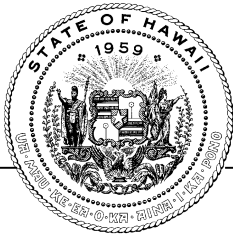


**SB 2355**



# OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**SENATE COMMITTEE ON WATER, LAND, AND AGRICULTURE**  
Wednesday, February 17, 2016  
2:45 PM  
State Capitol, Conference Room 224

in consideration of  
**SB 2355**  
**RELATING TO THE LAND USE COMMISSION**

Chair Gabbard, Vice Chair Nishihara, and Members of the Senate Committee on Water, Land, and Agriculture.

The Office of Planning (OP) supports the intent of Senate Bill 2355. 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 impose fines, and amend, modify, or vacate conditions of these entitlements granted pursuant to Hawaii Revised Statutes (HRS) Chapter 205. However, OP prefers the changes as proposed in our Administration Bill SB2821 which achieves the same intent.

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.

This bill provides the LUC with greater flexibility, beyond reversion, to enforce conditions and a more effective tool for ensuring that the interests of the State, the counties, and the public are protected.

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

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Statement of  
**Daniel E. Orodener**  
**Executive Officer**  
Land Use Commission  
Before the  
**Senate Committee on Water, Land and Agriculture**  
Wednesday February 17, 2016  
2:45 PM  
State Capitol, Conference Room 224

In consideration of  
**SB 2355**  
**RELATING TO THE LAND USE COMMISSION**

Chair Gabbard, Vice Chair Nishihara, and members of the Committee on Water, Land and Agriculture:

The Land Use Commission supports SB 2355 with suggested amendments as it seeks to provide the Land Use Commission with much needed additional enforcement powers. We do, however, prefer the Administration bill SB2821.

In order to ensure this measure meets its intended purpose we would suggest that certain amendments be made. The way the bill is currently structured the LUC can only enforce conditions on district boundary amendments and special permits that it decides after the measure has become law. This arises from the requirement that the LUC identify in its decisions what conditions are within the State's interest to enforce. Given the way the bill has been written the LUC would not be able to enforce conditions of State interest in decisions it has already rendered. We would therefore suggest the requirements of preliminary identification be removed.

In order to deal with recent decisions by the Supreme Court that left some uncertainty, we would also suggest that a definition of "substantial commencement" be added to section 205-4(g), Hawai'i Revised Statutes (HRS). It should also be made clear in proposed new section 205-4(i) that the LUC or any interested party may either begin proceedings or request an action be instituted. Section (i)(2) should also be modified to add the word "protecting" to the State marine and terrestrial environment. Additional State concerns should also be added to section 2 that include archaeological features, Hawaiian burial concerns and public trust doctrine issues. References in subsequent paragraphs to imposing conditions identified as State concerns should also be deleted.

Given that the cost for development of many large projects is often in the the hundreds of millions of dollars, a fine of up to \$10,000 per day would likely be an inadequate penalty. The sum would better be set at no greater than \$50,000 per day.

Similar complimentary changes are suggested for the section on enforcement of Special Permits.

Thank you for the opportunity to testify on this matter. Specific suggested language is attached to this testimony.

## SB2355 - Suggested Language Changes

### Section 1

Page 6, end of line 5 – sentence to add:

“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.”

Pages 6-7, new Subsection (i) on pages 6-7, amended to read:

“Notwithstanding any other provision of law to the contrary, the commission on its own motion or that of any other interested party may vacate, void, modify, or amend any condition of direct state concern in any decision and order for a boundary amendment approved under this section. The conditions of direct state concern shall include but not be limited to:

- (1) Conditions that relate to or require the installation of state infrastructure, including but not limited to public schools, state highways, or state facilities;
- (2) Conditions that promote or protect specific state policies, including but not limited to the preservation of state agricultural lands, increasing state agricultural production, protecting or enhancing the state marine and terrestrial environment, protecting traditional and cultural practices, and protecting archaeological features and burial grounds, and relating to the public trust doctrine.

The commission may impose a fine of not more than \$50,000 per day for failure to substantially meet the conditions of direct state concern.”

Page 8, new subsection (j) is amended to read:

“The commission is authorized to impose a fine of not more than \$50,000 per day for failure to substantially meet the conditions of direct concern as described in subsection (i).”

### Section 2

Page 12-13, new Subsection (g) is amended to read:

“Notwithstanding any other provision of law to the contrary, the commission on its own motion or that of any interested party may vacate, void, modify, or amend any special permit approved,

or any specified condition of direct state concern imposed, under this section. The conditions of direct state concern shall include but not be limited to:

- (1) Conditions that relate to or require the installation of state infrastructure, including but not limited to public schools, state highways, or state facilities;
- (2) Conditions that promote or protect specific state policies, including but not limited to the preservation of state agricultural lands, increasing state agricultural production, protecting or enhancing the state marine and terrestrial environment, protecting traditional and cultural practices, and protecting archaeological features and burial grounds, and relating to the public trust doctrine.

The commission may impose a fine of not more than \$50,000 per day for failure to substantially meet the conditions of direct state concern.

In vacating, voiding, modifying, or amending any special permit or condition or direct state concern pursuant to this subsection, no action by the county planning commission shall be required.”

Page 13, new Subsection (h) is amended to read:

“The commission is authorized to impose a fine of not more than \$50,000 per day for failure to substantially meet the conditions of direct state concern as described in subsection (g).”

# **BIA-HAWAII**

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THE VOICE OF THE CONSTRUCTION INDUSTRY

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## Testimony to the Senate Committee on Water, Land and Agriculture Wednesday, February 17, 2016 2:45 p.m. State Capitol - Conference Room 224

### **RE: SB 2355: Relating to Land Use Commission.**

Dear Chair Gabbard, Vice-Chair Nishihara, 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 provides the following comments on S.B. 2355 which would authorize the state land use commission to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes, if the commission finds a failure to substantially meet conditions of direct state concern, to be specified by the commission at the time it approves, denies, or modifies a boundary amendment or special permit. It would also allow the state land use commission to fine parties who fail to comply with conditions of direct state concern after they have been notified of violations of the conditions

S.B. 2355 identifies the following as "conditions of direct state concern:"

1. Conditions that relate to or require the installation of state infrastructure, including but not limited to public schools, state highways, or state facilities; and
2. Conditions that promote or protect specific state policies, including but not limited to the preservation of state agricultural lands, increasing state agricultural production, enhancing the state marine and terrestrial environment, and protecting traditional and cultural practices.

While the proposed bill attempts to correct the problem of overlapping State and County authority in the land use entitlement process, it falls short of addressing the underlying problem of changing the land use entitlement process from a reactive to a proactive process.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County. 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. If there are no issues of direct state concern in the County's plans for directed growth, the State Land Use Commission should reclassify these lands to urban once the County plans have been adopted. 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.

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.





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

COMMITTEE ON WATER, LAND AND AGRICULTURE

Senator Mike Gabbard, Chair  
Senator Clarence Nishihara, Chair

SB 2355  
RELATING TO THE LAND USE COMMISSION

February 17, 2016

Chair Gabbard  
Vice Chair Nishihara  
Committee Members

Hawaii's Thousand Friends supports SB 2355 that authorizes the LUC to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern.

In 1961, the first State legislature determined that a lack of adequate controls had caused the development of Hawaii's limited and valuable land for short-term gain for a few. The Development of scattered subdivisions, created problems of expensive yet reduced public services, and the conversion of prime agricultural land to residential use, were key reasons for the establishing the statewide zoning system.

To administer the statewide zoning law, HRS 205, the Legislature established the Land Use Commission to be responsible for preserving and protecting Hawaii's lands and encouraging those uses to which lands are best suited.

*The LUC's primary role is to ensure that areas of state concern are addressed and considered in the land use decision-making process.*

While the LUCs role and responsibilities are understood the LUC lacks the authority to place conditions that address issues of state concern. on boundary amendments

SB 2355 gives the LUC the authority to carry out its mandate and should be passed out of committee.





**Conservation Council  
for Hawai'i**

*Hawai'i's voice for wildlife*

*Kō Hawai'i leo no nā holoholona lōhiu*



Testimony Submitted to the Senate Committee on Water, Land, and Agriculture

Hearing: Wednesday, February 17, 2016 2:45 pm  
Conference Room 224

In Support of SB 2355 Relating to the Land Use Commission

Chair Gabbard, Vice Chair Nishihara, and Members of the Committee.

Aloha. Conservation Council for Hawai'i supports SB 2355, which authorizes the state land use commission to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes, if the commission finds a failure to substantially meet conditions of direct state concern, to be specified by the commission at the time it approves, denies, or modifies a boundary amendment or special permit; and allows the state land use commission to fine parties who fail to comply with conditions of direct state concern after they have been notified of violations of the conditions.

SB 2355 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 landowner receives from such reclassifications and approvals.

Large landowners and developers are often favored over the people in the land-use process. SB 2355 addresses this reality and/or perception.

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 SB 2355.

Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler

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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







**Testimony to the Senate Committee on Water, Land, & Agriculture  
Wednesday, February 17, 2016 at 2:45 P.M.  
Conference Room 224, State Capitol**

**RE: SENATE BILL 2355 RELATING TO THE LAND USE COMMISSION**

Chair Gabbard, Vice Chair Nishihara, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **would like to provide comments on SB 2355**, which authorizes the state land use commission to amend, modify, or vacate boundary amendment approvals, special permit approvals, and conditions of direct state concern granted pursuant to chapter 205, Hawaii Revised Statutes, if the commission finds a failure to substantially meet conditions of direct state concern, to be specified by the commission at the time it approves, denies, or modifies a boundary amendment or special permit. Allows the state land use commission to fine parties who fail to comply with conditions of direct state concern after they have been notified of violations of the conditions.

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.

S.B. 2355 identifies the following as "conditions of direct state concern:"

1. Conditions that relate to or require the installation of state infrastructure, including but not limited to public schools, state highways, or state facilities; and
2. Conditions that promote or protect specific state policies, including but not limited to the preservation of state agricultural lands, increasing state agricultural production, enhancing the state marine and terrestrial environment, and protecting traditional and cultural practices.

While the proposed bill attempts to correct the problem of overlapping State and County authority in the land use entitlement process, it falls short of addressing the underlying problem of changing the land use entitlement process from a reactive to a proactive process.

The Counties are responsible for planning for growth through their respective development, community, or sustainable plans based on population projections for each County. 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. If there are no issues of direct state concern in the County's plans for



# Chamber of Commerce HAWAII

*The Voice of Business*

directed growth, the State Land Use Commission should reclassify these lands to urban once the County plans have been adopted. 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.

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.

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**SB2355**

Submitted on: 2/9/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Ho`omana Pono, LLC	Support	Yes

Comments:

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**Date:** Tuesday, February 16, 2016 11:03:39 AM

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**SB2355**

Submitted on: 2/16/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charles Prentiss	Individual	Support	No

Comments:

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**Date:** Tuesday, February 16, 2016 2:40:31 PM

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**SB2355**

Submitted on: 2/16/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dave Kisor	Individual	Support	No

Comments:

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**SB2355**

Submitted on: 2/17/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane Brucato-Thomas	Individual	Support	No

Comments:

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**SB2355**

Submitted on: 2/16/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Hedgecock	Individual	Comments Only	No

Comments: I support this measure.

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**SB2355**

Submitted on: 2/16/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leslie Wingate	Individual	Support	No

Comments:

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**SB2355**

Submitted on: 2/14/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Marten	Individual	Support	No

Comments:

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**SB2355**

Submitted on: 2/16/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Matson	Individual	Support	No

Comments:

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**Date:** Wednesday, February 17, 2016 9:33:54 AM

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**SB2355**

Submitted on: 2/17/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Toni Withington	Individual	Support	No

Comments: Without enforcement power the LUC decisions are just paper. Please advance this bill. It is a long overdue step in giving our laws and regulations some teeth. Toni Withington, Hawi

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**Date:** Tuesday, February 16, 2016 12:41:39 AM

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**SB2355**

Submitted on: 2/16/2016

Testimony for WLA on Feb 17, 2016 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Vernon Hinsvark	Individual	Support	No

Comments: This bill is needed to add teeth to the enforcement of our land use laws and allows input to the LUC on planning commission decisions. It will add oversight to important decisions. I support SB2355 and ask for your support also.

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

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