

**STATE OF HAWAII**  
**LAND USE COMMISSION**  
**MEETING PACKET FOR**  
**JULY 26-27, 2022**

LAND USE COMMISSION  
NOTIFICATION OF LAND USE COMMISSION MEETING  
**Hybrid: In-Person & Virtual Meeting**

*Pursuant to Hawaii Revised Statutes, HRS § 92 as amended, the Commission plans to hold hybrid meetings in person and remotely by interactive conference technology, with Commission members, Staff and Applicants participating simultaneously online. Individuals and members of the public can view and listen to these live, online meetings by registering and using the links below. A registration e-mail will follow thereafter with a link to the day's meeting. Members of the public may also appear in person to view or provide testimony at the location indicated below.*

**A G E N D A**

DATE: July 26, 2022

TIME: 9:15 a.m.

IN PERSON: Homer A. Maxey Center Conference Room (Foreign-Trade Zone No. 9)  
521 Ala Moana Boulevard, Honolulu, HI 96813

VIRTUAL: Via Zoom. If you would like to participate virtually, please register in advance:  
[https://us02web.zoom.us/webinar/register/WN\\_vjs69fmiSKqg7IurZh16aw](https://us02web.zoom.us/webinar/register/WN_vjs69fmiSKqg7IurZh16aw)

**I. CALL TO ORDER**

**II. ADOPTION OF MINUTES**  
June 23, 2022

**III. TENTATIVE MEETING SCHEDULE**

**IV. MINUTES/TRANSCRIPTS**  
To Consider using the Transcripts in Lieu of the Minutes (HRS §92-9)

**V. COMMISSIONER TRAINING**

Training session to allow Commission to consult with its attorney and LUC staff regarding the Commission's powers, duties, privileges, immunities, and liabilities, with respect to:

- (1) Conducting meetings and contested case hearings,
- (2) Applicability of HRS chapter 92, the state sunshine law,
- (3) Applicability of HRS chapter 91, Hawai'i Administrative Procedure Act,
- (4) Applicability of HRS chapter 92F, the uniform information act,
- (5) §15-15-62 Ex parte communications,
- (6) Supreme Court decisions affecting LUC, and
- (7) HRS Section 92-5(a),(2), Personnel matters where consideration of matters affecting privacy will be involved.

**VI. RECESS**

## A G E N D A

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I. CALL TO ORDER

II. COMMISSIONER TRAINING (Continued)

I. ADJOURNMENT

**Executive Session.** During the scheduled meeting, the Commission may elect to consult with its legal counsel in executive session pursuant to HRS § 92-5.

**Special Assistance.** Persons who require an auxiliary aid, service, or an accommodation due to a disability should call (808) 587-3822 no later than 12:00 noon, 2 business days before the date of the meeting so arrangements can be made.

### **July 26, 2022**

[https://us02web.zoom.us/webinar/register/WN\\_vjs69fmiSKqg7lurZh16aw](https://us02web.zoom.us/webinar/register/WN_vjs69fmiSKqg7lurZh16aw)

### **July 27, 2022**

[https://us02web.zoom.us/webinar/register/WN\\_g7GDX7\\_mSjyNkmAAFsnz6A](https://us02web.zoom.us/webinar/register/WN_g7GDX7_mSjyNkmAAFsnz6A)

Once you have registered for this webinar, you will receive a confirmation email containing information about joining the scheduled webinar. You will need a computer with internet access, a video camera and microphone to participate.

If you do not have internet access, you may get audio-only access by calling the Zoom Phone Number +1 (669) 900-6833. Upon dialing the number, you will be prompted to enter the **Webinar ID: 834 3873 1372** (July 26) **812 1527 3571** (July 27). After entering the Webinar ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. You will not have a panelist number. So, please wait until you are admitted into the meeting.

**Public Testimony.** If you intend to provide oral testimony, you must attend the meeting at the location indicated on the meeting agenda. If you wish to submit written testimony, it must be received no later than 24-hours prior to the meeting to ensure time for the Commissioners to review it. You may submit written testimony by Fax: (808) 587-3827, Email: [dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov) or by Mail: State Land Use Commission, P.O. Box 2359, Honolulu, Hawai'i, 96814-2359. All written testimony will be acknowledged at the meeting.

**Meeting Materials.** Meeting materials will be available on the Land Use Commission's website prior to the Commission's meeting, available here: <http://luc.hawaii.gov> or in person at LUC office located at 235 S. Beretania Street, Suite 406, Honolulu, Hawaii 96813 pursuant to HRS § 92-7.5.

AGENDA ITEM II.  
ADOPTION OF MINUTES  
June 23, 2022

LAND USE COMMISSION  
MEETING MINUTES  
June 23, 2022 – 9:00 a.m.

**Pursuant to Hawai'i Revised Statutes, HRS § 92 as amended, the Commission conducted its meeting in person and remotely by interactive conference technology, with Commission members, Staff and Applicants participating simultaneously online. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the hybrid meeting using instructions circulated on the meeting agenda.**

IN PERSON :           State Office Tower, Leiopapa A Kamehameha Building 235 South Beretania Street, Conference Room 405, Honolulu, Hawai'i 96813 noted by (at room # 405, SOT)

VIRTUAL:            Zoom Webinar Virtual Meeting. Meeting Link for June 23, 2022 below:  
([https://us02web.zoom.us/webinar/register/WN\\_24rPLi3HTGqKFbM3i\\_FwLA](https://us02web.zoom.us/webinar/register/WN_24rPLi3HTGqKFbM3i_FwLA))

COMMISSIONERS PRESENT:	Nancy Cabral
(Attending in person in room 405, SOT)	Lee Ohigashi
	Gary Okuda
	Jonathan Scheuer
	Arnold Wong
	Dawn N. S. Chang
	Dan Giovanni
	Kū'ike Kamakea-Ōhelo

COMMISSIONERS EXCUSED:	Edmund Aczon
(9 seated Commissioners as of 05/01/22)	

STAFF PRESENT:	Daniel Orodener, Executive Officer
(Attending in person	Daniel Morris, Esq. Deputy Attorney General
unless indicated otherwise)	David Day, Esq. Deputy Solicitor General
	(Appellate Division)
	Scott Derrickson, Staff Planner (via Zoom)
	Riley Hakoda, Staff Planner
	Martina Segura, Staff Planner
	Ariana Kwan

COURT REPORTER:	via Naegeli Deposition and Trial
(Attending via ZOOM conference media)	

## **CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:08 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present.  
(Eight Commissioners present)

Chair Scheuer announced that Commissioner Edmund Aczon was excused from this meeting.

## **APPROVAL OF MINUTES**

The first agenda item was the approval of the Minutes for May 19, 2022 and June 8<sup>th</sup>, 2022. Chair Scheuer asked if any public testimony had been submitted and whether any additions or corrections needed to be made. There were no testifiers and no additions or corrections.

Commissioner Cabral moved to adopt the Minutes. Commissioner Wong seconded the motion.

Chair Scheuer asked the Executive Officer to poll the Commission. The Minutes for May 19, 2022 were unanimously approved 8-0-1 excused (Commissioner Aczon).

Chair Scheuer called for the Executive Officer to provide the Tentative Meeting Schedule.

## **TENTATIVE MEETING SCHEDULE**

The Executive Officer described the tentative meeting schedule from June 2022 to September 2022 and cautioned the commissioners to keep the scheduled days clear for now, and to contact LUC staff if there were any questions or conflicts.

There were no questions or comments regarding the tentative meeting schedule.

## **AGENDA ITEM IV: ADOPTION OF ORDER -A87-610 KS WAIAWA (O'ahu)**

Motion for Modification, Time Extension, and Release and Modification of Conditions of Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on February 11, 2020 to allow for modification of the Phase 1 and Phase 2 of the solar farm and to modify and release various conditions under the Commission's 2014 and 2020 Decisions and Orders concerning requirements of the submission

of a Master Plan, archaeological sites and plans, burial plans, historic resources, aircraft hazards, traffic, development plans and schedules, and decommissioning of the solar farm phases.

**PARTIES PRESENT (ATTENDED VIA ZOOM UNLESS OTHERWISE NOTED)**

Jennifer Lim (Petitioners' Counsel)

Onaona Thoene (Petitioners' Counsel)

Derek Simon (Petitioners' Counsel)

Brianna Weaver (Deputy Corporation Counsel, Department of Planning and Permitting)

Bryan Yee (Deputy Attorney General, Office of Planning and Sustainable Development)

**PUBLIC TESTIMONY**

Chair Scheuer asked if any written public testimony was received on the adoption of the order. LUC Staff responded that no public testimony had been received.

Chair Scheuer then sought public testimony, and there was none.

**ACTION**

Chair Scheuer confirmed that all Commissioners, including himself, were prepared to participate in the proceedings. The eight Commissioners (including the Chair) in attendance confirmed they were prepared.

Chair Scheuer opened the floor to discussion. There being none, Chair Scheuer entertained a motion.

Commissioner Wong moved to adopt the Order as drafted and presented by the Staff. Commissioner Giovanni seconded the motion.

Commissioner Wong spoke to his motion and described his support for affordable housing and sustainable energy sources.

Commissioner Giovanni spoke in support of the motion and acknowledged how the proposed project's interim solar farm would benefit the community and later give way to the development of affordable housing.

Commissioner Chang spoke in favor of motion, echoing Commissioner Giovanni's remarks regarding the interim use for a solar farm, and stressed the importance of affordable housing for Native Hawaiians.

Commissioner Cabral voiced her support for photovoltaic energy; however and shared her reasons for opposing the motion.

Commissioner Okuda spoke in favor of the motion but disagreed with Commissioner Wong's statement regarding the project providing housing for the people of Hawai'i. Commissioner Okuda referenced Finding of Fact ("FOF") 111 "Everything KS [Kamehameha Schools Bishop Estates] does must ultimately come back to achieving its goals of providing education," and clarified that Kamehameha Schools Bishop Estates was not bound to providing affordable housing for people in the State of Hawai'i.

Chair Scheuer acknowledged the differing viewpoints of Commissioner Wong and Okuda and shared his perspectives on the need for affordable housing, and why he agreed with Commissioner Okuda that the primary mission for Kamehameha Schools Bishop Estates was to provide education to Native Hawaiian children. Chair Scheuer then stated he would be voting in favor of the motion.

Chair Scheuer asked, Executive Officer Orodener to poll the Commission.

The motion to adopt the A87-610 Kamehameha Schools 2021 Motion to Amend passed with 7 affirmative votes and 1 nay.

The Commission took a brief recess at 9:26a.m. and reconvened at 9:28 a.m.

**AGENDA ITEM V: BRIEFING BY THE DEPARTMENT OF THE ATTORNEY GENERAL**

On Litigation and Appellate Proceedings DW Aina Le'a Development, LLC v. State of Hawai'i, Land Use Commission, Civil No. 17-00113 SOM-WRP.

**APPEARANCES: (ATTENDED VIA ZOOM UNLESS OTHERWISE NOTED)**

Daniel Morris, Esq. Deputy Attorney General, Land Use Commission (LUC)

David Day, Esq. Deputy Solicitor General, Appellate Division

Lauren Chun, Esq. Deputy Attorney General

Chair Scheuer confirmed that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Chair Scheuer introduced David Day and invited him to begin his briefing.

Mr. Day shared his experiences of working on the Bridge Aina Le'a case, and provided a brief overview on the recent proceedings of DW Aina Le'a Development, LLC v. State of Hawai'i case.

Chair Scheuer asked the Commissioners if they had any questions for Mr. Day or alternately if there was a motion to move into Executive Session.

Commissioner Cabral moved to enter into executive session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities in regards to the litigation and appellate proceedings concerning DW Aina Le'a Development, LLC. v. State of Hawai'i, Land Use Commission, Civil No. 17-00113 SOM-WRP.

Mr. Day interjected to introduce and ask if Deputy Attorney General Lauren Chun, could participate in the Executive Session. Chair Scheuer acknowledged and granted Mr. Day's request.

Commissioner Chang seconded the motion to go into Executive Session.

The motion to go into Executive Session passed unanimously 8-0.

The Commission entered Executive Session at 9:36 a.m. While in Executive Session, the Commission took a brief break at 10:31 a.m. and resumed Executive Session at 10:40 a.m. The Commission exited Executive Session and reconvened into public session at 11:03 a.m.

Chair Scheuer moved on to the next agenda item.

#### **AGENDA ITEM VI: DISCUSSION AND ACTION ON ELECTION OF LUC OFFICERS**

Chair Scheuer confirmed that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Commissioner Wong stated that Chair Scheuer, Commission Aczon, and himself were appointed to serve on the LUC election committee to designate the Commission's next Chair, Vice Chair, and Second Vice Chair. Commissioner Wong then made a motion that the Commission approve the election committee's proposed slate of Officers: Commissioner Giovanni as Chair, Commissioner Cabral as First Vice Chair and Commissioner Ohigashi as Second Vice Chair.

Commissioner Chang seconded the motion.

Chair Scheuer confirmed that the three Commissioners were willing to accept their nominations and serve in their proposed capacities. Commissioners Giovanni, Cabral, and Ohigashi acknowledged that they would.

The motion to approve the proposed slate of officers passed unanimously 8-0.

Chair Scheuer moved to the next agenda item.

## **AGENDA ITEM VII: EXECUTIVE SESSION**

Pursuant to HRS section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

Chair Scheuer confirmed that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Chair Scheuer allowed Bryan Yee (Deputy Attorney General, Office of Planning and Sustainable Development) to address the outgoing Commissioners.

Mr. Yee thanked Chair Scheuer for the opportunity and as a farewell and thank you, presented a limerick for each outgoing Commissioner.

Commissioner Ohigashi made a motion to go into Executive session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to LUC personnel matters where considerations of matters affecting privacy would be involved. Commissioner Cabral seconded the motion.

The motion to go into Executive Session passed unanimously 8-0.

The Commission entered Executive Session at 11:10 a.m. and reconvened into public session at 11:47 a.m.

There being no further business after reconvening, Chair Scheuer adjourned the meeting at 11:47 a.m.

AGENDA ITEM III.  
TENTATIVE MEETING SCHEDULE

# August 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19 STATE OF HAWAII STATEHOOD DAY	20
21	22	23	24 OAHU Airport Conference Rm Status Reports (SD) A17-804 Hi Memorial Life	25 C&C HNL Stormwater Quality Virtually (RH)	26 C&C HNL Stormwater Quality Virtually (RH)	27
28	29	30	31			

# September 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
28	29	30	31	1	2	3
4	5 STATE HOLIDAY LABOR DAY	6	7 TENTATIVE LUC MTG	8 TENTATIVE LUC MTG	9	10
11	12	13	14 HCPO in <b>Kauai</b> (Staff & Commissioners)	15 HCPO in <b>Kauai</b> (Staff & Commissioners)	16 HCPO in <b>Kauai</b> (Staff & Commissioners)	17
18	19	20	21 TENTATIVE LUC MTG	22 TENTATIVE LUC MTG	23	24
25	26	27	28	29	30	1

# October 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
25	26	27	28	29	30	1
2	3	4	5 MAUI ? SP92-380 Puunene Quarry	6 MAUI ? A15-798 Waikapu Properties	7	8
9	10	11	12	13	14	15
16	17	18	19 MAUI ? A19-809 Pulama Lanai Miki Basin	20 10am Staff Ethics Training Conf RM 204	21	22
23	24 ULI Fall Conf. in Dallas, TX	25 ULI Fall Conf. in Dallas, TX	26 ULI Fall Conf. in Dallas, TX	27 ULI Fall Conf. in Dallas, TX	28	29
30	31					

# November 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	31	1	2 TENTATIVE LUC MTG	3 TENTATIVE LUC MTG	4	5
6	7	8 STATE HOLIDAY ELECTION DAY	9	10	11 STATE HOLIDAY VETERAN'S DAY	12
13	14	15	16 TENTATIVE LUC MTG	17 TENTATIVE LUC MTG	18	19
20	21	22	23	24 STATE HOLIDAY THANKSGIVING	25	26
27	28	29	30			

# December 2022

Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	1	2	3
4	5	6	7 TENTATIVE LUC MTG	8 TENTATIVE LUC MTG	9	10
11	12	13	14	15	16	17
18	19	20	21 TENTATIVE LUC MTG	22 TENTATIVE LUC MTG	23	24
25	26 STATE HOLIDAY CHRISTMAS	27	28	29	30	31

## AGENDA ITEM V. COMMISSIONER TRAINING

Training session to allow Commission to consult with its attorney and LUC staff regarding the Commission's powers, duties, privileges, immunities, and liabilities, with respect to:

- (1) Conducting meetings and contested case hearings,
- (2) Applicability of HRS chapter 92, the state sunshine law,
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- (4) Applicability of HRS chapter 92F, the uniform information act,
- (5) §15-15-62 Ex parte communications,
- (6) Supreme Court decisions affecting LUC, and
- (7) HRS Section 92-5(a),(2), Personnel matters where consideration of matters affecting privacy will be involved.



# Commissioner Orientation

Hawai'i State Land Use Commission  
(LUC)

2022



LAND USE COMMISSION



## Topics

- History
- Types of Petitions
  - District Boundary Amendments
  - Special Permits
  - Declaratory Rulings
  - Important Agriculture Land Designation
  - Other
- Decision Making Process
  - Public Hearing Process
  - Intervention
- Public Trust Doctrine
- Sustainability
- Ethics
- Ongoing Litigation
- Current Issues
- Administrative Matters

# Brief History

The State Land Use Law: Hawai'i Revised Statutes Chapter 205 is unique in the history of Hawaii land use planning.

Originally adopted by the State Legislature in 1961



## Hawai'i Revised Statutes (HRS)

### Chapter 205

Established a framework of land use management and regulation in which all lands in the State of Hawai'i are classified into one of four land use districts.



# Purpose of the Law

In 1961, the Hawaii 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 the few while resulting in long-term loss to the income and growth potential of our State's economy.

Development of scattered subdivisions, creating problems of expensive yet reduced public services, and the conversion of prime agricultural land to residential use, were key reasons for establishing the state-wide land use system.

To administer this state-wide land use law, the Legislature established the Land Use Commission.



## Composition of the Land Use Commission

HRS§205-1 and HRS§205-2, established the Commission

The Land Use Commission composed of nine members, who are appointed by the Governor and confirmed by the State Senate.

One member is appointed from each of the four counties; five members are appointed at-large. The Commissioners are non-paid volunteers who represent a cross-section of the community.



# Role of the Commission

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

The Commission is responsible for preserving and protecting Hawaii's lands and encouraging those uses to which lands are best suited.

The Commission establishes the district boundaries for the entire State. The Commission acts on petitions for boundary changes submitted by private landowners, developers and State and county agencies. The Commission also acts on requests for special use permits within the Agricultural and Rural Districts.



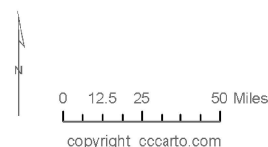
## LUC and County planning capabilities

Originally:

It was contemplated that once the counties developed capacity that they would play a larger role.

This is reflected in chapter 205:

- LUC's limited enforcement powers
- The 15-acre limitation
- Requirements to adhere to county plans
- Special Permit process
- County participation in proceedings



# Original Land Use Boundary development for 3 Districts

- Original three districts:

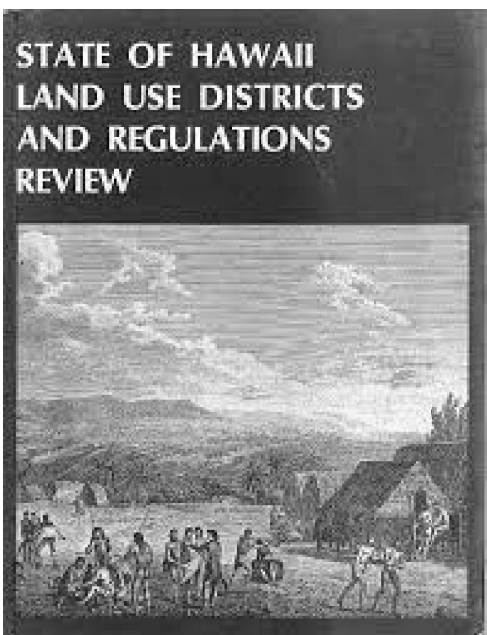
- Conservation
- Agricultural
- Urban

- Original boundary designation completed in 1964

- \*The Rural district was added later



## 5 Year Boundary Review Recommendations



1969

The LUC was originally tasked with doing a boundary review every five years.

Original 1964 Boundary Review

1969 Boundary Review

1974 Boundary Review

In 1988 the responsibility was transferred by the legislature to the Office of Planning and Sustainable Development (OPSD).

The last completed review five-year review was in 1990

An aerial photograph of a tropical coastline. A wide, sandy beach curves along the shore, bordered by lush green vegetation. The water is a vibrant turquoise near the shore, transitioning to a deep blue further out. A small, rocky island with some buildings is visible in the water to the right. The text "Types of Petitions" is overlaid in white on a dark blue horizontal band.

# Types of Petitions

An aerial photograph of a residential development. The houses are arranged in a grid-like pattern, with many trees and green spaces interspersed. The houses have dark roofs and light-colored walls. The text "DISTRICT BOUNDARY AMENDMENTS" is overlaid in black on a white horizontal band.

## DISTRICT BOUNDARY AMENDMENTS



## District Boundary Amendment (DBA)

- Most common major petition
- Request by a landowner or developer to change the land use district of a property usually so that it can be developed for an urban use. Can also be initiated State or County departments or agencies
- After acceptance of a petition the LUC must hold a hearing within not less than 60 days and not more than 180 days
- Usually Ag to Urban or Rural (Conservation re-designation is very rare)
- Re-designation to Urban allows anything from housing to commercial to industrial use
- County must also re-zone after re-designation
- Usually, an environmental impact statement is required
- Quasi-judicial proceeding that must result in a decision from date petition is deemed complete
- Requires approval of at least 6 Commissioners

## What is a DBA?

- Petitions by a landowner/developer to change the land use classification of property (usually from Conservation or Agricultural to Urban or Rural)
- Quasi-judicial in nature
- **Contested-case proceedings**
- Automatic parties: the Applicant, the State Office of Planning and Sustainable Development (OPSD), and the County

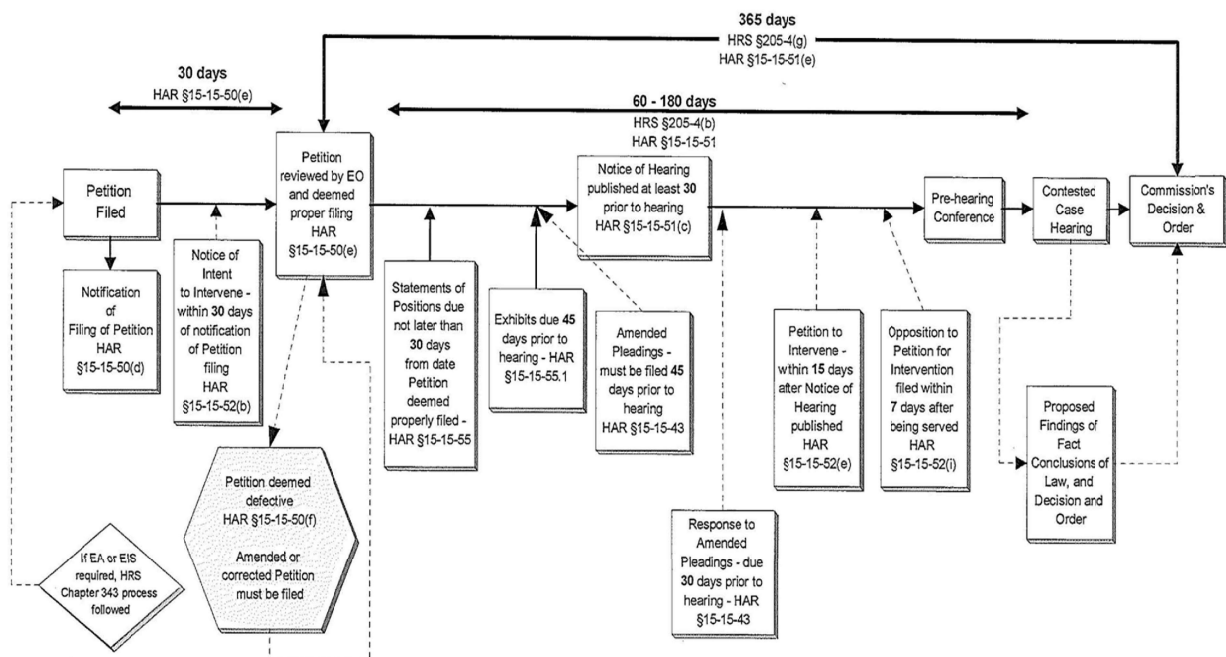




# DBA Process

- Initial Filing
- Pre-Hearing
- Contested-case Hearing
- Post-Hearing
- Decision
- Approve Form of the Order

Overview of District Boundary Amendment Process



# Initial Filing

*District Boundary Amendment*

- 30-day staff review period
- Applicant must give public notice of filing
- 30-day period for Interveners to file Notice of Intent to Intervene
- Statutory checklist for completeness
- Initial filings often deficient due to lack of Chapter 343, HRS compliance



# Pre-Hearing

*District Boundary Amendment*

- Pre-hearing conference
- Parties' Position Statements due
- Exhibit & Witness Lists
- Expert Testimony & Exhibits
- Notice of Hearing Published
- Intervention
  - Petition to Intervene
  - Hearing on Petition to Intervene



# District Boundary Amendment

- 365 days to render a decision
  - 90-day extension possible
  - No decision then automatic approval with generic conditions
- Contents of Petition
- Staff Review and Report
- Common Issues



## Contested Case Hearing Procedure

*District Boundary Amendment*

- Case presentation and order
- Public Testimony (NEW: before and after)
- Evidence (Exhibits and Testimony)
- Questioning by Parties
- Rules of Evidence
- Roberts Rules
- Executive Session
- Final Oral Arguments by Parties
- Close of Hearing
  - Directions to Parties on pleadings

# Questions by Commissioners

*District Boundary Amendment*

Why is it important?

When is it important?



## Post-Hearing

*District Boundary Amendment*

- Chair gives parties timeframe for submittal of post-hearing pleadings
- Parties submit proposed Decision & Orders, Comments & Objections
- Staff Report with recommendations and comparing similarities and differences for review
- Decision hearing to approve; approve with conditions or deny
- Approve Form of the Order hearing



# Decision-Making

*District Boundary Amendment*



- At close of evidentiary hearing, Commissioners will be asked if they have read the record, reviewed the transcripts, and are ready to deliberate
- The decision and conditions must be based on the record!
- Motion is made
  - Discussion by Commissioners
    - Possible amendments proposed
    - Possible withdrawal of Motion
- Call for the Question
- Commissioner statements on position and/or specific conditions

## Approval with Conditions

*District Boundary Amendment*

- LUC Standard Conditions
- Case-specific conditions
  - Typical (examples)
  - Atypical (examples)



# Typical

Nexus between conditions and project

Examples:

- Transportation
- Drainage
- Traffic Impact Assessment Report (TIAR)
- Compliance with Representations
  - "...substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. "



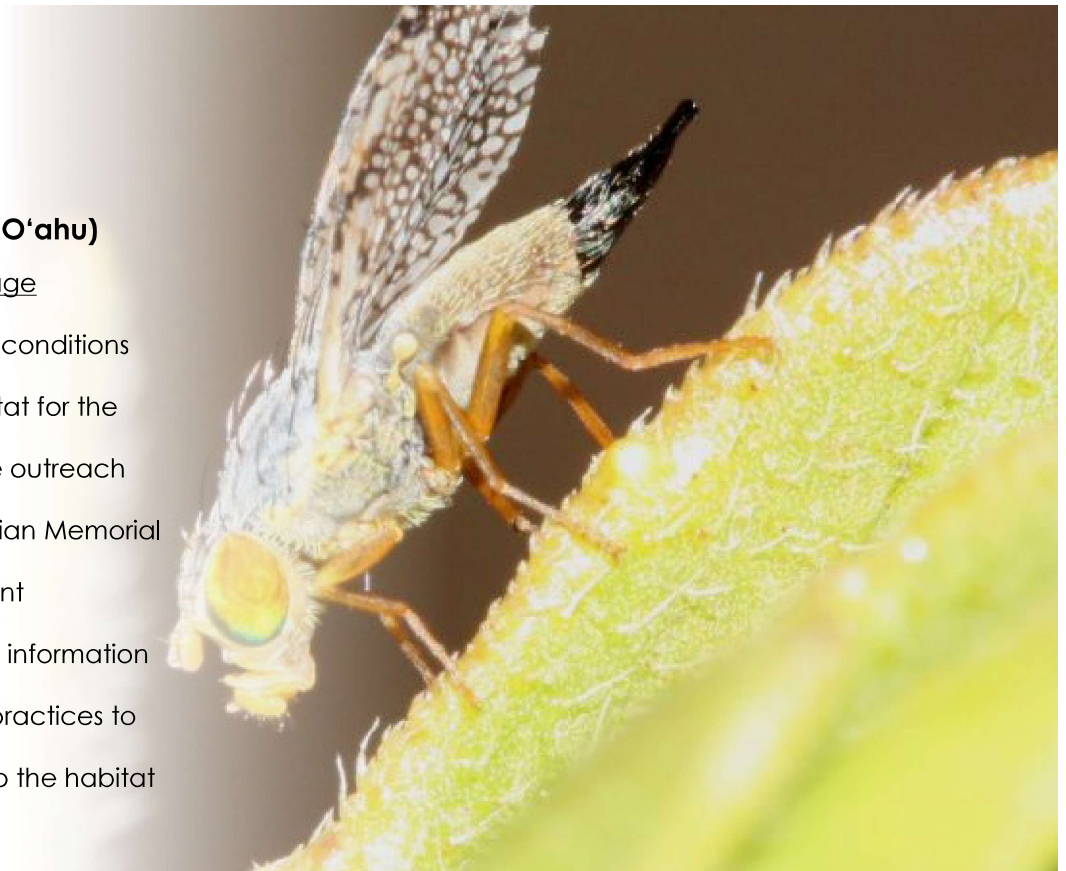
# Atypical

## Definition

### **A17-804 Hawaiian Memorial Park (O'ahu)**

"Stormwater Management and Drainage

Improvements. Notwithstanding other conditions related to the preservation of the habitat for the **endangered Hawaiian damselfly**... The outreach shall include informing visitors to Hawaiian Memorial Park as well as members of the adjacent community. The program shall include information on restricted activities and other best practices to avoid and minimize adverse impacts to the habitat and the species.



# Post-Decision

*District Boundary Amendment*

- Motion to Reconsider
  - Responses to Motion to Reconsider
  - Hearing and Decision on Motion
- Request for a 90-day Extension
- Other Motions



## Post-Decision Proceedings

*District Boundary Amendment*

- Parties or successors in interest to parties may bring motions
  - Motions to Delete Conditions
  - Motions to Amend Conditions
- Submitted for review to OPSD and County; and any other parties
- Intervention by new parties possible
- Contested-case hearing
- Generally, follow DBA process





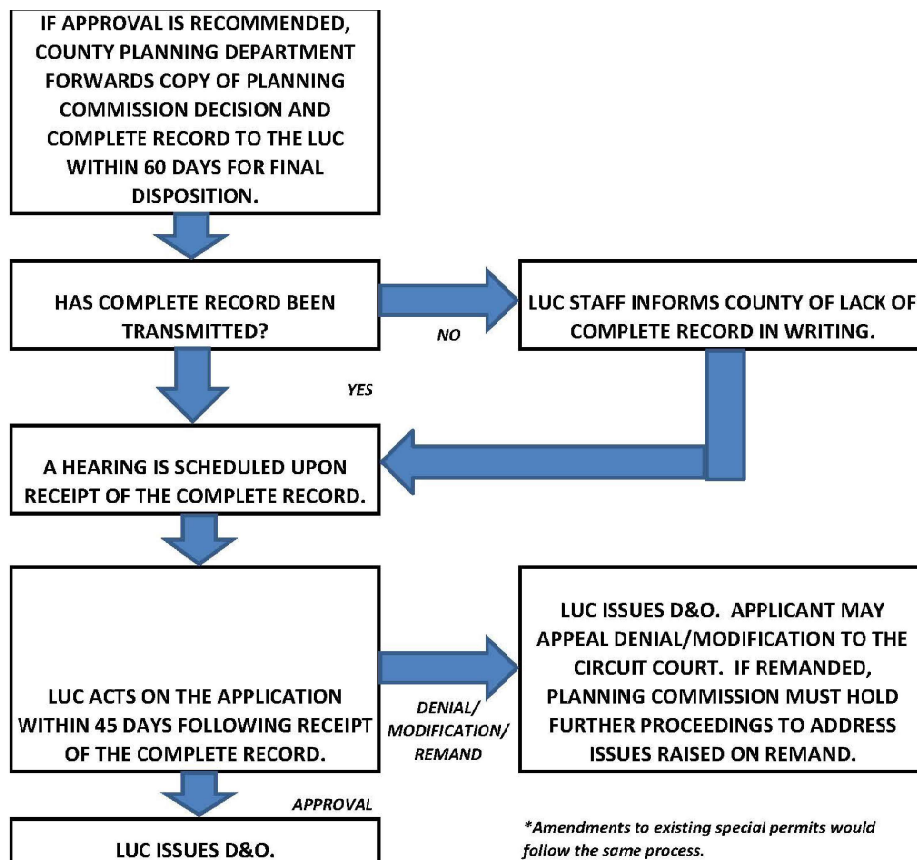
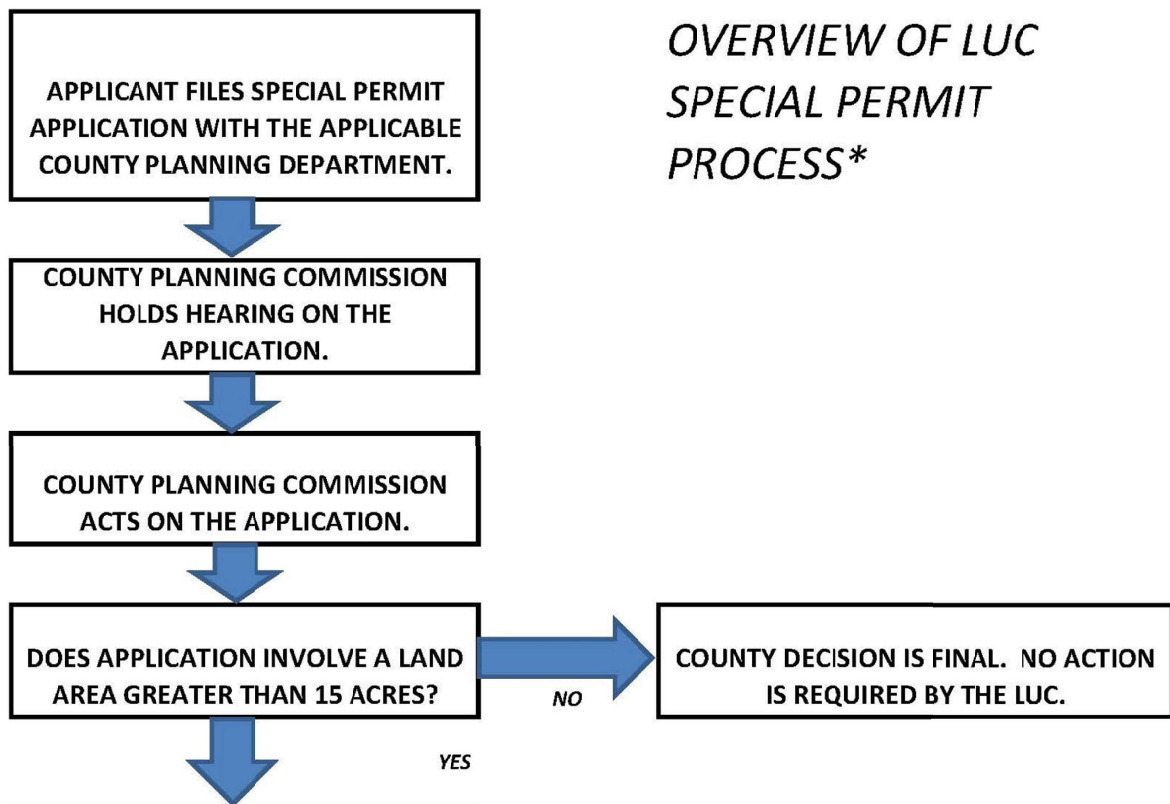
# SPECIAL PERMITS



## Special Permits

- For activity that is not specifically allowed in a district but is consistent with the designation.
- Usually in agricultural land (conservation land is governed by DLNR)
- Proceeding is initiated and heard at county level.
- LUC then holds a hearing to confirm, deny or modify the county decision based on the record made at the county level.
- Examples include rock quarries, dump, churches, processing facilities, etc.
- Recent changes to chapter 205 require a SP when solar panels are to be placed on class B or C lands regardless of the acreage involved.

## OVERVIEW OF LUC SPECIAL PERMIT PROCESS\*



*\*Amendments to existing special permits would follow the same process.*

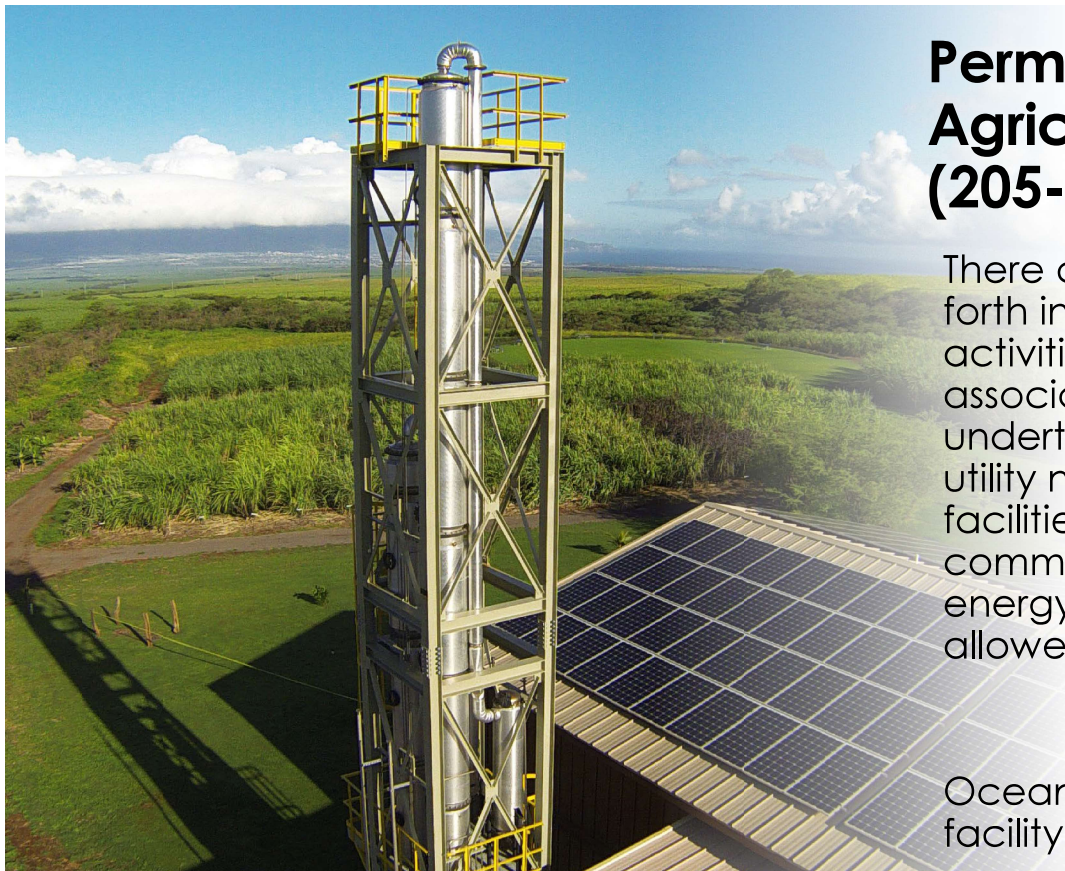


## Permissible Uses

Chapter 205 provides what activities (uses) can be undertaken in the different districts.

If a use is listed in chapter 205 as an allowed use, no LUC permits are required to undertake the activity or build the associated structure.

NOTE: County building/zoning etc. permits may still be required. County zoning codes can be MORE restrictive than chapter 205 (but not less).



## Permissible Uses In the Agricultural District (205-4.5)

There are 21 allowed uses set forth in 205-4.5 ranging from activities that are generally associated with agricultural undertakings to infrastructure to utility needs to processing facilities to plantation communities. In certain cases, energy producing facilities are allowed as well.

Ocean Vodka processing facility with solar panels

However:

*(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.*

## As an Aside

If the land is classified as C,D,E or U then the limitations on use are governed by 205-5 which gives the county leeway to further define the uses in 205-4.5 to include agricultural tourism uses and what is an accessory use on a farm IF there is a bona fide farming operation...



# 205-6 Allows Other Uses

The LUC only gets involved with SP's for land "the area of which is greater than 15 acres" OR lands designated important agricultural lands.

The County planning commission hears the matter first pursuant to a petition (regardless of acreage the petition is forwarded to the LUC for comment).

If the area is over 15 acres, the planning commission must then transmit a complete record of the proceedings to the LUC for its approval.

Within 45 days the LUC must:

- approve
- deny or
- approve with additional restrictions



## Special Permit proceedings before the LUC are *not* contested case hearings



The decision is based on the record of the county proceedings and the evidence presented at that level.

The Commission can ask for clarification

The Commission can ask for additional information from the parties. However, this may trigger a remand to the County for further proceedings.

No new parties may be admitted from those at the county level.

No formal evidentiary proceeding.

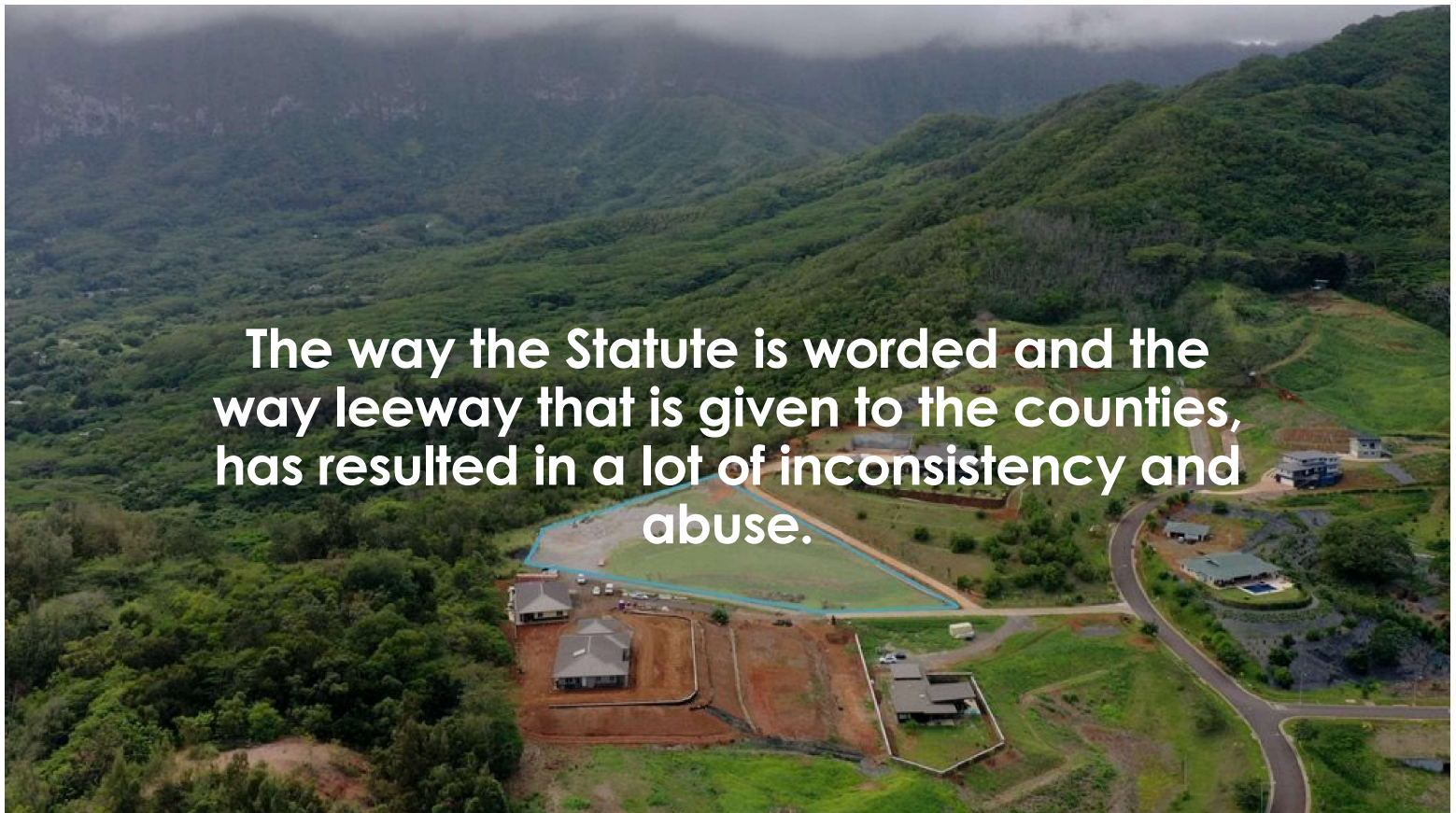
The decision **MUST** be based on, and supported by the record (Waimanalo Gulch case).

# Decision and Orders

A Decision and Order is prepared by staff after the proceedings and a second hearing is held to adopt the order.



**The way the Statute is worded and the way leeway that is given to the counties, has resulted in a lot of inconsistency and abuse.**





**What does “land the area of which is greater than fifteen acres” mean?**

- The counties have interpreted this top mean that the fifteen-acre provision refers to the use not the lot size

**What is an “unusual and reasonable use within an agricultural district”?**

- Some counties see this as a catch-all allowing everything, even if it is prohibited by another statutory section.
- Allowed uses? Churches? Repair shops? Auto repair shops? B&Bs? Yoga studios? Wellness centers? Energy production?
- Some of these uses are urban or industrial uses—is an SP the right mechanism?

**“Parceling” issue (rock quarry)**

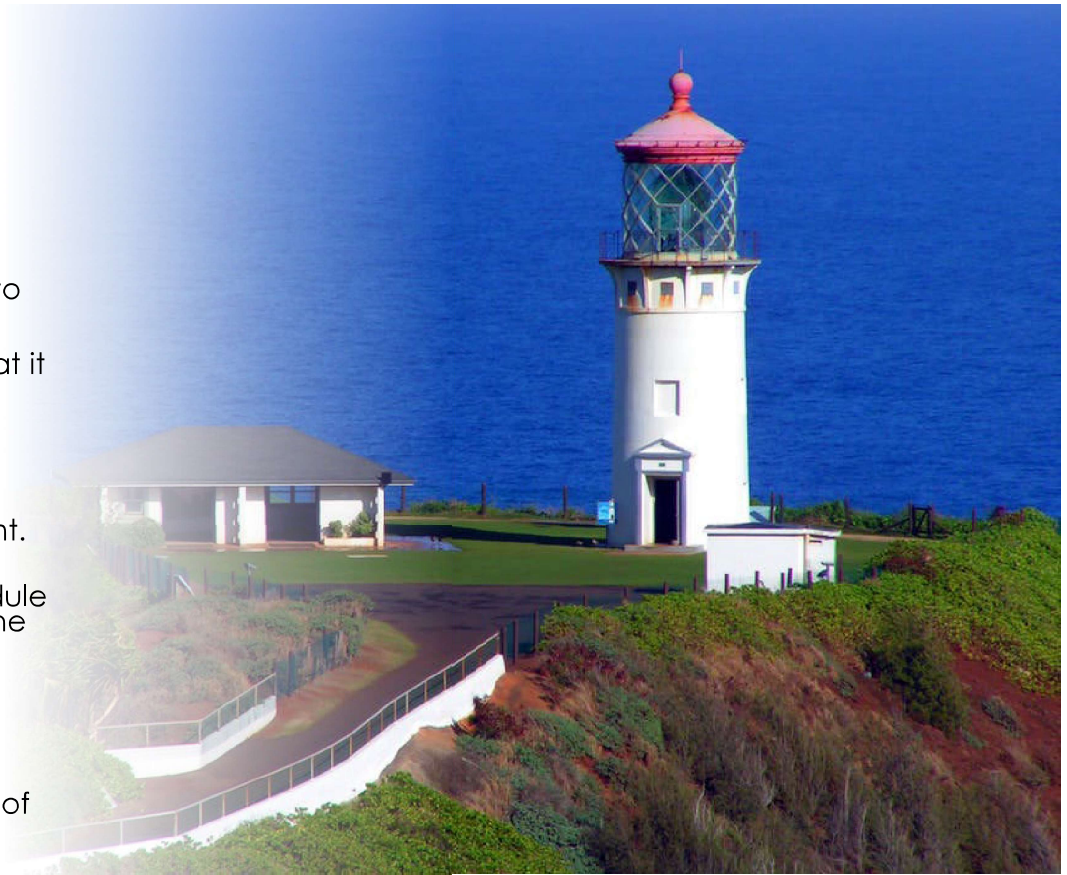
**Agricultural Subdivisions?**

# Declaratory Rulings

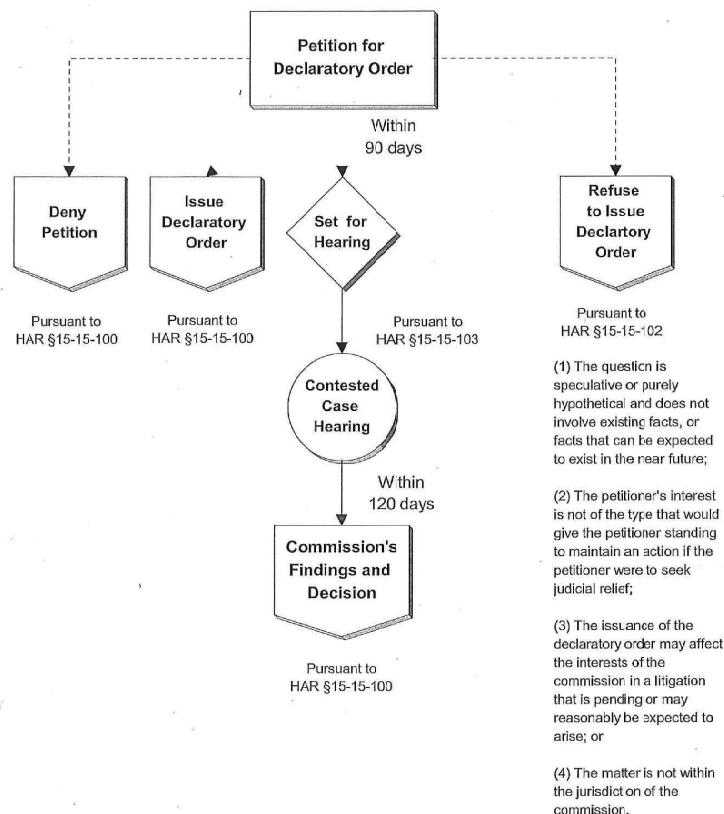


# Declaratory Rulings

- Infrequent
- Where there is uncertainty as to how to interpret something (statute, rule or order) the LUC can issue an opinion as to what it believes the answer is ("to terminate controversy or to remove uncertainty")
- Briefs by interested parties are filed and there is oral argument.
- LUC can affirm, deny or schedule for further hearing based on the pleadings and oral argument.
  - Not usually an evidentiary hearing
- Usually limited to a distinct set of factual circumstances.



**Declaratory Orders Flowchart**



## Subchapter 14 (15-15-98 to 104)

15-15-98 - "On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation."

The Commission can issue an order on its own motion to remove uncertainty.



## Options of the Commission (90 day timeframe) 15-15-100

- Reject the petition
- Issue a declaratory order on the matter
- Set the matter for hearing



# Grounds for Rejection

The question is speculative, hypothetical or not likely to occur

The petitioner lacks standing (legal criteria)

The issuance of the order will adversely affect the State or the commission in a pending or likely litigation

The matter is outside the commissions jurisdiction or refers to a statute outside of chapter 205.

Note: Must be distinguished from actual resolution of the issue. These are grounds for not reaching for question. If the question is reached, you can still find against the Petitioner based on your analysis of the issue. Confusion comes from how Petitioner's present their requests.

## Scheduling a Hearing

A hearing may be scheduled by decision of the commission or upon request by a party upon a proper showing or motion.

If a hearing is ordered or requested the commission must render a decision within 120 days of the hearing or within 45 days of the filing of the final brief.

There is flexibility in this regard and the commission may set different time constraints at hearing.

An aerial photograph of a vast agricultural landscape. The foreground and middle ground are filled with large, rectangular fields, some of which are divided into smaller plots by dark, reddish-brown lines, possibly irrigation canals or roads. The fields show varying shades of green, brown, and yellow, indicating different crops or stages of cultivation. In the background, a range of rugged, green mountains rises against a blue sky with scattered white clouds. The overall scene depicts a significant area of land dedicated to agriculture.

# IMPORTANT AGRICULTURE LAND (IAL)

HRS Chapter 205 Part III (205-41 to 52)  
HAR 15-15 Subchapter 17 (15-15-120 to 128)

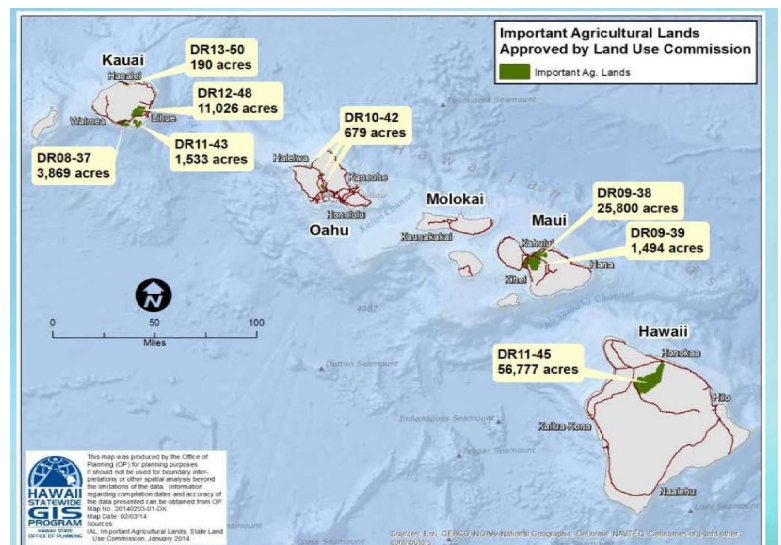
An aerial photograph of a vast agricultural landscape. The foreground and middle ground are filled with numerous rectangular plots of land, some appearing green and others brown, separated by dark, winding irrigation channels. In the background, a range of rugged, forested mountains rises against a blue sky with scattered white clouds. The overall scene depicts a large-scale farming operation in a mountainous region.

# IMPORTANT AGRICULTURE LAND (IAL)

HRS Chapter 205 Part III (205-41 to 52)  
HAR 15-15 Subchapter 17 (15-15-120 to 128)

# Important Agricultural Lands Designation

- IAL designation is a new power of the LUC designed to identify the best agricultural lands in the state and protect them for future generations.
- A private landowner may move the LUC to have their lands designated IAL
- The counties are tasked with proposing a designation of all of the land within their jurisdiction (public and private) appropriate for IAL designation.
- A private landowner may request that apportion of the proposed IAL land be designated rural or urban or take a credit for later urbanization of a percentage of the land.
- Tax implications.
- Does not add any enhanced protections with regard to uses unless a private landowner asks for a portion to be re-designated urban.



# What does it mean for land to be designated IAL?

The Legislature's intent in creating the IAL designation was to identify those lands that have the greatest value to agriculture and protect them for future generations.



## IAL caveats

- IAL is not a new "district". Land remains in the general "agricultural district"
- The Legislature specifically provided that IAL petitions are not DBA proceedings but rather are "Declaratory Rulings"
- Except under certain circumstances, designating land IAL does not change what can or cannot be done on the land. Everything currently allowed in the agricultural district, either by statute or pursuant to a Special Permit, is allowed on land designated IAL
- Unless the land was designated IAL in conjunction with a request to designate a portion of the land Urban (redistricting), there is no prohibition on later petitioning the LUC to redistrict the land from Agriculture to any other designation (Rural or Urban)



# How can land be designated IAL?

- The Counties are tasked with developing maps that identify all of the lands within their jurisdiction (public and private) that are appropriate for IAL designation. Once they have done so, the LUC can adopt the map designation.
- Private landowners can petition the LUC to have their land designated IAL. As an incentive, private landowners also have the ability to combine a petition for IAL designation with a request to have up to 15% of the total acreage subject to the petition re-classified to urban, rural or conservation.
- NOTE: The County is limited to designating no more than 50% of a landowner's property IAL. The 50% includes any land that the landowner may have already voluntarily had designated IAL.
- Since IAL designation does not change the districting of the land, portions of property or TMK's can be designated as IAL.



## Standards and Criteria for IAL Designation

### Section 205-44 HRS

- There are 8 criteria for IAL designation
- The Commission must evaluate the petition in light of the criteria
- If the petition is SOLELY for IAL designation, the land need not meet all 8
- If the land meets any of the criteria it must be given consideration for designation
- However, the LUC is tasked with weighing the standards and criteria to determine whether the land meets the mandated purpose of the Hawaii State Constitution and the objectives and policies of 205-42 and 43 HRS

### Article XI, Section 3

#### AGRICULTURAL LANDS

Section 3. The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

*Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.*

**[§205-42] Important agricultural lands; definition and objectives.** (a) As used in this part, unless the context otherwise requires, "important agricultural lands" means those lands, identified pursuant to this part, that:

- (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
- (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or
- (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

(b) The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. To achieve this objective, the State shall:

- (1) Promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses; and
- (2) Establish incentives that promote:
  - (A) Agricultural viability;
  - (B) Sustained growth of the agriculture industry; and
  - (C) The long-term agricultural use and protection of these productive agricultural lands. [L 2005, c 183, pt of §2]

**[§205-43] Important agricultural lands; policies.** State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands and shall be consistent with and implement the following policies:

- (1) Promote the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management;
- (2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;
- (3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;
- (4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;
- (5) Provide a basic level of infrastructure and services on important agricultural lands limited to the minimum necessary to support agricultural uses and activities;
- (6) Facilitate the long-term dedication of important agricultural lands for future agricultural use through the use of incentives;
- (7) Facilitate the access of farmers to important agricultural lands for long-term viable agricultural use; and
- (8) Promote the maintenance of essential agricultural infrastructure systems, including irrigation systems. [L 2005, c 183, pt of §2]

## The 8 Standards and Criteria are: (HRS§205-44)

- (1) Land currently used for agricultural production
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;
- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
- (5) Land with sufficient quantities of water to support viable agricultural production;
- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. [L 2005, c 183, pt of §2; am L 2008, c 233, §18]



## Issues with Implementing the IAL Statutes

No reference to chapter 343 environmental law process (may be applicable if there is a request for re-classification in the petition).

While it is specifically set forth that the process is a DR rather than a DBA, there is no explanation of the procedure required to process petitions. Note: DR proceedings provide that a hearing may be scheduled if neither denial or approval is appropriate at the initial proceeding.

The statutes allow a petitioner to take a "credit" for the 15% re-classification but does not define how the credit functions (chapter 343 issues, public trust doctrine issues, etc.)

The end result is that we have a set of rules that are trying to interpret what the legislature intended and reconcile the IAL statutes with other supreme court decisions, laws and statutes.

Our rules are therefore untested and, especially with regard to the 15% reservation and re-classification provisions, could be overturned/rejected by the courts.

# Requirements of 205-47

1. Maps must be developed "in consultation with":

A. Landowners.

B. The State Department of Agriculture.

C. Agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations.

D. The US Department of Agriculture Natural Resources Conservation Service.

E. The Office of Planning.

F. Other groups as necessary.

2. Each County must, through its planning department, develop an inclusive process for public involvement, including a series of public meetings throughout the process.

- "May" establish a citizens advisory committee;
- "May" use an existing process (general plan etc.); or
- Use ("employ") existing and adopted general plan, development plan or community plan maps.

3. The counties shall take notice of those lands already designated IAL by the LUC.

## Simple IAL Petitions

- A Landowner may Petition the LUC to have all or portions of their land designated IAL.
- The petition must include evidence to support the lands classification as IAL based on the 8 criteria set out in 15-15-120(c) and an explanation of the current or planned use of the area to be designated.
- The proceedings are a DR proceeding and governed by those rules.
- The LUC (through OPSD) must seek DOA's opinion on the appropriateness of the designation.
- To petition can only be granted if it receives a two thirds affirmative vote (6 commissioners) otherwise it is deemed denied.
- LUC usually, in order to ensure there is no later confusion, requests a specific waiver of the 15% credit for re-classification if it is not contained in the petition. Regardless, under section 15-15-124d), if the petition fails to include a request for credits to re-classify, it is automatically waived (this was written to ensure the commission decided based on the representations made at the initial hearing and to prevent retroactive claims for the credits).



## Additional Requirements

- The planned uses of both the agricultural lands and the land sought to be re-classified must be contained in the petition.
- TMK#s and verification of ownership.
- A certification from the DOA as to the quality of the land subject to the petition.



## To grant the petition, the commission must also find:

1. The land is suitable for reclassification under the dba chapters of the rules (Chapters 2 & 8)
2. Any urban re-classification is consistent with the county plans
3. That there has been adherence to chapter 343
4. 2/3 of the commission must vote in favor of the petition
5. The commission may impose reasonable conditions

Should the commission find that *either*:

The IAL designation is inappropriate; **or**

The reclassification of the remaining land is not appropriate;

The petition should be denied in its entirety.



## **Petition for IAL including a reservation of credits**

Instead of designating a specific portion of the land for re-designation in conjunction with an IAL proceeding, a landowner may request credits (to reclassify land to urban rural or conservation), amounting to 15% of the total land subject to the proceeding, to be used later.



# IAL Petition with RE-Classification Request

An IAL petition may include a **request to re-classify a portion (15%)** of the total amount of land in the petition to Urban, Rural or Conservation (15-15-122). The land sought to be reclassified must be

1. Within the same county as the land sought to be designated IAL;
2. If to urban, the reclassification must be consistent with the relevant county plans;
3. Be no more than 15% of the total acreage in the petition; and
4. Meet all the requirements of granting a DBA.

NOTE: Item 4 is not contained in 205-45 (b) - it was added to provide decision-making criteria. It does not require a DBA proceeding but establishes a benchmark required of the petitioner.



## Additional Requirements for Combined IAL Petition

For the lands sought to be designated IAL in a petition also requesting classification, the IAL lands must specifically meet two of the eight criteria:

1. Have sufficient quantities of water to support viable agricultural production; and
2. Contribute to maintaining a critical land mass important to agricultural productivity.

Unlike a petition which does not seek partial re-classification the commission must find, at a minimum, that based on the evidence presented, these two of the eight criteria are met. Meeting these two criteria does not automatically grant the petition, the remaining criteria must be balanced and weighed as well.

This raises a ton of issues!

Public Trust

Chapter 343

Infrastructure costs and requirements

Conditions

Impacts on watersheds

etc.



**HAR §15-15-124 is  
an attempt to  
resolve some of  
these**

It is untested and  
extrapolated - but our best  
shot



# SOME BASIC RULES

Limited to 15%

A petition can make a combined request (part for specifically identified lands and the remainder as a credit).

Must be specified in the petition.

Lands must be in the same county as the lands designated IAL.

Before the credits can be used a petition has to be filed similar to a petition that specifically identifies lands (Must meet the same criteria including IAL minimum requirements and evidence to support the re-classification)

Credits must be used within ten years

Credits are not transferrable.

## Re-classification of IAL Lands (HRS §205-50)

Once land has been designated IAL it can still be reclassified to Urban, Rural or Conservation. (HAR §15-15-126)

- If the land was designated IAL without a 15% reservation or reclassification the LUC can re-classify.
- If the land was designated IAL in conjunction with a 15% reservation or request, the legislature (by a 2/3 vote of both houses) must first authorize the re-designation

Special permits may also be granted after referral to the DOA.

Must be done as part of regular DBA proceeding.

Additional criteria must be met to grant the petition to re-classify.

# **Additional Criteria for Re-Districting of IAL Lands**

1. The land is not critical for agriculture.
  2. Re-districting will not harm the viability of agriculture in the area where it is located.
  3. It will not cause fragmentation of agricultural lands so as to make them unusable and will not allow intrusion of urban uses into an agricultural area.
  4. There is a public benefit or need for non-agricultural lands.
  5. It will not adversely impact the ability of the state or county to provide or support additional agricultural services in the area.
  6. The public benefit to re-districting outweighs the public benefit derived from continued use for agriculture.
  7. Re-districting will not impact the viability of agricultural operations on adjacent lands.
  8. The criteria for granting a DBA have been met.
  9. The criteria for decision making used by the county in designating or not designating land IAL have been met.
- Must be by 2/3 vote of the commission.
- If a petition is denied it can not be heard again for a year.

## **Removing the IAL Designation**

By petition landowner (or farmer) if there is no longer enough water for viable agriculture. (Lack of water must be due to circumstances beyond the petitioner's control).

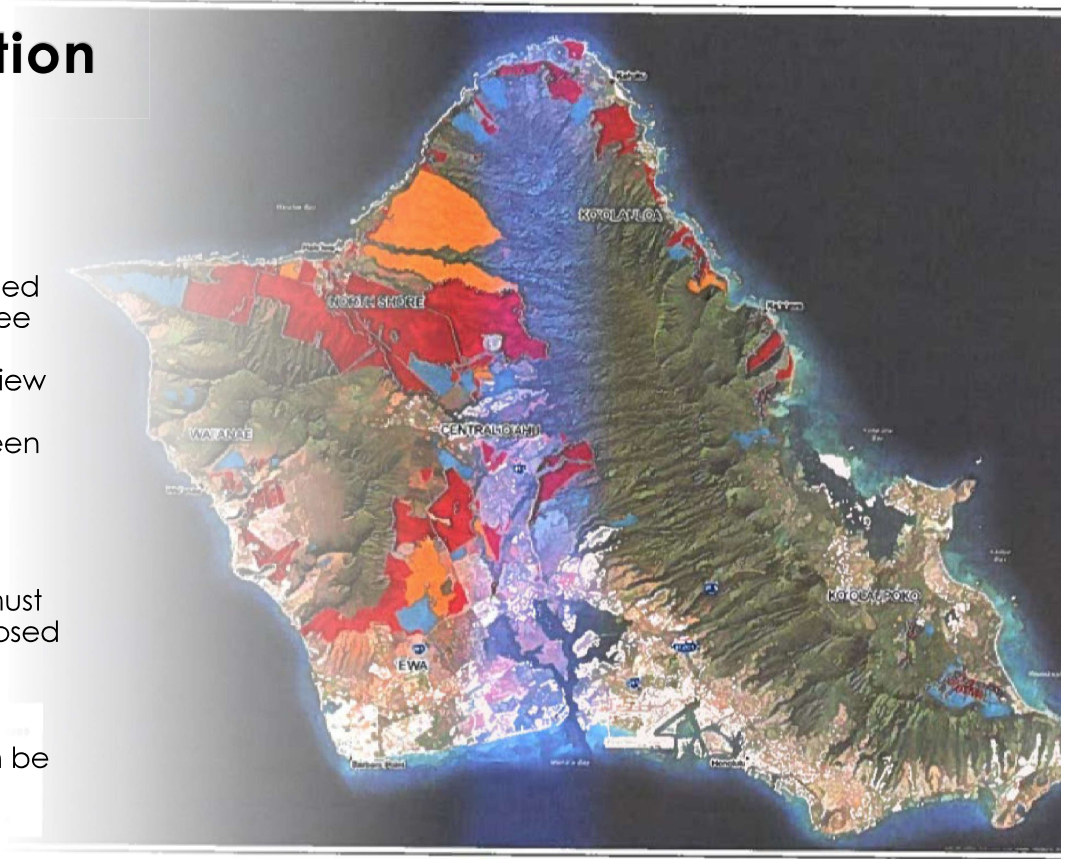
By prior authorization of the legislature where the designation was done in conjunction with a 15% reservation or re-classification.

County designated maps may be re-adjusted through periodic review by the county and commission where water is no longer available.



# County Designation Process (HRS 205-47)

- The Counties were originally supposed to present their proposed designation to the LUC within three years of the development of incentives (2008). The counties view this requirement as an unfunded mandate and have generally been slow to respond.
- Section 205-47 sets out specific requirements that the counties must adhere to in developing its proposed designation.
- This process is complex and can be expensive.



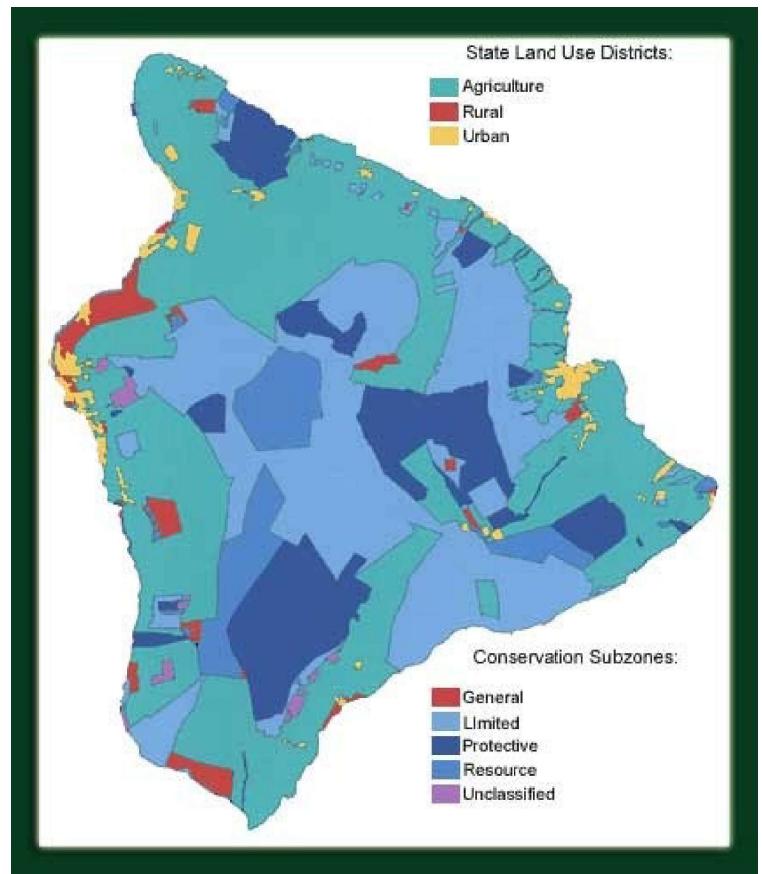
Once the Planning Department has identified potential IAL lands it must identify each owner of those lands and notify them that their lands are proposed for designation as IAL.

The Planning Department may then submit its recommendations to the County Council for approval.

When it does so the Planning Department shall submit to the Council a report on how the maps were derived and how they relate to support or are consistent with:

1. The IAL criteria set forth in 205-44 that all IAL land must meet.
2. The County Plans
3. The Comments received
4. Viability of existing agribusiness (?)
5. Statements made by landowners whose land is proposed for designation

- The County Council then must act, by resolution, to adopt the maps with or without changes.
- Once the Council has done so, the maps are transmitted to the LUC for action.



## County Submission to the LUC

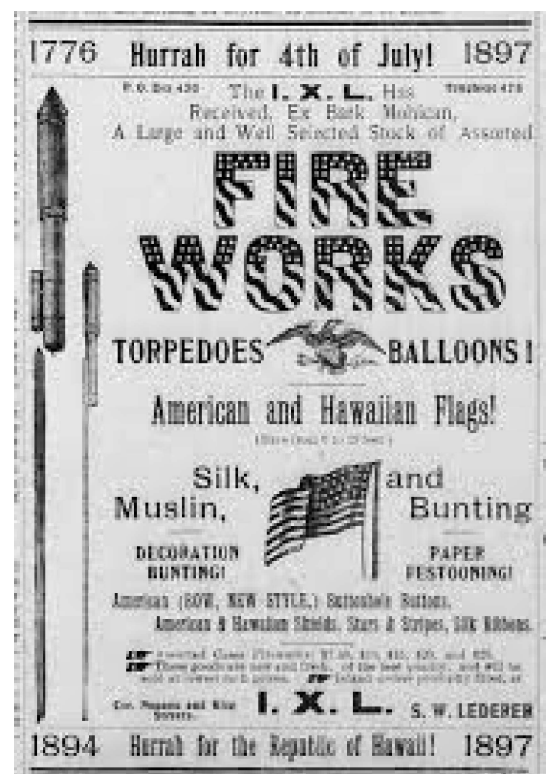
The LUC may then:

Remand the matter back if it feels further clarification is required;

Adopt the recommendations of the County; or

Amend or revise the County recommendations to exclude or include certain lands from designation.

Action by the LUC requires a two thirds affirmative vote (Currently 6 votes).

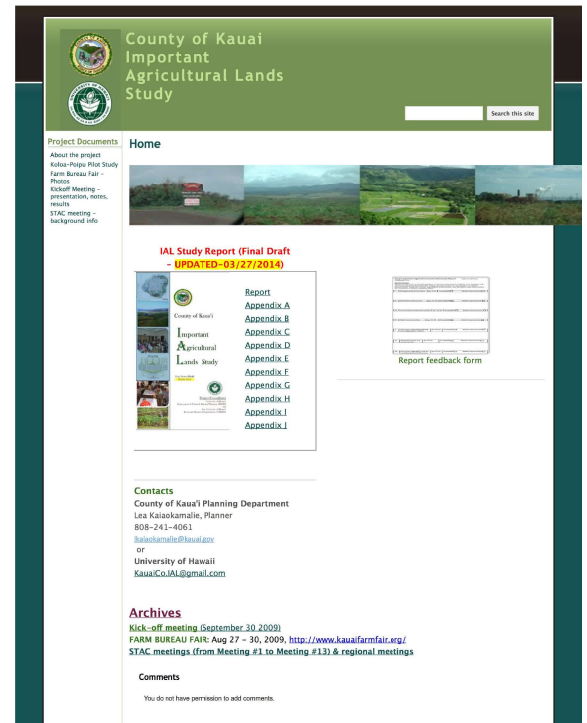


# County Submission to LUC

The IAL maps and report must be officially transmitted to the LUC by the County. The complete record of the proceedings must be included, evidencing that the County has gone through the proper procedure.

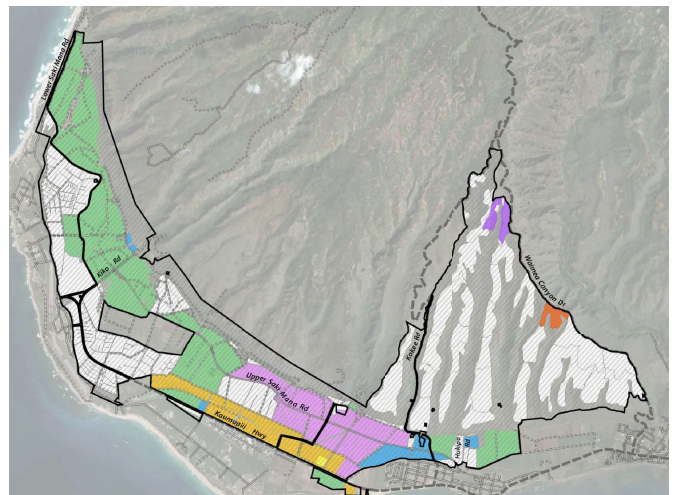
The County must also serve a copy on the State DOA and OPSD within 24 hours of filing.

DOA and OP have 45 days to provide comments to the LUC.



## IAL Issues

- Kekaha Agricultural Association (KAA)
  - Not a farmer
  - No State landowner authorization [ ADC vs. BLNR]
  - State designation process under HRS 205-44.5 not intended as piecemeal but for comprehensive designation by DLNR and DOA in collaboration



# County IAL Issues

- City & County IAL Submission
  - Criteria used: all or some
  - Notice
  - Public Engagement
  - Small parcels; steep slopes; CPR; non-contiguous parcels



## Other Proceedings

# Other Types of Proceedings

## **EIS/ EA approval**

Where the LUC has become the accepting authority.

## **Petitions to amend or modify DBAs**

Common where there has been a delay in development, ownership change or changed market conditions. The request can be anything from a deletion of conditions, modification of conditions or approval of a new use or project proposal.

## **Motions for order to show cause**

When the LUC or any interested party believes that there has been a violation of the terms and conditions of an LUC decision and order the LUC may hold a hearing to determine if there has in fact been a violation and whether the property should be reverted to its former designation.

## **Boundary interpretation (Rarely a proceeding)**



# EA/ EIS Approval

*Where the LUC has become the accepting authority*

- Approving the EA or EIS is not project approval
- Must follow The Hawai'i Environmental Policy Act (HEPA) includes the following statutes and administrative rules:
  - HRS Chapter 343, Environmental Impact Statements
  - HAR 11-200, Environmental Impact Statement Rules
  - HAR 11-201, Environmental Council Rules of Practice and Procedure



## Petitions to Amend or Modify DBA



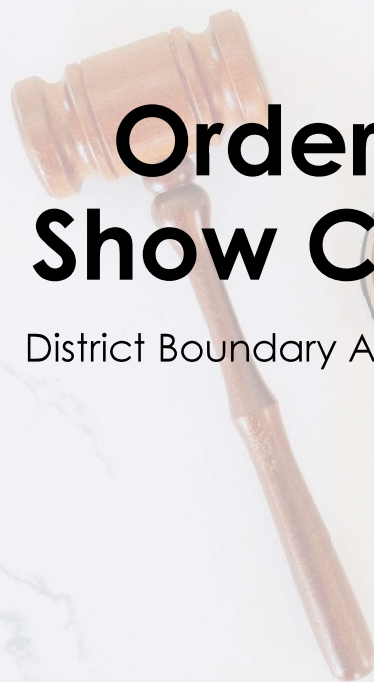
## Petitions to Amend or Modify DBA

- Amounts to approval of project
- Allows for modification, time extension, release, modification, and new conditions and requirements
- Requires good cause to grant motion



## Order to Show Cause

District Boundary Amendment



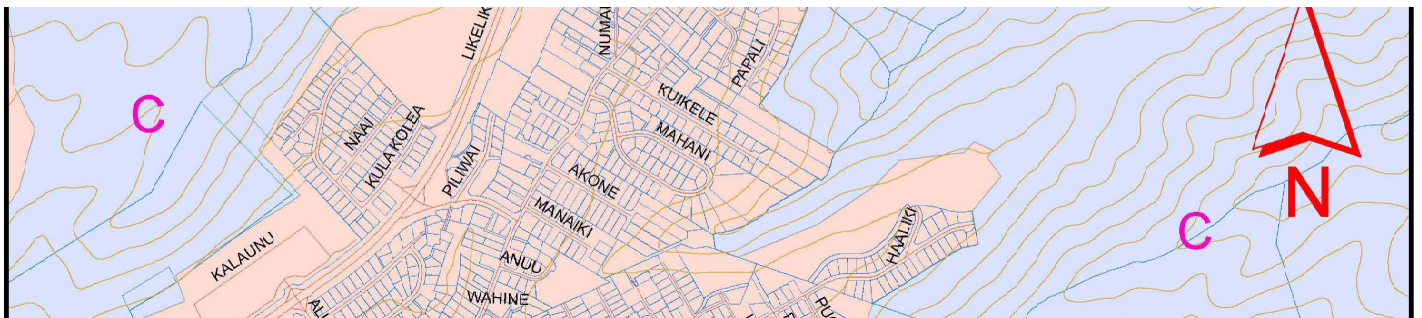
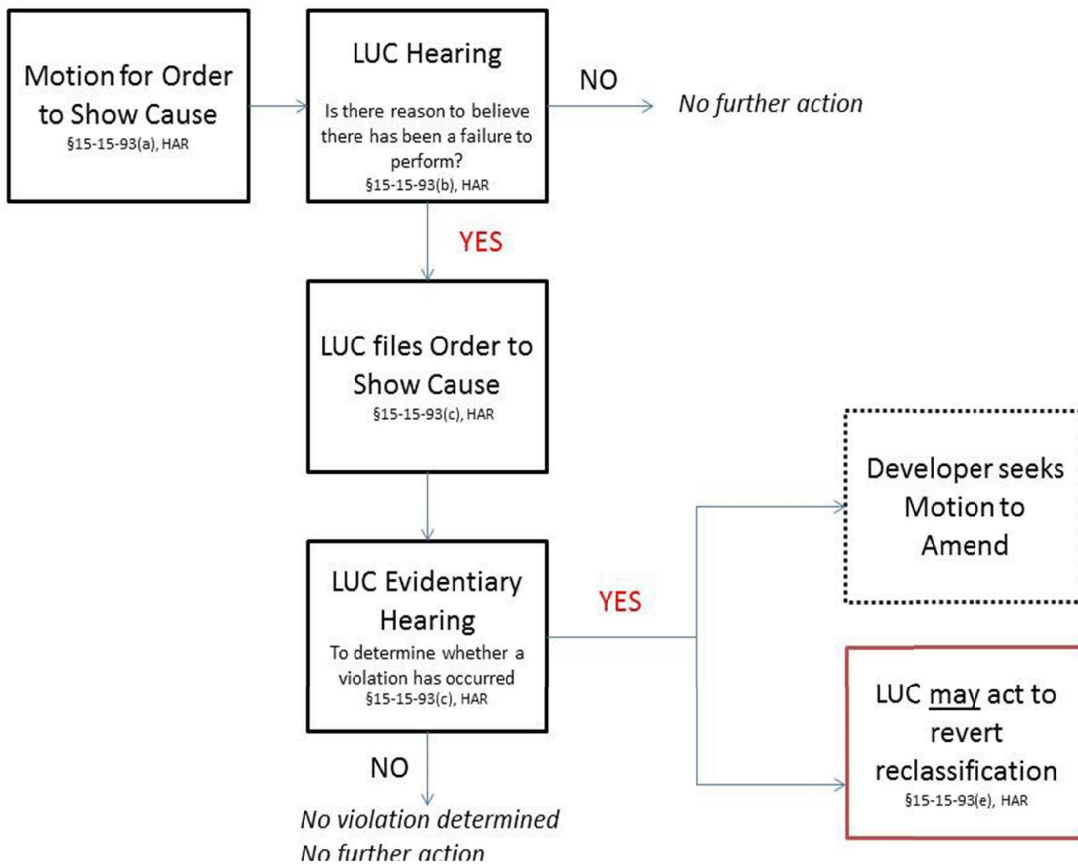
# What is an Order to Show Cause?

- Motion filed by interested party or by action of the Commission
- Hearing to determine if a violation in the terms of a petition's approval has occurred

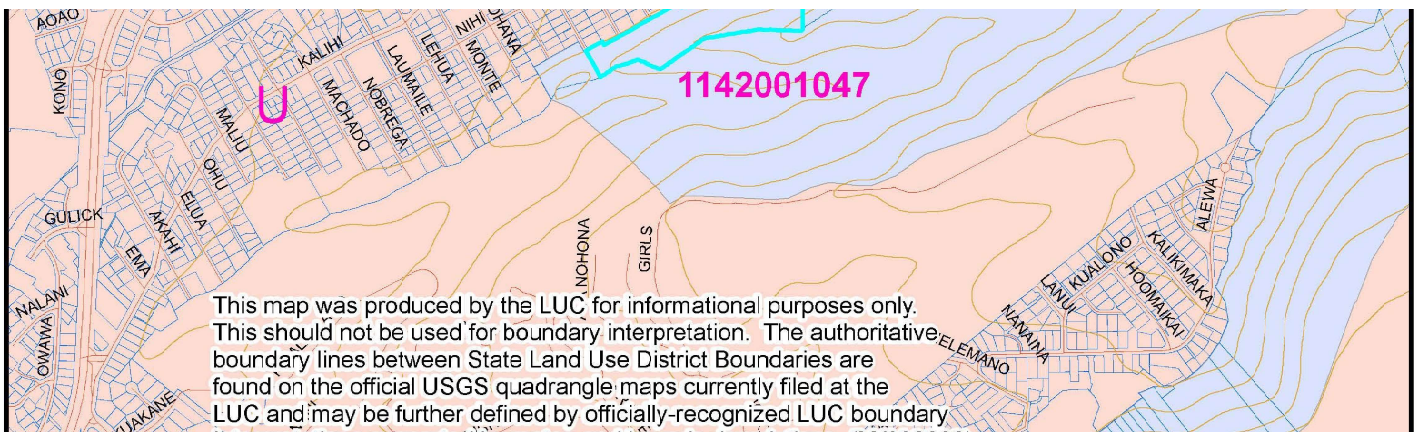
The form is a legal document from the Civil Court of the City of New York. It is titled "AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE". The form includes sections for the plaintiff, defendant, and a declaration of the plaintiff. A large red watermark "Sample Order to Show Cause" is overlaid on the form.

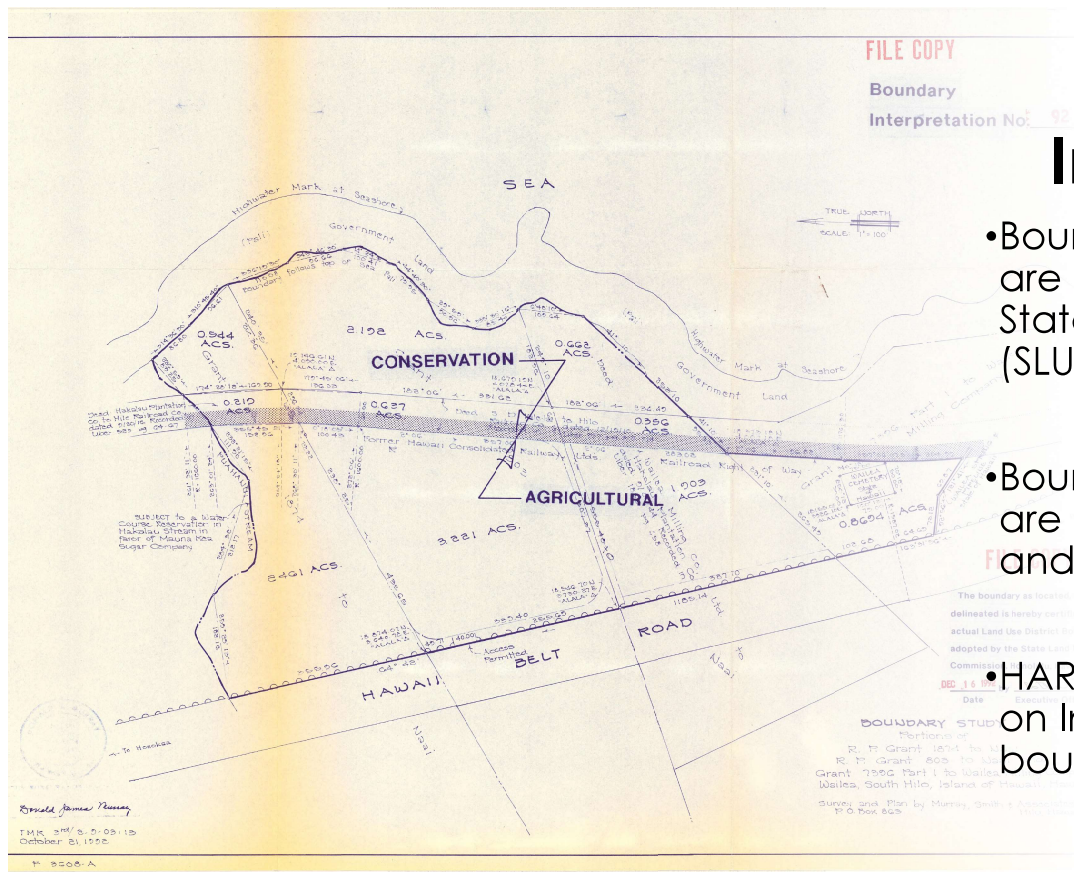
## The Process

- Motion filed alleging failure to perform according to conditions of petition approval
  - LUC holds a hearing on motion
  - If LUC has reason to believe there has been a failure to perform conditions or representations and commitments - Order to Show Cause is filed
  - LUC holds Order to Show Cause Status Conference
  - Parties to original petition and movant present their cases
  - LUC either finds no violation has occurred or finds violation and may then act to revert the reclassified property to its previous classification
- Order transmitted by the petitioner to the Commission, requesting they appear to show why the property should not be reverted, or the LUC hosts a status conference
  - LUC: the petitioner must show why the property must not be reverted



## Boundary Interpretations





## Boundary Interpretation

- Boundary interpretations are used to determine the State Land Use District (SLUD) in relation to parcel
- Boundary interpretations are usually done internally and rarely require a hearing
- HAR § 15-15-22 is the Rule on Interpretation of district boundaries



# All Meetings and Actions are Subject to the “Sunshine Law”.



Sunshine Law  
(Part I of Chapter 92, HRS)

Uniform Information  
Practices  
Act (UIPA)  
(Chapter 92f, HRS)

## Sunshine Law in Brief

- Meetings must be noticed, and an agenda posted a week in advance.
- Hearings are open to the public and minutes are taken as well as a recording of the proceedings
- The public is given the opportunity to testify (may be limited in time and when it is taken during the hearing).

Example: 'O'oma - amount of public testimony ended up limiting the time for evidentiary proceedings.

All deliberation must be made in public.



No deliberating towards a decision in executive session or in a separate meeting.

Executive Session may be requested by motion ONLY to discuss legal matters with counsel or to discuss confidential matters.



- More than two commissioners are prohibited from meeting without notice

- Staff are not decision makers so are not subject to the restrictions



- Five members are needed for quorum.

- **BUT** -

- SIX affirmative votes are needed for any action concerning a District Boundary Amendment or Decision and Order on DBA.

## How Do You Decide?

### Guidance and Decision-Making Criteria

- HRS 205-16
- HRS 205-17
- HRS 205A
- HAR 15-15-77 and -78 [DBA]
- HAR 15-15-95(c) [SP]
- Other
  - Good Cause
  - Preponderance of Evidence



**§205-17 Land use commission decision-making criteria.** In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;
- (3) The impact of the proposed reclassification on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;
  - (C) Maintenance of other natural resources relevant to Hawaii's economy, including agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-50;
- (5) The county general plan and all community, development, or community development plans adopted pursuant to the county general plan, as they relate to the land that is the subject of the reclassification petition; and
- (6) The representations and commitments made by the petitioner in securing a boundary change.  
[L 1985, c 230, §1; am L 1990, c 261, §2; am L 2005, c 183, §6; am L 2008, c 26, §1]



# When can Intervention Occur?

- Intervention must be requested before a hearing begins
- Notice of Intent to Intervene
  - 30 days after notice of petition filing for DBA; 15 days after hearing notice for other proceedings
- Intervention allowed for DBA and Declaratory Rulings; not SP which are a review of county action



## Who can Intervene?

- "Shall be admitted"
  - Any department or agency of the State
  - Any department or agency of the county in which the property is situated
  - Anyone with a property interest, who lawfully resides on the land, or who can demonstrate a direct and immediate affect where their interest is clearly distinguishable from the general public
- All other persons "May be admitted"

# What is Intervention

- Leave to intervene shall be freely given
- Leave to intervene may be denied if:
  - The position of the proposed intervener is substantially the same as a party already admitted
  - Admission of additional parties will render proceeding inefficient and unmanageable
  - The request is untimely

## How Intervention Works

Filing of a Notice of Intent to Intervene within 30 days of notice of a petition being filed

Petition for Intervention per LUC rules and providing the required information

LUC may limit the scope of intervention based upon representations by the potential intervener in their written petition or oral representations

# Not Quite Intervention

- A step down from intervention is where a representative of a citizen or community group is allowed to testify and express the views of that group
  - Not given party status
  - Requested to provide proof of authorization to speak on behalf of the group represented

An aerial photograph of a desert landscape. In the foreground, there are rolling hills with reddish-brown soil. In the background, a large, dark crater is visible, and to its left, a body of water reflects the sky. The overall scene is arid and rugged.

## THE PUBLIC TRUST DOCTRINE

A Brief Overview

The public trust is the right of the people to have the waters protected for their use. Comprehensive resource planning is intrinsic to the public trust concept which also demands provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty.

From the Waiāhole water decision - Hawaii Supreme Court, August 2000



## **HAWAII STATE CONSTITUTION Art. XI, sec. 1**

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with conservation and in furtherance of self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

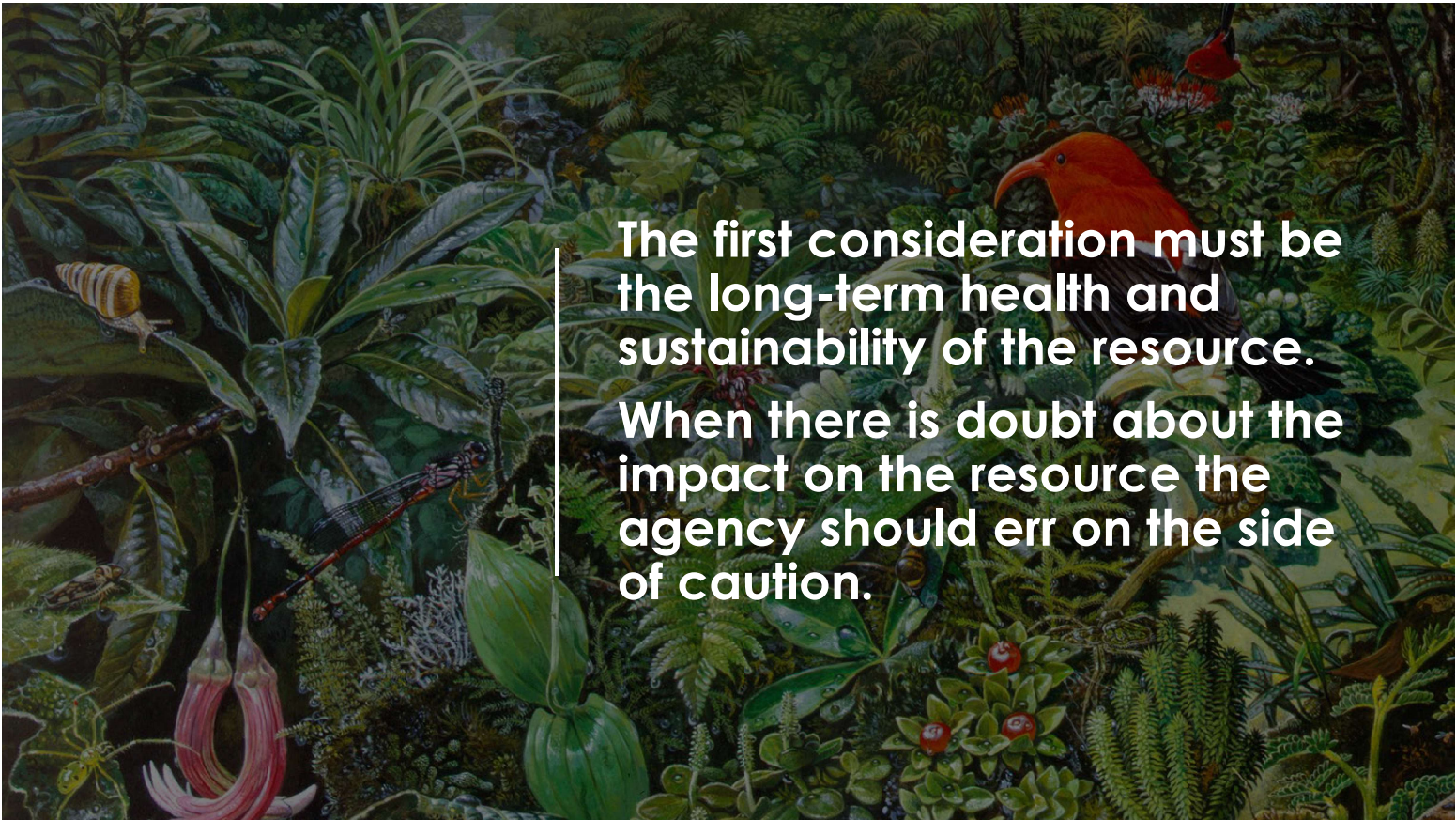




Note that this is very different from a mandate to mitigate impacts.

There is an affirmative requirement to ensure that public trust resources are preserved for future generations and that decisions do not overly impact the public's rights to utilize those resources.

For public officials making decisions about renewable public natural resources the first priority must be the long-term protection of the resources.



**The first consideration must be the long-term health and sustainability of the resource. When there is doubt about the impact on the resource the agency should err on the side of caution.**

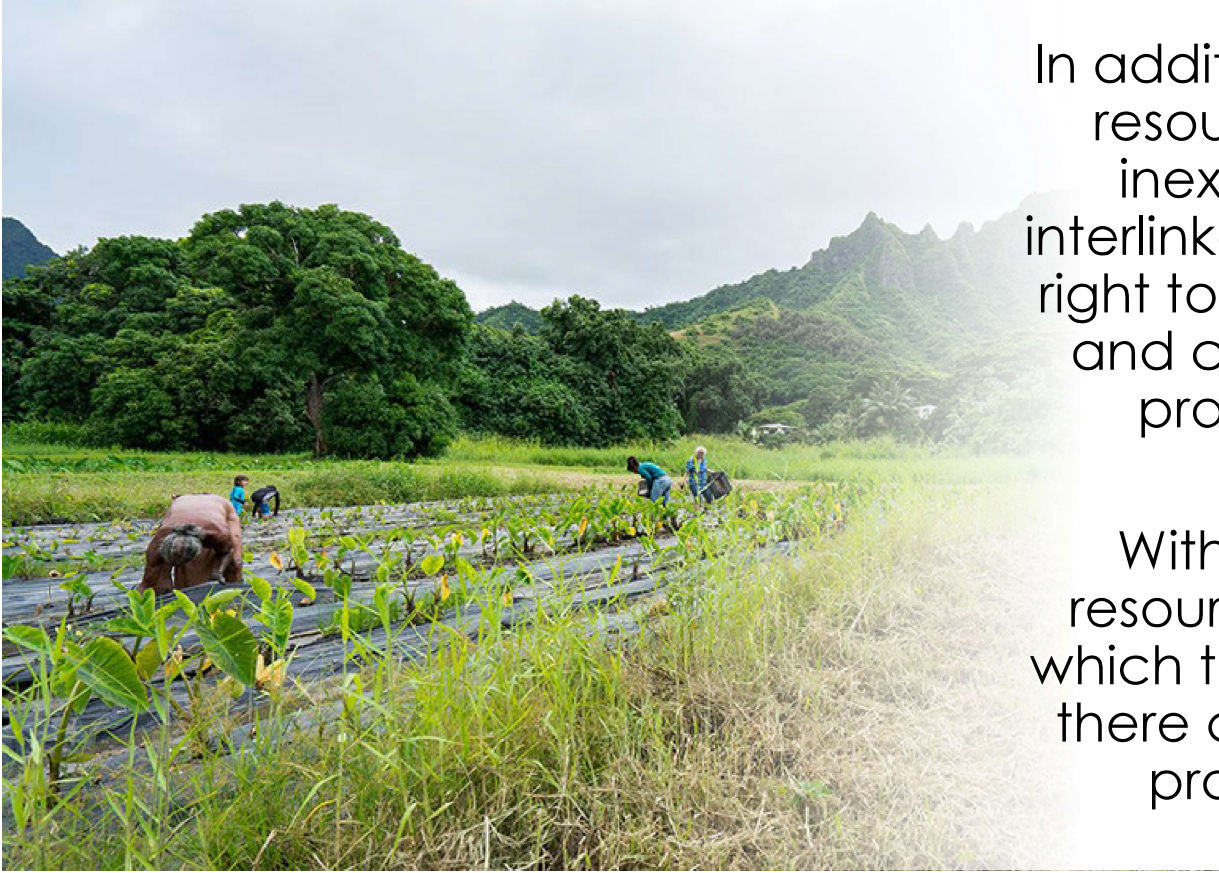


## This applies to

- Watershed Protection
- Historic Sites/cultural sites
- Environmental/natural resources
- Air, minerals & energy resources



For LUC purposes, the public trust doctrine is compounded by federal environmental regulations.



In addition, public resources are inextricably interlinked with the right to traditional and customary practices.

Without the resources upon which to practice, there can be no practice.

**The state must act...  
"as a trustee and not  
simply (as) a good  
business manager."**

"It must not relegate itself to the role of a mere "umpire passively calling balls and strikes for adversaries appearing before it" but instead must take the initiative in considering, protecting, and advancing public rights in the resources at every stage of the planning and decision-making process."

Waiāhole at p. 143



## Ka Pa‘akai

- The state and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Native Hawaiians to the extent feasible;
- Agencies are obligated to make an assessment, independent of the developer or applicant, of the impacts on traditional and customary practices of Native Hawaiians; and
- The independent assessment must include three factors known as the “*Ka Pa‘akai* framework.”

## Ka Pa‘akai Framework

1. Identify valued cultural, historical, or natural resources and the extent to which traditional are exercised;
2. The extent to which those resources will be affected or impaired by the proposed action; and
3. The feasible action to be taken to protect rights

# For more information on Protecting the Public Trust and Ka Paʻakai

Former Chair,  
Dr. Jonathan Likeke Scheuer



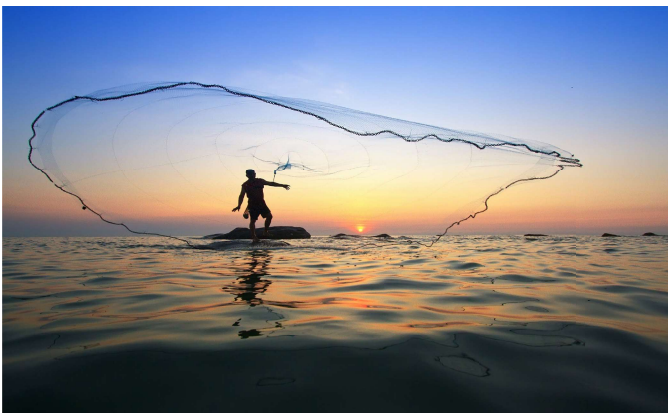
## SUSTAINABILITY

In Land Use Planning



# How Sustainability and Climate Change are Addressed

- LUC filing requirement in HAR 15-15-50(c)(24) and (25)
- Sustainability information spelled out in HRS 226-108 and -109



## **[§226-108] Sustainability. Priority guidelines and principles to promote sustainability shall include:**

- (1) Encouraging balanced economic, social, community, and environmental priorities;
- (2) Encouraging planning that respects and promotes living within the natural resources and limits of the State;
- (3) Promoting a diversified and dynamic economy;
- (4) Encouraging respect for the host culture;
- (5) Promoting decisions based on meeting the needs of the present without compromising the needs of future generations;
- (6) Considering the principles of the ahupua'a system; and
- (7) Emphasizing that everyone, including individuals, families, communities, businesses, and government, has the responsibility for achieving a sustainable Hawaii. [L 2011, c 181, §2]

**[§226-109] Climate change adaptation priority guidelines.** Priority guidelines to prepare the State to address the impacts of climate change, including impacts to the areas of agriculture; conservation lands; coastal and nearshore marine areas; natural and cultural resources; education; energy; higher education; health; historic preservation; water resources; the built environment, such as housing, recreation, transportation; and the economy shall:

- (1) Ensure that Hawaii's people are educated, informed, and aware of the impacts climate change may have on their communities;
- (2) Encourage community stewardship groups and local stakeholders to participate in planning and implementation of climate change policies;
- (3) Invest in continued monitoring and research of Hawaii's climate and the impacts of climate change on the State;
- (4) Consider native Hawaiian traditional knowledge and practices in planning for the impacts of climate change;
- (5) Encourage the preservation and restoration of natural landscape features, such as coral reefs, beaches and dunes, forests, streams, floodplains, and wetlands, that have the inherent capacity to avoid, minimize, or mitigate the impacts of climate change;
- (6) Explore adaptation strategies that moderate harm or exploit beneficial opportunities in response to actual or expected climate change impacts to the natural and built environments;
- (7) Promote sector resilience in areas such as water, roads, airports, and public health, by encouraging the identification of climate change threats, assessment of potential consequences, and evaluation of adaptation options;
- (8) Foster cross-jurisdictional collaboration between county, state, and federal agencies and partnerships between government and private entities and other nongovernmental entities, including nonprofit entities;
- (9) Use management and implementation approaches that encourage the continual collection, evaluation, and integration of new information and strategies into new and existing practices, policies, and plans; and
- (10) Encourage planning and management of the natural and built environments that effectively integrate climate change policy. [L 2012, c 286, §2]

# Solar, Wind, and Renewable Projects

## State Special Permit

- Record developed at County Planning Commission

## Motions to Amend District Boundary Amendments

- Record developed at LUC
- Weighing Public Benefit when former approved uses not progressing

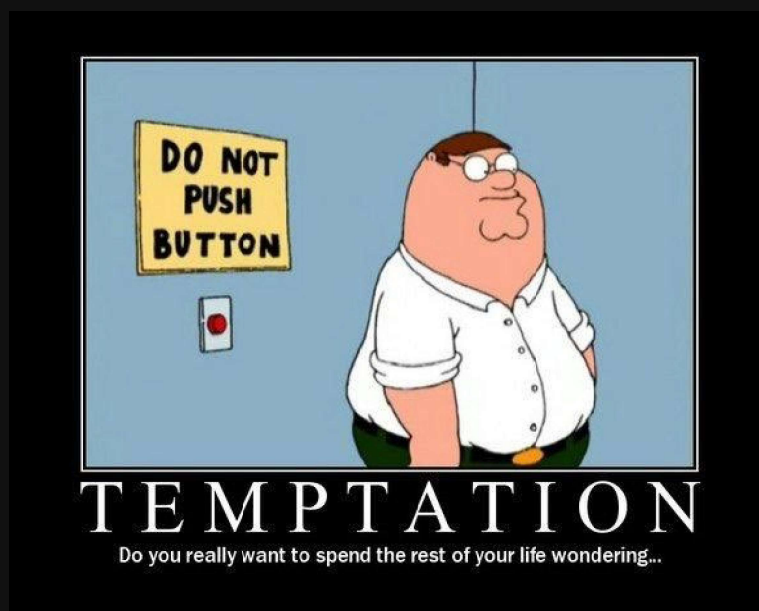
## General Issues

- Rush for Approvals
- Timeframes for a (long-term) temporary use
- Decommissioning



# ETHICS

State Ethics Code  
Chapter 84,  
Hawaii Revised  
Statutes ("HRS")



## Ethics Continued

When to disclose

When to recuse

Individual responsibility to  
file reports with ethics  
annually

Commissioners must take  
general ethics training  
every four years



# LUC and Legislature

- Budget
- Legislation
- Commissioner relationships



## Current Issues





# Affordable Housing

*Is the LUC the problem?*

- 10 years to obtain permitting
- Sprawl
- Type of housing
  - Is housing affordable?
- How can the LUC stimulate affordable housing
- Conflicting uses
- Former Chair, Dr. Jonathan Likeke Scheuer Editorial
- [Luciano Minerbi Civil Beat Article](#)

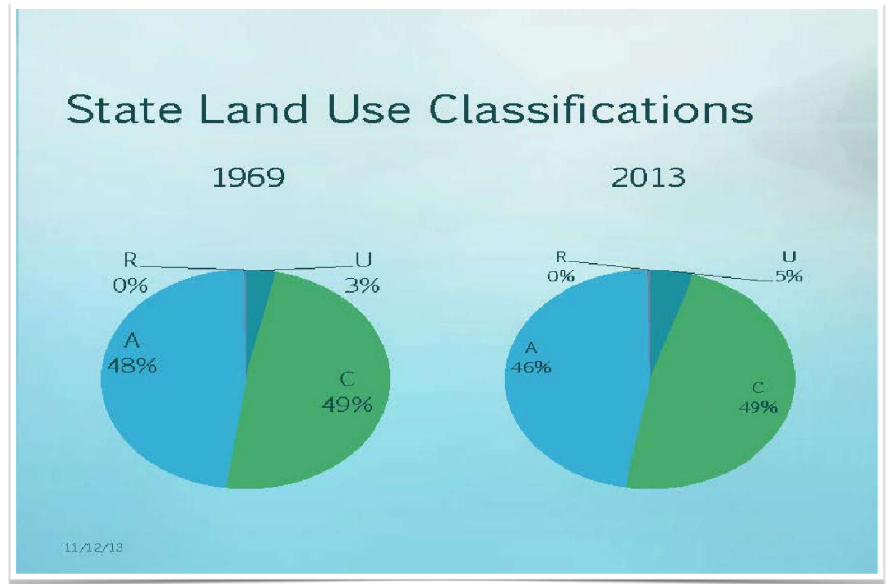
## Current Issues

- Enforcement has become increasingly problematic. Counties enforce based on local policy concerns. This results in inconsistent decisions.
- We are struggling, in each decision, to bring modern issues such as housing, food sustainability, controlling urbanization, and Climate Change into the process.



# Where we are now

The actual percentage changes have been minimal statistically.



We operate under an extremely open process that requires us to consider a set of defined public policy concerns in making and well supported decisions to support economic growth and protection of the state's most important assets.

We are, in this limited venue, tasked with effectuating policy surrounding:

- infrastructure
- protecting open space and agricultural lands
- protecting cultural assets and rights
- protecting the environment
- supporting economic growth by encouraging sustainable development
- promoting job growth
- protecting watershed
- encouraging deliberate and sustainable growth

# Administrative Matters

## Regular and Dependable Meeting Attendance



Assures Quorum  
Gets Business Done  
Saves Time and \$\$\$\$

## Attention and Prompt Response to Roll Call Messages/E-mails



REQUIRED TO POST  
MEETING AGENDA  
ONE WEEK PRIOR



EARLY ADVICE ON  
SPECIAL TRAVEL  
NEEDS



MEETING COSTS  
INVOLVED



LAST MINUTE  
CANCELLATIONS =  
\$\$\$\$\$\$\$\$!

## Keep Current with Commissioners Checkpoint and LUC Website Postings



Commissioner Notices  
Staff Reports  
Meeting Specific Info  
Website General Info

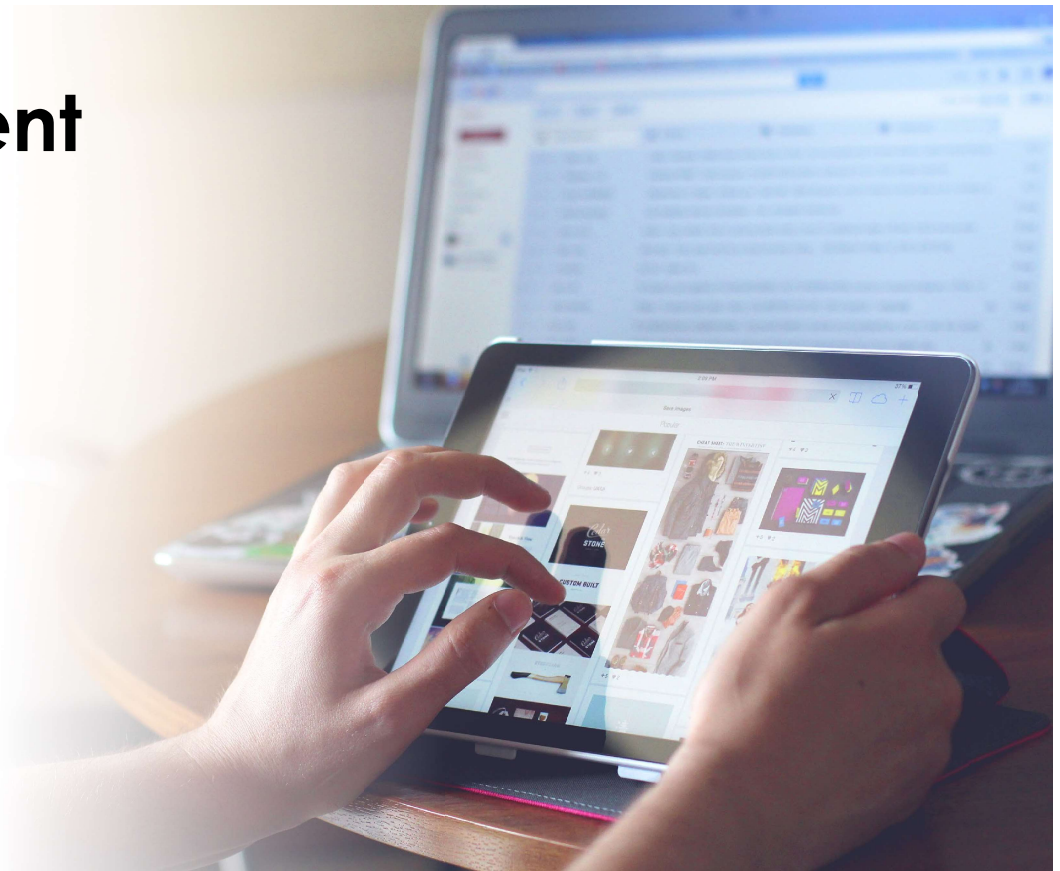
# Prompt Return of Paperwork and Receipts

- Hang onto everything
- Airline boarding passes
- "Zero" balance rental car receipts
- Hotel billings
- Other associated receipts (taxi, ...)
- TIPS ARE NOT REIMBURSED



## LUC Equipment

Commissioners **must** be able to access website and Zoom during hearings

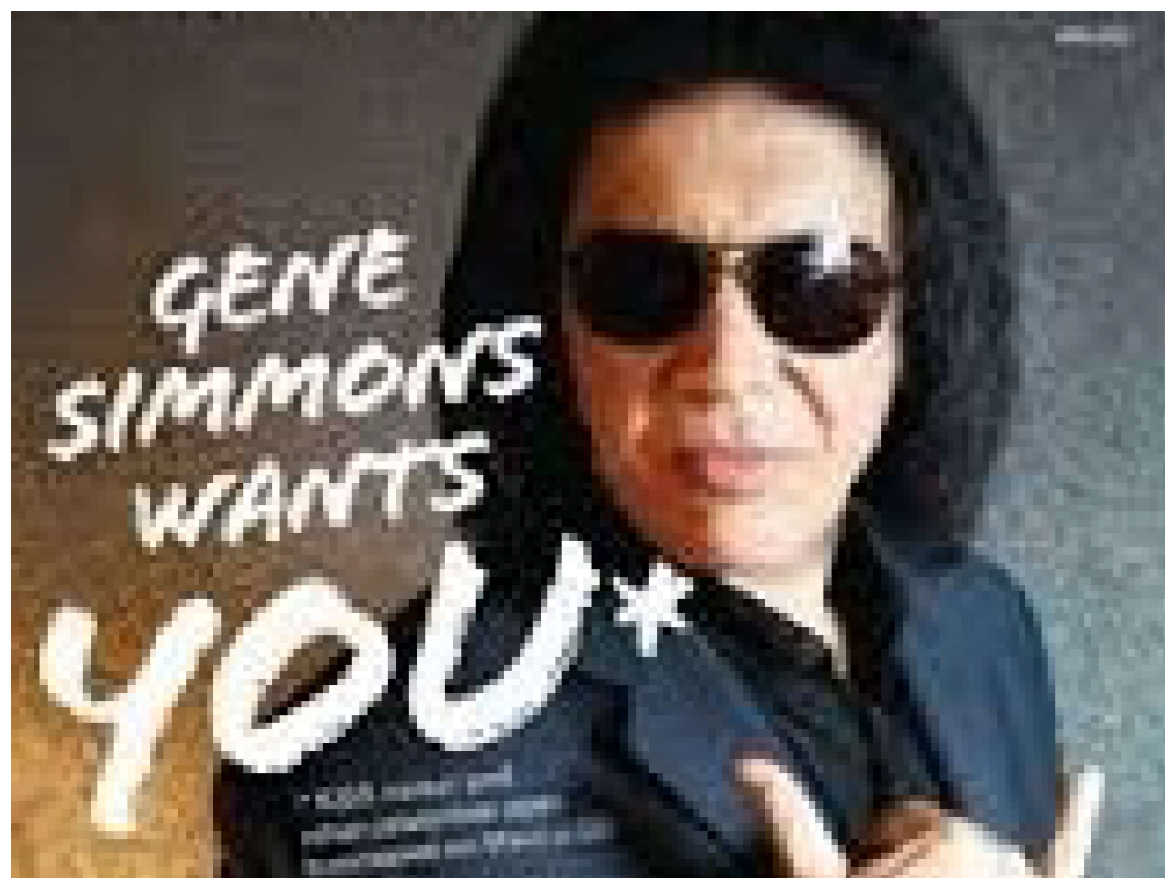


# Take Advantage of LUC Opportunities

- Education
- Seminars on Land Use Issues
- HCPO yearly planning conference
- Site visits and travel
- Public Involvement



Question:  
Who is willing to be a driver?





# Overview of the Office of Planning and Sustainable Development's Role in Supporting the Work of the State Land use Commission

Presentation to the State Land Use Commission on July 27, 2022

State Planning  
Statutes That  
Work  
Together

Ch. 205 Land Use Commission

Ch. 205A Coastal Zone Management

Ch. 226 Hawaii State Planning Act

Ch. 225P Climate Change Initiatives

Ch. 343 Environmental Impact Statements

Ch. 6E Historic Preservation

Ch. 225M State Planning

Ch. 206E Hawaii Community Development Authority

Ch. 201H Hawaii Housing Finance and Development Corporation

## Ch. 225M State Planning – Ten Responsibilities

- 1. Comprehensive planning and program coordination to implement the statewide planning system in Ch. 226, Part II.
- 2. Strategic planning
- 3. Facilitating coordinated and cooperative policy development.
- 4. Geographic Information System
- 5. Land use planning.

## Ch. 225M (continued)

- 6. Coastal and ocean policy management.
- 7. Regional carrying capacity studies.
- 8. Regional, national, and international planning.
- 9. Climate adaptation planning.
- 10. Smart growth and transit-oriented development.
- 11. Environmental review program.

# OPSD Programs that work together

- Coastal Zone Management Program
- Environmental Review Program
- Land Use Commission
- Land Use Division
- Special Plans Branch
- State Transit-Oriented Development Branch
- Statewide Geographic Information System
- Statewide Sustainability Program

## Boards that OPSD Supports:

- MACZAC
- Environmental Advisory Council
- Land Use Commission
- Statewide Comprehensive Economic Development Strategy Committee
- State Transit-Oriented Development Council (co-chair)
- Hawaii Board of Geographic Names
- Greenhouse Gas Sequestration Task Force
- Hawaii Climate Change Mitigation and Adaptation Commission (co-chair)

# Statewide GIS Program:

- Provide statewide GIS coordination among State, county, and federal agencies
- Manage and maintain a central geodatabase of 400+ data sets
- Share data with State agencies (internally) and the general public ([geoportal](#))
- *Geoportal includes State Land Use District Boundary layer*
- *Geoportal hosts popular [State Land Use District Locator App](#)*
- Respond to requests for maps and data from State agencies and the Legislature
- Consult with State agencies on projects involving GIS
- Manage the State's online mapping platform and License Agreement with Esri
- Manage the State's online mapping platform and License Agreement with Esri
- *Provide technical and project support to LUC staff as needed*



# Statewide GIS Program:

<b>Arthur Buto</b> arthur.j.buto@hawaii.gov (808) 587-2894	<b>Joan Delos Santos</b> joan.m.delossantos@hawaii.gov (808) 587-2895	<b>Christine Chaplin</b> christine.e.chaplin@hawaii.gov (808) 587-2896
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Email	<a href="mailto:gis@hawaii.gov">gis@hawaii.gov</a>
Geospatial Open Data Portal	<a href="https://geoportal.hawaii.gov">https://geoportal.hawaii.gov</a>
ArcGIS Online	<a href="https://arcgis.com">https://arcgis.com</a>
Web Services	<a href="https://geodata.hawaii.gov/arcgis/rest/services">https://geodata.hawaii.gov/arcgis/rest/services</a>
Sharepoint	<a href="https://hawaiioint.sharepoint.com/sites/gis">https://hawaiioint.sharepoint.com/sites/gis</a>
GIS Program website	<a href="https://planning.hawaii.gov/gis">https://planning.hawaii.gov/gis</a>



# HAWAII COASTAL ZONE MANAGEMENT PROGRAM



STATE OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

LAND USE COMMISSION BRIEFING

JULY 27, 2022



## National Coastal Zone Management Act (CZMA)

### The National Coastal Zone Management Program



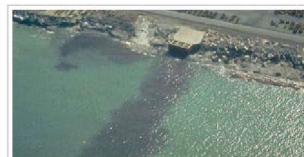
#### Federal Consistency

Gives states a strong voice in federal decisions that they otherwise would not have



#### Coastal Zone Enhancement

Provides incentives to states and territories to enhance their coastal management programs within nine areas of national significance



#### Nonpoint Pollution Control

Ensures that participating states have the necessary tools to prevent and control polluted runoff

- **National CZM Act of 1972**
- **Enacted by U.S. Congress**
- **Preserve, protect, develop, and where possible, to restore or enhance the resources of coastal zone for this and succeeding generations**
- **The state in the best position to manage the coastal zone**
- **Two major incentives (i) federal funding towards a partnership with the states (ii) administration of the federal consistency review program**



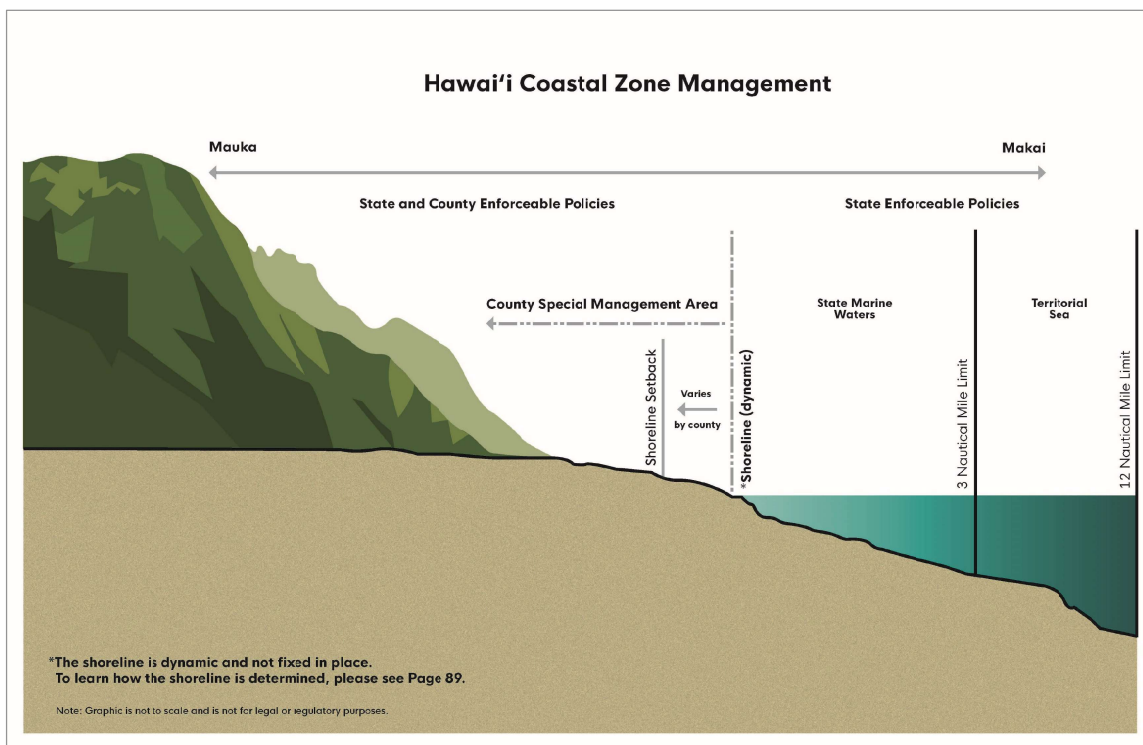
National Oceanic and  
Atmospheric Administration  
U.S. Department of Commerce

# Hawai'i Coastal Zone Management Program



- [What is CZM?](#)
- **Authority: Hawaii Revised Statutes Chapter 205A**
  - **Part I Coastal Zone Management**
    - **Objectives & Policies**
    - **Federal Consistency**
    - **Marine and Coastal Zone Advocacy Council**
  - **Part II Special Management Area**
  - **Part III Shoreline Setback**
  - **Part IV Marine and Coastal Affairs**
- **Hawai'i Ocean Resources Management Plan**
- **Coastal Nonpoint Pollution Control Program**

## Hawai'i Coastal Zone Management Program – Network



# Hawai`i Coastal Zone Management Program – Network

## Authorities Matrix

HAWAI`I CZM OBJECTIVES AND POLICIES, HRS Chapter § 205A-2	STATE & COUNTY AUTHORITIES AND ENFORCEABLE POLICIES
Recreational Resources HRS §§ 205A-2(b)(1) and 205A-2(c)(1)	
Objective 1: Provide coastal recreational opportunities accessible to the public.	DBEDT: HRS CHAPTER 201: PLANNING AND ECONOMIC DEVELOPMENT  DLNR: HRS CHAPTER 115: PUBLIC ACCESS TO COASTAL AND INLAND RECREATIONAL AREAS HRS CHAPTER 171: PUBLIC LANDS, MANAGEMENT AND DISPOSITION OF HRS CHAPTER 173A: ACQUISITION OF RESOURCE VALUE LANDS HRS CHAPTER 183: FOREST RESERVES, WATER DEVELOPMENT, ZONING HRS CHAPTER 183C: CONSERVATION DISTRICT HRS CHAPTER 184: STATE PARKS AND RECREATION AREAS HAR CHAPTER 13-5: CONSERVATION DISTRICT HAR CHAPTER 13-130: STATEWIDE TRAIL AND ACCESS PROGRAM HAR CHAPTER 13-222: SHORELINE CERTIFICATIONS  <b>LUC:</b> HRS CHAPTER 205: LAND USE COMMISSION HAR CHAPTER 15-15: LAND USE COMMISSION RULES  OPSD: HRS CHAPTER 205A, PART I: COASTAL ZONE MANAGEMENT HRS CHAPTER 205A, PART II: SPECIAL MANAGEMENT AREAS HRS CHAPTER 205A, PART III: SHORELINE SETBACKS  ALL AGENCIES: HRS CHAPTER 93-12: ANNUAL REPORTS HRS CHAPTER 101: EMINENT DOMAIN HRS CHAPTER 343: ENVIRONMENTAL IMPACT STATEMENTS HRS CHAPTER 344: STATE ENVIRONMENTAL POLICY  COUNTY APPLICABLE STATE AUTHORITIES: HRS CHAPTER 46: COUNTY ORGANIZATION AND ADMINISTRATION GENERAL PROVISIONS HRS CHAPTER 115: PUBLIC ACCESS TO COASTAL AND INLAND RECREATIONAL AREAS HRS CHAPTER 180C: SOIL EROSION AND SEDIMENT CONTROL HRS CHAPTER 205: LAND USE COMMISSION HRS CHAPTER 205A, PART II: SPECIAL MANAGEMENT AREAS

<https://www.capitol.hawaii.gov/hrscurrent/>  
<https://tgov.hawaii.gov/the-office/administrative-rules/>

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Version 12/08/2021

LUC:  
HRS Chapter 205: Land Use Commission  
HAR Chapter 15-15: Land Use Commission Rules

## Mahalo & Questions

- [National Coastal Zone Management Program](#)
- [Authorities Matrix](#)
- [SMA Permit](#)
- [County Profiles](#)
- [Shoreline Setbacks](#)
- [Hawai`i Ocean Resources Management Plan](#)

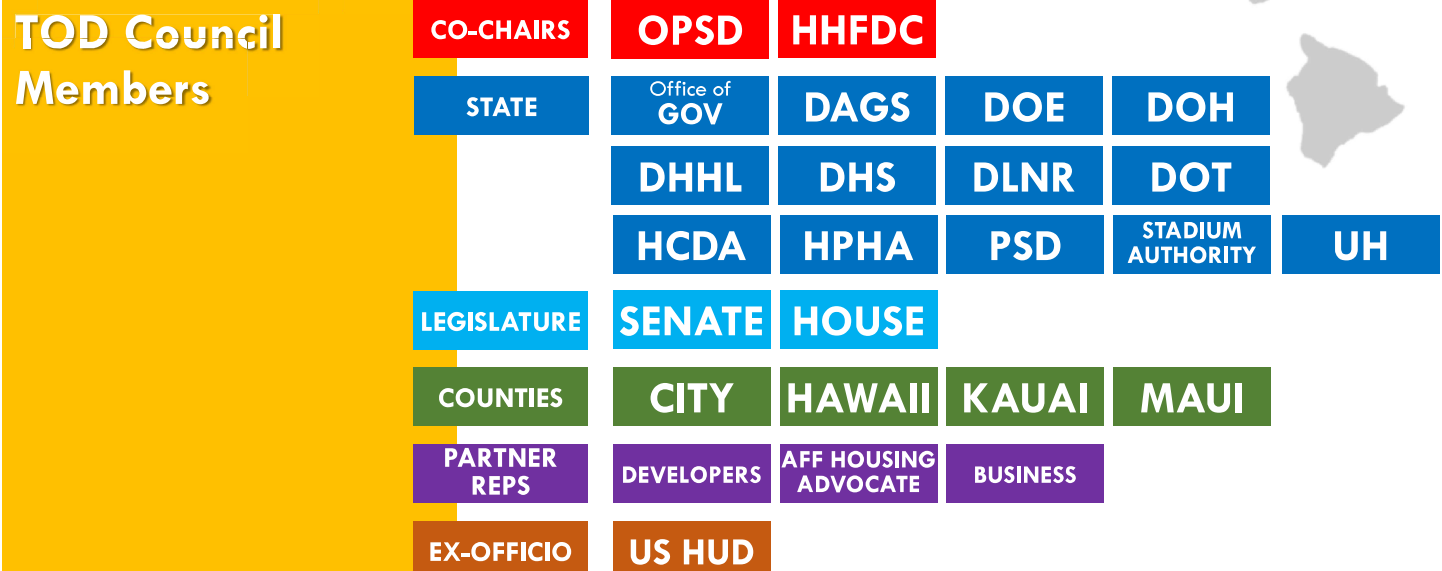
Justine Nihipali  
Office of Planning & Sustainable Development  
Hawaii Coastal Zone Management Program  
[justine.w.nihipali@hawaii.gov](mailto:justine.w.nihipali@hawaii.gov)

# Smart Growth/Transit-Oriented Development

## ● **Act 130** | SLH 2016

- Established  
**Hawaii Interagency Council for Transit-Oriented Development**  
as forum to coordinate State TOD planning, mixed-use, affordable & rental housing on State lands statewide  
(HRS §§ 226-63 & -64)
- Designated  
**OPSD as State lead agency for Smart Growth & TOD**  
(HRS § 225M-2(b)(10))

## Hawaii Interagency Council for Transit-Oriented Development



# TOD—a Smart Growth tool

- increase mixed-income & affordable housing stock
  - preserve/conserve agricultural lands and open space
  - improve livability of communities
    - reduce vehicle miles traveled & GHG emissions
    - manage cost of urban infrastructure

## what is TOD?

compact, walkable development centered around transit

### defining elements

- ▶ frequent/regular public transit service
  - + higher density
  - + mix of uses with commercial and civic anchors
  - + pedestrian orientation and connectivity
  - + multi-modal transportation options (mobility choices)
- = dynamic live-work-play communities that promote shift from individual auto use/trips for daily activities

# what would TOD look like?

O'ahu—housing at stations along rail corridor



**Neighbor Islands**  
housing at bus transit centers/hubs

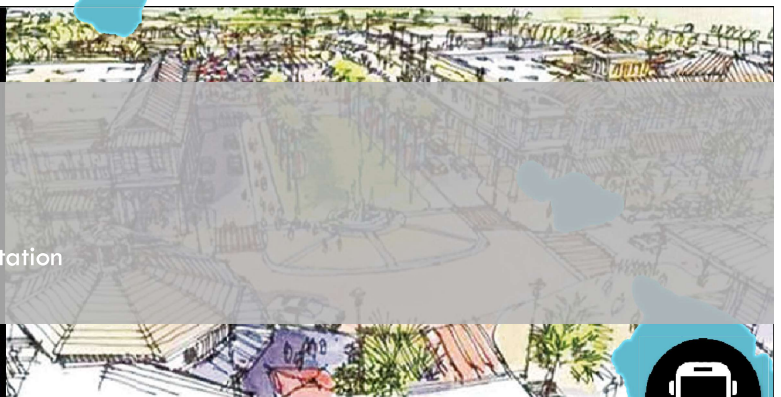
## OPSD TOD program

O'ahu—housing at stations along rail corridor



### urban infill

facilitating State & county TOD planning & TOD project implementation



**Neighbor Islands**  
housing at bus transit centers/hubs

# land use decision-making through the TOD lens



does the proposal support a development pattern that...

is compact with density?  
promotes transit ridership?  
promotes mixed-income housing &

is walkable, pedestrian-oriented?  
incorporates multiple mobility options?  
creates mixed-use, live-work-play communities?



## HRS Chapter 343 Environmental Review Process overview

Land Use Commission, July 27, 2022



# Environmental Review Program

## Staff

- Planner (vacant)
- Planner: **Tom Eisen**, primarily responsible to produce and publish *The Environmental Notice* twice each month; maintains online database of EAs, EISs, and other documents; also provides guidance and support to agencies, applicants, consultants, interested parties.
- Environmental Health Specialist: **Les Segundo**, primarily responsible to provide staff support to the Environmental Advisory Council; also provides guidance and support to agencies, applicants, consultants, interested parties.
- Secretary: **Jennifer Ching**: primarily responsible to provide administrative support to the program



“[T]he quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State. The legislature further finds that the determination of an **optimum balance between economic development and environmental quality** deserves the most thoughtful consideration, and that the **maintenance of the optimum quality of the environment deserves the most intensive care.**”

– HRS § 341-1, Environmental Advisory Council Findings and Purpose

# Guiding Principles



- The environmental review process (HRS Chapter 343 ["HEPA"]) is a DISCLOSURE process, which occurs prior to the permitting process
- A proposed action must hit a trigger for HEPA to apply (not every action goes through the HEPA process; see HRS Section 343-5(a)/next slide for the list of triggers)
- The Land Use Commission issues discretionary consents that are required for applicants' proposed actions to be implemented, and is thus considered an Approving Agency under HEPA
- As an Approving Agency, the LUC makes all the necessary determinations required by HEPA
- Consideration of "Significance" is important to determine the appropriate level of review (using Significance Criteria in the administrative rules for the process [HAR Section 11-200.1-13])
- Three levels of review: Exemption, Environmental Assessment (EA), and Environmental Impact Statement (EIS) (based on whether a **significant** impact is anticipated)
- If **not** anticipated, then **Exemption** (if eligible); if **unsure**, then **EA**; if **anticipated**, then **EIS**
- Public comment is a key aspect of the process (**EAs**: 30-day comment period on draft EA; **EISs**: 30-day comment on initial EIS Preparation Notice AND 45-day comment period on subsequent draft EIS)
- Applicant's final EA/EIS must include an adequate response to all substantive comments submitted
- LUC generally issues a Finding of No Significant Impact (FONSI) based on a Final EA, or LUC can Accept or reject a Final EIS (these determinations are required to be made within 30 days of submittal)

## For HEPA to apply, an action must propose one of these triggers:

- (1) the use of state or county lands or the use of state or county funds ...;
- (2) any use of any land classified as a conservation district;
- (3) any use within a shoreline area;
- (4) any use within any historic site as designated in the National or Hawaii Register;
- (5) any use within the Waikiki area of Oahu;
- (6) any amendments to existing county General Plans, where the amendment would result in designations other than agriculture, conservation, or preservation ...;
- (7) **any reclassification of any land classified as a conservation district;**
- (8) The construction of new or the expansion or modification of existing helicopter facilities within the State ...;
- (9) any wastewater treatment unit (WTU), except an individual wastewater system or WTU serving fewer than 50 single-family homes or the equivalent;
- (10) any waste-to-energy facility;
- (11) any landfill;
- (12) Any oil refinery; or
- (13) Any power-generating facility (a new or expanded fossil-fueled electricity-generating facility where the electrical output rating exceeds 5.0 megawatts



## Guidance Guidance Guidance

- Stay informed
  - Subscribe to *The Environmental Notice* at:  
<https://planning.hawaii.gov/erp/>
  - Check the website for additional materials  
<https://planning.hawaii.gov/erp/>
- Questions on the process?
  - Email [dbedt.opsd.erp@hawaii.gov](mailto:dbedt.opsd.erp@hawaii.gov)



# Office of Planning and Sustainable Development

Land Use Division  
LUC Commissioner Orientation

- I. Role of OPSD in LUC Dockets
- II. Types of Matters
  - A. DBAs
  - B. IAL
  - C. Special Permit / Declaratory Petitions
- III. Issues

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## Role of OPSD in LUC Dockets

### Two Primary Roles

Provide Informed  
Analysis



Present State Position  
/ Recommendation



30

## Types of Matters

### District Boundary Amendments

- ▶ OPSD is a mandatory, formal party to DBA hearings (HRS § 205-4(e))
- ▶ OPSD's Tasks re: DBA's
  1. Reviews the Petition and supporting documents
  2. Discusses issues with Petitioner throughout process
  3. Solicits comments on the Petition from State agencies
  4. Works with State agencies in development of State position
  5. Conducts its own analysis and evaluation
  6. Drafts and submits the State's position and testimony

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## Types of Matters

### District Boundary Amendments (cont.)

- ▶ OPSD's Tasks re: DBA's (cont.)
  7. OPSD considers whether there is a factual basis in the record to demonstrate a "nexus" between the state interest and the condition, and that a "rough proportionality" exists between the impact and the condition (Nollan v. Cal. Coastal Comm'n, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994))
- ▶ OPSD conditions are often reviewed by Petitioner

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## Types of Matters

### District Boundary Amendments (cont.)

#### ► OPSD's Tasks re: DBA's (cont.)

8. Identifies and presents state documents and witnesses; cross-examines witnesses, presents arguments and recommendations, answers questions
9. D&O
  - A. If in agreement with Petitioner on outcome → reviews and revises Petitioner's proposed D&O
  - B. If not in agreement with Petitioner on outcome → drafts D&O

33

## Types of Matters

### District Boundary Amendments (cont.)

#### ► OPSD's Tasks re: DBA's (cont.)

10. Post-hearing motions
  - Motion to amend, motion to reconsider, order to show cause
  - Typically follows the same process, but may be limited to the particular issues raised and factual basis for State recommendation
  - Complexity and time requirements vary widely

34

## Types of Matters

### Important Agricultural Land Designations

- ▶ OPSD is not a party
  - ▶ May provide comments on farmer petitions
  - ▶ Available to consult with LUC on county Petitions (per HRS § 205-48(b))
- ▶ OPSD's Tasks re: IAL Petitions
  1. Reviews the Petition and supporting documents
  2. Discusses issues with Petitioner, as necessary
  3. Solicits comments (primarily from DOA)
  4. Conducts its own analysis and evaluation
  5. Drafts and submits the State's position, identifying major issues and recommendations

35

## Types of Matters

### Important Agricultural Land Designations (cont.)

- ▶ OPSD's Tasks re: IAL Petitions (cont.)
  - ▶ Caveat: We have never had an IAL Petition that also sought to reclassify other property. Process is likely to be different.

36

## Types of Matters

### Special Permits / Declaratory Petitions

- ▶ Special Permits
  - ▶ Not a party, unless we intervene at the county level
  - ▶ Mandated recipients of copies of the special permit application (See HRS § 205-6(a))
- ▶ Declaratory Petitions
  - ▶ Not a party, unless we intervene at the LUC level

37

## Types of Matters

### Special Permits / Declaratory Petitions (cont.)

- ▶ OPSD's Tasks re: Special Permits / Declaratory Petitions
  1. Reviews the application and documents
    - ▶ Special permits – record can be voluminous
    - ▶ Declaratory petitions – legal issues and analysis can be complex
  2. Discussions with Petitioner and involvement of State agencies are less likely, happens occasionally
  3. Conducts its own analysis and evaluation
  4. Provides a recommendation based upon a statewide land use perspective and HRS chapter 205

38

## Issues

- ▶ Balancing agricultural, housing, renewable energy, and other worthwhile goals within a contested case hearing
  - ▶ Regional planning vs contested case hearings
  - ▶ County Community Plans
  - ▶ Policy vs Statutory issues

39

## Issues (cont.)

- ▶ HRS Chapter 343

205#343

40

## Issues (cont.)

- ▶ Acceptance of prior LUC decisions
  - ▶ Motions for reconsideration
  - ▶ Motions to amend
- ▶ Stipulations and importance of public participation

41

Questions?



# Planning for Sustainability & Climate Change in Hawai'i



Presentation to the  
State Land Use Commission  
July 27, 2022

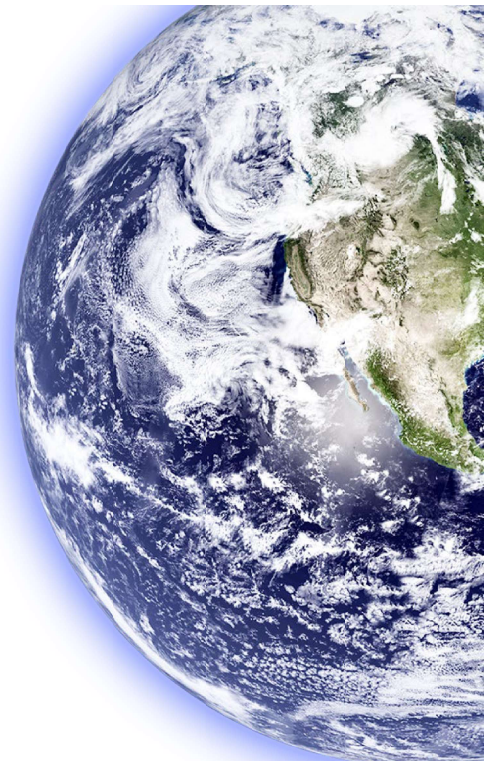
**Danielle M. M. Bass**  
State Sustainability Coordinator  
Statewide Sustainability Branch  
State of Hawai'i Office of Planning and Sustainable Development



OFFICE OF PLANNING &  
SUSTAINABLE DEVELOPMENT  
STATE OF HAWAII

## Overview:

1. Roles and Responsibilities of the State of Hawai'i's Office of Planning and Sustainable Development
2. Establishment of the Statewide Sustainability Branch
3. Overview of Climate Change and Global Warming
4. Hawai'i's Work Toward Climate Change Adaptation
5. Summary of the State of Hawai'i's Legal and Statutory Sustainability and Climate Targets
6. General Summary of Hawai'i 2050 Sustainability Plan Recommendations



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## OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

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### STATE OF HAWAI'I

## OPSD Roles & Responsibilities:

### Hawai'i Revised Statutes §225M-2 (b)

The Office of Planning **and Sustainable Development** shall gather, analyze, and provide information to the Governor, **the Legislature, and state and county agencies** to assist in the overall analysis and formulation of state policies and strategies to provide central direction and cohesion in the allocation of resources and effectuation of state activities and programs and effectively address current or emerging issues and opportunities. More specifically, the office shall engage in the following activities: <sup>2</sup>

1. State comprehensive planning and program coordination.
2. Strategic planning.
3. Planning coordination and cooperation.
4. Statewide planning and geographic information system.
5. Land use planning.
6. Coastal and ocean policy management, **and sea level rise adaptation coordination.** <sup>1</sup>
7. Regional planning and studies.
8. Regional, national, and international planning.
9. Climate adaptation **and sustainability** planning **and coordination.** <sup>1</sup>
10. Smart growth and transit-oriented development.
11. **Environmental Review.** <sup>3</sup>

### Legal References

<sup>1</sup> Indicates changes made to this statute by Act 45, SLH 2020

<sup>2</sup> Indicates changes made to this statute by Act 153, SLH 2021

<sup>3</sup> Indicates changes made to this statute by Act 152, SLH 2021

# Statewide Sustainability Branch Established

## Hawai'i Revised Statutes §225M-8

The Statewide Sustainability Branch is established within the Office of Planning and Sustainable Development. The State Sustainability Coordinator shall serve as the Administrator of the Branch. The branch shall have the following duties:

- (1) Develop, organize, and promote policies and programs that assist in the meeting of Hawai'i's numerous sustainability and climate policies and goals, and the priority guidelines and principles to promote sustainability set forth in HRS §226-108;
- (2) Identify, evaluate, and make recommendations regarding proposed legislation, regulatory changes, or policy modifications to the Governor, the Legislature, government agencies, private entities, and other bodies for the purpose of encouraging activities that best sustain, protect and enhance the quality of the environment, economy, and community for the present and future benefit of the people of Hawai'i; and
- (3) Develop and promote proposals that jointly and mutually enhance local economies, the environment, and community well-being for the present and future benefit of the people of Hawai'i.

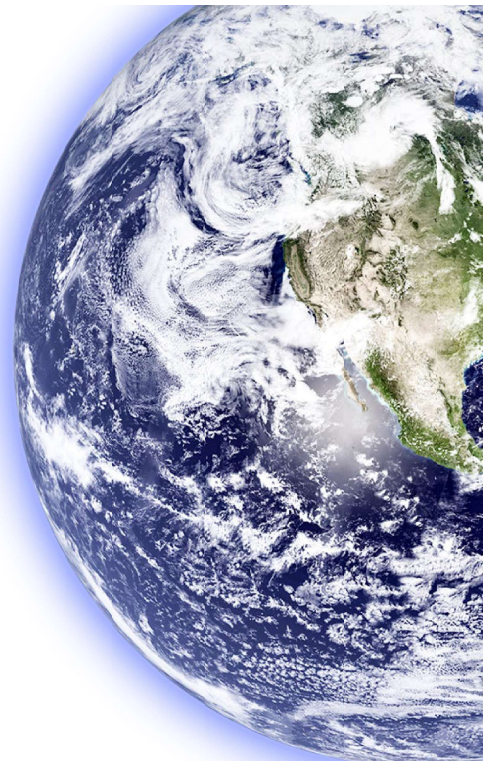
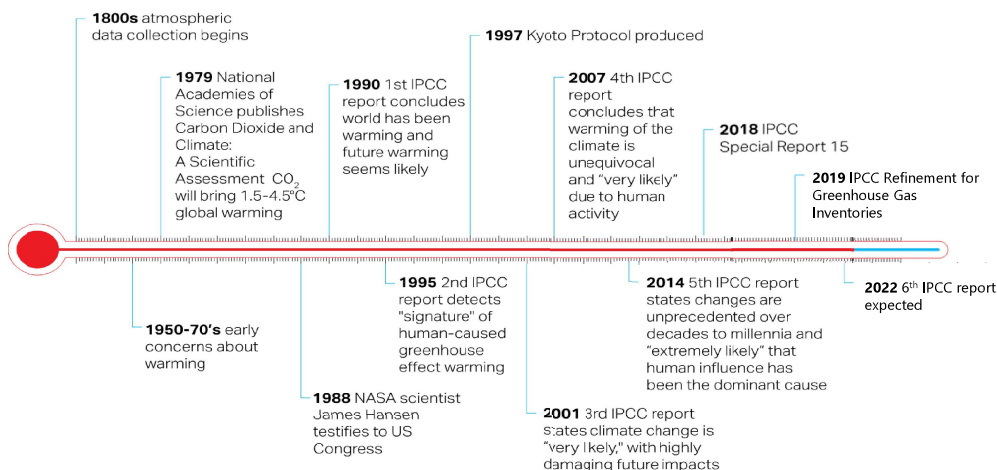
*Enacted as Act 45, Session Laws of Hawai'i 2020*



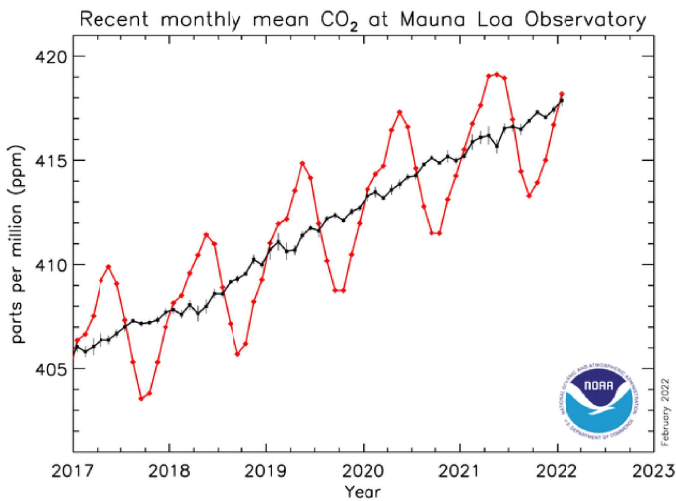
## What is Climate Change?

Changes in global or regional climate patterns from a rise in average global temperatures **due to increase from human emissions of greenhouse gases**

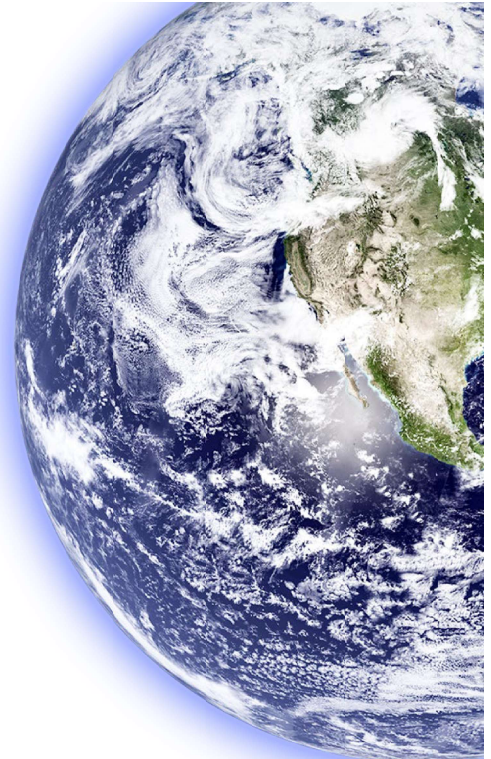
### Climate Change Science Timeline



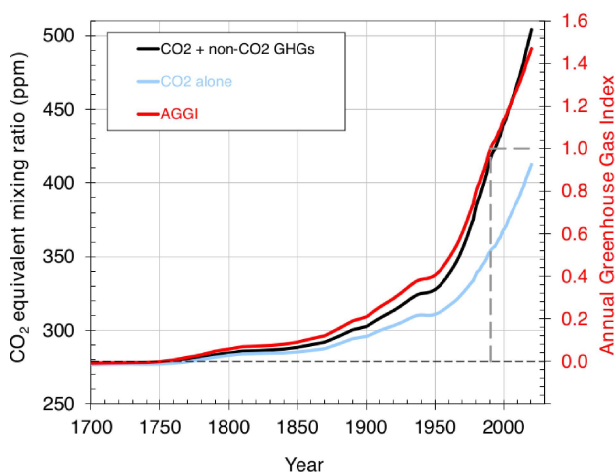
# Measuring CO<sub>2</sub> Parts Per Million (PPM):



- Safe levels of atmosphere concentrations of CO<sub>2</sub> is 350 ppm
- Current CO<sub>2</sub> records from Mauna Loa ~418 ppm
  - *The last time CO<sub>2</sub> levels were this high, humans did not exist.*
- PPM requirements can be converted to “carbon budgets”

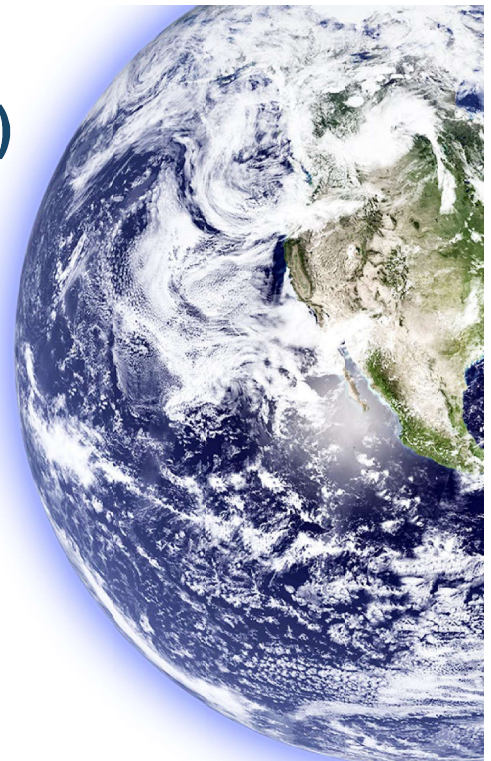


# Factoring Other Greenhouse Gases with Global Warming Potential (GWP)



## Regularly Regulated/Inventoried Greenhouse Gases (Set by the U.N. Kyoto Protocol)

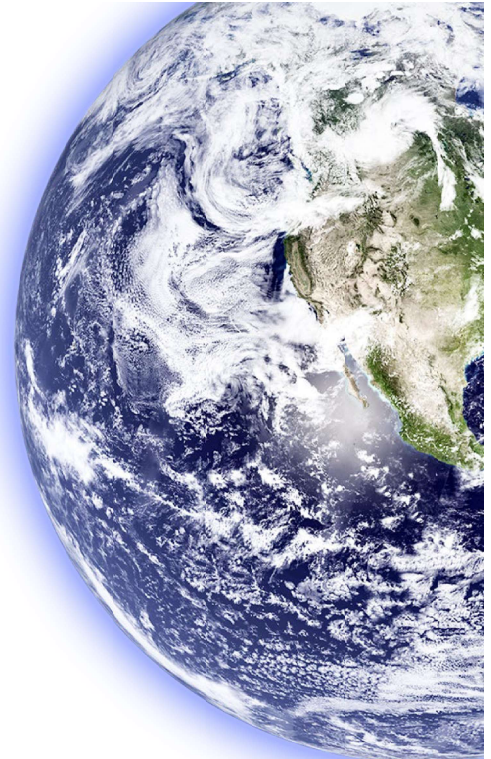
- Carbon Dioxide (CO<sub>2</sub>)
- Methane (CH<sub>4</sub>)
- Nitrous Oxide (N<sub>2</sub>O)
- Hydrofluorocarbons (HFCs)
- Perfluorocarbons (PFCs)
- Sulfur Hexafluoride (SF<sub>6</sub>)



# U.N. Paris Agreement

## Global Agreement set by the United Nations to Reduce Greenhouse Gas Emissions

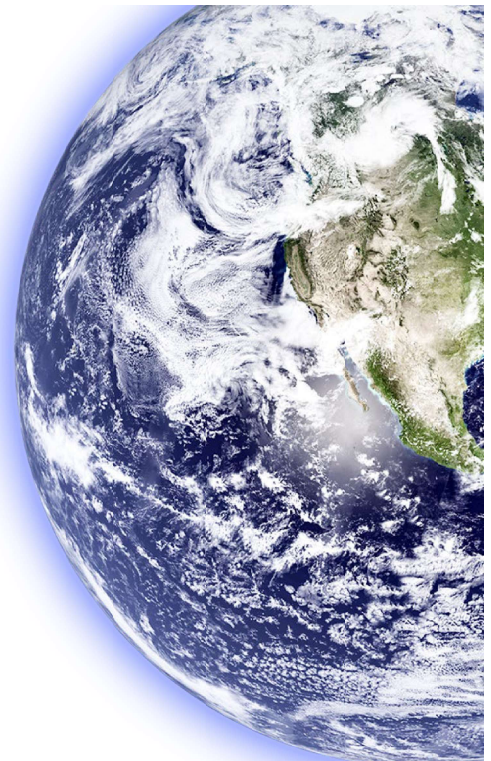
- Negotiated by 196 U.N. state members in 2015 at the U.N. Framework Convention of Climate Change (UNFCC)
- Agreed and signed in 2016
- United States is a member party of the Paris Agreement
- Aim of the Agreement:
  1. Hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to **limit the temperature increase to 1.5°C above pre-industrial levels**, recognizing that this would significantly reduce the risks and impacts of climate change
  2. Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;
  3. Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development



# U.N. Sustainable Development Goals

## 17 global goals set by the United Nations to be achieved by 2030

- Agreed in 2015
- 169 targets and 230 indicators to measure progress in the Sustainable Development Goals
- Organized by U.N. to connect to Paris Agreement to measure climate action and sustainable development as one agenda for a sustainable future.
- Used by governments, businesses, and NGOs as best practices to measure sustainability and sustainable development.

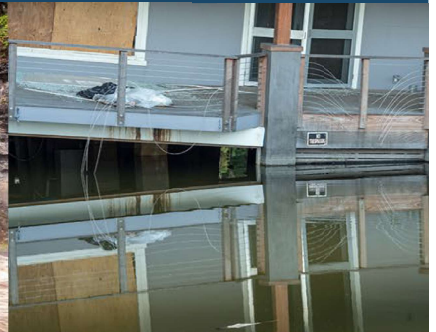
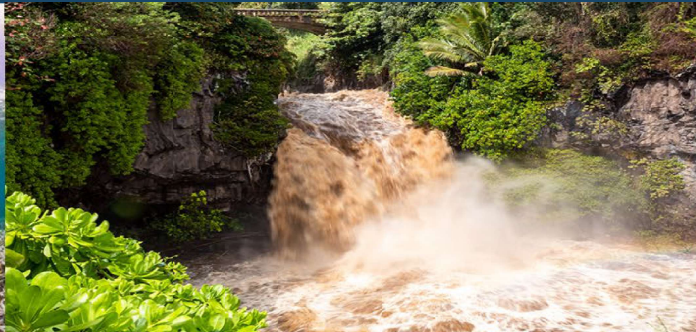


# So, what about Hawai'i?



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## Hawai'i's Climate Change Impacts



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# Climate Change Adaptation Planning by the State of Hawai'i

2017	2017	2018	2019	2019	2020	2020	2021	2021
								
<a href="#"><u>Hawai'i Coral Bleaching Recovery Report</u></a>	<a href="#"><u>Hawai'i Sea Level Rise Vulnerability and Adaptation Report</u></a>	<a href="#"><u>State of Hawai'i Multi-Hazard Mitigation Plan</u></a>	<a href="#"><u>Managed Retreat Strategies for Vulnerable Coastal Areas in Hawai'i</u></a>	<a href="#"><u>Statewide Coastal Highway Program Report</u></a>	<a href="#"><u>Ocean Resources Management Plan</u></a>	<a href="#"><u>South Shore Promenade and Coastal Open Space Study</u></a>	<a href="#"><u>Hawai'i Highways Climate Adaptation Action Plan</u></a>	<a href="#"><u>Hawai'i 2050 Sustainability Plan</u></a>
Published by Hawai'i Department of Land and Natural Resources - Division of Aquatic Resources	Published by Hawai'i Climate Change Mitigation and Adaptation Commission	Published by Hawai'i Emergency Management Agency	Published by Office of Planning - Coastal Zone Management Program	Published by Hawai'i Department of Transportation	Published by Office of Planning - Coastal Zone Management Program	Published by Office of Planning - Coastal Zone Management Program	Published by Hawai'i Department of Transportation	Published by Office of Planning - Statewide Sustainability Branch

## State of Hawai'i's Legal and Statutory Sustainability and Climate Targets

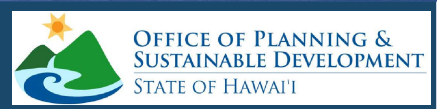
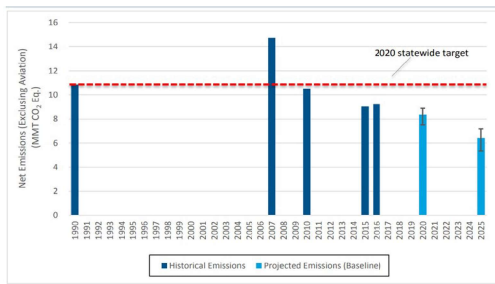


# 2020 Statutory Target: Greenhouse Gas Emissions Limit

## Greenhouse Gas (GHG) Emissions Limit

(Hawai'i Revised Statutes C. 342B-Part VI; enacted in 2007)

- Established a GHG emissions limit to be equal to/below statewide GHG emissions in 1990 by 2020.
- Hawai'i Greenhouse Gas Emissions Report for 2016 (GHG Inventory), released December 2019
  - Excludes Aviation Fuel Emissions
  - Excludes International Bunker Fuel Emissions

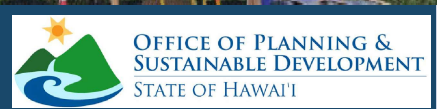


# 2022 Statutory Target: Ban on Coal Power

## Statewide Ban on Coal Power for Electricity Generation

(Hawai'i Revised Statutes §342B-36)

- Concludes all coal burning within the state on December 31, 2022.



# 2030 Legal Target: Double Local Food Production

## Department of Agriculture Doubling Food Production and Increase Food Exports by 2030

(Act 151; enacted in 2019)

Requires the Department of Agriculture, in cooperation with the Office of the Governor, to establish a strategic plan to achieve the goal to double food production and increasing food exports by 2030.

## Local Farm-to-State Meal Goals

(Act 144; enacted in 2022)

Requires the Departments of Education, Public Safety, Health, Defense, and the University of Hawai'i procure:

- 18% of food served consist of locally sourced products by 2030.
- 34% of food served consist of locally sourced products by 2040.
- 50% of food served consist of locally sourced products by 2050.



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# 2030 Statutory Target: Zero Emission Vehicles

## Clean Transportation Goal for State Fleet Transition to Zero Emission Vehicles

(Act 74; enacted in 2021)

- Requires the transition of 100% of the State's fleet that is light-duty motor vehicle passenger cars to be zero-emission vehicles by December 31, 2030.



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# 2030 Sustainability Goals: Aloha+ Challenge

## 2014: Senate Concurrent Resolution 69:

Hawai'i State Legislature endorses and supports an integrated approach and six ambitious targets of the Aloha+ Challenge to be achieved by **2030**:

- 1) **Clean Energy:** 70% clean energy, including 40% from renewables and 30% from efficiency;
- 2) **Local Food:** At least double the local food production with a goal of 20-30% of food consumed being grown locally;
- 3) **Natural Resource Management:** Reverse the trend of natural resource loss mauka to makai by increasing watershed protection, community-based marine management, invasive species prevention and control, and restoration of native species;
- 4) **Waste Reduction:** Reduce the solid waste stream prior to disposal by 50%, through source reduction, recycling, and bioconversion;
- 5) **Smart Sustainable Communities:** Increase livability and resilience in the built environment through planning and implementation at the state and county levels; and
- 6) **Green Workforce:** Increase local green jobs and education to implement these targets.

He Nohona 'Ae'ōia, A Culture of Sustainability



<b>CLEAN ENERGY</b> <small>70% clean energy : 40% from renewables &amp; 30% from efficiency</small>	<b>WASTE REDUCTION</b> <small>Reduce the solid waste stream prior to disposal by 70% through source reduction, recycling, bioconversion and landfill diversion methods</small>
<b>LOCAL FOOD</b> <small>At least double local food production : 20-30% of food consumed is grown locally</small>	<b>SMART SUSTAINABLE COMMUNITIES</b> <small>Increase livability and resilience in the built environment through planning and implementation at the state and county levels</small>
<b>NATURAL RESOURCE MANAGEMENT</b> <small>Reverse the trend of natural resource loss mauka to makai by increasing freshwater security, watershed protection, community-based marine management, invasive species control and restoration of native species</small>	<b>GREEN WORKFORCE &amp; EDUCATION</b> <small>Increase local green jobs and education to implement these targets</small>



# 2035 Statutory Targets: Net Zero Campuses

## University of Hawai'i Net Zero Energy Goal

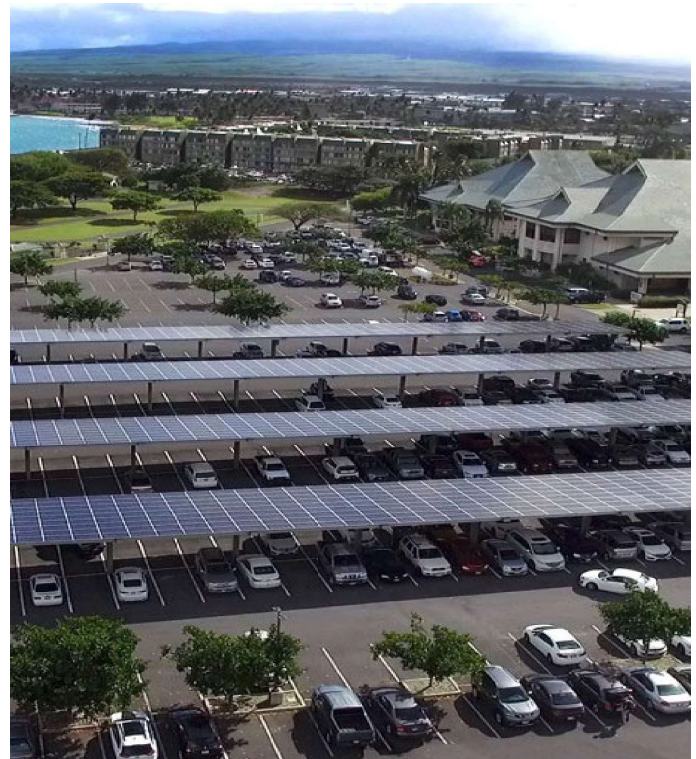
(Hawai'i Revised Statutes §304A-119; enacted in 2015)

- Requires all campuses of the University of Hawai'i including Hawai'i's community college system to be net zero in energy use by 2035.

## Department of Education Net Zero Energy Campuses

(Hawai'i Revised Statutes §302A-1510; enacted in 2016)

- Requires all public schools in the State of Hawai'i to be net zero in energy use by 2035.



# Sustainable Development in State Facilities

## Energy Efficiencies and Environmental Standards for State Facilities and Motor Vehicles

(Hawai'i Revised Statutes §196-9; enacted in 2006)

- Requires New State Buildings to be at least LEED Silver
- Requires New Public Residences to be: energy efficient, prevent heat gain, natural ventilation, and solar water heating systems
- Requires Public Procurement: to include lifecycle costs benefit analysis to purchase ENERGY STAR Equipment

## Design for State Buildings

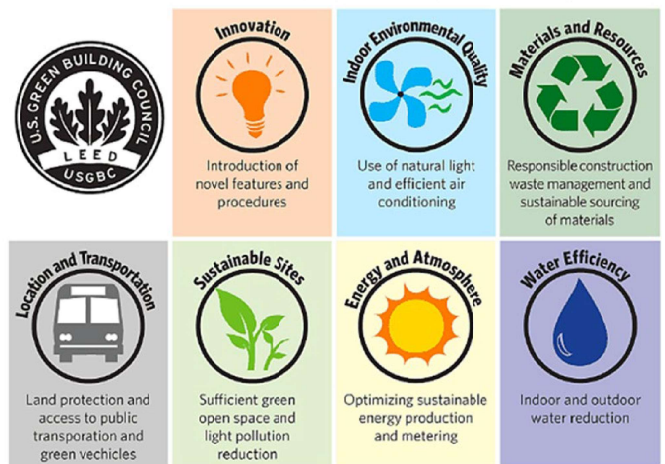
(Hawai'i Revised Statutes §107-27; enacted in 2022)

Beginning July 1, 2023, all new state building construction shall:

1. Maximize energy and water efficiency
2. Maximize energy generation potential
3. Use building materials that reduce the carbon footprint of the project.

## LEED CERTIFICATION REQUIREMENTS

In order to achieve LEED certification, projects must earn points in these categories:



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## 2045 Statutory Targets:

Beginning in 2015, Hawaii's State Legislature began codifying "100%" goals to direct the following sustainability & climate resilience targets:

### 1. 100% Renewable Portfolio Standard by 2045

(Hawai'i Revised Statutes §269-92; enacted in 2015, amended in 2022)

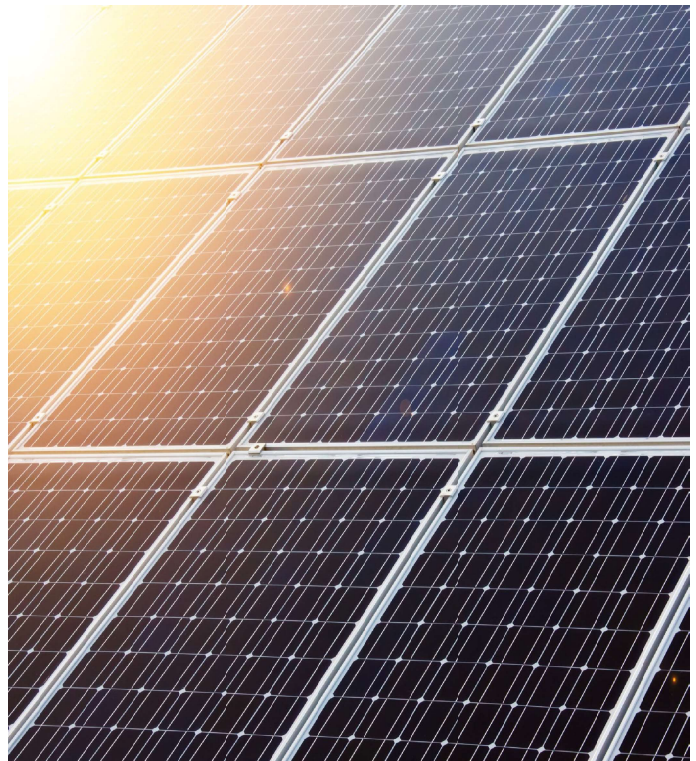
Requires all electric utilities in Hawai'i to establish an RPS of its net electricity generation:

- 40% by 12/31/2030,
- 70% by 12/31/2040, and
- 100% by 12/31/2045.

### 2. Zero Emissions Clean Economy Target by 2045

(Hawai'i Revised Statutes §225P-5; enacted in 2018)

Establishes a statewide target to sequester more atmospheric carbon and greenhouse gases than emitted within the State as quickly as practicable, but no later than 2045.



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# 2045 Statutory Targets (Continued)

## 3. 100% Reclaimed Water in State & County Facilities by 2045

*(Hawai'i Revised Statutes §174C-31; enacted in 2016)*

Requires the Hawai'i Water Plan to direct the utilization of reclaimed water for uses other than drinking and for potable water needs in 100% of state and county facilities by 12/31/2045.



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# 2050 Statutory Target: Cesspool Mandatory Upgrade

## Statewide Mandatory Cesspool Upgrade

*(Hawai'i Revised Statutes §342D-74; enacted in 2019)*

- Requires the upgrade, conversion, or sewer connection of all cesspools (~88,000) in the State before 2050 unless exempted.



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# Hawai'i 2050 Sustainability Plan



## Update Process & Public Outreach



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## The Process: Planning for the 2020-2030 Decade of Action



### Review Hawai'i's laws & plans

Review sustainability  
mandates, state  
agency plans, and  
county plans.



### Public Outreach

Host public  
informational sessions  
throughout  
Hawaiian Islands.



### Coordinate with stakeholders

Coordinate with  
stakeholder groups to  
focus on and facilitate  
challenges.



### Determine future actions

Identify gaps and  
recommend future  
actions to achieve by  
2030.



**150+** Laws, Plans,  
Policies, and  
Strategies  
Reviewed



**2** Public Surveys  
**9** Public Sessions  
**20** Advertisements  
**230** Participating organizations  
and agencies  
**800+** Public Participants



**2** Distributed Drafts  
**2** Week Review per Draft  
**5** Public Presentations  
**1,550+** Stakeholder Emails  
**65** State & County Reviewing Agencies



**8** Focus Areas  
**17** Case Studies  
**38** Strategies  
**250** Recommended Actions  
**117** Pages



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**The Product:** U.N. SDGs as a framework to match the 2020-2030 planning timeline.



# Hawai'i 2050 Sustainability Plan



## Recommendations



# 8 Focus Areas Recommended for 2020-2030:



## 1. Promote a Sustainable Economic Recovery

Through strategies that support local agriculture, green workforce development and education, and regenerative and sustainable tourism.

## 2. Reduce Greenhouse Gas Emissions

By continuing to monitor the state's emissions and reduce greenhouse gas emissions through strategies in the energy, transportation, and waste sectors.

## 3. Improve Climate Resilience

By continuing to monitor and adapt to climate impacts and take actions to increase the resilience of the natural and built environments and their occupants.

## 4. Advance Sustainable Communities

Through strategies that improve land use and access to green space, advance sustainable practices in schools, and encourage sustainable buildings and infrastructure.

## 5. Advance Equity

By ensuring equitable access to resources, addressing affordable housing and homelessness crises, and improving gender equity.

## 6. Institutionalize Sustainability Throughout Government

By increasing the government's capacity through institutionalized collaboration to address sustainability and greening government operations.

## 7. Preserve the Natural Environment

By including a focus on clean water, marine resources and ecosystems, and natural resource protection.

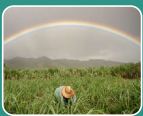
## 8. Perpetuate Traditional Ecological Knowledge and Values

Throughout Hawai'i as the state tackles sustainability and climate challenges.



2021-2030 Focus Area

## PROMOTE A SUSTAINABLE ECONOMIC RECOVERY



### Strategy 1

- Promote Farmer Livelihoods



### Strategy 2

- Support local markets for locally grown food



### Strategy 3

- Promote sustainable & resilient farmland, practices, and infrastructure



### Strategy 4

- Invest in green workforce development, beginning with youth



### Strategy 5

- Foster the development of jobs that can sustain families financially



### Strategy 6

- Support the diversification of the economy



### Strategy 7

- Reduce the environmental footprint of the tourism industry



### Strategy 8

- Support native Hawaiian culture & reduce impacts of the tourism industry to local communities



## REDUCE GREENHOUSE GAS EMISSIONS

Strategy 9

- Measure, manage, and plan for GHG emission reduction

Strategy 10

- Incorporate climate change planning into decision-making processes

Strategy 11

- Promote energy conservation and efficiency through outreach, communication, and community and public engagement

Strategy 12

- Continue to invest in the deployment of clean energy technologies to reduce the reliance on fossil fuels

Strategy 13

- Expand the adoption of zero emission vehicles (ZEVs)

Strategy 14

- Promote alternative modes of transportation

Strategy 15

- Reduce the generation of waste, including plastic waste

Strategy 16

- Increase the diversion of waste through recycling, reuse, and composting

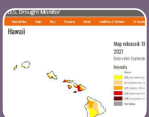


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## IMPROVE CLIMATE RESILIENCE

Strategy 17

- Integrate climate change adaptation and resilience considerations into planning and implementation

Strategy 18

- Assess and communicate the impacts of climate change to residents, businesses, and communities most likely to be impacted

Strategy 19

- Implement actions that improve the state's resilience to climate change

Strategy 20

- Increase the resilience of vulnerable populations to the impacts of climate change and other shocks and stressors

## ADVANCE SUSTAINABLE COMMUNITIES

Strategy 21

- Advance smart growth initiatives and multimodal transportation systems

Strategy 22

- Advance sustainability in school and university operations

Strategy 23

- Integrate sustainable design principles into new and existing buildings



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## ADVANCE EQUITY

Strategy 24

- Strengthen broadband access to support digital learning and online solutions in rural areas

Strategy 25

- Continue to improve economic and social sustainability of individuals through access to affordable housing

Strategy 26

- Continue to implement strategies that reduce homelessness in Hawai'i to enhance livelihoods

Strategy 27

- Continue to advance opportunities for all, regardless of gender

## INSTITUTIONALIZE SUSTAINABILITY

Strategy 28

- Invest in staff and other resources to coordinate and advance sustainability goals across state and local governments

Strategy 29

- Update State policies to reflect sustainability and climate change priorities

Strategy 30

- Incorporate sustainability into government operations



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## PRESERVE THE NATURAL ENVIRONMENT

Strategy 31

- Improve water quality through reduced pollution and dumping

Strategy 32

- Support water reuse strategies to conserve water

Strategy 33

- Establish policies to protect Hawaii's unique marine ecosystems

Strategy 34

- Manage climate change impacts to marine resources

Strategy 35

- Protect and manage watersheds

Strategy 36

- Continue to adopt strategies that protect land-based natural resources

Strategy 37

- Conserve working forest landscapes, protect forests from harm, and enhance public benefits from trees and forests



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## PERPETUATE TRADITIONAL ECOLOGICAL KNOWLEDGE AND VALUES



### Strategy 38

- Ground climate and sustainability strategies in our cultural foundation



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## Hawai'i 2050 Sustainability Plan Wins National Merit Award for Excellence in Sustainability for State and Regional Plans



*Mahalo for your support!*



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"The best preparation for tomorrow is doing your best today."  
-H. Jackson Brown, Jr.



**Danielle Bass**  
State Sustainability Coordinator

Statewide Sustainability Branch  
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## Questions?



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View the Hawai'i 2050  
Sustainability Plan at

[https://hawaii2050.hawaii.gov/  
interactive](https://hawaii2050.hawaii.gov/interactive)

Written Testimony Received  
(Late submittal)

**Kwan, Ariana L**

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**Subject:** FW: [EXTERNAL] Testimony from Joan Hildal

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**From:** Joni Astawa <[jastawa@yahoo.com](mailto:jastawa@yahoo.com)>  
**Sent:** Wednesday, July 27, 2022 3:38 PM  
**To:** Derrickson, Scott A <[scott.a.derrickson@hawaii.gov](mailto:scott.a.derrickson@hawaii.gov)>  
**Subject:** [EXTERNAL] Testimony from Joan Hildal

Aloha Scott, I was waiting to put my comments/testimony at the end of the hearing but it was ended before they acknowledged my raised hand. Anyhow, I would like to let you know what my comments were especially pertaining to sustainability and the input of the OPSD.

My name is Joan Hildal from Hakalau, Big Island

Thank you for taking my testimony. I've listened to the entire 2 day hearing and was impressed and hopeful for the LUC moving forward into the future. The most important suggestion I heard was from the OPSD who suggested that the LUC pay more attention to the laws and own rules in effect and less on their own preferences, personal, political or otherwise. It maybe too late for our DR but we have noticed more unnecessary appeals heading to the courts because of this reason. This continues a climate of confusion and contradiction into the future and wastes a lot of time and resources better used elsewhere if the LUC had simply focused more attention on the State Office of Plannings recommendations, the laws, facts and evidence before you.

Into the future, sustainability is everything for our islands. All we wanted to do is continue to nurture our established orchards, sell our produce in the local markets and contribute to Hawaii's economy. Hawaii's laws and your own rules supported us.

We had:

- 1). Prime AG land which is only 4% of Hawaii island's total land area
- 2). Have planted over 70 different varieties of fruit and nut trees with many repeats for sustainability and food for the future of our people and our island's economy.
- 3). Abundant water and are 100% solar for sustainability.
- 4) After thorough investigation the State Office of Planning did not oppose our petition.

And yet our petition was denied 0-7. We didn't understand.

BUT... I'm still hopeful that if the LUC takes more advantage of the OPSD's input and applies our laws and rules to the best of their abilities, the LUC can actually do good for our islands.

Thank you for taking my testimony.....