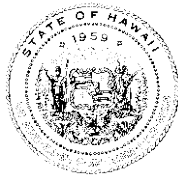


DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
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

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on the Judiciary
Friday March 4, 2016
4:25 PM
State Capitol, Conference Room 325

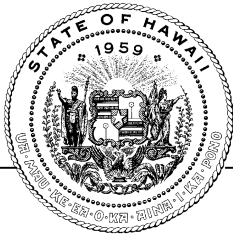
In consideration of
HB 2044 HD1
RELATING TO THE LAND USE COMMISSION

Chair Rhoads, Vice Chair San Buenaventura, and members of the Committee on the Judiciary:

The Land Use Commission fully supports HB2044 HD1. This measure would provide the Commission with additional options for enforcement of the conditions contained in its decisions and orders. The measure has the benefit of assuring the community that projects are built in accordance with agreed upon requirements, ensuring the State's and public's interests are protected while still allowing developers the assurance projects will not be halted via revocation of land use classification. It also provides the LUC the opportunity to work with developers to ensure projects are built properly rather than outright terminated.

Currently the LUC does not have the ability, except in extremely limited circumstances to enforce its decisions, before there has been substantial commencement, and it only has one penalty it may assess, reversion to the former land use classification. This leaves the commission little leeway and runs contrary to public policy, threatening jobs, and the construction of affordable homes. This measure will allow the LUC to remedy a violation without having to stop projects by revoking permits while still protecting the public's interests.

Thank you for the opportunity to testify on this matter.



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
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Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON JUDICIARY
Friday, March 4, 2016
4:25 PM
State Capitol, Conference Room 325

in consideration of
HB 2044 HD 1
RELATING TO THE LAND USE COMMISSION

Chair Rhoads, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary.

The Office of Planning (OP) supports House Bill 2044, HD 1. This bill would give the Land Use Commission (LUC) additional tools for enforcing the conditions or requirements of a land use district boundary amendment by allowing the LUC to impose fines, and amend, modify, or vacate conditions of these entitlements granted pursuant to Hawaii Revised Statutes (HRS) Chapter 205.

Currently, the LUC's only remedy for a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, is the granting of an order to show cause pursuant to Hawaii Administrative Rules (HAR) § 15-15-93. The approved boundary amendment decision and order could then be subject to reversion, whereby the land is reverted to its former land use classification or changed to a more appropriate classification. In some cases, reversion is not the most appropriate mechanism for addressing violations and prevents the LUC and the parties from developing a more practical solution.

Thank you for the opportunity to testify on this matter.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LATE

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development & Tourism
before the
HOUSE COMMITTEE ON THE JUDICIARY

Friday, March 4, 2016
4:25 PM
State Capitol, Conference Room 325

in consideration of

HB 2044, HD1
RELATING TO THE LAND USE COMMISSION.

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee on the Judiciary.

The Department of Business, Economic Development and Tourism (DBEDT) supports HB 2044, HD1. This measure will allow the State Land Use Commission (LUC) the ability to enforce conditions contained in its District Boundary Amendment decisions and orders that protect important State interests and the public trust.

Currently, the LUC does not have the ability except in extremely limited circumstances to enforce its decisions, before there has been substantial commencement, and it only has one penalty it may assess, reversion to the former land use classification. Currently, the counties have the authority to enforce conditions. However, for various reasons the counties cannot enforce conditions.

When a project has been approved, the LUC has determined the project has significant value to the community. Conditions are placed on the development of the project to protect the public's interests, protect the State from having to pay for infrastructure costs. Significant impacts to the economy and the housing market can result, if projects are terminated through reversion. To ensure that the public can continue to expect the positive attributes of a project, this measure will allow for continued dialogue to address any conditions that may arise.

From an economic standpoint it is not beneficial to completely halt or revoke a project's permits when a violation occurs. The State has a social and economic interest in seeing projects completed. It is a benefit to both the construction industry and the pressing need for housing.

This measure will allow the LUC to remedy a violation without having to revoke permits and stop a project.

The measure also serves to support all developers and create certainty by ensuring developers who violate conditions do not obtain competitive advantage over those who comply with conditions.

Thank you for the opportunity to testify on this matter.



LATE

HB2044 HD1
RELATING TO THE LAND USE COMMISSION
House Committee on Judiciary

March 4, 2016

4:25 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2044 HD1, which addresses long-standing compliance challenges relating to district boundary amendments and conditions of approval, by providing the Land Use Commission (LUC) with a variety of flexible, alternative enforcement tools.

Conditions of approval are a critical means by which the LUC can fulfill its obligations to Native Hawaiians. Pursuant to Hawai‘i’s Constitution, various statutes, and judicial decisions, the State has an affirmative duty to preserve and protect Native Hawaiian traditional and customary practices, while reasonably accommodating competing private and governmental interests.¹ Participation in zoning and land use processes, including LUC district boundary amendment decisions, are sometimes the only way that Native Hawaiians have been able to meaningfully participate in land use decision-making and enforce their rights. LUC conditions of approval for district boundary amendments and special permits may include mitigation measures that preserve and protect traditional and customary practices, as well as the natural and cultural resources they rely upon. The effective enforcement of LUC conditions and other lawful orders can therefore be critical to enforcing the rights of Native Hawaiians, and perpetuating the Hawaiian culture.

HB2044 HD1 will enhance the enforceability of LUC conditions of approval and other orders, promote accountability in representations made to the LUC, and better protect the integrity of LUC decisions. By providing the LUC with clear yet flexible enforcement tools relating to when and how to respond to a petitioner’s failure to comply with conditions of approval or the petitioner’s representations to the LUC, and by authorizing the LUC to impose penalties for violations or failures to comply with HRS Chapter 205 or LUC orders, this bill allows the LUC to more effectively ensure that important cultural and environmental land use protections are adhered to and properly enforced.

In order to further clarify the LUC’s authority to enforce conditions of approval, the Committee may want to consider adding a definition of “substantial commencement” to

¹ As discussed in *Ka Pa‘akai O Ka ‘Aina v. Land Use Commission*, 94 Hawai‘i 31 (2000).

HRS § 205(g). For example, OHA notes that in testimony for SB2355, the LUC suggested defining “substantial commencement” as follows:

“For the purposes of this section ‘substantial commencement’ shall be defined as completion of all public improvements and infrastructure required by conditions imposed pursuant to this chapter, both within the project area and outside the project area and completed construction of twenty per cent of the physical private improvements such that they are usable and/or habitable.”²

Accordingly, OHA urges the Committee to **PASS** HB2044 HD1. Mahalo for the opportunity to testify on this measure.

² LUC testimony to the House Committee on Water, Land, and Agriculture on February 17, 2016, *available at*: http://www.capitol.hawaii.gov/Session2016/Testimony/SB2355_TESTIMONY_WLA_02-17-16.PDF

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Nadine K. Nakamura
Managing Director

Ka'āina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766
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Testimony before the House Judiciary
HB2044 HD1 Relating to The Land Use Commission

March 4, 2016 at 4:25 pm Conference Room 329

By Michael A. Dahilig
Director of Planning, County of Kaua'i

Chair Rhoads and Honorable Members of the Committee:

On behalf of the County of Kaua'i Planning Department, I offer **COMMENTS** and **CONCERNS** concerning this measure as it relates to greater enforcement powers for the Land Use Commission.

We all agree we need greater and more robust enforcement of our land use and environmental laws. The idea behind having the Land Use Commission's conditions of approval have teeth behind them is a good thing.

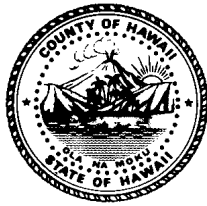
However, we raise concerns with respect to how such a bill would preempt County enforcement powers. Situations may arise whereby our home rule authority to enforce zoning ordinances under HRS 46-4 authority would consequentially be eroded due to venue shopping.

Further, as land use issues are rarely black and white, we are uncertain, given the language of the current draft, whether applicants holding dual state and county entitlements would claim double jeopardy defenses as a consequence of overlapping enforcement actions.

We believe the best approach toward enhancing enforcement is coordinating State and County enforcement actions versus a piece meal approach. A comprehensive enforcement scheme that involves both the State and Counties, and intertwines both levels of land use regulation and authority, better suits the public interest and eliminates confusion and uneven application of the law.

We encourage continued dialogue regarding the subject matter raised in this legislation. Mahalo for your consideration.

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

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Testimony before the House Judiciary HB2044 HD1 Relating to The Land Use Commission

LATE

March 4, 2016 at 4:25 pm Conference Room 329

By Duane Kanuha
Planning Director, County of Hawai'i

Chair Rhoads and Honorable Members of the Committee:

On behalf of the Hawai'i County Planning Department, I offer the following **CONCERNS** pertaining to this measure as it relates to greater enforcement powers for the Land Use Commission.

I offer these concerns based on my past and present public service as Deputy Planning Director and Planning Director under three different administrations with the County of Hawai'i and also as a former member and Chairperson of the Land Use Commission (the "LUC").

Current statutes contain very specific separations of land use authorities between the state and the county. HRS 46-4 provides for county zoning authority, and emphasizes that the powers therein shall be liberally construed in favor of the county exercising them in accordance with a long range comprehensive general plan to ensure the greatest benefit for the State as a whole. HRS 205-5 continues to recite that the powers granted to the counties under section 46-4 shall govern the zoning within the state land use districts, other than in conservation districts.

The district boundary amendment (the "DBA") process provides the venue to ensure that there is some semblance of coordination between the State and the Counties with respect to the applicable petition. To avoid obvious duplication of authorities, the counties have historically requested the LUC to refrain from imposing zoning or development specific DBA conditions of approval since most DBA petitions do not, nor should not have development or entitlement specificity at the DBA level of entitlement review. The LUC has nevertheless, continued to request such specificity at the DBA level which, unless adopted by the respective county at the zoning level, results in duplicative and in many cases, conflicting requirements being imposed upon the petitioner.

This bill attempts to provide a venue for the LUC to intervene and take enforcement action against the petitioner(s) for noncompliance or other failures to perform. The LUC already has this authority through their order to show cause procedure under HAR Section 15-15-93. Obviously, however, this procedure is more applicable to those DBA's which have not obtained

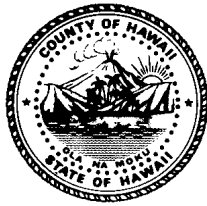
Rep Karl Rhoads, Chair
Committee on Judiciary
March 4, 2016
Page 2

zoning or other related land use entitlements at the county level. As illustrated in the *Aina Lea* decision, once the petitioner has secured further land use entitlements at the county level, an order to show cause initiative will be much more difficult to enforce unless the specific performance condition(s) was not included or substantially addressed in the county's legislative zoning approval process.

The land use entitlement separation of powers doctrine this bill attempts to reconcile is already provided for in existing statutes and/or rules and regulations. This bill, although well intended, is not really necessary and would provoke even further discord between state and county planning efforts.

Thank you for the opportunity to provide commentary for your consideration.

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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Testimony before the House Judiciary HB2044 HD1 Relating to The Land Use Commission

LATE

March 4, 2016 at 4:25 pm Conference Room 329

By Duane Kanuha
Planning Director, County of Hawai'i

Chair Rhoads and Honorable Members of the Committee:

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I offer these concerns based on my past and present public service as Deputy Planning Director and Planning Director under three different administrations with the County of Hawai'i and also as a former member and Chairperson of the Land Use Commission (the "LUC").

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Rep Karl Rhoads, Chair
Committee on Judiciary
March 4, 2016
Page 2

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The land use entitlement separation of powers doctrine this bill attempts to reconcile is already provided for in existing statutes and/or rules and regulations. This bill, although well intended, is not really necessary and would provoke even further discord between state and county planning efforts.

Thank you for the opportunity to provide commentary for your consideration.



**Conservation Council
for Hawai'i**

Hawai'i's voice for wildlife

Kō Hawai'i leo no nā holoholona lōhiu



Testimony Submitted to the House Committee on Judiciary

Hearing: Friday, March 4, 2016 14:25 pm
Conference Room 325

In Support of HB 2044 HD 1 Relating to the Land Use Commission

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee.

Aloha. Conservation Council for Hawai'i supports SB 2355 SD 1, which 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 where there has been a failure to adhere to or comply with the petitioner's representations or the land use commission's conditions; clarifies who may motion for an order to show cause based on an alleged failure to perform a condition, representation, or commitment; and extends incremental districting to urban districts to twenty years. (HB2044 HD1).

HB 2044 HD 1 is needed to deter parties from violating conditions attached to land use reclassifications and other approvals.

The bill is fair and reasonable given the significant benefits a petitioner receives from such reclassifications and approvals.

Furthermore, there are bills this session that seek to weaken or eliminate the Land Use Commission, which is supposed to represent the public and State's interest in land use and development matters. Please protect the integrity of our land-use process by supporting HB 2044 HD 1.

Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler

Telephone/Fax: 808.593.0255 | email: info@conservehi.org | web: www.conservehi.org
P.O. Box 2923 | Honolulu, HI 96802 | Office: 250 Ward Ave., Suite 220 | Honolulu, HI 96814

President: Julie Leialoha | Vice President: Koalani Kaulukukui | Secretary: Wayne Tanaka

Treasurer: Ryan Belcher | Directors: Rick Barboza | Anne Huggins Walton

Executive Director: Marjorie Ziegler | Administrator: Jonnetta Peters



March 4, 2016

The Honorable Karl Rhoads, Chair

House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 2044, H.D.1, Relating to the Land Use Commission

HEARING: Friday, March 4, 2016 at 4:25 p.m.

Aloha Chair Rhoads, Vice Chair San Buenaventura, 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. 2044, H.D.1 which:

1. Provides that upon petition by any party, requires the Land Use Commission to investigate and hold a hearing on county violation or failure to enforce land use conditions or restrictions;
2. Rescinds county permit authority as penalty for violation or failure to enforce; and
3. Provides for expedited judicial review.

HAR believes H.B. 2044, H.D.1 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.

Over the years, issues have arisen relating to the LUC's imposition of detailed timing deadlines and other specific requirements and conditions, as well as the LUC's continued attempts to monitor and enforce conditions which involve detailed development issues and requirements which the counties are rightfully responsible to establish and enforce under HRS Chapter 205 and county laws.

Requiring petitioners to “substantially conform with the conditions or requirements of the order granting the special permit,” or risk amendment, modification or vacation of said permit would be unjust and unreasonable, will undoubtedly result in unnecessary lawsuits and litigation, and negatively impact project financing and development

Mahalo for the opportunity to testify in opposition to this measure.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Friday, March 4, 2016 at 4:25 P.M.
Conference Room 325, State Capitol**

RE: HOUSE BILL 2044 HD 1 RELATING TO THE LAND USE COMMISSION

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 2044 HD 1, which 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.

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.

The bill 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 LUC process, including various judicial appeals, usually takes years to resolve. Large projects which require reclassification of land by the LUC usually take years to build out. Once construction commences, market conditions may have changed from when the project was originally submitted to 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.

March 3, 2016

Representative Karl Rhoads, Chair
House Committee on Judiciary

RE: HB2044, HD1

**Strong Opposition and Proposed Amendments to HB 2044, HD1
Relating to the Land Use Commission.**

Those of us with a long family history and those of us with shorter times here in Hawaii are committed to ensuring that development that occurs is done in a manner that truly respects our unique environment, our culture and our community. We may have differing ideas on how to accomplish those goals and on what the end product should be, but our commitment is nonetheless primary.

Over the years, in order to ensure that the above goals are met, a plethora of laws, judicial findings and orders and practices have been added to our legal and administrative systems. These changes occur at all levels of our government. We have now come to a point where it is exorbitantly expensive, time consuming and extremely difficult to wend our way through all of this to execute solid projects for the good of the community. The Thirty Milometer Telescope, Super Ferry and others may seem like projects that do not relate to this legislation – but they all do. How so? They represent projects that died (or are dying) procedurally despite their authors having followed steps proscribed by the State of Hawaii through its agencies. Their deaths are an example of our failure to govern. They demonstrate with clarity systems constructed with good intentions that have become so byzantine that every level of government seems to understand them differently. The result, among others, is that those who study what is going on in the United States consistently rate Hawaii as the most difficult State in the Union to do business in – even more difficult than the District of Columbia (making us the 51st worst place to do business).

What is the affect of over regulation in land use? The current White House contracted a study on this subject:

<http://blogs.wsj.com/economics/2015/11/20/why-white-house-economists-worry-about-land-use-regulations/>

The bottom line is that over regulation results in higher prices of homes, reduced availability of affordable homes and greater income disparity among residents. In a State where more homes are desperately needed and particularly more affordable and middle class homes, we do not need over regulation. What we clearly need are protective laws that are clear enough to be readily understood and followed and regulations that ensure swift and fair determinations. The above project failures (i.e. TMT, etc.) each tell a story – the end of which is a failure of governance due to errors made resulting from overly complex laws, etc.

If we add to our regulations rather than simplifying and clarifying them we will in the end reduce the availability of jobs and homes. If we add complexity and overlap to agencies responsible for land use planning we will in the end reduce availability of jobs and homes. As it now stands wise



investors – whether local or not – are concluding that Hawaii is absolutely NOT the place to make investments in land use. HB2044, HD1 will only make the current situation worse.

This is not to say or to imply that we should let projects be built that are truly harmful to the State – but it is to say that if we do not fix our current system we will surely not get bad projects. But we will just as surely not get the good and high quality projects that, frankly, we very desperately need.

For these reasons I ask that you not pass this legislation in any form. Further, it would make great sense to take the whole subject of land use planning and simplify it for the sake of our community. We DO need good solid projects and we DO need their approval route to be clear and timely. Without this, we will soon find that our homeless, affordability and quality job situations continue on their downward spiral.

Sincerely,

Bill Walter
President

LATE

Testimony of
Pacific Resource Partnership

State of Hawaii
House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

HB 2044, HD1 – Relating to Land Use Commission
Friday, March 4, 2016
4:25 P.M.
State Capitol – Room 325

Aloha Chair Rhoads, Vice Chair San Buenaventura and members of the Committee:

We respectfully oppose HB 2044, HD1 relating to the Land Use Commission. This measure will establish 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. This bill 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 where there has been a failure to adhere to or comply with the petitioner's representations or the land use commission's conditions. This bill clarifies who may motion for an order to show cause based on an alleged failure to perform a condition, representation, or commitment and extends incremental districting to urban districts to twenty years.

The Land Use Commission's role was always intended to be a long-term land use planning agency guided by the principles of HRS 205-16 and 17. Requiring petitioners to "substantially conform with the conditions or requirements of the order granting the special permit," or risk amendment, modification or vacation of said permit (based, no less, upon the LUC's unilateral findings of the petitioner's failure to conform, and with the LUC being obligated to follow its own boundary amendment procedures or requiring a county planning commission action in doing so) would be unreasonable, result in unnecessary lawsuits and litigation and negatively impact project financing and development, as well as the overall economy in Hawaii.

Thank you for the opportunity to share our views with you and we humbly ask for this bill to be deferred in your committee.



(Continued From Page 1)

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.

Testimony to the House Committee on Judiciary
Friday, March 4, 2016
4:25 P.M.
State Capitol - Conference Room 325

LATE

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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RE: HB 2044 HD1: Relating to the Land Use Commission.

Dear Chair Rhoads, Vice-Chair San Buenaventura, 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 is opposed to HB 2044 HD 1 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.

The bill 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 LUC process, including various judicial appeals, usually takes years to resolve. Large projects which require reclassification of land by the LUC usually take years to build out. Once construction commences, market conditions may have changed from when the project was originally submitted to 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.

LATE

HAWAII OPERATING ENGINEERS
INDUSTRY STABILIZATION FUND



*Uniting our strengths and working together
for a better tomorrow.*

Affiliated AFL-CIO
COPPEU - H - AFL-CIO LO

March 4, 2016

Honorable Karl Rhoads, Chair
Honorable Joy A. San Buenaventura, Vice Chair
And Members of the Committee on Judiciary
Hawaii State Capitol
Honolulu, HI

RE: In Opposition of HB 2044 HD1 - Relating to the Land Use Commission

Chair Rhoads and Members of the Committee,

John R. Monis, representing the Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), a labor management fund representing 300 general contractors in the heavy civil engineering and 4000 members in the construction industry.

HB2044 HD1 is not consistent with the intent and application of HRS Chapter 205 and its two-tiered state/county government land use approval process. HD1 ignores the reality of development and enforcement of conditions and fails to recognize the very important fact that the counties presently possess staffing, funding, expertise and experience to address such matters. For that, HOEISF strongly opposes the intent of HB2044 HD1.

Sincerely,

John R. Monis

JOHN R. MONIS
Executive Director
Hawaii Operating Engineers
Industry Stabilization Fund



LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

JAMES DRUMGOLD JR.
Executive Board

JOSEPH YAW
Executive Board

ORLANDO PAESTE
Executive Board

CHRISTOPHER WOOD
Auditor

MARK TRAVALINO
Auditor

COMMITTEE ON JUDICIARY
Rep. Karl Rhodes, Chair
Rep. Joy San Buenaventura, Vice Chair

DATE: Friday, March 4, 2016
TIME: 4:25 PM
PLACE: Conference Room 325
State Capitol 415 South Beretania Street

LATE

RE: BILL NO. HB2044 RELATING TO THE LAND USE COMMISSION

Aloha Chair Rhodes, Vice-Chair San Buenaventura and Members of the House
Judiciary Committee:

My name is Gino Soquena, and I am the Government and Community Relations
Director for The Laborers' International Union of North America Local 368 which
represents almost 5,000 members throughout the State of Hawaii.

We **OPPOSE** HB 2044, HB1. It is our firm belief that this bill would unnecessarily
expand the authority of the LUC to impose additional penalties and change the
terms of development conditions pursuant to vague standards, and that it would
further: (1) result in further unnecessary opportunities for contentious harassment
and litigation against landowners and developers with LUC approvals
(petitioners); (2) add greater uncertainty and hindrances to the entitlement and
post entitlement process; and (3) severely impede and negatively impact
development and financing of affordable and housing for all income levels and
other projects.

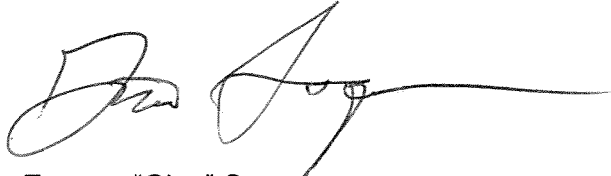
Allowing "any party or interested person" at any time and without limit, to file a
Motion for an Order to Show Cause against petitioners, would result in perpetual
quasi-judicial hearings, contentious litigation against land owners with LUC
approvals (petitioners). The new language in this bill allows the "any party or
interested person" at any time and without limit, to file a Motion for 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. Opponents of a
project, dissatisfied with approvals, will have license and statutory procedure for
continuing opposition and potentially unfair harassment in perpetuity.

By allowing "any party or interested person" to file motions for misrepresentation,
violation or non-compliance which could result in new or amended conditions (in

the discretion of the LUC), this bill unfairly extends the entitlement process and its uncertainty and opportunities for contentious litigation forever. Years after completion of a project, a developer could potentially have to defend against allegations of misrepresentation or breach of conditions, penalties and compliance with new conditions.

The Laborers' Union Local 368 appreciates the opportunity to provide testimony in **OPPOSITION** of HB2044 and respectfully requests that this Bill be held. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene Soquena", with a long horizontal flourish extending to the right.

Eugene "Gino" Soquena
Government & Community Relations Director
Laborers' International Union of North America Local 368



International Brotherhood of Electrical Workers

LOCAL UNION NO. 1186 • Affiliated with AFL-CIO

1935 HAU STREET, ROOM 401 • HONOLULU, HI 96819-5003
TELEPHONE (808) 847-5341 • FAX (808) 847-2224

March 4, 2016

LATE

TO: **HOUSE COMMITTEE ON JUDICIARY**

For Hearing on Friday, March 4, 2016, at 4:25 p.m., in Conf. Room 325

RE: **TESTIMONY IN OPPOSITION TO HB 2044 HD1**

Honorable Chair Rhoads, Vice Chair San Buenaventura, and Judiciary Committee Members,

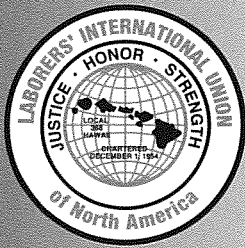
The **International Brotherhood of Electrical Workers Local Union 1186** represents over 3,800 members working in electrical construction, telecommunications, and with Oceanic Time Warner. Our members include civil service employees at Pearl Harbor, Hickam, Kaneohe, and military facilities throughout Hawaii. IBEW Local 1186 also represents over 110 signatory electrical contracting companies that perform most of the electrical work in our state.

We stand in opposition to HB 2044 HD1. We understand the need for effective compliance tools proposed by this bill, but we know of serious concerns about the possibility of overly strict requirements that can tie the hands of potential developments, and lead to lesser production of needed local workforce housing.

Future uncertainty regarding possible Land Use Commission actions, and the loss of flexibility and efficiency in staging complex development projects requires that any enforcement and compliance regulations be cautiously analyzed and applied. We urge stakeholders to work together to address these concerns so that responsible and efficient development and production of homes in Hawaii can be sustained. Thank you for giving us this opportunity to testify in opposition to HB 2044 HD1.

Mahalo and aloha,

Damien Kim
Business Manager – Financial Secretary
International Brotherhood of
Electrical Workers, Local Union 1186



LiUNA!

LATE

COMMITTEE ON JUDICIARY
Rep. Karl Rhodes, Chair
Rep. Joy San Buenaventura, Vice Chair

DATE: Friday, March 4, 2016
TIME: 4:25 PM
PLACE: Conference Room 325
State Capitol 415 South Beretania Street

RE: BILL NO. HB2044 RELATING TO THE LAND USE COMMISSION

Aloha Chair Rhodes, Vice-Chair San Buenaventura and Members of the House Judiciary Committee:

My name is Peter Ganaban, and I am the Business Manager/ Secretary-Treasurer for The Laborers' International Union of North America Local 368 which represents almost 5,000 members throughout the State of Hawaii.

We **OPPOSE** HB 2044, HB1. It is our firm belief that this bill would unnecessarily expand the authority of the LUC to impose additional penalties and change the terms of development conditions pursuant to vague standards, and that it would further: (1) result in further unnecessary opportunities for contentious harassment and litigation against landowners and developers with LUC approvals (petitioners); (2) add greater uncertainty and hindrances to the entitlement and post entitlement process; and (3) severely impede and negatively impact development and financing of affordable and housing for all income levels and other projects.

This measure creates more unnecessary litigation, delays, increased costs and uncertainty by extending the entitlement process in perpetuity, and imposing duplicative, cumbersome and contentious processes which delay and impede the development of needed housing and other desirable projects. The current law and Hawaii supreme Court decisions have confirmed that the counties are the government entities that have the jurisdiction to enforce the urban, agricultural and rural State Land Use Districts and the LUC conditions on land use classifications. This "two tiered entitlement system" (State land use reclassification and County zoning) has from time to time been the topic of discussion and criticism. Critics have questioned whether a two tiered system is necessary where it is duplicative and impedes and adds time and costs to development and financing of desirable projects such as affordable housing, and have argued that a more streamlined process would be in the public interest. From time to time proposals have been made to abolish the LUC. On the other hand, proponents of a more cumbersome two tiered system have argued, among other matters, that any duplication and delay is desirable to ensure appropriate review for protection of limited land resources. This bill, which explicitly states its intent to "expand the authority of the LUC," does not attempt to further balance these perspectives, instead, it just creates a "never-ending entitlement process" that is duplicative, cumbersome and contentious, which increases litigation,

PETER A. GANABAN
*Business Manager/
Secretary-Treasurer*

ALFONSO OLIVER
President

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Executive Board

JOSEPH YAW
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ROBERT DICION
Auditor

MARK TRAVALINO
Auditor

CHRISTOPHER WOOD
Auditor

LiUNA Local 368
1617 Palama Street
Honolulu, HI 96817
Phone: (808) 841-5877
Fax: (808) 847-7829
www.local368.org

Feel the Power

delays, costs and uncertainty and will impede and obstruct the development of affordable and housing for all income levels.

The Laborers' Union Local 368 appreciates the opportunity to provide testimony in **OPPOSITION** of HB2044 and respectfully requests that this bill be held. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Ganaban", with a long horizontal line extending to the right.

Peter A. Ganaban
Business Manager/ Secretary-Treasurer
Laborers' International Union of North America Local 368



Founded 1889

PLUMBERS AND FITTERS LOCAL 675 UNITED ASSOCIATION



LATE

March 3, 2016

Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

RE: IN OPPOSITION of HB 2044, HD 1

JUD HRG: Friday, March 4, 2016, 4:25 p.m., Conference Room 325

My name is Reginald Castanares, Business Manager / Financial Secretary of the Plumbers and Fitters, Local 675 of Hawaii. I represent nearly 2,500 active and retired tradesman in Hawaii's Construction Industry. The working men and women along with their families which comprise the membership of Local 675 would like to add their voices to the opposition of HB 2044 HD 1, which numerous other industry organizations have similarly articulated.

Our concern simply stated, is that we believe this bill is contrary to the intent and purposes of the State of Hawaii's long established public policy to adopt the express principals as set forth in HRS 205-16 and 17.

Further, we are concerned that the bill if adopted will degrade our State and County relationships of land use and planning and zoning. It appears that if this measure is allowed to proceed the State will potentially have a free hand to influence the density outcomes which historically has been the purview of the Counties.

Additionally, the proposed measure would add a substantial financial burden upon the parcel of land which is the subject of said proposed action, with lengthy administrative and subsequent legal proceedings. Lastly we believe that the Hawaii Supreme Court's ruling in the Aina Lea case established the procedures on what and how the Land Use Commission must comply with in order for it to "change" the land use classification of land.

