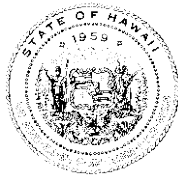


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Lieutenant Governor

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Director

MARY ALICE EVANS
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LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

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Executive Officer

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Planner

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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 2044
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 HB2044 with additional comments. This measure would provide the Commission with additional options for enforcement of the conditions contained in its decision and orders.

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 measure will allow the LUC to remedy a violation without having to revoke permits and stop a project while still protecting the public's interests.

The Commission has concerns with the language in proposed new subsection 205-4(k), HRS, restricting the ability of the Commission to consider incremental districting only when a project would not be completed within twenty years.

Under current Commission procedures, any project that will take more than 10 years to complete is required to provide the Commission with a phased development plan in ten-year increments. This provides important information to the Commission, government agencies, private businesses, and the public to guide future investment decisions, particularly for government-funded infrastructure improvements. The Commission may consider, but is not required, to approve a project incrementally based on this information. Incremental districting has been used rarely and has usually been done at the request of an applicant rather than the Commission. The present practice assists the Commission in ensuring that infrastructure improvements are

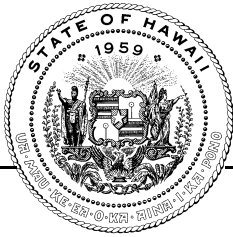
constructed in a manner sufficient to ensure there are not adverse impacts to the State or counties or significant impacts to the public.

We would therefore propose some language changes to preserve the ability of the commission to ensure that the public interest is protected, ensure proper planning of infrastructure and further clarify the Commission's responsibilities under this new subsection. The proposed language is attached for your consideration.

Thank you for the opportunity to testify on this matter.

Pg 9, line 15, new section (k) should be amended to read as follows (new language in yellow):

(k) In reclassifying lands to the urban district, the commission may consider requiring incremental districting approval only for those petitions where substantial development of the petition area is not anticipated to be completed within twenty years from the date of the commission's approval of the petition for district boundary amendment. Nothing in this subsection shall prohibit the commission from reclassifying the entire petition area, regardless of the time anticipated to complete development. Notwithstanding anything in this section to the contrary, the commission may, as a condition of deeming any petition complete, require the submission of an incremental districting plan, phasing plan or construction schedule in any petition for a district boundary amendment. The commission may place conditions on its approval of any district boundary amendment to ensure that infrastructure improvements or public improvements are constructed in a manner sufficient to ensure there is no adverse impact to the state or county or significant adverse impacts to the public.



**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
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

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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 2044
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 2044. 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. However, OP would prefer the changes as proposed in our Administration Bill HB 2292.

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.

The current rules require that if a project will take more than 10-years to be substantially complete, then an incremental development plan in 10-year increments must be part of the petition filings, which the LUC can then determine whether to approve the project in total or in increments. The 20-year proposed limitation makes it difficult for State and county governments to plan infrastructure funding, timing and development.

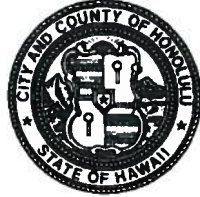
OP would prefer the improvements to the LUC's enforcement capabilities proposed in Administration Bill HB 2292.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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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. 2044
Relating to the Land Use Commission

The Department of Planning and Permitting (DPP) offers **comments** on House Bill No. 2044, which provides the Land Use Commission (LUC) with additional enforcement powers to address noncompliance of requirements associated with an LUC decision on district boundary amendments. It also makes special provisions for "incremental districting approval."

The proposed measure needs to be clarified with respect to existing enforcement provisions found in HRS 205-12 and 205-13. Will there be two avenues for enforcement, or is the intent to delete subsections 12 and 13?

With respect to incremental districting, we note that for large projects, trunk infrastructure systems must be planned and implemented with an assumed build-out demand. If the entire project is not approved, this means county zoning cannot proceed for the entire project. This will force incremental delivery of infrastructure, which may not be the most efficient or timely process. We would support an amendment to this proposal that full approval can be considered if the entire project were supported by county regional plans.

We believe that more discussion needs to be held before moving forward with this Bill. Currently, the LUC's only direct recourse for noncompliance with its decision and orders is to revert the land use district back to its original designation. We agree that this is a drastic tool for minor issues. At the same time, we are not aware of any dissatisfaction with the county enforcement process.

The Honorable Ryan Yamane, Chair
and Members of the Committee on
Water and Land
Hawaii State House of Representatives
Hawaii State Capitol
Re: House Bill No. 2044
February 12, 2016
Page 2

We ask that the committee hold this Bill to allow the LUC to discuss the issue with the counties and consider ways to improve the overall enforcement process, which may not require statutory changes.

Thank you for the opportunity to testify.

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 2044 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 2044, 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 and 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.

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 Counties would be responsible for rezoning the lands based on their respective plans.



Chamber of Commerce HAWAII

The Voice of Business

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.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 11, 2016 10:46 AM
To: waltestimony
Cc: DrKioniDudley@hawaii.rr.com
Subject: Submitted testimony for HB2044 on Feb 12, 2016 09:30AM

HB2044

Submitted on: 2/11/2016

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

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

Comments: HB 2044 Basically, this is a good bill. Up till now, the LUC has been required to let the city oversee compliance with the Conditions accompanying their Decisions and Orders. The county has been very selective on what it wanted to pay attention to. The Commission could do nothing. This gives the Commission the right to impose a \$50,000 a day fine on dudes not complying with their conditions. Other changes seem to be okay. Except: In 205-4 g) In the 2nd last line of this long section, the wording might seem to exclude unsuccessful intervenors from filing a Motion for an Order to Show Cause why a property should not revert to its original district. I was an unsuccessful intervenor, and we needed to, and did, file a motion for an order to show cause. We should ask them to either drop the word “successful” or change the wording to “successful and unsuccessful intervenors” in that line. And in section k) The LUC needs the freedom to approve huge developments incrementally, that is, section by section. Such as, “We approve this part, then, if all goes well, we approve that part.” Section k) would give them that right only for projects exceeding 20 years. (Right now, the LUC requires developers to present plans for the first and then the second ten years. Projects are not approved in segments, however, as far as I know. The current law doesn’t even envision projects going beyond twenty years.) If we are trying to strengthen the LUC, let’s move the timeline back to ten years. In section k) let’s drop the word “only” In line 2, and then in line 4, let’s change “completed in twenty years” to “completed in ten years.” Dr. Kioni Dudley 672-8888

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

LATE



Hawaii's Thousand Friends

25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

COMMITTEE ON WATER & LAND

Rep. Ryan I. Yamane, Chair
Rep. Ty J.K. Cullen, Vice Chair

HB 2044
RELATING TO THE LAND USE COMMISSION

HB 2043
RELATING TO THE LAND USE COMMISSION

February 12, 2016

Hawaii's Thousand Friends finds both bills confusing and lack clarity of intent.

In HB 2044 it is unclear what (a) Any petitioner for an amendment to a district boundary... refers to. Is it a petitioner's application for a boundary amendment that triggers a violation? Or does this statement refer to violations that occur after a petitioner has received a boundary amendment?

In 2044 what is the intent of allowing "...any party or interested person..." to issue an "order to show cause?" Is this statement meant to infer that the Commission is not able to do its job and that other people need to step in? What is the process for any party or interested person to serve an order to show cause? How is any party or interested person defined? Does this statement mean that *any person who is interested* in but not be connected to the project may issue a motion to show cause?

In HB 2943 pg. 1 line 14 how are "unusual and reasonable uses" allowed by special permit in the agricultural and rural districts defined?

Under HB 2943 pg. 2 line 11 who would qualify as an "other responsible party in the case?"

In HB 2943 what constitutes a "violation" and what is the process to determine that the "violation" was caused "primarily by any official act of the county...?"

HB 2044 and HB 2943 are confusing and should be held in committee.

In the interest of shedding light on the LUC and how to improve its enforcement capabilities all LUC bills should be heard.

LATE



OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

HB2044

RELATING TO THE LAND USE COMMISSION

House Committee on Water & Land

February 12, 2016

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2044, 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 This duty is often reflected in zoning and land use processes, such as the approval of district boundary amendments and special permits by the LUC; in many such cases, LUC conditions of approval and other lawful orders may include mitigation measures that preserve and protect traditional and customary practices, as well as the natural and cultural resources they rely upon, identified during the decision-making process. 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 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 authorities regarding 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

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

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.

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

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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.