

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## HOUSE COMMITTEE ON WATER AND LAND

### H.B. No. 1016, Relating to Transfer of Development Rights

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Director of Health

February 8, 2013  
8:30 a.m.

1 **Department's Position:** The Department of Health **OPPOSES** this bill.

2 **Fiscal Implications:** This bill establishes a conservation stewardship fund to include appropriations  
3 from the environmental response revolving fund, among other sources. For fiscal year 2013-2014, the  
4 bill proposes an appropriation of \$160,000 from the environmental response revolving fund.

5 **Purpose and Justification:** The purpose of this bill is to authorize the land use commission to establish  
6 a transfer of development rights program, which would provide a process by which development rights  
7 are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel, or area  
8 of land in one or more receiving districts. The department appreciates the aim of the program, which is  
9 to protect open lands, to enhance sites and areas of special character, and to enable and encourage  
10 management of land as a valuable natural resource. However, the department opposes this bill because  
11 it would divert funds away from the current barrel tax allocations designated for the environmental  
12 response revolving fund, and because the transfer of development rights program would not directly  
13 accomplish the goals of the environmental response revolving fund.

1           The department must follow mandatory requirements under the environmental response  
2 revolving fund to use it for oil spill planning, prevention, preparedness, education, research, training,  
3 removal, and remediation; and for direct support for county used oil recycling program. The  
4 environmental response revolving fund may also be used to support environmental protection and  
5 natural resource protection programs, including energy conservation and alternative energy  
6 development; and to address concerns related to air quality, global warming, clean water, polluted  
7 runoff, solid and hazardous waste, drinking water, and underground storage tanks.

8           The department uses the environmental response revolving fund to respond to and cleanup  
9 hazardous material releases to the environment, which may also affect public health. There has been a  
10 steady decrease in environmental response revolving fund revenues due to various factors such as the  
11 global recession, an increase in more fuel efficient and hybrid vehicles, and the trend towards alternative  
12 non-petroleum based energy sources. The current 5 cents per barrel that goes to the environmental  
13 response revolving fund will not provide sufficient funding to support the department's statutorily  
14 mandated tasks, let alone the recommended uses.

15           For these reasons, the department opposes the proposed appropriation of the environmental  
16 response revolving fund. Moreover, this bill conflicts with the department's support of an additional 5  
17 cents per barrel increase to the environmental response revolving fund as introduced through S.B. No.  
18 1088, Relating to the Environmental Response, Energy, and Food Security Tax.

19           Thank you for the opportunity to testify.

## lowen1-Kyli

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 2:04 PM  
**To:** waltestimony  
**Cc:** mz@conservehi.org  
**Subject:** Submitted testimony for HB1016 on Feb 8, 2013 08:30AM

**Follow Up Flag:** Follow up  
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### **HB1016**

Submitted on: 2/6/2013

Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marjorie Ziegler	Conservation Council for Hawai'i	Oppose	No

Comments: This bill works against sound land-use planning. Also, the environmental response fund should not be used for this purpose.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 4:33 PM  
**To:** waltestimony  
**Cc:** Daniel.E.Orodenker@dbedt.hawaii.gov  
**Subject:** Submitted testimony for HB1016 on Feb 8, 2013 08:30AM  
**Attachments:** LUC Testimony on HB 1016 2-6-2013.pdf

**HB1016**

Submitted on: 2/6/2013

Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dan Orodenker	State Land Use Commission	Support	No

Comments: Supports intent

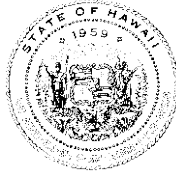
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**NEIL ABERCROMBIE**  
Governor

**SHAN S. TSUTSUI**  
Lieutenant Governor

**RICHARD LIM**  
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

**FRED A. TALON**  
Drafting Technician

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Statement of  
**Daniel E. Orodener**  
Executive Officer  
Land Use Commission  
Before the  
House Committee On Water And Land  
State Capitol, Conference Room 325

In consideration of

**HB 1016 RELATING TO TRANSFER OF DEVELOPMENT RIGHTS**

Chair Evans, Vice Chair Lowen, members of the Committee on Water and Land

The Land Use Commission supports the intent of HB1016 but notes that there are some practical issues that need to be resolved. In addition, we could only consider this proposal if it does not replace or adversely impact priorities contained in the Executive Budget.

The Land Use Commission (LUC) whole-heartedly supports a policy of limiting urban sprawl and increasing density in the urban core to alleviate infrastructure issues and preserving land for open space, agriculture and recreational use. It is recognized that transfer of development rights programs have had an effect on community planning and been successful around the country. However, the actual implementation of such a program is complex, takes time and resources and must be developed in a manner that precisely fits the geographic and political structure.

Issues that need to be resolved include:

- County participation;
- Identification of receiving markets (or if any market exists for the purchase of development rights);
- Identification of transferring areas;
- Implications on the Important Agricultural Land laws and initiative;
- The links to urban growth boundary planning (do urban expansion plans need to be modified);
- What methods are required to create a market for development rights; and
- Coordination with, and implications to, transit on all Islands but especially on the Transit-Oriented Development program on Oahu.

In order to ensure that a Transfer of Development Rights program is adequately developed a detailed study would have to be performed as part of the initial process to determine what type of a program would work in the Hawaii land use system, what incentives are required, what types of development rights have value in Hawaii and what actions need to be taken to develop a market for the sale of development rights. In sum, if the program is to be successful it must be carefully tailored to the existing land use structure.

While the issue is an urgent one we would suggest that prior to the establishment of the program, the Land Use Commission be authorized to undertake a study and planning process to determine if the system could be successful and if so, what problems need to be overcome and how.

It is our estimation that the complexity of this exercise would require an appropriation of \$220,000.00 a year for a two year period.

Thank you for the opportunity to testify on this matter.

TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEES ON WATER & LAND AND  
ENERGY & ENVIRONMENTAL PROTECTION  
ON  
HOUSE BILL NO. 1016

February 8, 2013

RELATING TO TRANSFER OF DEVELOPMENT RIGHTS

House Bill No. 1016 authorizes the Land Use Commission (LUC) to establish a Transfer of Development Rights Program; specifies certain requirements for the transfer of development rights; and allows the creation of a Development Rights Bank in which development rights may be retained or sold. The bill also establishes the Conservation Stewardship Special Fund into which are deposited appropriations by the Legislature, appropriations from the Environmental Response Revolving Fund, and other monies received by the LUC. The funds may be used for the administration of the Transfer of Development Rights Program.

The Department of Budget and Finance (B&F) defers to the LUC regarding the technical issues and merits of the bill. However as a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the HRS. Special or revolving funds should:

- 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program;
- 2) provide an appropriate means of financing for the program or activity; and
- 3) demonstrate the capacity to be financially self-sustaining.

In regards to House Bill No. 1016, it is difficult to determine whether

there is a clear nexus between the benefits sought and the source of funding, and whether the fund will be self-sustaining.

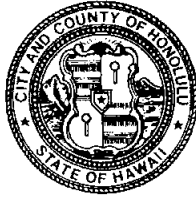
I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, HRS.



DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JIRO A. SUMADA  
ACTING DIRECTOR

February 8, 2013

The Honorable Cindy Evans, Chair  
and Members of the Committee on Water & Land  
State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Evans and Committee Members:

**Subject: House Bill No. 1016  
Relating to Transfer of Development Rights**

The Department of Planning and Permitting **strongly opposes** House Bill 1016, which would allow the State Land Use Commission (SLUC) to establish a transfer of development rights (TDR) program. This would be a violation of homerule, and obstruct the counties' deliberate and comprehensive long range planning and zoning programs.

We support multiple strategies to maintain a healthy agricultural industry, but we question whether House Bill No. 1016 reflects a meaningful strategy. The administration of a TDR program, creation of a TDR credit bank, and establishment of a conservation stewardship fund will result in a significant administrative cost that may be rarely used, if at all.

The City is currently in the process of establishing Important Agricultural Lands (IAL) for Oahu in accordance with Chapter 205, Hawaii Revised Statutes (HRS). We believe that the designation of IAL, once established statewide, can be a significant step in addressing the State constitution mandate, and will help the State Agricultural District to focus on just agriculture; they will not have to deal with remnant or residual lands.

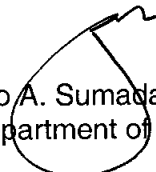
We note that while the bill calls for a "well-considered plan", there is no provision for public comment on specific transfers. It is important that neighbors who are expected to host additional development have a voice in the decision. The bill makes due acknowledgement that the counties can already establish their own TDR programs, which would seem to inherently create more confusion over basic development rights in the affected receiving and sending districts.

The Honorable Cindy Evans, Chair  
and Members of the Committee on Water & Land  
State House of Representatives  
Re: House Bill No. 1016  
February 8, 2013  
Page 2

Lastly, there is no market for additional density on Oahu. Development is hampered more by the lack of supportive infrastructure and other development challenges than the need for more floor area. If the intent of the bill is to reduce urbanization pressures on agricultural lands, there are other more effective strategies. If the intent is to direct development as urban infill, there are likewise other more effective strategies.

In summary, we do not believe this bill is necessary and we request this bill be held in Committee. Thank you for the opportunity to testify.

Very truly yours,

  
Jiro A. Sumada, Acting Director  
Department of Planning and Permitting

JAS:jmf  
hb1016TransferDevelopmentRights



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/08/2013

**Committee:** House Water & Land

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** HB 1016 RELATING TO TRANSFER OF DEVELOPMENT RIGHTS.

**Purpose of Bill:** Allows the land use commission to establish a transfer of development rights program. Specifies certain requirements for transfer of development rights. Allows the creation of a transfer of development rights credit bank. Establishes the conservation stewardship fund. Requires the commission to adopt rules. Appropriates funds from the environmental response revolving fund.

**Department's Position:**

The Department of Education (DOE) supports the intent of this bill, but would like to propose an amendment to this bill to include public schools in the list of considerations for an area to receive additional development. The DOE is concerned that "receiving districts" as described in the bill have adequate public school resources along with the other public facilities named in the bill, such as "transportation, water supply, waste disposal and fire protection."

Section 205-C (3) would read:

(3) Every receiving district, to which transfer of development rights may be authorized, shall contain adequate resources, environmental quality, and public facilities including adequate public schools, transportation, water supply, waste disposal, and fire protection such that there will be no damaging consequences and the increase development is compatible with the development otherwise permitted within the district;

Thank you for the opportunity to testify on this bill.