

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

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Deputy to the Chairperson

State of Hawaii  
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WRITTEN ONLY  
TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

TUESDAY, MARCH 2, 2021  
9:30 A.M.  
Via Videoconference

SENATE BILL NO. 137, SD 1  
RELATING TO LAND USE

Chairperson Dela Cruz and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 137, HD 1. If enacted, this measure would authorize the counties to process petitions for Agricultural District boundary amendments greater than 15 acres but not more than 25 acres provided that the land areas:

- are proposed for reclassification to the urban district,
- are contiguous to the urban district,
- are not designated Important Agricultural Lands or with soils classified as "A" or "B" and;
- at least 60 percent of the acreage is to be developed as affordable housing.

The Department of Agriculture offers a comment.

This measure establishes affordable housing as a priority activity for consideration within the State Land Use Law while protecting designated Important Agricultural Lands and agricultural lands with Land Study Bureau ratings of "A" or "B" from being considered for expedited land use district reclassifications.

Thank you for the opportunity to testify on this measure.





**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lieutenant Governor

**MIKE MCCARTNEY**  
Director

**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai'i

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Executive Officer

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Drafting Technician

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Statement of  
**Daniel E. Orodenker**  
**Executive Officer**  
State Land Use Commission

Before the  
**Senate Committee on**  
**Ways and Means**

Tuesday March 2, 2021  
9:30 AM  
State Capitol, Virtual Video Conference

In consideration of  
**SB 137**  
**RELATING TO LAND USE**

Chair Dela Cruz ; Vice Chair Keith-Agaran; and members of the Senate Committee on Ways and Means:

The Land Use Commission, while it supports the goal of increasing affordable housing in the State, cannot support of SB137, which seeks to allow the counties to approve state district boundary amendments up to 25 acres from the currently allowable 15 acres, in its current form. At the outset it should be noted that between 2000 and the present, the LUC has approved over 40,000 homes with only a little over 2000 actually built. This is a clear indication that the state approval process is not a factor in the housing problem facing the state of Hawai'i. DBEDT projections were that 65,000 units will be required to meet demand by 2025. At the current pace of approval the LUC will have approved the necessary number of homes in the next few years.

The current version of this bill contains some poorly crafted language that could be interpreted in a manner that is contrary to its intent and needs to be corrected. We would strongly suggest that an SD2 be developed that rectifies some of the concerns set forth in this testimony and the testimony of the Office of Planning. It is suggested that the bill be revised to reflect the carefully worded and negotiated language that was used in the Omnibus Bill developed last year.

More importantly the language in this bill is contrary to the extensively negotiated omnibus bill that was put forward last session, SB 3104 SD1, (SLH2020). SB 3104 SD1,

(SLH2020) was a much more comprehensive bill introduced last year that was derived from discussions between the community, developers, government agencies and members of the legislative leadership. It includes trade-offs and compromises that made various changes palatable to different constituent groups and was designed to actually result in the construction of homes for the people of Hawaii.

As the Omnibus bill avoids the drafting errors contained in SB137 SD1 while providing the same power to grant DBAs to the counties under identical circumstances we would suggest that the language set forth below be used to replace the current language in SB 137 SD1. Use of this amended version in an SD2 will also result in a preservation of the checks and balances contained in the Omnibus bill that do not exist in the current version of SB137 SD1.

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 the definition of affordable contained in the proposed language set forth below be utilized to ensure that homes developed under this amended procedure be will actually result in homes that can be purchased by the average Hawaii 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 ones to specifically avoid a more rigorous environmental review and State process. While SB 137 SD1 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 additional language be added that requires the counties to make such determination prior to granting a district boundary amendment.

We strongly urge this measure be amended to track SB3104 SD1 from last session so that the hard work and energy put into last 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 a proposed Senate Draft 2 for the committees’ consideration.

Thank you for the opportunity to testify on this matter.



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# A BILL FOR AN ACT

RELATING TO LAND USE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1.

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

“(a) District boundary amendments involving lands in the conservation district~~[, land areas greater than fifteen acres]~~ or lands delineated as important agricultural lands shall be processed by the land use commission pursuant to section 205-4 District boundary amendments of all other lands greater than fifteen acres shall be processed by the land use commission pursuant to section 205-4, except as provided in subsection (e).

(b) Any department or agency of the State, and department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use

decision-making authority of the county in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the rural and urban districts and lands less than fifteen acres in the agricultural district that are not designated as important agricultural lands.

(c) District boundary amendments involving land areas of fifteen acres or less, except as provided in subsection (b), shall be determined by the appropriate county land use decision-making authority for the district and shall not require consideration by the land use commission pursuant to section 205-4; provided that ~~such~~ the boundary amendments and approved uses are consistent with this chapter. The appropriate county land use decision-making authority may consolidate proceedings to amend state land use district boundaries pursuant to this subsection, with county proceedings to amend the general plan, development plan, zoning of the affected land, or ~~such~~ other proceedings. Appropriate ordinances and rules to allow consolidation of ~~such~~ proceedings may be developed by the county land use decision-making authority.

(d) The county land use decision-making authority shall serve a copy of the application for a district boundary amendment to the land use commission and the department of business, economic

development, and tourism and shall notify the commission and the department of the time and place of the hearing and the proposed amendments scheduled to be heard at the hearing. A change in the state land use district boundaries pursuant to this subsection shall become effective on the day designated by the county land use decision-making authority in its decision. Within sixty days of the effective date of any decision to amend state land use district boundaries by the county land use decision-making authority, the decision and the description and map of the affected property shall be transmitted to the land use commission and the department of business, economic development, and tourism by the county planning director.

(e) Notwithstanding any other provision of this section to the contrary, a person may petition the appropriate county decision-making authority in the county in which the land is situated for a change in the boundary of a district involving lands that are not designated as conservation lands or important agricultural lands, or with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B, and comprising twenty-five acres or less; provided that the majority of the development for which the boundary amendment is sought shall be for affordable housing and shall prioritize and give preference to projects that are able

to deliver more lower-priced housing; provided further that the district boundary amendments shall be limited to lands contiguous to the urban district.

(f) Parceling of lands for development shall be prohibited for the purposes of subsection (e). 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 (e), 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.



SECTION 2. Section 205-4, Hawaii Revised Statutes, is amended read as follows:

1. By amending subsection (a) to read:

"(a) Any department or agency of the State, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified~~[7]~~ may petition the land use commission for a change in the boundary of a district. This section applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural lands, and lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in ~~[section]~~ sections 201H-38~~[7]~~ and 205-3.1(e). The land use commission shall adopt rules pursuant to chapter 91 to implement section 201H-38."

2. By amending subsection (g) to read:

(g) Within a period of not more than three hundred sixty-five days after the proper filing of a petition, unless otherwise ordered by a court, or unless a time extension, which shall not exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing

conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section 205-17 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change. The commission may provide by condition that absent substantial commencement of use of the land in accordance with ~~[such representations,]~~ representations made to the commission, or absent substantial compliance with the conditions imposed under this chapter, the commission, on its own motion or upon motion by any party or interested person, shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.~~[Such conditions,]~~ If the commission finds, after a hearing conducted in accordance with commission rules and chapter 91, that the petitioner's failure to adhere to or comply with the representations or conditions does not warrant reversion to the land's former land use classification, including by reason of ineligibility, or if there has been substantial commencement of use of the land, the commission may:

(1) Record a notice of noncompliance on the land with the bureau of conveyances;

(2) Modify the existing conditions or impose new conditions to ensure compliance with the decision and order; or

(3) Provide by decision and order that the petitioner or its successor in interest shall be subject to the civil penalty set forth in section 205- .

All conditions imposed under this subsection, if any, shall run with the land and be recorded in the bureau of conveyances.

All motions requesting an order to show cause based on an alleged failure to perform a condition, representation, or commitment on the part of a petitioner, may be filed only by the commission or a person who was a party to the proceedings, including successful interveners, that resulted in the reclassification."

SECTION 3. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

(1) After a hearing conducted in accordance with land use commission rules and chapter 91, is found to have violated a condition of the decision and order of the land use commission with regard to a district boundary amendment or any representation made therein; 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 conducted 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."

SECTION 4. Section 205-6, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) [~~Special~~] Except as provided in section 205-3.1(e), special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the

approval, including the adherence to representations made by the applicant.

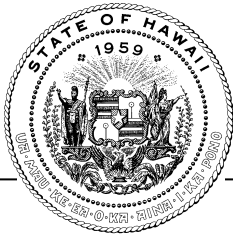
(e) [A] Except for district boundary changes made through an appropriate county decision-making authority pursuant to section 205-3.1(e), a copy of the decision, together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres or for lands designated as important agricultural lands, shall be transmitted to the land use commission within sixty days after the decision is rendered.

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by 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."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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





# OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE  
GOVERNOR

MARY ALICE EVANS  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**MARY ALICE EVANS**  
Director, Office of Planning  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
Tuesday, March 2, 2021  
9:30 AM  
Via Videoconference  
  
in consideration of  
**SB 137, SD1**  
**RELATING TO LAND USE.**

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means.

The Office of Planning (OP) offers **comments with amendments** to SB 137, SD1 that authorizes the counties to approve State Land Use District Boundary Amendments for non-important Agricultural lands or Rural lands up to 25 acres in size to the Urban District provided that at least 60% of the land is used for the development of affordable housing. The bill also requires that the land being considered for reclassification be contiguous to the Urban District, has a land study bureau (LSB) soil rating of “C” or lesser, provides owner-occupancy restrictions in perpetuity, and prohibits parceling. In addition, SB 137, SD1 would amend § 205-3.1 (b) (3), Hawaii Revised Statutes, to exclude agricultural lands that have a LSB soil rating of “A” or “B”.

OP supports the intent of measures that increase the availability of affordable housing. However, the current language in SB 137 would benefit from clarification to avoid unintended interpretations. We respectfully **recommend replacing the language in the SD1, with the following sections of SB 3104 (20):**

- Part III, Section 14, which amends Ch. 201H;
- Part III, portions of Section 15, which amends Ch. 205-3.1, (a), (e), (f), (g), and (h);
- Part III, Section 16, which amends Ch. 205-4(a);
- Part IV, Sections 17 and 18, which amend Ch 6E-42; and
- Part VII, which protects rights and duties which have matured, and penalties incurred.

OP would also recommend that any county-authorized reclassification of lands of not more than 25 acres should be consistent with the county general plan and community development plan. Thank you for the opportunity to testify.

  
OFFICE OF HAWAIIAN AFFAIRS  
‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai  
Legislative Testimony

**SB137 SD1**  
RELATING TO LAND USE  
Ke Kōmike ‘Aha Kenekoa o ke Ki‘ina Hana a me nā Kumuwaiwai  
Senate Committee on Ways and Means

Malaki 2, 2021

9:30 a.m.

Lumi 221

The Office of Hawaiian Affairs (OHA) provides the following **COMMENTS** on SB137 SD1, which would shift State Land Use Commission (LUC) oversight to the counties for District Boundary Amendments (DBAs) to rural and certain agricultural lands between 15 to 25 acres if (1) the land areas are proposed for reclassification to the urban district and contiguous to the urban district, and (2) at least 60% of the land areas would be dedicated for affordable housing development. **Along with comments related to retaining the LUC’s oversight over certain DBAs, OHA respectfully offers amendments for the committee’s consideration that may improve the LUC’s enforcement authorities to facilitate the production of housing units, similar to the language found in SB3104 SD1 (Reg. Sess. 2020).** OHA also notes that it commented on a nearly identical measure last year, SB2620 SD1.

First, OHA emphasizes that the proposed reduction of the LUC’s review of DBAs **would likely not reduce affordable housing development delays, and instead may further impair the LUC’s ability to consider and mitigate impacts to natural and cultural resources and associated Native Hawaiian traditional and customary practices.** The loss of the LUC’s careful and comprehensive considerations in DBAs would not be balanced by any marginal benefit gained in the production timeline for affordable housing units needed by Hawai‘i residents. **No data or other factual information suggests that the LUC review process contributes to delays in housing development timelines.** The LUC consistently decides on Hawai‘i Revised Statutes (HRS) Chapter 201H affordable housing projects within its designated “fast-track” 45-day allowance period. The median timeframe for all LUC DBA decision-making between 1995 and 2014 was approximately 14 months, compared to 24 months for the development of necessary infrastructure and facilities.<sup>1</sup> Since 2000, **the LUC has already approved development for over 40,000 residences, of which only about 2,000 have actually been built due to other requirements, such as water and sewer infrastructure capacity.**<sup>2</sup> The few actual instances of “substantial delays” in final LUC decision making have been infrequent, and generally occurred only for projects involving significant land use policy conflicts.

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<sup>1</sup> STATE LAND USE TASK FORCE, STATE LAND USE SYSTEM REVIEW DRAFT REPORT iii (2015)..

<sup>2</sup> Land Use Commission, Written Testimony on HB260 (Reg. Sess. 2021), at 7, available at [https://www.capitol.hawaii.gov/Session2021/Testimony/HB260\\_TESTIMONY\\_HSG-WAL\\_02-09-21\\_.PDF](https://www.capitol.hawaii.gov/Session2021/Testimony/HB260_TESTIMONY_HSG-WAL_02-09-21_.PDF) (last accessed February 26, 2021).



The LUC was created nearly 60 years ago, when the Hawai‘i State Legislature determined that a lack of adequate controls had caused the development of Hawai‘i’s limited and valuable lands “for short-term gain for the few while resulting in long-term loss to the income and growth potential of our State’s economy.”<sup>3</sup> Some of the key reasons for the LUC’s creation were the development of scattered subdivisions creating problems of expensive yet reduced public services, and the conversion of prime agricultural land to residential use.<sup>4</sup> **With ever-growing development pressure by speculators and land investment corporations, the needs and concerns that gave rise to the establishment of the LUC may be of even greater consequence today than they were nearly 60 years ago.**

Today, the Commission “is responsible for preserving and protecting Hawai‘i’s lands and encouraging those uses to which lands are best suited.”<sup>5</sup> LUC DBA review accordingly entails an analysis of various environmental, cultural, and socioeconomic impacts and the identification of feasible conditions to mitigate such impacts, areas in which the LUC has particular expertise and institutional knowledge. Notably, LUC decision-making criteria include, in particular, the “maintenance of valued cultural, historical, or natural resources,” taking into consideration: “(1) the identity and scope of ‘valued cultural, historical, or natural resources’ in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the (agency) to reasonably protect native Hawaiian rights if they are found to exist.”<sup>6</sup> **In many cases, LUC review may be the only opportunity for Native Hawaiians to assert their constitutionally-protected traditional and customary rights with respect to development proposals, in a government forum intended and designed to meaningfully address their concerns.**

Second, if the Committee decides to pass this measure, OHA offers the following additional amendments to clarify language regarding enforcement of LUC authority, as proposed by the LUC in its testimony regarding similar measure, SB3104 SD1 (Reg. Sess. 2020). These additions would better ensure that the LUC has the enforcement powers it needs to best perform its duties, including by providing it with a means to better enforce the construction of required affordable housing units, by:

Inserting a new section in the measure, to read as follows:

SECTION \_\_. Chapter 205, Hawai‘i Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

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<sup>3</sup> State of Hawai‘i Land Use Commission website, History, last accessed on Feb. 4, 2020, available at <https://luc.hawaii.gov/about/history-3/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Ka Pa‘akai o ka ‘Āina v. Land Use Commission*, 94 Haw. 31 (2000).

- (1) After a hearing in accordance with land use commission rules and chapter 91, is found to have violated a condition of the decision and order of the land use commission with regard to a district boundary amendment or any representation made therein; 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."

And by amending page 6, lines 12-18, to read as follows:

"seeking a boundary change. The commission may provide by condition that absent substantial commencement of use of the land in accordance with [~~such representations,~~] representations made to the commission, or absent substantial compliance with the conditions imposed under this chapter, the commission, on its own motion or upon motion by any part or interested person, shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification. [~~Such conditions,~~] If the commission finds, after a hearing in accordance with commission rules and chapter 91, that the petitioner's failure to adhere to or comply with the representations or conditions does not warrant reversion to the land's former land use classification, including by reason of ineligibility, the commission may:

- (1) Record a notice of noncompliance on the land with the bureau of conveyances; or

(2) Modify the existing conditions or impose new conditions to ensure compliance with the decision and order.

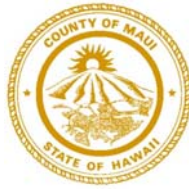
All conditions imposed under this subsection, if any, shall run with the land and be recorded in the bureau of conveyances.

All motions requesting an order to show cause based on an alleged failure to perform a condition, representation, or commitment on the part of a petitioner, may be filed only by the commission or a person who was a party to the proceedings, including successful intervenors, that resulted in the reclassification."

Mahalo nui loa for the opportunity to testify on this measure.

Michael P. Victorino  
Mayor

Sananda K. Baz  
Managing Director



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February 25, 2021

TESTIMONY OF MICHAEL P. VICTORINO  
MAYOR  
COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
Tuesday, March 2, 2021  
Conference Room 211 & Videoconference

**SB137 RELATING TO LAND USE**

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Honorable members of the Committee on Ways and Means

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Thank you for this opportunity to testify in **SUPPORT** of **SB137**.

This bill authorizes county land use decision-making authorities to amend district boundaries involving land areas greater than fifteen but no more than twenty-five acres to the urban district without consideration of the land use commission if at least sixty per cent of the land is used to develop affordable housing.

I would like to suggest that the twenty-five acres be increased to one hundred acres as this would allow greater flexibility for affordable housing development.

With the urgent need for more affordable housing, allowing the counties' land use decision-making authority the opportunity to grant district boundary amendments (DBAs) for up to one hundred (or twenty-five acres,) instead of fifteen acres, would greatly improve the speed of the regulatory process. In Maui County, the Maui County Planning Commission is the decision-making body for DBAs. The commission also hears the affordable housing projects and passes their recommendations to the Maui County Council who makes the final decision on land use. If the Planning Commission grants the DBA at the same time as hearing the project, that will save a tremendous amount of time and money for the project. Thus allowing for more affordability and more timeliness of the completion of the units.

**I urge you to pass this measure with proposed modifications, SB137.**



# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WAYS AND MEANS

March 2, 2021 9:30 AM

### In **OPPOSITION** of **SB137 SD1**: Relating to Land Use

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Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **opposes SB137 SD1** which reduces the Land Use Commission's authority to authorize new land use activities.

The Sierra Club supports significantly increasing the supply of affordable housing across the Hawaiian Islands. However, as we have noted in our testimony on these proposals over the years, and expound on in this testimony below, the data demonstrates that the LUC is not the obstacle to affordable housing construction. We also note that there already exist many "streamlined" processes for affordable housing, including HRS §201H and the exception for affordable housing in the regulations implementing HRS §343.

Measures to increase affordable housing construction must balance changing land use laws with the need to improve enforcement authority for the LUC, while also ensuring environmental protection, smart community planning, and long-term resiliency. We appreciate the immense effort lawmakers are investing to find this balance and incorporate feedback from all stakeholders.

If the legislature is inclined to pass this bill, we urge you to fully consider this option for a balanced approach:

1. Ensure that the Land Use Commission processes district boundary amendments not only for important agricultural lands, but also for agricultural lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B— as "A" and "B" rated ag lands have the highest potential for local food production and additional consideration of rezoning is warranted. **We note that this language is currently in the SD1.**
2. Add enforcement language to the Haw. Rev. Stat §205-13 Penalty for violation, to provide the LUC the tools needed to ensure compliance after granting district boundary amendments for the purpose of building affordable housing.

If these amendments cannot be incorporated into this bill, then we respectfully ask the legislature to not amend the district boundary process at all.

### **Expanding LUC enforcement authority would increase housing construction**

We believe that granting the LUC reasonable enforcement authority will increase housing units on the market because it creates a mechanism for encouraging developer-follow-through on commitments made during the district boundary amendment process.

Since 1980, more than 25% of all the housing authorized by the LUC has not yet been built. On O'ahu alone 23,000 units approved by the LUC have not been constructed. Many of those units are affordable housing or workforce housing units. This includes Ho'opili (DR Horton), Koa Ridge (Castle & Cooke), Gentry Waiawa (now owned by Kamehameha Schools), and Royal Kunia Phase II.

With additional enforcement authority, the LUC could initiate a hearing to review a project for non-compliance. In this quasi-judicial evidentiary hearing, the LUC could collect evidence, and where the evidence justifies it, modify conditions imposed on the project or impose fines on the project to expedite construction.

### **The State Land Use Commission is not the obstacle to affordable housing**

For sixty years, the LUC has played an essential role in encouraging proper land uses to protect and preserve Hawai'i's natural resources. In 1961, the legislature created the LUC in response to "a lack of adequate controls [that] had caused the development of Hawaii's limited and valuable land for short-term gain for the few while resulting in long-term loss to the income and growth potential of our State's economy."<sup>1</sup>

This unique agency is critical to protecting open space, agricultural fields, natural resources, native Hawaiian rights, taxpayers' money, the overall quality of life for Hawai'i residents, and the long-term health of our economy. Unlike county permitting agencies, the LUC assesses district boundary amendments on basic good planning principles, such as whether the project provides for adequate public schools, and transportation infrastructure.

Currently, the LUC reviews district boundary amendment petitions involving 15 acres or more and only reviews housing-related projects when development proposals are proposed on lands designated as agricultural or conservation districts. The LUC is also required to approve or deny a petition within 365 days from its submission. If the LUC fails to complete review and decision making on a petition within that time period, then the petition is automatically approved. The LUC has always met that deadline; no project has been automatically approved.

Moreover, project proposals that qualify as affordable housing under Haw. Rev. Stat. § 201H currently enjoy an extremely expedited review process at the Land Use Commission and the county permitting agencies. Per Haw. Rev. Stat. §201H-38, **affordable housing projects**

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<sup>1</sup> <https://luc.hawaii.gov/about/history-3/>

**requiring petitions for district boundary amendments are required to be heard and decided upon within 45 days after the filing of a petition.**<sup>2</sup> According to LUC staff, throughout the 2010's there were roughly four big 201H affordable housing projects approved at the LUC, all within the 45 day timeline.<sup>3</sup> The LUC has not had to automatically approve any affordable housing projects because it meets its deadlines.

The Sierra Club remains committed to supporting the critical mission of expanding truly affordable housing supplies, especially in the urban centers of each county. Doing so not only protects farmland from development pressure and speculative land valuations, but it also encourages more sustainable development patterns by putting housing near employment opportunities and essential services. Working together we can increase the affordable housing supply without sacrificing Hawai'i's fertile farmlands, rural communities, good planning principles, or the overall quality of life for Hawai'i's people.

Please do reach out for additional conversation on how the LUC's authority can be approved in the future. Thank you very much for this opportunity to provide testimony in **opposition to SB137**.

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<sup>2</sup> <https://luc.hawaii.gov/about/district-boundary-amendment-procedures/>

<sup>3</sup> 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/>

March 2, 2021

**The Honorable Donovan Dela Cruz, Chair**  
Senate Committee on Ways and Means  
Via Videoconference

**RE: S.B. 137, SD1, Relating to Land Use**

**HEARING: Tuesday, March 2, 2021, at 9:30 a.m.**

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, 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** S.B. 137, SD1, which authorizes county land use decision—making authorities to amend district boundaries involving land areas greater than fifteen acres, except non important agricultural land or rural land areas greater than fifteen acres but not more than twenty-five acres if the land areas are proposed for reclassification to the urban district and at least sixty per cent of the land areas will be dedicated for the development of affordable housing.

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 housing at all price points, including encouraging 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 25 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.

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March 2, 2021

HEARING BEFORE THE  
SENATE COMMITTEE ON WAYS AND MEANS

**TESTIMONY ON SB 137, SD1**  
RELATING TO LAND USE

Conference Room 211  
9:30 AM

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, 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.

**HFB opposes SB 137, SD1**, which would allow district boundary amendments without Land Use Commission approval for agricultural land of a certain acreage, provided that at least 60 percent of the acreage will be dedicated for the development of affordable housing.

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.



**LATE**

**SENATE COMMITTEE ON WAYS & MEANS  
Hawaii State Capitol  
415 South Beretania Street  
Via Videoconference  
9:30 AM**

**March 2, 2021**

RE: SB 137, Relating to Housing.

Chair Dela Cruz, Vice Chair Keith-Agaram, and members of the committee:

My name is Beau Nobmann, 2021 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 strong support of SB 137, which authorizes the counties to reclassify lands 15-100 areas in certain rural, urban, and agricultural districts in which at least 60% of the housing units on the land sought to be reclassified are set aside for affordable housing.

The state of Hawaii is in a dire housing crisis which has been further exacerbated by the ongoing pandemic situation. This bill would encourage the building of affordable housing by making more land readily available to potential developers. The building industry is one of the very few economic drivers in the state throughout the COVID pandemic, and giving them more opportunity to provide our residents with affordable housing would have a positive impact on our community.

We are in strong support of SB 137, and appreciate the opportunity to express our views on this matter.

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[info@biahawaii.org](mailto:info@biahawaii.org)

March 2, 2021  
9: 30 a.m.  
Conference Room 211 & Videoconference



**To: Senate Committee on Ways and Means**  
**Sen. Donovan M. Dela Cruz, Chair**  
**Sen. Gilbert S.C. Keith-Agaran, Vice Chair**

**From: Grassroot Institute of Hawaii**  
**Joe Kent, Executive Vice President**

RE: SB137 SD1 — RELATING TO LAND USE  
***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB137](#), 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 25 acres, if they are proposed for reclassification to the urban district, contiguous to an urban district and at least 60% of the square footage of the development will be dedicated to development of so-called affordable housing.

In raising the acreage cutoff to 25 acres, SB137 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 an unnecessary limitation, namely, 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.

While well-intentioned, that additional limitation may frustrate the intent of the bill by creating another regulatory roadblock to the increase of the housing supply. There are ways to

encourage the growth of affordable housing that won't hobble development before it even begins.

We urge you to remove the 60% requirement and focus first 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 recent 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 SB137: 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 SB137, without the unnecessary limitation, would go part of the way toward achieving those recommendations.

Thank you for the opportunity to submit our comments.

Sincerely,  
Joe Kent  
Executive Vice President  
Grassroot Institute of Hawaii