof, failure to provide sufficient evidence; and
3. Altering the guideline language for determining what constitutes an "unusual and reasonable use".

### **Requiring approval from the State CWRM and Sustainability Coordinator**

The DPP shares OPSD's concerns that requiring approval by the CWRM for water at the time or before a DBA petition is filed is burdensome and duplicates County requirements. The CWRM opposed this change in its November 14, 2023 written testimony, and stated that County Water Use and Development Plans (WUDP), prepared by each respective county and adopted by CWRM, are the planning documents designed to coordinate water and land use planning and ensure that water will be available for future uses. Similarly, the Counties' already have requirements to ensure that adequate drainage and stormwater infrastructure improvements meet local and state codes.

### **LUC's discretion to dismiss or deny a motion and to deny a DBA petition**

The DPP understands the need for the LUC to ensure expedient and effective hearings. However, the proposed authority this discretion gives the LUC may in fact lead to a longer approval process. Substantive or procedural defects should be identified early on, not at the hearing stage where dismissal or denial is costly in terms of time and resources, especially without established opportunities to remedy deficiencies in the petition. Disputes may ultimately have to be settled in courts rather than administratively.

### **Altering the Special Permit guideline language for determining what constitutes an unusual and reasonable use.**

§ 15-15-95 (c)(2) is awkwardly worded and the DPP believes the additional proposed list of adverse impacts is too specific, hinging it solely on safety and the cause of impacts creating actual physical harm. In addition, we suggest keeping the guideline broad, as it is not possible to list every potential impact a project may have on land use(s). Each project is different requiring its own unique evaluation. By evaluating a project with only a "cookie cutter" set of impacts, such effort may exclude impacts not listed, such as those effects on public views or the night sky. Instead, we recommend language that states, ' Instead, we recommend language that states, 'the proposed use may be allowed if it can be shown there are no adverse impacts or known adverse impacts can be mitigated to a reasonable degree to protect the surrounding property.'

Moreover, the double negative in this section should be removed because it is confusing. It states, "The commission may deny a permit if one of the following is violated. Since the proposed language for the five guidelines are all in the negative, i.e., "shall not..", "would not...", "unsuitability...", "unsuited...", does that mean a project that violates them would be acceptable?

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### **Other Amendments**

An item not listed in the OPSD review of the LUC proposed rule amendments is the proposed requirement under § 15-15-95(b). The proposed language states that counties send copies of special permit petitions to the CWRM, the Sustainability Coordinator, and the State Public Utilities Commission. The counties are already required to send special permit petitions to the LUC, the OPSD, and the State Department of Agriculture, and the DPP requests comments on the petition from a host of governmental and community organizations. Therefore, it is unclear why this additional requirement is necessary.

The OPSD also emphasized that this is an opportunity for the Counties to suggest other amendments that we believe could improve the LUC process. We have concerns with the language in § 15-15-95(f) that requires county planning commissions to decide upon a reasonable time limit suited to establishing the particular use proposed, and if appropriate, a time limit for the duration of the proposed use, which shall be a condition of the special permit. The Hawaii Revised Statutes, Chapter 205 and the City and County of Honolulu, Rules of the Planning Commission do not state that the county planning commission establish a time limit for the duration of the proposed use, and it should be the County's discretion to determine if such a time limit is appropriate. We welcome the opportunity to discuss this issue with the LUC and OPSD.

Thank you again for the opportunity to comment, and the DPP appreciates the position the OPSD has taken on behalf of the counties in this important consideration of the LUC proposed rule amendments. Should there be any questions, please contact Franz Kraintz, Community Planning Branch Chief, at (808) 768-8046 or via email at [fkraintz@honolulu.gov](mailto:fkraintz@honolulu.gov).

Very truly yours,



Dawn Takeuchi Apuna  
Director

DTA:ah

Enclosure

cc: LUC