

Brief History

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



A scenic landscape of a tropical valley. In the foreground, a calm pond reflects the sky and surrounding greenery. The middle ground is dominated by a lush green golf course with several tall palm trees scattered throughout. Beyond the golf course, there are rolling green hills and more palm trees. In the background, majestic mountains rise under a blue sky with scattered white clouds. The overall atmosphere is peaceful and natural.

Purpose of the Law

In 1961, the Hawai'i State Legislature determined that a lack of adequate controls had caused the development of Hawai'i'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; including access, quality, impact, and availability of water.

The Commission is responsible for preserving and protecting Hawai'i'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:

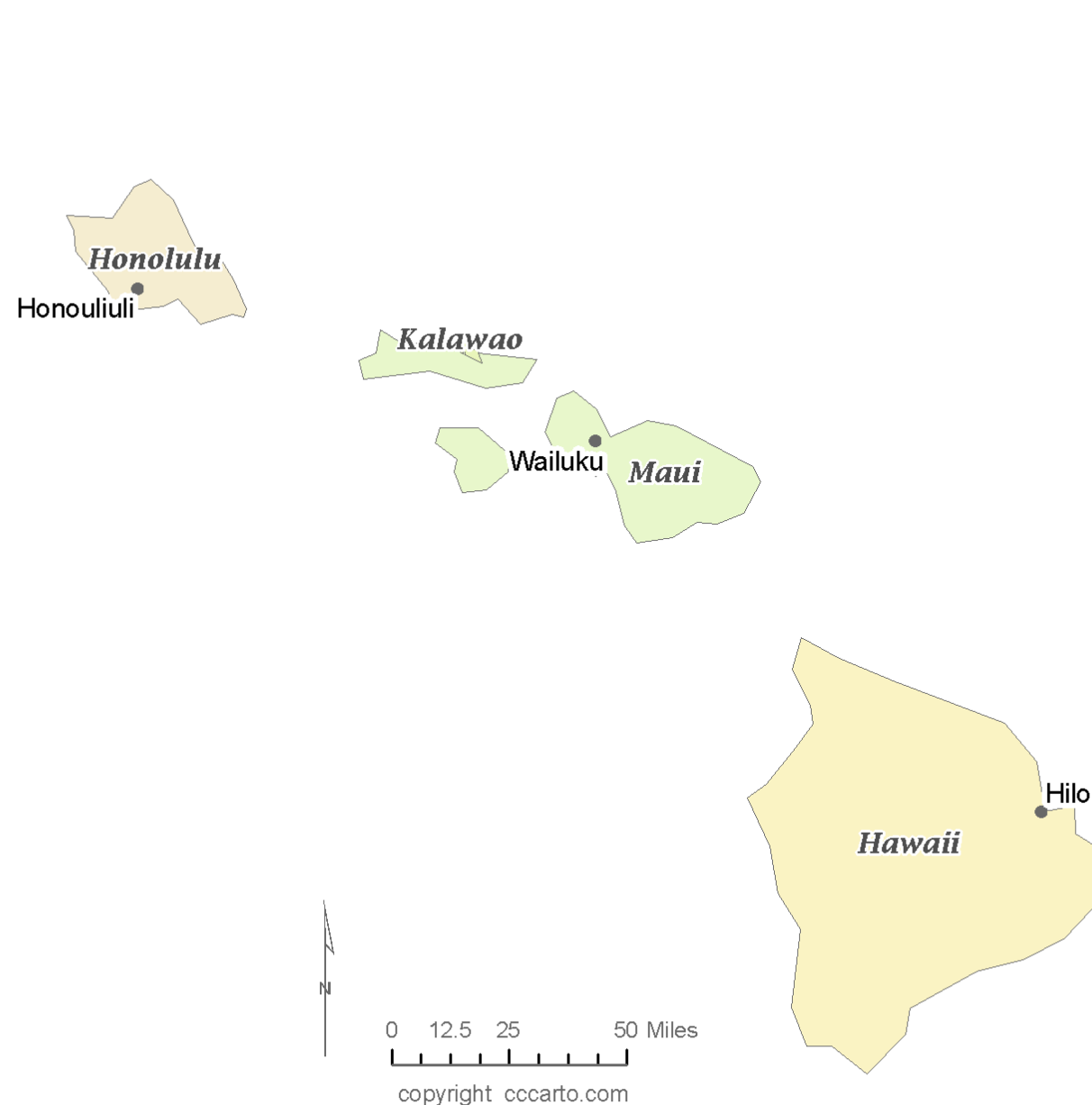
- LUC's limited enforcement powers

- The 15-acre limitation

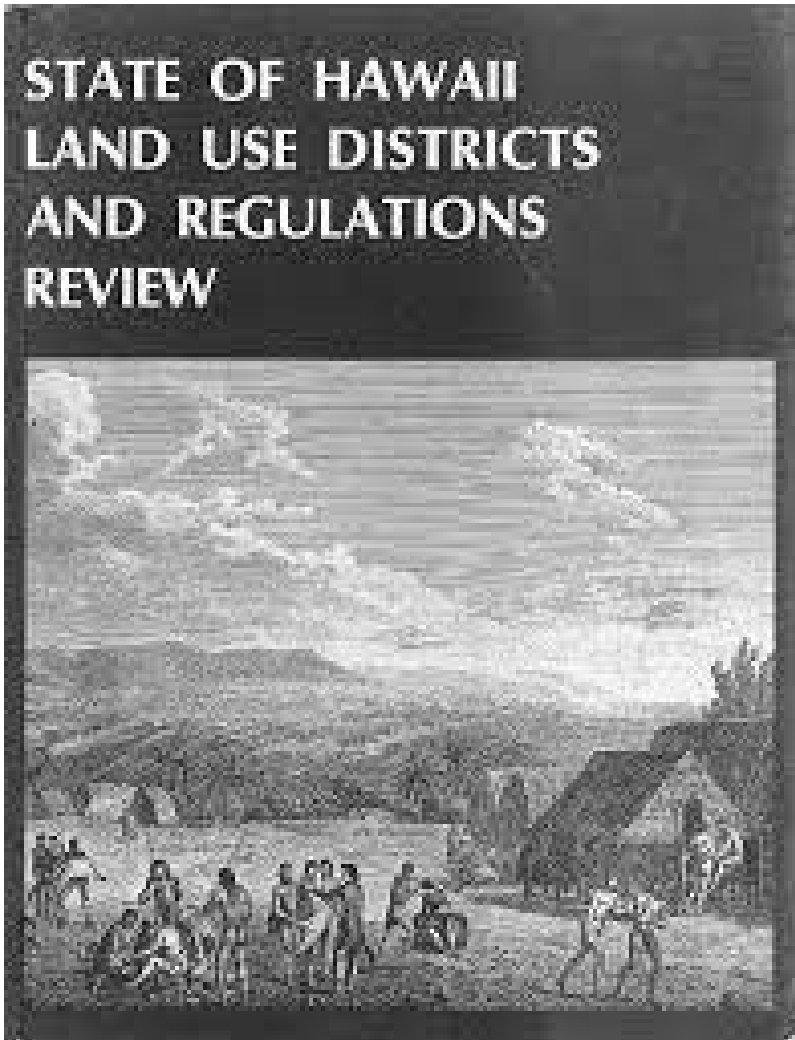
- Requirements to consider to county plans

- Special Permit process

- County required participation in proceedings



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 comprehensive five-year review was in 1990

In 2021 the law was amended to make the review by OPSD voluntary

In 2022 OPSD conducted a limited review

Types of Petitions

An aerial photograph of a residential community. In the foreground, there are several tennis courts with blue and green surfaces. To the right, a large, open green field is visible. In the background, there are rows of houses with dark roofs and a large, open field with a grid-like pattern, possibly a former agricultural field. The text "Types of Petitions" is overlaid in the center of the image.

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, 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 and max time 365 days

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.



Declaratory Rulings

- 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, unless requested or LUC determines necessary
- Usually limited to a distinct set of factual circumstances.



Important Agricultural Lands Designation

- IAL designation by the LUC is designed to identify the best agricultural lands in the State and protect them for future generations.
- A private landowner may petition the LUC to have their lands designated IAL
- The counties are also 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 a portion of the proposed IAL land be designated rural or urban or take a credit for later urbanization of a percentage of the land.
- Does not add any enhanced protections with regard to uses unless a private landowner asks for a portion to be re-designated urban.

