

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?

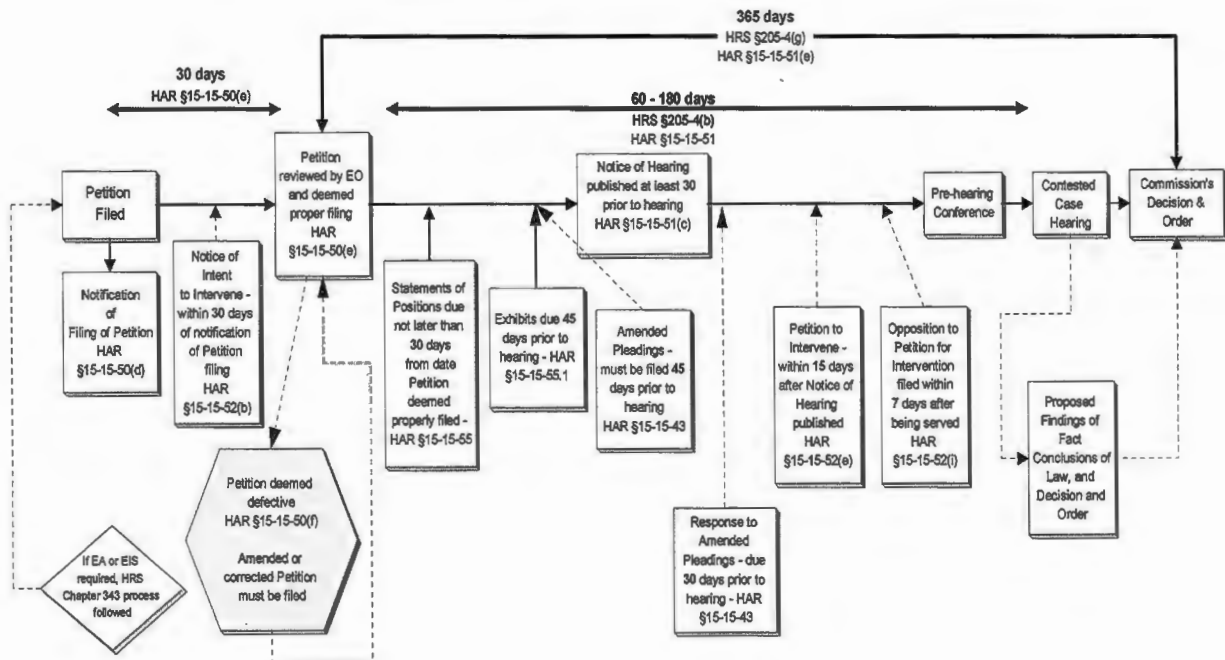
- Petitions by a landowner/developer to change the land use classification of property (usually from Conservation or Agricultural to Urban or Rural)
- Quasi-judicial in nature
- **Contested-case proceedings**
- Automatic parties: the Applicant, the State Office of Planning and Sustainable Development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

Asking the Parties questions allows additional information to be added to the record.

When is it important?

When more information is needed on topics of concern.

For example: Ka Pa'akai, archeological assessments, chapter 205, environmental assessments, infrastructure buildout times, social impacts, and more.

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 evidence, 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



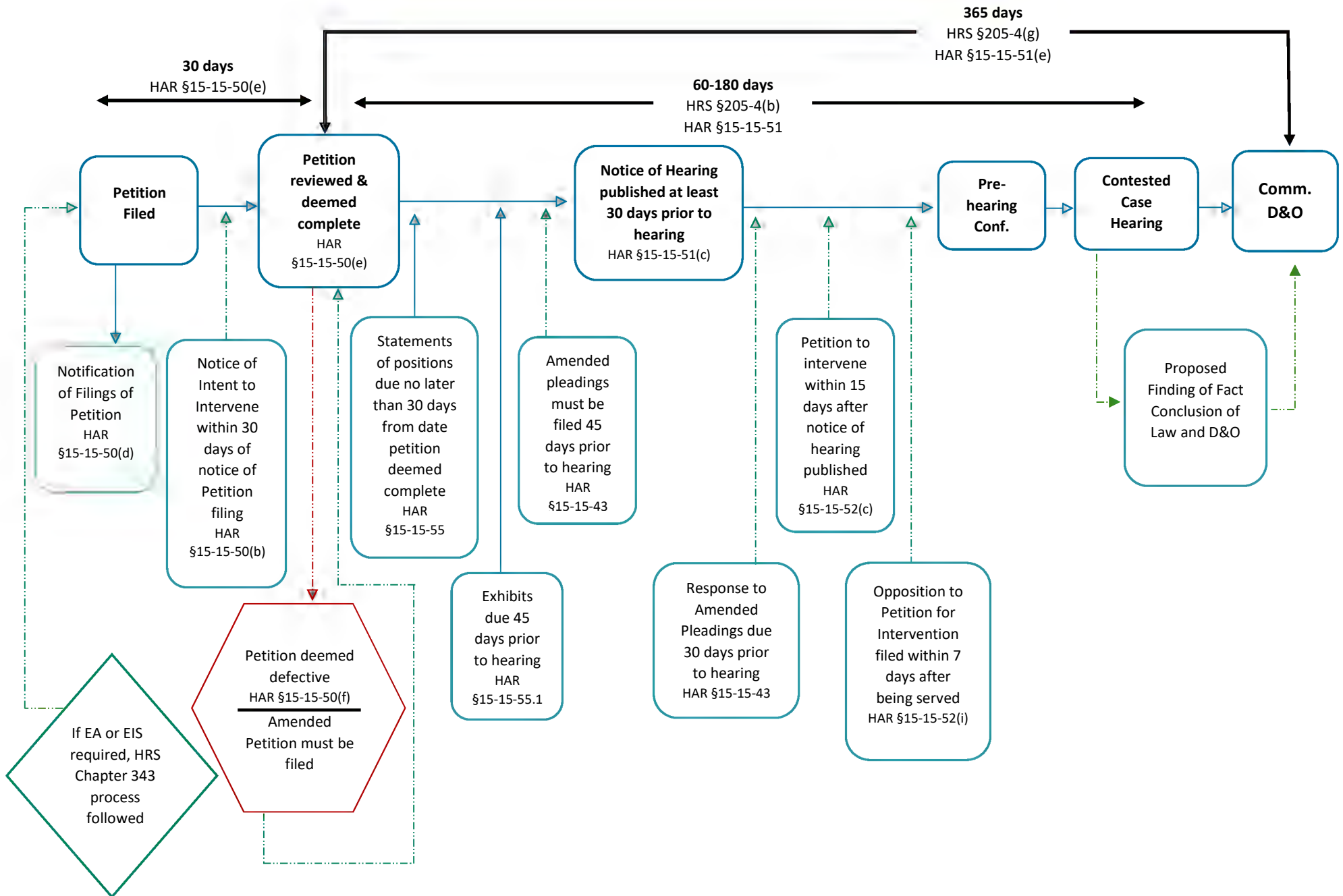
Post-Decision Proceedings

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



Overview of District Boundary Amendment Process



Decision Making Criteria for Reclassification of District Boundaries

Hawai'i Revised Statutes ("HRS")	Hawai'i Administrative Rules ("HAR")
§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:	§15-15-77 Decision-making criteria for boundary amendments.
(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;	(a) The commission shall not approve an amendment of a land use district boundary unless the commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, is not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.
(2) The extent to which the proposed reclassification conforms to the applicable district standards;	(b) In its review of any petition for amendment of district boundaries pursuant to this chapter, the commission shall specifically consider the following: <ul style="list-style-type: none"> (1) The extent to which the proposed boundary amendment conforms to the applicable goals, objectives, and policies of the Hawai'i state plan and relates to the applicable priority guidelines of the Hawai'i state plan and the adopted functional plans; (2) The extent to which the proposed boundary amendment conforms to the applicable district standards; (3) The impact of the proposed boundary amendment on the following areas of state concern: <ul style="list-style-type: none"> (A) Preservation or maintenance of important natural systems or habitats; (B) Preservation and maintenance of valued cultural resources and activities, and, historical, or



	<p>natural resources, including water resource uses; (C) Maintenance of other natural resources relevant to Hawaii's economy including, but not limited to agricultural resources; (D) Commitment of state funds and resources;</p> <p>(E) Provision for employment opportunities and economic development; and</p> <p>(F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;</p> <p>(4) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan, and community, development, or community development plans of the county in which the land is located;</p> <p>(5) The representations and commitments made by the petitioner in securing a boundary amendment, including a finding that the petitioner has the necessary economic ability to carry out the representations and commitments relating to the proposed use or development;</p> <p>(6) Lands in intensive agricultural use for two years prior to date of filing of a petition or lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action:</p> <p>(A) Will not substantially impair actual or potential agricultural production in the vicinity of the subject</p>
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	<p>property or in the county or State; or</p> <p>(B) Is reasonably necessary for urban growth; and</p> <p>(7) In considering boundary amendments for lands designated important agricultural lands pursuant to part III, chapter 205 , HRS, the commission shall specifically consider the standards and criteria set forth in section 205-50, HRS.</p>
<p>(3) The impact of the proposed reclassification on the following areas of state concern:</p> <p>(A) Preservation or maintenance of important natural systems or habitats;</p> <p>(B) Maintenance of valued cultural, historical, or natural resources;</p> <p>(C) Maintenance of other natural resources relevant to Hawaii's economy, including agricultural resources;</p> <p>(D) Commitment of state funds and resources;</p> <p>(E) Provision for employment opportunities and economic development; and</p> <p>(F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;</p>	<p>(c) Amendments of a land use district boundary in conservation districts involving land areas fifteen acres or less shall be determined by the commission pursuant to this subsection and section 205-3.1, HRS.</p>
<p>(4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-50;</p>	<p>(d) Amendments of a land use district boundary in other than conservation districts involving land areas fifteen acres or less shall be determined by the appropriate county land use decision-making authority for the district.</p>



<p>(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</p>	<p>(e) Amendments of a land use district boundary involving land areas greater than fifteen acres shall be determined by the commission, pursuant to this subsection and section 205-3 .1, HRS. [Eff 10/27 /86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; am and comp OCT 18 2019] (Auth: HRS §§205- 1, 205- 7) (Imp: HRS §§205-3.1, 205-4, 205-16, 205-17)</p>
<p>(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]</p>	

