



# OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824  
Web: <http://planning.hawaii.gov/>

DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON WATER AND LAND**  
Friday, February 12, 2016  
9:30 AM  
State Capitol, Conference Room 325

in consideration of  
**HB 2043**  
**RELATING TO THE LAND USE COMMISSION**

Chair Yamane, Vice Chair Cullen, and Members of the House Committee on Water and Land.

The Office of Planning (OP) supports the intent of House Bill 2043. This bill would give the Land Use Commission (LUC) additional tools for enforcing the conditions or requirements of a land use district boundary amendment and special permit by allowing the LUC to determine whether the county has violated or failed to enforce conditions or restrictions revert the subject property to its former district classification or revoke the LUC's approval of a special permit entitlement granted pursuant to Hawaii Revised Statutes (HRS) Chapter 205.

However, there may be due process issues with respect to the way this would put a county on administrative trial for non-enforcement, yet the Petitioner of the subject district boundary amendment or special permit would be subject to the consequences. Furthermore, OP notes on page 1, line 6-7, the "petition by any party" is not defined. Thus, there may be no limitation on who can bring such a petition to the LUC.

OP would prefer the improvements to the LUC's enforcement capabilities proposed within Administration Bill HB 2292.

Thank you for the opportunity to testify on this matter.

**DAVID Y. IGE**  
Governor

**SHAN S. TSUTSUI**  
Lieutenant Governor

**LUIS P. SALAVERIA**  
Director

**MARY ALICE EVANS**  
Acting 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

---

Statement of  
**Daniel E. Orodener**  
**Executive Officer**  
Land Use Commission  
Before the  
**House Committee on Water and Land**  
Friday February 12, 2016  
9:30 AM  
State Capitol, Conference Room 325

In consideration of  
**HB 2043**  
**RELATING TO THE LAND USE COMMISSION**

Chair Yamane, Vice Chair Cullen, and member of the Committee on Water & Land:

The Land Use Commission supports the intent of HB 2043 in that it seeks to provide the LUC with the ability to ensure that conditions of a district boundary amendment or a special permit are enforced.

The concept of providing the LUC with the ability to enforce conditions is a sound one. We would defer to the Attorney General on whether or not the proposed language raises due process issues or other constitutional issues associated with having the LUC review a county decision with the penalty for violation being levied against an applicant and proposed limitations on citizen involvement in bringing an Order to Show Cause.

We would note that as this measure creates an entirely new section of chapter 205, HRS, we caution that while we currently do not see a conflict, that it not be inconsistent with other proposed measures, such as HB2044 and HB2292, that also seek to provide the LUC with additional enforcement powers.

Thank you for the opportunity to testify on this matter.

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

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR

ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

February 12, 2016

The Honorable Ryan I. Yamane, Chair  
and Members of the Committee on Water  
and Land  
Hawaii State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Yamane and Committee Members:

Subject: House Bill No. 2043  
Relating to the Land Use Commission

The Department of Planning and Permitting (DPP) strongly **opposes** House Bill No. 2043, which would require the State Land Use Commission (LUC) to process reversion of district boundary amendments and revoke special use permit approvals in cases where the respective county failed to enforce land use conditions and/or restrictions imposed by the Commission.

Instances in which a condition is not actively enforced by the City are often due to conditions of approval that are unenforceable by the counties. Sometimes they are poorly structured or vague. Sometimes they are beyond the control of the county.

Specifically, a standard LUC condition of approval on a district boundary amendment is that the project must comply with representations made to the State. This is a very broad condition, subject to interpretation. The City cannot determine what level of compliance is expected, if parking was part of a project proposal, does the relocation of the parking, or a change in the number of parking spaces provided, constitute a violation? If this level of enforcement is expected, then these components need to be included with the LUC's decision and order.

Another example is when a condition is under State jurisdiction. If a State agency fails to cooperate in addressing the condition, the City does not have the

The Honorable Ryan I. Yamane, Chair  
and Members of the Committee on Water and Land  
Hawaii State House of Representatives  
Hawaii State Capitol  
Re: House Bill No. 2043  
February 12, 2016  
Page 2

authority to require a State action. To penalize the City for a State non-action is unreasonable.

Many larger projects already have similar requirements as a condition of county zoning or land use permit approvals. As a practice by the City, compliance with these conditions is addressed prior to either issuance of subdivision or building permit approvals. Therefore, to a large extent, enforcement of LUC conditions is folded into county permits.

Existing rules and regulations of the LUC and the respective county Planning Commissions already provide a process for enforcement and revocation of district boundary amendments and special use permits. The existing process allows an aggrieved party, or the LUC and the Planning Commission, to seek resolution to the enforcement of conditions or restrictions. This Bill would be counterproductive as it would add another layer of regulations to the current process, which is performing appropriately.

Please file the measure. Thank you for the opportunity to share our concerns.

Very truly yours,



George I. Atta, FAICP  
Director



**Testimony to the House Committee on Water & Land  
Friday, February 12, 2016 at 9:30 A.M.  
Conference Room 325, State Capitol**

**RE: HOUSE BILL 2043 RELATING TO THE LAND USE COMMISSION**

Chair Yamane, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **expresses serious concerns regarding** HB 2043, which would require the land use commission to process the reversion of land use district boundary reclassifications and revoke approvals for special use permits in cases where the pertinent county has violated or failed to enforce land use conditions or restrictions imposed by the commission for the subject property.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

With respect to H.B. 2043, the LUC would penalize the applicant by reverting or reclassifying its lands back its original land use classification if the "County" failed to enforce a condition or restriction imposed on the applicant by the LUC. It seems rather extreme to penalize the applicant for the County's actions. It would appear that it would be more appropriate for the LUC to deal directly with the County on this issue as opposed to revoking the reclassification of the applicant's lands.

The question becomes when it is appropriate for the LUC to reconsider its reclassification actions if a project changes due to site, market conditions or unforeseen circumstances. This question illustrates the fundamental problem with the land use entitlement process in Hawaii. The State's role in the process should be limited to "State" interests such as natural resource management, maintaining and protecting our water resources, and regional transportation and public educational issues.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County. Once the LUC reclassifies lands based on the County's identification of future growth areas, the Counties would be responsible for rezoning the lands based on their respective plans.

The LUC's continued involvement in specific projects once lands are reclassified is part of the reasons why Hawaii's land use entitlement process is so time consuming, confusing and complicated.



Finally, if lands are reclassified based on the County's identification of area for planned growth, what possible public purpose will be served by having these lands reverted back to agriculture or conservation based on the "non-compliance" of an LUC imposed condition? Not only is this type of extreme action unnecessary but this process creates uncertainty and risk that may make it difficult to finance projects in the future.

With the median price of houses on Oahu at \$730,000.00, it is crucial to seriously consider how proposed changes to the existing land use entitlement process will either help or hurt Hawaii's residents.

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

February 12, 2016

**The Honorable Ryan I. Yamane, Chair**

House Committee on Water & Land  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: H.B. 2043, Relating to the Land Use Commission**

**HEARING: Friday, February 12, 2016 at 9:30 a.m.**

Aloha Chair Yamane, Vice Chair Cullen, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its 8,800 members. HAR **opposes** H.B. 2043 which requires the land use commission to process the reversion of land use district boundary reclassifications and revoke approvals for special use permits in cases where the pertinent county has violated or failed to enforce land use conditions or restrictions imposed by the commission for the subject property.

Reversion of land back to its original classification is an extreme measure and often not in the best interest of the community. Under recent Supreme Court decisions it may not even be allowable if a developer has begun construction, even if it the development is in direct violation of a Land Use Commission (LUC) order.

HAR further believes H.B. 2043 is not consistent with the two-tiered system of land use approvals – State and County. Under HRS 205-12, the appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the LUC and restriction on use and the condition relating to agricultural districts.

The LUC operate with a broad focus on state land use issues and believes this is inconsistent with the authority allowed by counties.

Mahalo for the opportunity to testify.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 11, 2016 10:54 AM  
**To:** waltestimony  
**Cc:** DrKioniDudley@hawaii.rr.com  
**Subject:** Submitted testimony for HB2043 on Feb 12, 2016 09:30AM

**HB2043**

Submitted on: 2/11/2016

Testimony for WAL on Feb 12, 2016 09:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dr. Kioni Dudley	The Friends of Makakilo	Support	No

Comments: I really like this HB2043! Again, like HB 2044, it would strengthen the Land Use Commission. The only minor change I would suggest here is on page 2 line 19. I would add the underlined, so as to read, "any act or inaction of the county." The reason for this suggested change (addition of "or inaction") is that most often the problem is that the county has taken no action.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

2016 OFFICERS

PRESIDENT  
CRAIG WASHOFSKY  
SERVCO HOME & APPLIANCE  
DISTRIBUTION

PRESIDENT-ELECT  
EVAN FUJIMOTO  
GRAHAM BUILDERS, INC.

VICE PRESIDENT  
DEAN UCHIDA  
SSFM INTERNATIONAL, INC.

TREASURER  
MICHAEL WATANABE  
JW, INC.

SECRETARY  
PETER ELDRIDGE  
RAYNOR OVERHEAD DOORS &  
GATES, INC.

SPECIAL APPOINTEE-BUILDER  
PAUL D. SILEN  
HAWAIIAN DREDGING  
CONSTRUCTION CO, INC

SPECIAL APPOINTEE-BUILDER  
MARK KENNEDY  
HASEKO CONSTRUCTION  
MANAGEMENT GROUP, INC.

SPECIAL APPOINTEE-ASSOCIATE  
GARY T. OKIMOTO  
HONOLULU WOOD TREATING, LLC

IMMEDIATE PAST PRESIDENT  
RICHARD HOBSON, JR.  
GENTRY HOMES, LTD.

CHIEF EXECUTIVE OFFICER  
GLADYS MARRONE  
BIA-HAWAII

2016 DIRECTORS

ANTHONY BORGE  
RMA SALES

BEAU NOBMANN  
HPM BUILDING SUPPLY

DOUGLAS E. PEARSON  
CASTLE & COOKE HOMES  
HAWAII, INC.

CHRIS CHEUNG  
CC ENGINEERING &  
CONSTRUCTION, INC.

CLIFTON CRAWFORD  
C&J CONTRACTING, INC.

CURT KIRIU  
CK INDEPENDENT LIVING BUILDERS

DWIGHT MITSUNAGA  
DM PACIFIC, INC.

JACKSON PARKER  
D.R. HORTON, SCHULER DIVISION

JENNIFER ANDREWS  
COLDWELL BANKER PACIFIC  
PROPERTIES

MARK HERTEL  
INTER-ISLAND SOLAR SUPPLY,  
OAHU-MAUI-HAWAII-KAUAI

MARSHALL HICKOX  
HOMEWORKS CONSTRUCTION, INC.

SARAH LOVE  
BAYS LUNG ROSE & HOLMA

MAILING  
P.O. BOX 970967  
WAIPAHU, HAWAII  
96797-0967

STREET  
94-487 AKOKI STREET,  
WAIPAHU, HAWAII 96797

P 808.847.4666  
F 808.440.1198  
E INFO@BIAHAWAII.ORG

Testimony to the House Committee on Water & Land

Friday, February 12, 2016

9:30 a.m.

State Capitol - Conference Room 325

**LATE**

**RE: HB 2043 & HB 2044 – Relating to the Land Use Commission.**

Dear Chair Yamane, Vice-Chair Cullen, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer 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 has serious concerns regarding the manner in which punitive actions will be imposed on projects in both these bills. As drafted, the bills propose the following:

H.B. 2043 Would require the land use commission to process the reversion of land use district boundary reclassifications and revoke approvals for special use permits in cases where the pertinent county has violated or failed to enforce land use conditions or restrictions imposed by the commission for the subject property.

H.B 2044 Establishes penalties for any petitioner for an amendment to a district boundary that violates, neglects or fails to conform to or comply with chapter 205, HRS, (land use commission) or any lawful order of the land use commission. Authorizes the land use commission to record a notice of noncompliance, modify existing conditions, or impose new conditions on land that has been petitioned for a boundary amendment fails to adhere to or comply with the petitioner's representations or the land use commission's conditions. Clarifies who may motion for an order show cause based on an alleged failure to perform a condition, representation, or commitment. Extends incremental districting to urban districts to twenty years.

With respect to H.B. 2043, the LUC would penalize the applicant by reverting or reclassifying its lands back its original land use classification if the "County" failed to enforce a condition or restriction imposed on the applicant by the LUC. It seems rather extreme to penalize the applicant for the County's actions. It would appear that it would be more appropriate for the LUC to deal directly with the County on this issue as opposed to revoking the reclassification of the applicant's lands.

H.B. 2044 attempts to address a recurring situation in any reclassification or rezoning action. The level of detail provided by the applicant and imposed on projects by the LUC is usually based on the proposed project and market conditions at the time of the reclassification action by the LUC.

The question becomes when it is appropriate for the LUC to reconsider its reclassification actions if a project changes due to site, market conditions or unforeseen circumstances. This question illustrates the fundamental problem with the land use entitlement process in Hawaii. The State's role in the process should be limited to "State" interests such as natural resource management, maintaining and protecting our water resources, and regional transportation and public educational issues.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County.

Once the LUC reclassifies lands based on the County's identification of future growth areas, the County's would be responsible for rezoning the lands based on their respective plans.

The LUC's continued involvement in specific projects once lands are reclassified is part of the reasons why Hawaii's land use entitlement process is so time consuming, confusing and complicated.

Finally, if lands are reclassified based on the County's identification of area for planned growth, what possible public purpose will be served by having these lands reverted back to agriculture or conservation based on the "non-compliance" of an LUC imposed condition? Not only is this type of extreme action unnecessary but this process creates uncertainty and risk that may make it difficult to finance projects in the future.

With the median price of houses on Oahu at \$730,000.00, elected officials need to seriously consider how proposed changes to the existing land use entitlement process will either help or hurt Hawaii's residents.

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