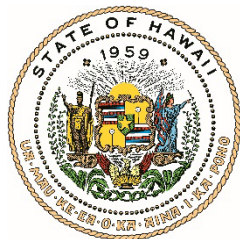


State of Hawai‘i Land Use Commission

Komikina Ho‘ohana ‘Āina

Commission Orientation Materials



List of Acronyms

ALISH	Agricultural Land of Importance to the State of Hawai'i
BLNR	State of Hawai'i Board of Land and Natural Resources
D&O	Decision and Order
DBA	District Boundary Amendment
DLNR...	State of Hawai'i Department of Land and Natural Resources
DOA	State of Hawai'i Department of Agriculture
DR	Declaratory Ruling
EA	Environmental Assessment
EIS	Environmental Impact Statement
EMI.....	East Maui Irrigation Ditch
HAR	Hawai'i Administrative Rules
HRS	Hawai'i Revised Statutes
IAL	Important Agriculture Lands
LSB	Land Study Bureau
LUC	State of Hawai'i Land Use Commission
OPSD	State of Hawai'i Office of Planning and Sustainable Development
SP	Special Permit
ULIPA	Uniform Information Practices Act

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STATE OF HAWAII LAND USE COMMISSION

<https://luc.hawaii.gov/>

ORIENTATION MATERIALS

INTRODUCTION

The purpose of the following resource materials is to assist Commissioners in the performance of their important responsibilities in implementing the State Land Use Law, Hawai'i Revised Statutes ("HRS") [Chapter 205](#).

OVERVIEW OF LAND USE LAW AND COMMISSION DUTIES

The State Land Use Law [Chapter 205](#), HRS, was originally adopted by the Hawai'i State Legislature in 1961. The Land Use Law establishes an overall framework of the land use management whereby all lands in the State of Hawai'i are classified into one of four Districts: Urban, Rural, Agricultural and Conservation.

To administer this state-wide districting law, the Legislature established the Land Use Commission. The Commission is 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 unpaid volunteers who represent a cross-section of the community.

The Commission established the district boundaries for the entire State in 1964. Comprehensive boundary reviews were conducted by the Commission in 1969 and again in 1974. Since then and partly as a result of the Town v. Land Use Commission Hawai'i Supreme Court decision, 55 Haw. 538, 524 P.2nd 84 (1974), all changes to the district boundaries after 1974 have been made via individual petitions.

The Commission acts on petitions for boundary changes greater than 15 acres or for lands within the conservation district submitted by private landowners, developers and State and County agencies. Petitions for boundary changes that are fifteen acres or less, and outside of the Conservation District are decided by the County in which the land is located. The Commission also acts on requests for special use permits within the Agricultural and Rural Districts. In addition to Chapter 205, HRS the Commission has adopted more detailed administrative rules that provide both procedural and substantive guidance to the Commission and staff. [Title 15 State Land Use Commission Rules, Hawai'i Administrative Rules \("HAR"\)](#).

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

STATE LAND USE DISTRICTS

URBAN DISTRICT

The Urban District generally includes lands characterized by “city-like” concentrations of people, structures, and services. This district also includes sufficient reserve areas for foreseeable urban growth. Jurisdiction of this district lies with the respective counties.

See [§205-2 HRS](#) and [§15-15-18 HAR](#).

RURAL DISTRICT

Rural Districts generally includes lands suited for low density residential lots (not more than one dwelling per one-half acre) and small farms. Jurisdiction is shared by the Commission and County governments. Variances can be obtained through the Special Use Permitting process.

See [§205-2 HRS](#) and [Sec. §15-15-21 HAR](#). However, also see [HRS 46-4\(c\)](#), allowing counties to allow ‘Ohana or additional dwelling units on any residential lot.

AGRICULTURAL DISTRICT

The Agricultural District includes land for the cultivation of crops, aquaculture, raising livestock, wind energy facilities, timber cultivation, agriculture-support activities (i.e. mills, employee quarters, etc.) and land with significant potential for agricultural uses.

Uses permitted in the highest productivity agricultural categories are governed by statute ([HRS 205-4.5](#)). Uses in the lower-productivity categories (C D, E or U) are established by the Commission and include those allowed on A or B lands as well as those stated in Section 205-4.5, HRS.

See [§205-2 HRS](#), [§205-4.5 HRS](#) and [§15-15-19 HAR](#).

CONSERVATION DISTRICT

Conservation lands are comprised primarily of lands in existing forest and water reserve zones and include areas necessary for protecting watersheds and water sources, scenic and historic areas, parks, wilderness, open space, recreational areas, habitats of endemic plants, fish and wildlife and all submerged lands seaward of the shoreline. The Conservation District also includes lands subject to flooding and soil erosion.

Conservation Districts are administered by the State Board of Land and Natural Resources (“BLNR”) and uses are governed by rules promulgated by the State Department of Land and Natural Resources (“DNLNR”). See [§205-2 HRS](#) and [§15-15-20 HAR](#).



DISTRICT BOUNDARY AMENDMENT (“DBA”) PROCEDURES

District boundary amendments are obtained by petition to the Commission. Petitions can be initiated by the State departments or agencies; County departments or agencies in which the property is situated, or by individuals or developers with authorization or ownership of the property sought to be reclassified.

Contents and format of the petition are described in the Hawai‘i Land Use Commission Administrative Rules ([HAR 15-15](#)). A petition must meet the requirements of content and format before it is considered properly filed and accepted for processing. This includes compliance with Hawai‘i Administrative Statutes (“HRS”) [Chapter 343](#) - Environmental Impact Statements, Upon acceptance of a properly filed petition, the Commission must hold a hearing in the county on which the subject property is located within not less than 60 days and not more than 180 days. This hearing is usually before the entire Commission but can be before an appointed Hearings Officer.

The Commission must decide upon the request within 365 days after the petition is deemed a proper filing unless otherwise ordered by a court, or unless a time extension is granted (which shall not exceed 90 days) by a two-thirds vote of the members of the commission. The Commission may approve, approve with conditions, or deny the petition. If a district boundary is amended with conditions, the conditions must be recorded with the Bureau of Conveyances, as these conditions will run with the land and shall be binding upon the petitioners and subsequent persons with any interest in the land.

Amendment of a district boundary requires approval by at least six of the nine Commissioners. See generally [§205-4 HRS](#) and [§15-15-50](#), [§15-15-74 HAR](#).

DBA PROCESS SUMMARY

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

ADDITIONAL INFORMATION ON DBA PROCESS, INCLUDING ROLES OF STAFF

Throughout the Commission’s decision-making process on District Boundary Amendments (DBA’s), the Commission staff provides data and reports to assist the Commission. [An Overview of the District Boundary Amendment Process](#).

When a Petition is filed, it is very common for the Petitioner to include a request that the Commission serve as the accepting authority for the project’s Environmental Impact Statement HRS Chapter 343, which request routinely is granted by the Commission. The petitioner then prepares and circulates a

draft environmental impact report covering all the physical, environmental, and cultural impacts of the project. After review by the affected government agencies, community groups, and other interested parties, the Petitioner must address all the concerns raised and then prepare a final Environmental Impact Statement (“EIS”) or Environmental Assessment (“EA”). The staff reviews this document and prepares a Staff Report (Example of [A typical EIS Staff report](#)). The acceptance of the Petitioners Final EIS then comes before the Commission for action. This approval concerns only the sufficiency of the Petitioners EIS in meeting the requirements of [Chapter 343](#) HRS, not a decision on the merits of the project.

If the EIS is approved and assuming all the other content requirements for the Petition have been met, the Executive Officer then certifies that the Petition is complete. Among other things this triggers the 365-day statutory time requirement for a Commission decision. A hearing date is then selected and the Petitioner (on behalf of the LUC) files the appropriate Notice of Hearing in all the required newspapers and mails notices to the LUC’s mailing list.

This Notice of Hearing triggers a formal intervention process for interested parties. By way of a motion, an interested party, whether an individual, a community group, or an adjoining landowner, can petition to intervene as a party. See [§15-15-50 \(g\)](#), HAR. Intervention is freely granted by the Commission as called for in the LUC Rules (Example of a [Intervention Order](#)). An approved intervener then has all the rights and responsibilities of the other parties (Petitioner, Office of Planning and Sustainable Development (“OPSD”) and County Planning Department) to fully participate in the docket in terms of timely filing documents, calling witnesses, cross examining witnesses, putting in evidence, arguing the merits of the case, and appealing decisions to court.

Prior to the hearing date, the Commission staff holds a prehearing conference with all the parties to ascertain the basic position of the parties on the docket, to determine the dates for submitting witness and exhibits lists and get a sense of the length of time needed for the hearings. Prior to the start of the hearing, a Staff Report summarizing the positions of the parties, areas of agreement and disagreement, and identification of the key issues is submitted to the Commission (Example of a beginning of a [hearing Staff Report](#)).

During the initial DBA hearing, the Petitioner provides its case in support of the Petition or Motion in front of the Commission, following the Petitioners Presentation the OPSD, County Planning Department, and Intervener is to state their case. Commissioners are given the opportunity to ask the Parties questions after their presentations. After the line of questioning, the Petitioner is given the opportunity to present rebuttal evidence or closing arguments. After questioning from the Commission, the Commission may close the evidentiary portion of the hearing.

After close of evidence, the Petitioner usually drafts a proposed Decision and Order that is circulated to all Parties to comment on. The Commission votes to approve or deny a district boundary amendment, the staff then prepares a proposed Decision & Order (“D&O”) reflecting the Commission’s decision. The D&O with specific conditions is reviewed to make sure it accurately reflects the Commission’s decision and is then voted upon by the Commission (Example of an adopted [Findings of Fact, Conclusions of Law, and Decision and Order](#)).

DECISION-MAKING CRITERIA

The Land Use Law requires the Commission to specifically consider the following criteria in review of any petition for a boundary amendment [Decision-Making Criteria Matrix for Reclassification of District Boundaries](#):

- A. Conformity to the goals, objective and policies of the Hawai‘i State Plan ([Chapter 226](#), HRS) and the Functional Plans adopted pursuant to the State Plan.
- B. Extent to which the proposed reclassification conforms to the applicable district standards ([HRS 250-2](#)).
- C. Impacts on the following State concerns:
 - 1. Preservation or maintenance of important natural systems or habitats
 - 2. Maintenance of valued cultural, historical and natural resources
[Ka Pa‘akai O Ka ‘Āina v. Land Use Commission](#)
 - 3. Maintenance of other natural resources relevant to Hawai‘i economy, including but not limited to agriculture resources
 - 4. Commitment of state funds and resources
 - 5. Provision for employment opportunities and economic development; and
 - 6. Provisions for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups
- D. The standards and criteria for the reclassification or rezoning of important agricultural lands in section [\(HRS\) 205-50](#)
- E. 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
- F. The representations and commitments made by the petitioner in securing a boundary change.
- G. Sustainability in Land Use Planning. LUC filing requirement in HAR [15-15](#)-50 (24) and (25) per [HRS 225-P](#) The Hawai‘i Climate Change Mitigation and Adaptation Initiative
 - 1. The impacts of sea level rise on the proposed development
 - 2. Infrastructure adaptations to address the impacts of climate change including sewer, water, and roadway improvements
 - 3. The overall carbon footprint of the proposed development and any mitigation measures or carbon footprint reductions proposed



4. The location of the proposed development and the threats imposed to the proposed development by sea level rise, based on the maps and information contained in the Hawai'i Sea Level Rise Vulnerability Adaptation report and the proposed mitigation

Furthermore, the Commission must take into account the General Plan of the respective County (and all community, development, and community development plans adopted pursuant to the General Plan); and, where applicable, the objectives, policies and guidelines of the State Coastal Zone Management Law ([Chapter 205A](#), HRS).

See [§205-17](#) HRS, [§15-15](#)-77 HAR, and Act 26 SLH 2008.

QUASI-JUDICIAL PROCEEDINGS

By law, the decision-making process of the Commission is quasi-judicial. This means that the process is more judicial than legislative in nature. In this way, the rights of those who are most directly involved or most affected by the decision are accorded due process before an action is taken by the Commission. These individuals are allowed to take part in the proceedings as “parties”.

Parties that appear before the Commission may do so on the party's own behalf or through an authorized representative. Parties may also be represented through an attorney. Persons with direct interests that are clearly distinguishable from those of the general public may petition the Commission to intervene in the proceeding. As an intervener, a nominal fee is required and they have the right to present witnesses, cross-examine witnesses of other parties, and have standing to appeal the Commission's decision to the Circuit Court.

All others may apply for leave to intervene as long as their position is not substantially similar to the position of party already admitted to the proceeding.

In addition to the petitioner, the Office of Planning and Sustainable Development (“OPSD”) and the respective County Planning Departments are mandatory parties to the proceedings.

Oral or written communications with Commission members by persons, whether or not a party to a proceeding before the Commission are strictly limited under Commission rules.

See [§15-15](#)-62 HAR.

The Land Use Law sets general procedures for processing district boundary amendment and special use permit requests. The Commission has adopted specific administrative rules for implementing the law and reviewing these land use requests.

SPECIAL USE PERMIT (“SP”) PROCEDURES

This permitting process allows for “unusual and reasonable” uses within the Agricultural and Rural Districts; provided such uses comply with the objectives of the Land Use Law and meet the guidelines established by the Commission.

Applications for special use permits are made initially to the appropriate planning commission of the county where the property is located. The county planning commissions hear evidence from parties and render a decision, and when the SP is greater than 15 acres, the decision comes before the LUC for consideration.

On an application that involves an area greater than 15 acres, the Commission must decide on the request within 45 days after receipt of the complete record of the proceeding held by the County. Five affirmative votes are required to approve such a request. Denial or modification of a special use permit is appealable to the court. See [§205-6 HRS](#).

DECLARATORY RULINGS (“DR”)

The declaratory ruling process allows, by petition of an interested person, the Commission to address the applicability of any statutory provision or of any rule or prior order of the Commission. The Commission can on its own motion or upon request issue a declaratory order to terminate a controversy or to remove uncertainty. Upon receipt of a petition for declaratory order, the Commission has 90 days within which to either deny the petition in writing or issue a declaratory order or set the matter for a hearing. If the matter is scheduled for a hearing, then the Commission shall render findings and decision within 120 days after the close of the hearing. The commission, for good cause may refuse to issue a declaratory order. One example of a reason why the Commission might refuse, for good cause, to issue a declaratory order would be that it might affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise. See generally section [§15-15-98 and 102 HAR](#) and [§91-8 HRS](#). [Declaratory Orders Flowchart](#).

In 2005, the Legislature passed [Act 183](#) / [HB 1640](#), which provided for farmers or landowners to petition the Commission for designation of land as Important Agricultural Lands (IAL) using the Commission declaratory ruling process. The following provides more specific information on the issue of IAL and how the declaratory ruling process has been utilized in recent dockets before the Commission.

IMPORTANT AGRICULTURAL LAND (“IAL”)

After years of failed legislative attempts to pass important agricultural lands legislation in response to the Hawai’i constitutional mandate, [Act 183](#) passed in 2005. The law was modified by [Act 233](#) / [SB 2646](#) in 2008. Collectively, these two acts constitute the IAL law. See generally section [§15-15-120-128 HAR](#) and [§205 Part III \(41-52\) HRS](#). Important agricultural land petitions are processed as declaratory rulings.

In addition to the framers and landowners’ ability to seek an IAL designation, the law provides for County identification of IAL lands and sets forth the Commission Process for adopting the County IAL maps. To date, only the City and County of Honolulu attempted to identify IAL land within their respective jurisdiction. However, the Commission Denied the Petition that the City and County of



Honolulu brought before the Commission. Since then, the City has appealed the Commission's decision to circuit court. The LUC awaits the outcome of the appeal, to have a better understanding and gain clarity on the IAL laws.

The status of the initial landowner IAL petitions are available at: [IAL Maps](#).

All private IAL petitions that were filed have been posted to our LUC website. Please refer to the website for the details of each docket. <https://luc.Hawaii.gov/completed-dockets/declaratory-rulings/ial/>

ADMINISTRATIVE RULES

[Chapter 15-15](#), HAR, governs the practices and procedures before the Commission and these rules are meant to secure the just and efficient determination of every proceeding. The rules are to be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawai'i.

Periodically, the Commission on its motion may initiate proceedings for the adoption, amendment, or repeal of any rules of the Commission. Generally, such occasions may arise when new statutory provisions are enacted by the Legislature affecting [Chapter 205](#), HRS requiring new rules or changes to existing rules to implement. In addition, any interested person may petition the Commission for changes to the rules. When considering changes to the rules, the Commission holds public hearings on each island to receive comments. There are rules governing the Commission response to petitions for rulemaking and for notice requirements for public hearings; however, there are for deadlines on the Commission's adoption of any proposed rule changes after public hearings have been conducted. See [§15-15-105](#), HAR.

SUNSHINE LAW

All Commission meetings and actions are subject to the 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 present oral testimony on any agenda item; provided that the oral testimonies of interested persons shall not be limited to the beginning of a board's agenda or meeting.
- All deliberation must be made in public.
- No deliberating towards a decision can be made 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

HAWAI'I STATE ETHICS COMMISSION

The [ETHICS HANDBOOK](#) for State Board and Commission Members summarizes the laws in the State Ethics Code that apply to all state board and commission members in Hawai'i. These laws require state officials to uphold high standards of ethical conduct. Hawai'i State Ethics Commission website:

<https://ethics.Hawaii.gov/>.

Should you have any questions, please feel free to contact the Hawai'i State Ethics Commission at (808) 587-0460 or ethics@hawaiiethics.org.

Electronic Filing System for Financial Disclosures

The Hawai'i State Ethics Commission has launched its new electronic filing system for financial disclosures. State officials who are required to file annual disclosures of financial interests with the Commission can now file their disclosures electronically and can better manage their filings. Officials also can use the new e-filing system to file gifts disclosures with the Commission. For more information, including step-by-step instructions on how to access and use our new e-filing system, go to the Commission's website at <https://hawaiiethics.my.site.com/disclosures/s/>.

Ua Mau ke Ea o ka 'Āina i ka Pono

The life of the land is perpetuated in righteousness

