

# BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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## Testimony to the House Committees on Water and Land Wednesday, February 12, 2014

9:30 a.m.

State Capitol - Conference Room 325

### **RE: HOUSE BILL NO. 2640, H.D. 1, RELATING TO THE LAND USE COMMISSION**

Dear Chair Evans and Vice Chair Lowen, and members of the committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-HAWAII **strongly opposes** H.B. No. 2640 H.D. 1, which proposes to require the State Land Use Commission to automatically reevaluate boundary amendment decisions after 10 years if the landowner has not made efforts to use the land in accordance with the boundary amendment.

The bill fails to recognize the fundamental and cyclical nature of the real estate market in Hawaii. Securing financing to invest in a project at a favorable rate, given the market conditions for both builders and home buyers, takes time to put in place. Investors generally will not finance projects which have too much uncertainty as the uncertainty creates risk. Requiring a review of the permitting after 10 years from approval would create uncertainty and would not help get more projects built quickly, including much needed housing.

Hawaii's land use entitlement process is probably one of the major reasons why the median home price on Oahu right now is \$685,000.00. Removing predictability and restricting the areas where growth is permitted places unnecessary restrictions on the overall supply of housing. This lack of certainty coupled with a lengthy approval process discourages small and medium size developers from entering the market. If the objective of this type of legislation is to increase the cost of development in Hawaii and in turn increase the cost of housing to Hawaii's residents, then this type of legislation would be appropriate.

Perhaps more thought should be given to not only what the legislature is attempting to achieve through this type of legislation but also look at the consequences, including unintended consequences, of this type of draconian legislation.

Thank you for the opportunity to express our views on this matter.

**NEIL ABERCROMBIE**  
Governor

**SHAN S. TSUTSUI**  
Lieutenant Governor

**RICHARD LIM**  
Director

**MARY ALICE EVANS**  
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

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Statement of  
**Daniel E. Orodener**  
**Executive Officer**  
Land Use Commission  
Before the  
**House Committee on Water and Land**  
February 12, 2014  
8:00 AM  
State Capitol, Conference Room 325

In consideration of  
**HB 2640 HD1**  
**RELATING TO LAND USE COMMISSION**

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

The Land Use Commission supports the intent of HB 2640 HD1. However, we would recommend that the language in the measure be modified to conform with the terminology in Chapter 205 HRS and for clarity.

Specifically, the Land Use Commission suggests that the word "re-evaluate" be replaced with the words "automatic ten year review". In addition, we would suggest the language in the measure be modified to require the petitioner or landowner to affirmatively take action and appear before the Land Use Commission after ten years to confirm the ongoing validity of the Decision and Order or to allow the Land Use Commission to re-open and review the Decision and Order for conformity to changed conditions.

Thank you for the opportunity to testify on this matter.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Water and Land  
Wednesday, February 12, 2014 at 8:00 a.m.  
State Capitol - Conference Room 325**

**RE: HOUSE BILL NO. 2640, H.D. 1, RELATING TO THE LAND USE COMMISSION**

Chair Evans and Vice Chair Lowen, and members of the committee:

The Chamber **strongly opposes** H.B. No. 2640 H.D. 1, which proposes to require the land use commission to automatically reevaluate boundary amendment decisions after 10 years if the landowner has not made efforts to use the land in accordance with the boundary amendment.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The bill fails to recognize the fundamental and cyclical nature of the real estate market in Hawaii. Securing financing to invest in a project at a favorable rate given the market conditions for both builders and home buyers takes time to put in place. Investors generally will not finance projects which have too much uncertainty as the uncertainty creates risk. Requiring a review of the permitting after 10 years from approval would create uncertainty and would not help get more projects built quickly.

Hawaii's land use entitlement process is probably one of the major reasons why the median home price on Oahu right now is \$685,000.00. Removing predictability and restricting the areas where growth is permitted places unnecessary restrictions on the overall supply of housing. This lack of certainty coupled with a lengthy approval process discourages small and medium size developers from entering the market. If the objective of this type of legislation is to increase the cost of development in Hawaii and in turn increase the cost of housing to Hawaii's residents, then this type of legislation would be appropriate.

Perhaps more thought should be given to not only what the legislature is attempting to achieve through this type of legislation but also look at the consequences, including unintended consequences, of this type of draconian legislation.

Thank you for the opportunity to express our views on this matter.





# KAMEHAMEHA SCHOOLS

February 11, 2014

## WRITTEN TESTIMONY TO THE HOUSE COMMITTEE ON WATER AND LAND

By

Walter F. Thoemmes, Chief of Staff  
Kamehameha Schools

Hearing Date: February 12, 2014  
8:00 a.m. Conference Room 325

To: Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair  
Members of the House Committee on Water and Land

### **RE: House Bill No. 2640 H.D. 1 Relating to the Land Use Commission**

Chair Evans, Vice Chair Lowen, and members of the House Committee,

Kamehameha Schools respectfully submits the following testimony objecting to House Bill No. 2640:

Even in the best economic times, land use planning in Hawaii is a long-term process. The most diligent of landowners must carefully time—and pay for—State, local and other governmental approvals (and conditions imposed), construction plans, designs, and project financing. As we saw in the most recent recession, the most carefully planned developments may not foresee the occurrence or length of an economic downturn. Accordingly, landowners need the flexibility to time their projects to take advantage of (or weather) changes in the economy, and certainty in the land use process so they can ensure their successful completion. This Bill eliminates both flexibility and certainty from the market by subjecting landowners to unanticipated changes to conditions a decade after approval.

This Bill should not and cannot apply to issued and vested boundary amendments. Even for new decisions, it is fundamentally unfair. Boundary amendment proceedings before the LUC are lengthy and require a significant investment of time, money, and effort. Through the process, the LUC and the petitioner work together to finalize certain conditions as part of the approved petition. These conditions impose significant costs upon a landowner. However, the landowner is willing to accept them because they serve as a governmental assurance upon which the landowners can rely in preparing their long-term plans for their land. In other words, in exchange for additional costs, the landowner gains certainty as to its future obligations when these conditions vest. Petitioners are harmed and deprived of the benefit of this bargain if the vested conditions are now made subject to change.

The Bill's reevaluation requirement is also arbitrary and would chill development. Imposing a "one size fits all" deadline fails to consider the differences in complexity between large and small projects and whether the market is right for development. In fact, many large developments in Hawaii are only economically and practically feasible if they occur over several decades. Further, lenders are particularly concerned about future uncertainties, like unanticipated governmental regulations. Therefore, the specter

of unilaterally imposed conditions would significantly impair the landowner's ability to finance a project. For these reasons, a blanket reevaluation is inappropriate, and would disrupt a landowner's ability to engage in long-term planning and obtain financing for their lands.

We respectfully request that the Bill be held in committee. Mahalo for the opportunity to provide our comments on this measure.

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Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 12, 2014

TO: HONORABLE CINDY EVANS, CHAIR, HONORABLE NICOLE LOWEN,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON WATER  
AND LAND

HONORABLE FAYE HANOHANO, CHAIR, HONORABLE TY CULLEN,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON OCEAN,  
MARINE RESOURCES & HAWAIIAN AFFAIRS.

SUBJECT: **COMMENTS REGARDING H.B. 2640, HD1, RELATING TO LAND USE  
COMMISSION.** Requires the land use commission to automatically reevaluate  
boundary amendment decisions after 10 years if the landowner has not made  
efforts to use the land in accordance with the boundary amendment. (HD1)

HEARING

DATE: Wednesday, February 12, 2014  
TIME: 8:00 a.m.  
PLACE: Room 325

Dear Chairs Evans and Hanohano, Vice Chairs Lowen and Cullen, and Members of the  
Committees:

The General Contractors Association (GCA) is an organization comprised of over six hundred  
(600) general contractors, subcontractors, and construction related firms. The GCA was  
established in 1932 and is the largest construction association in the State of Hawaii. The GCA's  
mission is to represent its members in all matters related to the construction industry, while  
improving the quality of construction and protecting the public interest.

GCA has concerns with H.B. 2640, HD1, which requires the land use commission to  
automatically reevaluate boundary amendment decisions after 10 years if the landowner has not  
made efforts to use the land in accordance with the boundary amendment.

Current law already requires those with land use approvals to submit an annual report on the  
status of one's project, thus this measure is not necessary. The Commission is informed about a  
project's status based on the annual report.

Over the years, issues have been raised relating to the LUC's detailed timing deadlines and other  
specific requirements and conditions. Additionally, questions have been raised regarding the  
LUC's continued monitoring and enforcement of conditions which involve detailed development  
issues and requirements which the counties are responsible to establish and enforce under  
Chapter 205, Hawaii Revised Statutes and county laws.

Thank you for this opportunity to present our views on this measure.



**LATE**



February 11, 2014

Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair  
House Committee on Water and Land

**Opposition to HB 2640, HD1 Relating to Land Use. (Requires the land use commission to automatically reevaluate boundary amendment decisions after 10 years if the landowner has not made efforts to use the land in accordance with the boundary amendment.) (HD1)**

**Wednesday, February 12, 2014, 8:00 a.m., in Conference Room 325**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

This measure does not have a purpose clause, so its intent and purpose is unknown. It is not known exactly what the problem is, however, the existing system already has adequate processes to review the F does not know how many landowners are not using the land for which the acknowledges that some conditions imposed by the Land Use Commission (Commission) may not be satisfied, however, the enforcement or of said conditions, determination of good cause for the delays and any extension of time to satisfy the conditions should lie with the counties.

Based on the following reasons and considerations, LURF **OPPOSES** HB 2640, HD1, and must request that this bill be held in Committee, based on the following:

- HB 2640, HD1 is unnecessary and ignores the existing Commission Administrative Rules and process, which provide the opportunity for an annual Commission review, and require a mandatory order to Show Cause be issued if the Commission has reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petition: The existing Commission Rules:

- Requires the petitioner to develop the land to which the boundary amendment applies in substantial compliance with the representations made to the Commission. Failure to so develop the subject property may result in reversion of the subject property to its former land use district classification, or change it to a more appropriate land use district classification;
- Requires petitioners to file annual reports to the Commission, State office of Planning and respective county planning department (Commission Rules Section 15-15-90(e)(3));
- Whenever the Commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, the Commission is required to issue and serve upon the party or person bound by the conditions, representations, or commitments, an Order to Show Cause why the property should not revert to its former land use classification, or be changed to a more appropriate classification;
- HB 2640, HD1, is not consistent with Hawaii Revised Statutes (HRS) §205-12 Enforcement, which authorizes the counties to enforce all land use district classifications and land use district regulations adopted by the Commission (except for Conservation Districts).
- HB 2640, HD1, is not consistent with the intent and application of HRS Chapter 205 and its two-tiered government land use approval process (State/county).
- HB 2640, HD1 specifically disregards the reality of development projects, enforcement of conditions, the reasons for delays in compliance with conditions and the expertise and experience of the counties to address such matters.
- HB 2640, HD1 could have unintended (or intended) negative impacts or hardships on existing residential, commercial and industrial and resort zoned properties or those in active construction, which will cause inconsistencies with county zoning, and violations of the powers granted to the counties under HRS 46-4.
- HB 2640, HD1 will result in severe unintended consequences and confusion – as it will require existing residential, commercial, industrial and resort zoned properties to revert back to agricultural land use classifications.
- Instead of passing HB 2640, HD1, the Legislature should pass HB 193 (2013), which was passed by this Committee in 2013, and is a more reasonable and rational bill which reflects reality and is consistent with Hawaii laws.

For the reasons stated above, LURF respectfully recommends that **HB 2640, HD1 be held in this Committee**. Thank you for the opportunity to provide comments regarding this proposed measure.