

DAVID Y. IGE
GOVERNOR



LAND USE COMMISSION

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

DANIEL ORODENKER
EXECUTIVE OFFICER

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February 28, 2022

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

Before the
**House Committee on
Finance**

Tuesday March 1, 2022
11:00 AM
State Capitol, Room 308 Virtual Video Conference

In consideration of
HB 1840 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS

Chair Luke; Vice Chair Yamashita; and members of the House Committee on Finance:

The Land Use Commission opposes HB 1840 HD1. The proposed measure seeks to allow the counties to approve State district boundary amendments up to 50 acres from 15 acres. The LUC believes that the justification for this bill is unsupported by any empirical data, lacks clarity as to purpose, severely negatively impacts comprehensive land use planning, puts many other State initiatives such as food security and clean energy self-sufficiency at risk and will not accomplish its purported purpose of increasing affordable housing.

In addition, there is concern with regard to the actual impact of this measure on the total land area that could be designated into the Urban District under this measure. As the attached Maui County and Hawai'i County maps show, the impact of this measure could be staggering. For the County of Hawai'i there are approximately 1,900 parcels with a minimum acreage totaling 30,000 acres that might be affected. For the County of Maui approximately 1,500 parcels with a minimum acreage totaling 22,000 acres.

At the outset it should be noted that between 2000 and the present, the LUC has approved over 40,000 homes with only a relatively small percentage actually built and/or have not begun the

development process. This is a clear indication that the State approval process is only a small factor in the housing problem facing the State of Hawai‘i.

In a prior session, SB3104 (SLH2020) was introduced to address housing issues. That Omnibus bill was the culmination of discussions with all of the interested public and private sector groups involved in or concerned with the housing crisis. A minor increase to County jurisdiction was proposed but only for 100% affordable housing projects and HRS Chapter 201H affordable housing projects. This measure would grant many of the proposed changes from SB3104 (SLH2020) without commensurate negotiated safeguards.

Significantly, this bill will not result in any cost or time savings to developers that would stimulate affordable housing projects. Developers will still have to meet HRS Chapter 343 requirements and contested-case hearings can't be avoided as a matter of law. While the County has made an effort to explain why it believes contested case hearings would not be required by law, we believe their logic is flawed and that significant litigation could result from the passage of this measure.

It should be recognized that the LUC process is not expensive, nor does it cause any significant delay to project development. Once a petition is deemed complete the LUC has 365 days to render a decision, often dispensing with the matter in one or two hearings within 4-6 months from filing. Costs are therefore minimal and not prohibitive.

From a planning standpoint, this measure is simply bad public policy. Hawai‘i is unique in its land use issues. Competing uses must be carefully balanced from a State-wide perspective to ensure that the cultural rights of the community are protected, land is preserved for agricultural uses to ensure food sustainability; and that renewable energy goals are met. Releasing lands for development that are not balanced in light of important State interests is contrary to the needs of the community and good planning practices. Focusing solely on housing issues would severely impair the ability of the State to plan amongst competing needs and for its future.

This measure also poses significant risk to issues and land use needs outside of the housing crisis. We have all been made critically aware, during the course of this crisis, how important it is that Hawai‘i have a healthy agricultural industry and that Hawai‘i develop policies that will promote food independence and sustainability. This large-scale planning and balancing of needs does not take place at the county level. Such State-wide issues must be balanced against the need for housing. Sprawling development, rather than re-development of the already urbanized lands in Hawai‘i will not serve Hawai‘i well as a whole.

Further, it is also clear that the public policy goal of developing clean, renewable energy sources needs to be balanced in relation to affordable housing. This measure would jeopardize planning and initiatives by the LUC, PUC and clean energy proponents, and the Legislature itself.

As set forth above, Section 2 of this measure, which seeks to exempt re-classification of lands from HRS Chapter 91 requirements and contested case hearings is likely a violation of due process property rights embedded in the Constitution and a direct violation of due process rights embodied in law.

As such, the section is likely rendered invalid and contested case hearings will still have to be held before any district boundary amendment can be approved. Arguments to the contrary are flawed.

The LUC is also the only land use body that meets the State constitutional requirements of applying Public Trust Doctrine principles to its decisions. The public interest in water, the environment, traditional and customary practices, cultural resources, and public access rights must be taken into account in any decision-making on district boundary changes. The counties are not designed to handle these issues (which also require contested case proceedings for proper adherence to the law). The constitutional mandate cannot be met in a legislative or ministerial proceeding.

We don't believe that this measure should move forward. However, if this measure should move forward we attach the proposed language for the Committee's consideration (see attached). The proposed changes would alleviate concerns raised by various community groups, Hawaiian groups, the Farm Bureau and others. We also have made changes to the language added by the Water and Land committee with regards to parceling that clarify that it reflects the fifty-acre threshold called for in the measure. It will give the LUC a process by which the issues of concern can be met in a short and cost effective manner and to ensure that the counties do not inadvertently impact parties' rights to due process.

The LUC believes that this measure will not have the intended result and will in fact cause significant harm to other equally important State initiatives. It also poses the real threat of significantly impacting the agricultural capacity of the State by allowing a ten-fold increase in the amount of urbanized lands in Maui and Hawai'i counties. There is also a serious and very real concern that the measure is in violation of established law and won't pass constitutional muster.

Thank you for the opportunity to testify on this matter.

Proposed Amendments to HB1840 HD1

The following language would replace that found in the current HD1 under Section 2. as subsection (d). The existing subsections (e), (g), and definitions of affordable housing would remain; and subsection (f) and (h) regarding parceling would be amended to correct the threshold acreage figure from [twenty-five] to fifty.

Section 2. Section 205-3.1, Hawaii Revised Statutes, is amended to read as follows:

“(d) District boundary amendments involving land areas greater than fifteen acres and less than 50 acres, processed by a county decision-making authority under this section shall be subject to review and approval by the land use commission. The land use commission may impose additional restrictions as may be necessary and appropriate in granting the approval, including the adherence to representations made by the applicant.

- (1) The district boundary amendment is necessary to produce housing, sixty per cent of which shall be affordable housing reserved for occupants whose incomes do not exceed eighty per cent of the area median income;
- (2) If, by the date of the application, the county has adopted an ordinance that:
 - (A) Establishes a procedure for determining such district boundary amendments;
 - (B) Requires the county, in considering an application for a district boundary amendment, to consider the impact of the proposed reclassification on areas of state and county concern, including but not limited to impacts on state and county infrastructure and provision for housing opportunities for certain income groups;
 - (C) Requires the district boundary amendment and approved uses to be consistent with the applicable county general plan and community plan or community development plan;
 - (D) Requires final recommendation and action on an application for a district boundary amendment to be taken by the county legislative body; and
 - (E) Requires the county to take enforcement actions to assure substantial compliance with representations made by the applicant in seeking the boundary amendment, including conditioning approvals upon substantial commencement of use of the land in accordance with those representations.

(3) A copy of the decision, together with the complete record of the proceedings before the county decision-making authority on all district boundary amendments involving land areas greater than fifteen

acres and less than 50 acres, shall be transmitted to the land use commission within sixty days after the decision is rendered;

Within ninety days after receipt of the complete record of the proceedings before the county decision-making authority, the land use commission shall act to approve, approve with modification, or deny the petition. A denial by the county legislative body or the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(4) The land use commission’s review and basis for approval, denial, or modification shall be limited to issues concerning:

(A) Whether adequate due process was provided to all interested persons by the county decision-making authority with regard to the district boundary amendment process;

(B) Whether Chapter 343 was adhered to by the county decision-making authority;

(C) Whether the land subject to a district boundary amendment is contiguous to or adjacent to existing urban district lands;

(D) Whether the county decision-making authority has adhered to its obligations under the Public Trust Doctrine;

(E) Whether cultural resources, and traditional and customary rights would be negatively impacted or adequately addressed;

(F) Whether parceling has occurred with respect to associated lands;

(G) Whether there will be significant environmental impacts on the natural environment; and,

(H) Whether the district boundary amendment is consistent with and implements the Hawaii 2050 Sustainability Plan.

As used in this subsection, “county legislative body” means the city council or county council of a county.”

“(f) Parceling of lands for development shall be prohibited for the purposes of subsection (d). If lands that have been parceled are proposed for reclassification, the petition for reclassification shall be processed as lands greater than fifteen or [twenty-five] fifty acres, pursuant to section 205-4.”

“(h) As used in this section:

“Parceling” means the subdivision of lands greater than [twenty-five] fifty acres into two or more parcels, more than one of which is then proposed for reclassification within a ten-year period from the date of the subdivision.”

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON FINANCE

**TUESDAY, MARCH 1, 2022
11:00 A.M.
VIA VIDEOCONFERENCE**

**HOUSE BILL NO. 1840, HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS**

Chairperson Luke and Members of the Committee:

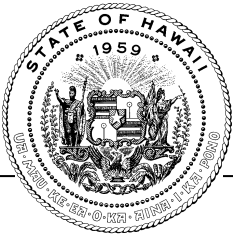
Thank you for the opportunity to testify on House Bill No. 1840, House Draft 1 that would allow the counties to reclassify land areas over 15 acres but not to exceed 50 acres, provided the counties have adopted ordinances establishing a procedure and requirements including that the land use boundary amendment is needed to produce housing, 60% of which is reserved for occupants whose incomes do not exceed 80% of the area median income, and there is a prohibition on project parceling.

The Department is concerned about the potential adverse impact this bill may have on the State's prime agricultural land resource. Fifty acres is equivalent to the footprint of the entire Ala Moana Shopping Center complex. Requiring petitions to be in compliance with county general plans or community plans may not be sufficient to protect prime agricultural lands from piecemeal reclassifications. Ensuring food sustainability and food security for Hawai'i requires preventing the diminution of the single most critical asset for achieving those goals for food production – its prime agricultural lands. We urge an amendment that excludes agricultural lands that are



designated Important Agricultural Lands or with "A" or "B" Overall Productivity Ratings as classified by the Land Study Bureau and be exempt from the effect of this measure.

Thank you for the opportunity to provide our testimony on this measure.



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

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR

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Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
HOUSE COMMITTEE ON FINANCE
Tuesday, March 1, 2022
11:00 AM
State Capitol, Conference Room 308

in consideration of
HB 1840 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS.

Chair Luke, Vice Chair Yamashita, and Members of the House Committee on Finance.

The Office of Planning and Sustainable Development (OPSD) **supports** HB 1840 HD1, which would amend HRS § 205-13.1 to allow the county land use decision-making authority to reclassify lands in the State Urban, Rural, and Agricultural District not classified as Important Agricultural Lands over 15 acres but equal to or less than 50 acres provided that the county establishes a procedure for determining such District Boundary Amendments (DBA), considers the impact on areas of State and county concerns, and is consistent with county plans. The bill also requires that the DBA be to provide housing, 60 percent of which shall be reserved for occupants with incomes not exceeding 80 percent of area median income and prohibits parceling.

Increasing the amount of lands which the counties are allowed to reclassify up to 50 acres, especially for the provision of much needed affordable housing, would provide greater flexibility to address differences between State Land Use District classifications and county general plans and community development plans. This increase is appropriate in view of the comprehensiveness of the county planning process and extensiveness of community involvement when the county plans are updated.

Thank you for the opportunity to testify on this measure.

HB-1840-HD-1

Submitted on: 3/1/2022 7:55:08 AM

Testimony for FIN on 3/1/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Morris Atta	Hawaii Department of Agriculture	Comments	Yes

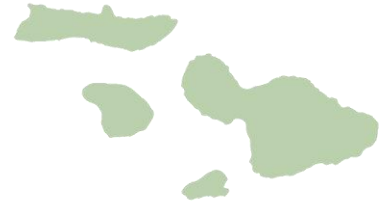
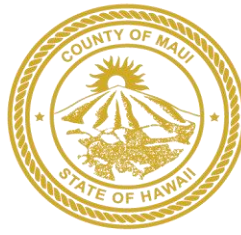
Comments:

I am available to answer questions on behalf of the Department of Agriculture.

MICHAEL P. VICTORINO
MAYOR

MICHELE CHOUREAU MCLEAN, AICP
DIRECTOR

JORDAN E. HART
DEPUTY DIRECTOR



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA, 2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

February 28, 2022

TESTIMONY OF MICHELE CHOUREAU MCLEAN, AICP
PLANNING DIRECTOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON FINANCE

Tuesday, March 1, 2022, 11:00 A.M.

Videoconference / Conference Room 308

HB1840 HD1 RELATING TO DISTRICT BOUNDARY AMENDMENTS

Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair
Honorable Members of the House Committee on Finance

Thank you for this opportunity to testify in **SUPPORT** of HB1840 HD1.

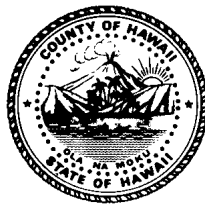
HB1840 HD1 will allow each county to make final decisions on state land use district boundaries for properties that are 50 acres or smaller, with important restrictions: the purpose of the boundary amendment must be to provide housing, 60 percent of which must be for low-income residents, and the county must adopt an ordinance to provide the same standards and impose the same requirements that the State Land Use Commission (LUC) follows.

The LUC has submitted testimony providing legal arguments in opposition to this bill, to which we have previously submitted counter legal arguments. **The most persuasive argument against the LUC's position is that the counties already have the authority to grant boundary amendments up to 15 acres; HB1840 HD1 would simply increase the threshold from 15 to 50 acres – it would not change the process in any other way (except to provide the safeguards noted above) – and so the constitutionality and Public Trust Doctrine arguments hold no water since the counties exercise this authority already.**

Maui County has been processing boundary amendments for decades, with a procedural ordinance in place since 1986 (Chapter 19.68, Maui County Code). In recent years, we have seen several “fast track” affordable housing projects with accompanying boundary amendments of 14.8 or 14.9 acres, clearly endeavoring to stay under the 15-acre threshold. Increasing this threshold will result in more land being made available for affordable housing. The counties have just as much (if not more) expertise in making local land use decisions based on sound planning principles than the LUC does.

Please support HD1840 HD1. Mahalo for your consideration.

Mitchell D. Roth
Mayor



Elizabeth A. Strance
Corporation Counsel

J S. Yoshimoto
Assistant Corporation
Counsel

COUNTY OF HAWAII OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720 • Phone (808) 961-8251 • Fax (808) 961-8622

February 28, 2022

Testimony re HB 1840 HD 1
Jean K. Campbell, Esq.
Deputy Corporation Counsel
Representing County of Hawai'i Planning Department

The LUC raises two legal concerns regarding HB 1840 HD1. The first is that the County's district boundary amendment procedure which utilizes the County Council as the final decision-making authority and does not allow for a contested case hearing is a constitutional violation of procedural due process. The second is that the LUC is the only body that meets the State constitutional requirements of applying the Public Trust Doctrine principles to its decisions. **Both statements are legally wrong.**

The LUC contends that the County's procedure is an unconstitutional deprivation of due process because the process does not allow for a contested case hearing. The Land Use Commission Statute, HRS 205 §3.1, delegated to the County decision-making authority for district boundary amendments on parcels of 15 acres or less. Pursuant to that section, Hawai'i County established its procedure for district boundary amendments as the following:

- An application to the Planning Department,
- A recommendation from the Department to the Planning Commission.
- The Planning Commission then makes a recommendation to the County Council.
- The Council takes that recommendation and refers it to its Planning Committee, who evaluates the recommendation.
- The Council's Planning Committee then makes a further recommendation to the full Council for its final decision.

Public hearings are held at **each step** in this process once the initial recommendation leaves the Planning Department.

This procedure was adopted in 1986 and has been functioning ever since. The procedure is the same on Maui. Many hotly contested projects have passed through these procedures at both Counties over the last **37 years** and the procedure has not been overturned as invalid or unconstitutional.

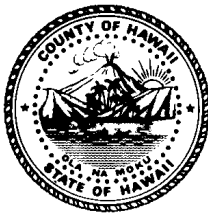
In fact, in the *Sandy Beach Defense Fund vs City and County of Honolulu* case, the Hawaii Supreme Court evaluated a similar procedure adopted by the City which did not allow for a contested case hearing. The Court specifically evaluated whether this procedure was unconstitutional. The court recognized that the Hawai'i Administrative Procedures Act, or HRS Chapter 91, did not apply to the legislative branch of government, whether it was taking a legislative or non-legislative act. The Court noted that the basic elements of procedural due process require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest.

The court specifically held that City's process, which involved a recommendation from the Department of Land Utilization to the City Council, which passed through its committees and ended with a final decision by the City Council, **satisfied procedural due process requirements and in doing so the court noted that a contested case hearing is not the exclusive avenue for public input and participation.** The multiple public hearings, each following adequate public notice, satisfied all procedural due process requirements. Honolulu's procedure is similar to Hawai'i County's current procedure with the one exception: Hawai'i County adds an additional public hearing before our Planning Commission.

HB 1840 HD 1 as currently drafted simply expands the number of properties which can go through this legal process. It does not change a currently legal process into an illegal process. It simply expands the applicant pool for the existing legal procedure.

With regard to the application of the public trust doctrine, it is well established law under the Hawai'i Constitution as further interpreted by the *Kauai Springs Inc. v Planning Commission of the County of Kauai* case, among other cases, that the public trust doctrine applies to both state and county decisions which affect public trust resources. Public trust resources include water and publicly owned land, including the shoreline and, to the extent that state land use boundary amendments affect these resources, the public trust must be considered by both the county and the state. To suggest otherwise is simply wrong.

REBECCA VILLEGAS
Council Member
District 7, Central Kona



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HAWAI'I COUNTY COUNCIL

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Kailua-Kona, Hawai'i 96740

February 28, 2022

TESTIMONY OF REBECCA VILLEGAS
COUNCIL MEMBER, HAWAI'I COUNTY COUNCIL
ON HB 1840 HD1, RELATING TO DISTRICT BOUNDARY AMENDMENTS
Committee on Finance
Tuesday, March 1, 2022 11:00a.m.

Aloha Chair Luke, and Members of the Committee:

I thank you for the opportunity to OPPOSE HB 1840 HD1. My testimony is submitted in my individual capacity as a member of the Hawai'i County Council and Chair of the Hawai'i County Council Climate Resilience and Natural Resource Management Committee.

The purpose of this Act is to authorize the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres but equal to or less than fifty acres according to a process to be determined by each county and subject to certain conditions, including the condition that the district boundary amendment is necessary to produce housing, sixty per cent of which shall be reserved for occupants whose incomes do not exceed one hundred forty per cent of the area median income.

Allowing public input serves as a critical tool for fighting corruption, enabling citizens to more fully participate, making governments more efficient, encouraging investment and commitment, and helping persons exercise their fundamental human rights.

For the reasons stated above I urge the Committee on Finance to OPPOSE this measure. Should you have any questions, please feel free to contact me at (808) 323-4267.

Mahalo for your consideration.

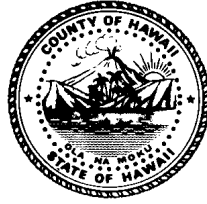
A handwritten signature in black ink, appearing to read "Rebecca Villegas".

Rebecca Villegas
Council Member, Hawai'i County Council

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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March 1, 2022

Testimony by
ZENDO KERN, Planning Director
County of Hawai'i Planning Department

before the

Committee on Finance

Tuesday, March 1, 2022, 11:00 A.M.
State Capitol, Conference Room 308

In consideration of

HB1840 HD1

Relating to District Boundary Amendments

Representative Sylvia Luke, Chair, Representative Kyle Yamashita, Vice Chair and Members of the Committee on Finance:

Thank you for this opportunity to testify in **SUPPORT** of HB1840 HD1.

The County of Hawai'i fully supports HB1840 HD1 as it will give another option to provide much needed affordable housing on our island and in our State. There has been previous testimony submitted regarding the constitutionality and legality of the proposed bill. Additional testimony is being submitted by our Corporation Counsel to address these concerns.

The County of Hawai'i has been approving State Land Use Boundary Amendments through the County Council for up to 15 acres since the 1980's. This process has been legal, effective and is usually conducted concurrently with a Change of Zone application. These requests are reviewed against the criteria for approving these applications, which includes consistency with the General Plan & the Community Development Plan for the area, the Public Trust Doctrine, availability of infrastructure to support the proposed development, and other listed criteria.

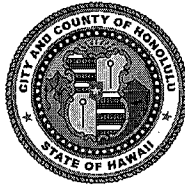
By allowing the Counties to process State Land Use Boundary Amendments up to 50 acres for affordable housing projects, this will expedite these projects to meet the overwhelming demand in our County and State. The processing of these applications will not change as they will be required to meet the same criteria that is currently being used by the Counties for approval for State Land Use Boundary Amendments up to 15 acres.

Once again, thank you for your consideration of this testimony and for your support of HB1840 HD1.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR
DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR
EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

March 1, 2022

The Honorable Sylvia Luke, Chair
and Members of the Finance
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

**Subject: House Bill No. 1840, HD 1
Relating to District Boundary Amendments**

The Department of Planning and Permitting (DPP) **supports** House Bill No. 1840, HD 1, with a recommended amendment.

This Bill authorizes the counties to determine district boundary amendments (DBAs) for project areas over fifteen but less than fifty acres if the county has adopted an ordinance that meets certain requirements, including that the DBA is necessary to produce housing, 60 percent of which shall be reserved for occupants whose incomes do not exceed 80 percent of the area medium income.

We believe that this may be an efficient and useful approach to increase the development of affordable housing, which is desperately needed. However, the Legislature should carefully consider the concessions under the Bill balanced against the overall goal to provide affordable housing. For Oahu, most projects coming in under this Bill would be for reclassification of State Agricultural District lands to the Urban District, which will mean the loss of agricultural lands. We therefore suggest that the Bill be amended to prohibit DBAs on lands with good-quality production of agriculture in order to retain those lands for agricultural uses.

Thank you for this opportunity to provide testimony.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean Uchida".

Dean Uchida
Director

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

February 28, 2022

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair
Rep. Kyle T. Yamashita, Vice Chair

Rep. Patrick Pihana
Rep. Amy A. Branco
Rep. Stacelynn K.M. Eli Rep. Sayama
Rep. Daniel Holt Rep. Adrian K. Tam
Rep. Greggor Ilagan Rep. Chris Todd
Rep. Kobayashi Rep. Tina Wildberger
Rep. Lisa Marten Rep. Bob McDermott
Rep. Scott Y. Nishimoto

Testimony of Michael P. Victorino, Mayor, Maui County
on
H.B. 1840
Relating to District Boundary Amendments
Wednesday, March 1, 2022
11:00 A.M.
VIA VIDEOCONFERENCE
ROOM 308
State Capitol
415 South Beretania Street

As Mayor of Maui County, I support H.B. 1840. Maui County supports legislation that provides counties to meet the needs of our residents with opportunities to provide housing.

Please support amendments of H. B. 1840 authorizing the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres but equal to or less than fifty acres according to a process to be determined by each county and subject to certain conditions. Of importance is that the district boundary amendment is necessary to produce housing and that sixty per cent of which shall be affordable housing.

Thank you for your support.

February 28, 2022
Page 2

Michael P. Victorino,
Mayor, County of Maui

Contact: Stacy Crivello
Office of the Mayor
Community Liaison
808-270-1795



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON FINANCE

March 1, 2022

11:00 AM

Conference Room 308

In **OPPOSITION** to **HB1840 HD1**: Relating to District Boundary Amendments

Aloha Chair Luke, Vice Chair Yamashita, and members of the Finance Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **opposes HB1840 HD1**, which could remove important protections for natural and cultural resources, Native Hawaiian traditional and customary practices, and other public interests in major land use district boundary amendments.

The Land Use Commission ("LUC") has long administered a critical, comprehensive process to identify and mitigate impacts to natural and cultural resources, Native Hawaiian traditional and customary rights, food security, and other public interests that may be affected by the reclassification of conservation, rural, agricultural, and urban lands. Unlike existing county land use decisionmaking, the quasi-judicial nature of the LUC district boundary amendment process ensures that data and other information from experts, cultural practitioners, and other stakeholders are adequately considered and incorporated in district boundary amendment approvals. The LUC also possesses substantial institutional knowledge regarding how the public's interest in large-scale land use changes can be consistently protected.

By preventing the LUC from participating in district boundary amendment changes between 15-50 acres, this measure may compromise the public's environmental, cultural, agricultural, and recreational interests in our islands' lands and waters. While the Sierra Club appreciates the included conditions that counties enact certain ordinances and requirements prior to the proposed reduction in the LUC's authority, it is unclear whether and how these ordinances would sufficiently provide the quasi-judicial, project-specific opportunities for input under the LUC process, or replace the LUC's substantial institutional knowledge in its decades of practice overseeing large-scale land use changes.

Sierra Club appreciates the intent of this measure to promote the production of affordable housing. **However, the Sierra Club notes that the LUC is not the apparent barrier to affordable housing production it is often purported to be.** The LUC is already required to approve or deny completed district boundary amendment applications within a year of receipt; for Chapter 201H "affordable housing" projects such as those described in this Proposed HD1, this

deadline is shortened to 45 days.¹ According to LUC staff, throughout the 2010s, all major 201H affordable housing projects were approved by the LUC within the 45 day timeline.²

If affordable housing development is a concern, Sierra Club respectfully urges the Committee to explore the potential expansion of the LUC's enforcement authority. Since 1980, more than 25% of all the housing authorized by the LUC has not yet been built, much of which was proposed to be affordable and workforce housing. On O'ahu alone, 23,000 units approved by the LUC have not been constructed; this includes Ho'opili (DR Horton), Koa Ridge (Castle & Cooke), Gentry Waiawa (now owned by Kamehameha Schools), and Royal Kunia Phase II. Providing the LUC with reasonably enhanced enforcement authority will help to encourage developer follow-through on commitments made during the district boundary amendment process, including with regards to the production of affordable housing units. Possible statutory language to accomplish this could read as follows:

"§205- Penalty. (a) Any petitioner for an amendment to a district boundary that:

(1) Violates; or

(2) Neglects, fails to conform to, or comply with this chapter or any lawful order of the land use commission may be subject to a civil penalty not to exceed \$50,000 per day that the violation, neglect, or failure occurs, or reversion pursuant to section 205-4(g), but not both. The civil penalty shall be assessed by the land use commission after a hearing in accordance with chapter 91.

(b) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the land use commission may remit or mitigate the penalty upon terms that it deems proper.

¹ See <https://luc.hawaii.gov/about/district-boundary-amendment-procedures/>.

² A record of all LUC decisions organized by island is available online at: <http://luc.hawaii.gov/completed-dockets/decision-and-orders-for-boundary-amendments/>.

(c) If any civil penalty imposed pursuant to this section is not paid within a time period as the land use commission may direct, the attorney general shall institute a civil action for recovery of the civil penalty in circuit court."

For the reasons described above, the Sierra Club respectfully urges the Committee to **HOLD** this measure. Mahalo nui for the opportunity to testify.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

March 1, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 1840 PROPOSED HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS

Room 309 & Videoconference
11:00 AM

Aloha Chair Luke, Vice-Chair Yamashita, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau opposes HB 1840, Proposed HD1, which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres but less than or equal to fifty acres if the county has adopted an ordinance that meets certain requirements, including the requirement that the district boundary amendment is necessary to produce housing, sixty percent of which shall be reserved for occupants whose incomes do not exceed one hundred forty percent of the area median income.

HFB recognizes and supports the need for affordable housing. We also recognize that in the land category system used today, agriculture was originally the catchall land classification and that some lands included within the agricultural district were not necessarily considered optimal for agriculture.

However, agriculture has significantly evolved. Soil classification is no longer the determinant of land good for agriculture. Greenhouses, hydroponics, aquaculture, and aquaponics are just a few of the many types of agriculture that can occur on *all* classes of land (A, B, C, D, E). Some of the best floriculture and hydroponic operations in Hawai'i are on C, D, and E lands. The total environment, including rainfall amount and timing, day and night-time temperatures, wind, and humidity each contribute to whether a particular region is suitable for a specific crop. In many cases, the soil type and even the existing terrain are not determinative of whether farming can exist and thrive.

Hawai'i Farm Bureau has serious concerns about this measure; allowing residential developments to be interspersed with farming operations often causes problems that can result in the failure of farms. This cannot be allowed. Because of the pandemic, everyone better understands now the importance of agriculture in our isolated and vulnerable state. We must protect agricultural lands from well-known threats and avoid simplistic solutions to Hawai'i's housing problems.

HFB is opposed to eliminating the oversight of the Land Use Commission and its process for agricultural boundary amendments.

The urgency to address Hawai'i's need for affordable housing should not be allowed to eliminate Hawai'i's use of productive agricultural land.

Thank you for your consideration of our concerns.



March 1, 2022

11 a.m.

Conference Room 308

Via Videoconference

To: House Committee on Finance

Rep. Sylvia Luke, Chair

Rep. Kyle T. Yamashita, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: HB1840 HD1 — RELATING TO DISTRICT BOUNDARY AMENDMENTS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB1840 HD1](#), which would change existing restrictions on the authority of the counties to amend district boundaries.

Under this bill, county decision-making officials would be permitted to amend district boundaries for certain land areas greater than 15 acres, but not more than 50 acres, if the county has adopted an ordinance that includes certain enforcement provisions and limitations on land use, such as that the amendment be consistent with the community development plan). Moreover, at least 60% of the development must be dedicated to the development of so-called affordable housing.

In raising the acreage cutoff to 50 acres, HB1840 would make an important stride toward streamlining the decision-making process and encouraging the growth of the housing pool in our state.

However, the bill includes unnecessary limitations, namely, the restrictions contained in the prescribed ordinance and the requirement that this special consideration will be given only for proposals where 60% of the land will be dedicated to the development of affordable housing.

Known as “inclusionary zoning,” this high-percentage set-aside for affordable housing will frustrate the intent of the bill by making such projects financially unfeasible.

A large body of research shows that inclusionary zoning makes housing less affordable, since developers respond to such mandates by building fewer homes.¹ To make matters worse, the mandates force developers to raise the prices of market-rate homes to make up for the so-called affordable homes.

Our research using the “Inclusionary Housing Calculator” developed by Grounded Solutions Network shows that in housing markets like Maui that have a 50% inclusionary zoning requirement, it is nearly impossible to make a profit building housing without a government subsidy.² As the requirement goes up to 60% and more, it becomes even less feasible to build new housing.

For example, according to the calculator, a low-rise apartment project with 30 units costing \$18 million would incur a net loss of \$7 million, if built in an area with an affordable housing requirement of 50%.³

As noted by economist Carl Bonham at the Economic Research Organization at the University of Hawaii, inclusionary zoning, “reduces incentives for developers to produce all forms of housing, and will reduce the overall supply of housing units and increase the price of housing.”⁴

A 2004 study by the Reason Foundation found that inclusionary zoning led to reduced housing growth in the San Francisco Bay Area region.⁵

While well-intentioned, the inclusionary zoning requirement and other limitations may frustrate the intent of the bill by creating another regulatory roadblock to the increase of the housing supply.

¹ Tom Means, Edward Stringham and Edward Lopez, “[Below-Market Housing Mandates as Takings: Measuring their Impact](#),” The Independence Institute, November 2007; “[Inclusionary Zoning: Implications for Oahu’s Housing Market](#),” The Economic Research Organization at the University of Hawaii, Feb. 12, 2010; “[How land-use regulation undermines affordable housing](#),” Mercatus Research, November 2015; Paul Kupiec and Edward Pinto, “[The high cost of ‘affordable housing’ mandates](#),” The Wall Street Journal, Feb. 12, 2018; Benjamin Powell and Edward Stringham, “[Housing supply and affordability](#),” Reason Foundation, April 1, 2004; and “[Inclusionary zoning primer](#),” National Association of Home Builders, August 2019.

² “[Inclusionary Housing Calculator 2.0](#),” Grounded Solutions Network, 2019.

³ “[Project Summary](#),” Grounded Solutions Network, accessed Feb. 9, 2021.

⁴ Carl Bonham, “[The Unintended Consequences of Affordable Housing Policy](#),” The Economic Research Organization at the University of Hawaii, Sept. 8, 2013.

⁵ Benjamin Powell and Edward Stringham, “[Housing supply and affordability](#),” Reason Foundation, April 1, 2004.

Fortunately, there are ways to encourage the growth of affordable housing that would not hobble development before it even begins.

Regarding this bill, we urge you to remove the 60% requirement. Beyond that, focus on reforming the state Land Use Commission and streamlining the development process.

That said, this committee should be commended for addressing one of the root causes of the state's housing crisis: the excess of regulation and bureaucracy that can delay and frustrate development.

A Grassroot Institute report on the problem, ["Reform the Hawaii LUC to encourage more housing,"](#) discussed how state policymakers could encourage the growth of housing by reexamining the role and purpose of the LUC.

The report included two recommendations that relate directly to the intent of HB1840: raising the acreage cutoff for LUC review of district boundary amendment requests, and allowing the counties to handle all DBAs for urban and agricultural lands, leaving the LUC free to focus on statewide environmental issues and DBAs of conservation lands.

Enacting bill HB1840, without the unnecessary limitations, would go part of the way toward achieving those recommendations.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



House Committee on Finance

Hawai'i Alliance for Progressive Action (HAPA) Opposes: HB1840 HD1

Tuesday, March 1st, 2022 11:00 a.m.

Aloha Chair Luke, Vice Chair Yamashita and Members of the Committee,

HAPA opposes HB1840 HD1, which could remove important protections for natural and cultural resources, Native Hawaiian traditional and customary practices, and other public interests in major land use district boundary amendments.

The Land Use Commission (LUC) is designed to ensure the public's interest in large-scale land use changes. Unlike county land use processes, the LUC district boundary amendment process ensures that data and other information from stakeholders and experts are adequately considered and incorporated in district boundary amendment approvals. The LUC has long administered a specific process to prevent impacts to natural and cultural resources and to preserve environmental services, food security, rights, and other public interests that may be affected by the reclassification.

By preventing the LUC from participating in district boundary amendment changes for parcels that are 15-50 acres the bill compromises the public's interests. Despite the inclusion of the condition that counties could still enact certain ordinances and requirements prior to the proposed reduction in the LUC's authority, it is unclear whether and how these ordinances would provide project-specific opportunities for input under the LUC process, or replace the substantial institutional knowledge the LUC has regarding large-scale land use changes.

We acknowledge the intent to promote the production of affordable housing through HD1. However, despite claims, the LUC is not the apparent barrier to affordable housing production. The LUC is already required to approve or deny completed district boundary amendment applications within a year of receipt; for Chapter 201H "affordable housing" projects, this deadline is shortened to 45 days.¹ Consistently for over a decade all large

¹ <https://luc.hawaii.gov/about/district-boundary-amendment-procedures/>

201H affordable housing projects were approved by the LUC within the 45 day timeline.²

To address affordable housing let's look at the potential expansion of the LUC's enforcement authority. For nearly 4 decades more than 25% of all the housing authorized by the LUC has not yet been built, much of which was proposed to be affordable and workforce housing. On O'ahu alone, 23,000 units approved by the LUC have not been constructed; this includes Ho'opili (DR Horton), Koa Ridge (Castle & Cooke), Gentry Waiawa (now owned by Kamehameha Schools), and Royal Kunia Phase II. Providing the LUC with reasonably enhanced enforcement authority will help to encourage follow through on commitments made during the district boundary amendment process with regards to the production of affordable housing units.

HAPA supports the possible statutory language suggested by Sierra Club of Hawai'i.

"§205- Penalty. (a) Any petitioner for an amendment to a district boundary that:

(1) Violates; or

(2) Neglects, fails to conform to, or comply with this chapter or any lawful order of the land use commission may be subject to a civil penalty not to exceed \$50,000 per day that the violation, neglect, or failure occurs, or reversion pursuant to section 205-4(g), but not both. The civil penalty shall be assessed by the land use commission after a hearing in accordance with chapter 91.

(b) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the land use commission may remit or mitigate the penalty upon terms that it deems proper.

(c) If any civil penalty imposed pursuant to this section is not paid within a time period as the land use commission may direct, the attorney general shall institute a civil action for recovery of the civil penalty in circuit court."

Please defer HB1840.

Thank you for your consideration.

Respectfully,



Anne Frederick
Executive Director

² <http://luc.hawaii.gov/completed-dockets/decision-and-orders-for-boundary-amendments/>



**HOUSE COMMITTEE ON FINANCE
State Capitol, Via Videoconference
415 South Beretania Street
11:00 AM**

March 1, 2022

RE: HB 1840 HD1, Relating to District Boundary Amendments

Chair Luke, Vice Chair Yamashita, and members of the committee:

My name is Daryl Takamiya, 2022 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in support of HB 1840 HD1, Relating to District Boundary Amendments.

This bill would authorize the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres but less than or equal to fifty acres if the county has adopted an ordinance that meets certain requirements.

The bill addresses the overlapping land use entitlement process used in Hawaii. Allowing the counties to reclassify lands, especially in areas which the county has identified for urban growth, removes the time consuming process of having the state Land Use Commission reclassify the lands. The counties are responsible for identifying areas for future urban expansion, and are best suited to make these types of urban land use decisions.

We are in support of HB 1840 HD1, and appreciate the opportunity to provide our comments on this matter.

HB-1840-HD-1

Submitted on: 2/27/2022 10:27:58 PM

Testimony for FIN on 3/1/2022 11:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Cory Harden	Individual	Oppose	No

Comments:

Aloha legislators,

Please vote down this bill. It seriously weakens

protection by the Land Use Commission, and protection for Native Hawaiian traditional and customary practices and

other public interests -- all for "affordable" housing which

often is anything but "affordable".

Mahalo.

HB 1840 HD 1 TESTIMONY

To: House Committee on Finance
Hearing on March 1, 2022 at 11:00 a.m.

From: John Kawamoto

Position: Oppose

I am an advocate for affordable housing and for the environment.

As an environmental advocate I oppose this bill because it urbanizes agricultural and rural land. If Hawaii is to achieve food security, which should be a priority in this era of climate change, all agricultural and rural land should be preserved, particularly on Oahu. Those who want to “Keep the Country Country” should also oppose the bill.

Furthermore, as a housing advocate I oppose the bill because it would likely create very little of the needed housing. Hawaii needs 50,000 new housing units, and this bill would only incrementally increase the supply. Meanwhile, the Legislature is also considering big, new ideas for housing that can create all of the housing units needed by using land that is already urbanized. These are the bills that the Legislature should be considering.

This bill does little to increase the supply of housing, and it sacrifices agricultural and rural land to do so.