



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

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

Coastal Zone
Management
Program

Environmental Review
Program

Land Use Commission

Land Use Division

Special Plans Branch

State Transit-Oriented
Development

Statewide Geographic
Information System

Statewide
Sustainability Branch

Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
HOUSE COMMITTEE ON WATER AND LAND
Tuesday, February 1, 2022
8:30 AM
State Capitol, Conference Room 430

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

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

The Office of Planning and Sustainable Development (OPSD) **supports** HB 1840, Proposed HD 1, which would amend HRS § 205-3.1 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, considers the impact on areas of State and county concern, and is consistent with county plans. The proposed HD1 adds a requirement to provide housing, 60 percent of which shall be reserved for occupants with incomes not exceeding 140 percent of area median income.

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.

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 WATER AND LAND

**TUESDAY, FEBRUARY 1, 2022
8:30 A.M.
VIA VIDEOCONFERENCE**

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

Chairperson Tarnas and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1840, Proposed 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 for housing for occupants whose incomes do not exceed 140% of the area median income.

The Department is concerned about the potential impact this bill may have on the State's agricultural land resources. 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. We would prefer that agricultural lands that are designated Important Agricultural Lands or with "A" or "B" Overall Productivity Ratings as classified by the Land Study Bureau be exempt from the effect of this measure.

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



HB-1840

Submitted on: 1/31/2022 8:38:39 AM

Testimony for WAL on 2/1/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
earl yamamoto	dept. of agriculture	Comments	Yes

Comments:

I will be available to answer any questions

DAVID Y. IGE
GOVERNOR



LAND USE COMMISSION

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

DANIEL ORODENKER
EXECUTIVE OFFICER

235 S. Beretania Street, RM 406, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804
Email Address: dbedt.luc.web@hawaii.gov

Telephone: (808) 587-3822
Fax: (808) 587-3827
Website: luc.hawaii.gov

January 31, 2022

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

Before the
House Committee on
Water and Land

Tuesday February 1, 2022
8:30 AM
State Capitol, Room 430 Virtual Video Conference

In consideration of
HB 1840 HD1 Proposed
RELATING TO STATE BOARDS AND COMMISSIONS

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

The Land Use Commission opposes HB 1840 HD1 Proposed. The proposed HD1 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.

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.

Significantly, there will be no cost or time savings to developers that would stimulate affordable housing projects with this measure. Developers will still have to meet HRS Chapter 343 requirements. 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.

Section 2 of this measure, which seeks to exempt re-classification of lands from Chapter 91 requirements and contested case hearings is likely unconstitutional and, under the Towne case and the recent Mauna Kea cases, 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. The counties are not set up to handle this type of proceeding. All rights of appeal and all rights to cross examine and required procedural safeguards will still have to be adhered to in order to protect constitutional rights to due process. The counties cannot grant a district boundary amendment “legislatively” without violating due process and the Constitution.

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.

A key element of this modification is the assurance that projects developed under the amended procedure proposed by this measure will be for the house-less or those looking for affordable homes. The general definition of affordable homes allows homes marketed for buyers whose income can be up to 140% of median. Housing developed at this level of “affordability” will not result in homes for residents in need. Income of 140% of median for a family of four is approximately \$170,000 and for an individual is \$122,000 (extrapolating from 2019 numbers). Based on these calculations a \$1,000,000 home would be recognized as “affordable. This is hardly an attainable average for most families. We would strongly suggest that if this measure is to move forward, the definition of affordable contained in the proposed language set forth below be utilized to ensure that homes developed under this amended procedure will actually result in homes that can be purchased by the average Hawai‘i resident.

There is also a significant and very real concern that the current version of this bill will result in landowners engaging in “parceling” or breaking up large parcels into smaller cones to specifically avoid a more rigorous environmental review and State process. While SB137 SD2 (SLH2021) does contain a provision prohibiting parceling it is not clear when the analysis needs to be performed or by who. We would strongly urge that the suggested language (see attached) be added that requires the counties to make such a determination prior to granting a district boundary amendment.

We believe that this measure should be amended to track SB3104 SD1 (SLH2020) so that the hard work and energy put into that year's Omnibus bill by this body can be recognized and that there will be some chance of success for an increase in the development of affordable housing. We therefore have attached proposed language for the committees' consideration (see attached).

This measure also poses significant risk to issues and land use needs outside of the housing crisis. It is well established that Hawai'i is unique in its limited land availability for competing needs. 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 issue 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.

The LUC believes that this measure, while directed at a recognized need, will not have the intended result and will in fact cause significant harm to other equally important State initiatives and won't pass constitutional muster.

Thank you for the opportunity to testify on this matter.

Proposed Amendments to HB1840 HD1 Proposed

(1) 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~~ eighty per cent of the area median income; and

(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 acres, pursuant to section 205-4.

(g) Before a county land use decision-making authority grants a petition for reclassification pursuant to subsection (d), the county land use decision-making authority shall make a clear finding, based on the evidence submitted, that the land subject to a petition for reclassification has not been parceled or proposed to be parceled.

(h) As used in this section, "parceling" means the subdivision of lands greater than twenty-five 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."

(i) As used in this section "affordable housing" means homes that are affordable to purchasers whose income is no greater than 80 percent of the median income for the county in which the reclassification is to occur.

DAVID Y. IGE
GOVERNOR



LAND USE COMMISSION

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

DANIEL ORODENKER
EXECUTIVE OFFICER

235 S. Beretania Street, RM 406, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804
Email Address: dbedt.luc.web@hawaii.gov

Telephone: (808) 587-3822
Fax: (808) 587-3827
Website: luc.hawaii.gov

January 31, 2022

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

Before the
House Committee on
Water and Land

Tuesday February 1, 2022
8:30 AM
State Capitol, Room 430 Virtual Video Conference

In consideration of
HB 1840 HD1 Proposed
RELATING TO DISTRICT BOUNDARY AMENDMENTS

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

The Land Use Commission opposes HB 1840 HD1 Proposed. The proposed HD1 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.

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.

Significantly, there will be no cost or time savings to developers that would stimulate affordable housing projects with this measure. Developers will still have to meet HRS Chapter 343 requirements. 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.

Section 2 of this measure, which seeks to exempt re-classification of lands from Chapter 91 requirements and contested case hearings is likely unconstitutional and, under the Towne case and the recent Mauna Kea cases, 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. The counties are not set up to handle this type of proceeding. All rights of appeal and all rights to cross examine and required procedural safeguards will still have to be adhered to in order to protect constitutional rights to due process. The counties cannot grant a district boundary amendment “legislatively” without violating due process and the Constitution.

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.

A key element of this modification is the assurance that projects developed under the amended procedure proposed by this measure will be for the house-less or those looking for affordable homes. The general definition of affordable homes allows homes marketed for buyers whose income can be up to 140% of median. Housing developed at this level of “affordability” will not result in homes for residents in need. Income of 140% of median for a family of four is approximately \$170,000 and for an individual is \$122,000 (extrapolating from 2019 numbers). Based on these calculations a \$1,000,000 home would be recognized as “affordable. This is hardly an attainable average for most families. We would strongly suggest that if this measure is to move forward, the definition of affordable contained in the proposed language set forth below be utilized to ensure that homes developed under this amended procedure will actually result in homes that can be purchased by the average Hawai‘i resident.

There is also a significant and very real concern that the current version of this bill will result in landowners engaging in “parceling” or breaking up large parcels into smaller cones to specifically avoid a more rigorous environmental review and State process. While SB137 SD2 (SLH2021) does contain a provision prohibiting parceling it is not clear when the analysis needs to be performed or by who. We would strongly urge that the suggested language (see attached) be added that requires the counties to make such a determination prior to granting a district boundary amendment.

We believe that this measure should be amended to track SB3104 SD1 (SLH2020) so that the hard work and energy put into that year's Omnibus bill by this body can be recognized and that there will be some chance of success for an increase in the development of affordable housing. We therefore have attached proposed language for the committees' consideration (see attached).

This measure also poses significant risk to issues and land use needs outside of the housing crisis. It is well established that Hawai'i is unique in its limited land availability for competing needs. 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 issue 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.

The LUC believes that this measure, while directed at a recognized need, will not have the intended result and will in fact cause significant harm to other equally important State initiatives and won't pass constitutional muster.

Thank you for the opportunity to testify on this matter.

Proposed Amendments to HB1840 HD1 Proposed

(1) 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~~ eighty per cent of the area median income; and

(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 acres, pursuant to section 205-4.

(g) Before a county land use decision-making authority grants a petition for reclassification pursuant to subsection (d), the county land use decision-making authority shall make a clear finding, based on the evidence submitted, that the land subject to a petition for reclassification has not been parceled or proposed to be parceled.

(h) As used in this section, "parceling" means the subdivision of lands greater than twenty-five 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."

(i) As used in this section "affordable housing" means homes that are affordable to purchasers whose income is no greater than 80 percent of the median income for the county in which the reclassification is to occur.

HB-1840

Submitted on: 1/31/2022 8:24:34 AM

Testimony for WAL on 2/1/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Zendo Kern	County of Hawaii Planning Department	Support	Yes

Comments:

Support



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON WATER AND LAND

February 1, 2022

8:30 AM

Conference Room 430

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

Aloha Chair Tarnas, Vice Chair Branco, and members of the House Water and Land Committee,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **opposes HB1840**, 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 therefore 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.

With regards to the Proposed HD1, the Sierra Club appreciates the intent 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

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

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 encourages the Committee to explore of 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.

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

February 1, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON HB 1840 PROPOSED HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
Conference Room 430 & Videoconference
8:30 AM

Aloha Chair Tarnas, Vice-Chair Branco, and Members of the Committee:

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

The Hawaii 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 Hawaii 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.

Hawaii 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 Hawaii'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 Hawaii's need for affordable housing should not be allowed to eliminate Hawaii's use of productive agricultural land.

Thank you for your consideration of our concerns.



February 1, 2022

The Honorable David A. Tarnas, Chair

House Committee on Water & Land

Via Videoconference

RE: H.B. 1840, Proposed HD1, Relating to District Boundary Amendments

HEARING: Tuesday, March 1, 2021, at 8:30 a.m.

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **strongly supports** H.B. 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, 60% of which shall be reserved for occupants whose incomes do not exceed 140% of the area median income.

Hawai'i has been struggling with the issue of affordable housing for decades. Challenges range from land and infrastructure costs, financing, regulatory challenges, and permitting. According to the Department of Business Economic Development and Tourism's 2019 report on Housing Demand in Hawai'i, the state needs up to 46,000 housing units to meet demand in Hawai'i by 2030. Ultimately, we have a housing supply problem, and this measure is a creative approach to address those challenges, by building affordable housing.

The Land Use Commission (LUC) is responsible for the classification of land parcels into urban, rural, agricultural and conservation districts. Additionally, the LUC acts on land use district boundary amendment petitions involving the reclassification of lands greater than 15 acres in agricultural, rural, and urban district areas, provided it is not in the conservation district or delineated as important agricultural lands. Lands that are less than the 15 acres can be reclassified by the counties. Moreover, the county process involves opportunities for public input, which includes a presentation to the appropriate neighborhood board and public input at hearings before the appropriate county Planning Commission and City Council.

HAR would respectfully recommend that the acreage be increased from 50 to 100 acres. This would allow for more housing units to be built to help the State reach its housing demand. Additionally, more acreage makes it more economically feasible for environmental safeguards to be built, such as a wastewater treatment plants or connectivity to an existing sewer system. Smaller projects may not be able to absorb said costs. Mahalo for the opportunity to testify.



House Committee on Water and Land

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

Tuesday, February 1st, 2022 8:30 a.m.

Aloha Chair Tarnas, Vice Chair Branco and Members of the Committee,

HAPA opposes HB1840, 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 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

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

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