

DAVID Y. IGE
GOVERNOR



LAND USE COMMISSION

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

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February 11, 2022

Statement of
Daniel E. Orodener
Executive Officer
State Land Use Commission

Before the
House Committee on
Water and Land

Tuesday February 15, 2022
8:30 AM
State Capitol, Room 430 Virtual Video Conference

In consideration of
HB 1716
RELATING TO LAND USE

Chair Tarnas; Vice Chair Branco; and members of the House Committee on Water and Land:

The Land Use Commission (“LUC”) supports the intent of HB 1716. The proposed measure would require the LUC to prepare a conservation and development plan every ten years. Further, the LUC would be charged with determining if changes to district boundaries was necessary and then making those amendments. While supporting the intent of this measure we would like to point out the following:

This would be an ongoing endeavor requiring significant funding for staff and/or consulting services to carry out. The precise amount required to complete the process is unknown at this time, but past land use planning efforts have required over \$750,000 in funds.

It must be noted that provisions in the bill requiring district boundary amendments are problematic. Constitutional due process requirements and Supreme Court decisions require amendments to district boundaries be conducted as contested-case proceedings pursuant to HRS 91. As a result, the LUC could not “legislatively” change district boundaries. To conform the measure to existing law, provisions of HRS Chapter 205 could be amended to require that the recommendations of the study be adhered to in the granting or denial of any district boundary amendments. Should the recommendation of the report be for the reclassification of urban or rural lands to agriculture or conservation, the Office of Planning and Sustainable Development could be authorized to bring petitions to effectuate such changes.

We would also suggest that the conservation and development plan being proposed for every ten years replace the five-year boundary review study as currently provided for in HRS §205-18.

We are attaching a proposed HD1 that deals with the issues presented in the testimony.

Thank you for the opportunity to testify on this matter.

A BILL FOR AN ACT

RELATING TO LAND USE

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. Chapter 205, Hawaii Revised Statutes, is amended by replacing an existing section to be appropriately designated and to read as follows:

§205-18 “Conservation and development plan. (a) At least once every ten years, the land use commission shall prepare or amend and adopt a plan of conservation and development for the State. Following the adoption of the conservation and development plan, the land use commission shall regularly review and maintain the plan.

(b) The conservation and development plan shall serve as a statement of policies, goals, and standards for the physical and economic development of the State. Each plan shall include:

(1) A determination if any changes to the district boundaries are necessary;

(2) Specific recommendations regarding:

(A) The most desirable use of land for agricultural, rural, urban, and conservation purposes;

(B) The recommended population density for each county upon review of county general plans, and county development and community plans;

(C) Climate Change and Sustainability issues impacting land use including, but not limited to Food sustainability, clean energy needs and sea level rise;

(D) Applicable State Plans including the 2050 Sustainability Plan;

(E) Cultural and environmental resource protection and conservation;

(F) Fresh water conservation and sustainability;

(G) Provisions for the development of housing opportunities consistent with soil types, terrain, and infrastructure capabilities; and

(H) Recommendations to support housing choice and economic diversity in housing.

(c) The land use commission may seek the assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review.

(d) Upon adoption of a conservation and development plan, the land use commission shall not amend any district boundary or grant any special permit that is not in conformity with the recommendations of the conservation and development plan.

(e) The Office of Planning and Sustainable Development is specifically authorized, and shall make every effort to, bring proceedings or petitions before the Land Use Commission to conform the State district boundaries to the recommendations made in the conservation and development plan. Such petitions will be in conformance with state law and the requirements of Chapter 91 Hawaii Revised Statutes.”

SECTION 2. §205-18 **[Review of districts.** The office of planning and sustainable development may undertake a review of the classification and districting of all lands in the State. The office, in its boundary review, shall focus its efforts on reviewing the Hawaii state plan, county general plans, and county development and community plans. Upon completion of the boundary review, the office shall submit a report of the findings to the commission, governor, legislature, and appropriate state and county agencies. The office may initiate state land use boundary amendments which it deems appropriate to conform to these plans. The office may seek the assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review.]

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended to read as follows:

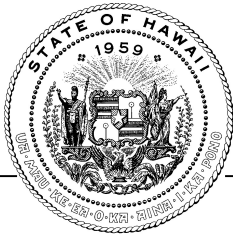
§205-4 Amendments to District Boundaries involving land areas greater than fifteen acres.

(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, [and] consistent with the policies and criteria established pursuant to sections 205-16 and 205-17, and are in conformance to the conservation plan pursuant to section 205-18.

SECTION 4. New statutory material is underscored.

SECTION 5. Existing statutory material to be replaced is bracketed.

SECTION 6. This Act shall take effect upon its approval.



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
HOUSE COMMITTEE ON WATER AND LAND
Tuesday, February 15, 2022
8:30 AM
State Capitol, Conference Room 430

in consideration of
HB 1716
RELATING TO LAND USE.

Chair Tarnas, Vice Chair Branco, and Members of the House Committee on Water and Land.

The Office of Planning and Sustainable Development (OPSD) offers the following **comments and concerns** on HB 1716, which would make the Land Use Commission (LUC) responsible for a State conservation and development plan that would serve as a statement of policies for the physical and economic development of the State and make specific recommendations for the most desirable use of land for agricultural, rural, urban, and conservation purposes, the population density of each county, for development of housing opportunities and to support housing choice and economic diversity in housing. The LUC is also required to amend the State Land Use District boundaries in accordance with the plan recommendations.

The plan proposed by HB 1716 would duplicate portions of the Hawaii State Plan, HRS Chapter 226 and OPSD's role to provide technical assistance in administering the Hawaii State Plan under HRS § 226-53. The bill also duplicates HRS § 205-18, as amended, that places responsibility for review of State Land Use Districts with the OPSD. We are also concerned with the overlap of responsibilities given to the LUC under this bill with those of the Hawaii Housing Finance and Development Corporation for housing and the Board and Department of Land and Natural Resources for the State Conservation District.

Thank you for the opportunity to testify on this measure.