



LAND USE COMMISSION

Komikina Ho'ohana 'Āina

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
Ka 'Oihana Ho'omōhala Pā'oihana, 'Imi Wai wai a Ho'omāka'ika'i

JOSH GREEN, MD
GOVERNOR

DANIEL ORODENKER
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April 1, 2023

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

Before the
Senate Committee on Judiciary

Wednesday April 5, 2023
9:45 PM
State Capitol, Room 016 & Videoconference

In consideration of
HB 676 HD1 SD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS

Chair Rhoads; Vice Chair Gabbard; and members of the Senate Committee on Judiciary:

The Land Use Commission (LUC) provides the following comments on HB 676 HD1 SD1.

The LUC is not opposed, at this time, to this measure. We believe amendments made by the House and Senate committees have strengthened the bill, requiring that any county procedures or rules with respect to district boundary reclassifications adhere to and incorporate necessary due process consistent with Hawai'i Revised Statutes ("HRS") Chapters 91 and 92. In addition, consideration of the Public Trust doctrine will also apply to the counties in their decision-making process.

Thank you for the opportunity to testify on this matter.



HB676 HD1 SD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
Senate Committee on Judiciary

April 5, 2023

9:45 AM

Room CR 016

The Office of Hawaiian Affairs (OHA) **STRONGLY OPPOSES HB676 HD1 SD1**, which would allow Counties to amend State Land Use district boundaries and require ownership of the lands by the applicable County for 99 years. OHA’s opposition to this measure stems from the fact that the State Land Use Commission (LUC) was created as a necessary ‘check-and-balance’ to ensuring that Hawai‘i’s lands were preserved and protected, while encouraging best uses, that the LUC is subject to Hawaii Revised Statutes (HRS) Chapter 91 Rulemaking Authority requirements and HRS Chapter 92 Sunshine Law requirements, and that the measure would allow for the County level reclassification of Conservation district lands.

Granting County level authority to oversee the delineation of Conservation lands and Agricultural land for the purposes of removing those lands from conservation and agricultural use in favor of housing without explicitly requiring the same or greater protections than what is specified under HRS Chapters 91 and 92 would permanently harm Native Hawaiian traditional practices, harm Hawai‘i’s food sustainability and security, and infringe upon all Hawai‘i residents’ rights to inform good governance, to contested cases which could cause harm to their persons and/or property, and their right to a clean and healthful environment.

I. Permanent Harm to Native Hawaiian Traditional and Cultural Practitioners

The LUC is obligated, by law, to review all petitions for the reclassification of land and to consider the impact of that reclassification, as a matter of State concern, on the “preservation or maintenance of important natural systems or habitats;” the “maintenance of valued cultural, historical, or natural resources;” and the “maintenance of other natural resources relevant to Hawai‘i’s economy, including agricultural resources.”¹ **This measure proposes to hand over the authority to reclassify all lands over 15 acres, with the exception of important agricultural lands (IALs), potentially resulting in their permanent alienation, to a county division that is not mandated to make these same considerations for the benefit of the State.**

II. Permanent Harm to Hawai‘i’s Food Sustainability.

Soil classification is no longer a viable standard for assessing agricultural potential in an age where technological advancements in agriculture have allowed us to grow food in virtually every environment. Currently, “more than 80% of Hawai‘i’s food is imported”². The Hawai‘i 2050 Sustainability Plan – Ten Year Measurement Update noted that “[t]he 2008 Hawaii 2050 Sustainability Plan measured that about 15% of the food consumed in Hawaii was grown locally, and

¹ HRS §205-17.

² City and County of Honolulu Office of Climate Change, Sustainability and Resiliency, *Food Systems*, <https://www.resilientoahu.org/food-systems> last accessed February 9, 2023.



HB676 HD1 SD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
Senate Committee on Judiciary

35% of the fruits and vegetables consumed were locally grown.³ The Office of Planning has previously stated that food production in Hawai‘i is hampered in part by “pressure on the use of important agricultural land for higher value purposes.”⁴

While housing is a critical need in the State of Hawai‘i, so too is reliable access to food. Nearly every district boundary amendment (DBA) reviewed by the LUC in recent history has been to convert Agricultural or Conservation District lands to Urban or Rural District lands. A total of 24 DBAs have been filed with the LUC from 2010 as of the beginning of February 2023. A review of each DBA application filed with the LUC from 2010 to present indicates that, of the 24 DBAs filed with the LUC in this 13-year period, a total of 17 DBAs have been granted with one DBA being denied on initial submission but granted upon reconsideration; 3 DBAs have been withdrawn by the petitioner, 1 other was terminated by the petitioner, and 3 DBAs appear to be currently in progress.⁵ Of these 24 DBA applications, the vast majority have been to redistrict Agricultural or Conservation lands to Urban, with several applications including a request for amendment to Rural, while only one request was to reclassify lands to Agricultural from Conservation.

It is clear from the numbers that there is immense pressure to reclassify Agricultural lands for housing. It is also clear from the numbers that for the sake of Hawai‘i’s food sustainability and security, the reclassification of Agricultural lands must only be done under the most stringent of reviews, taking into consideration not only the direct community level impacts of that reclassification, but what the impacts are at the community and state levels from the permanent removal of each acre of agricultural lands from agricultural production.

III. *Infringement upon Hawai‘i Residents’ Rights to Inform Good Governance and Contest Cases which Could Cause Them Harm.*

The LUC’s decision-making process is subject to Chapter 91 rulemaking authority, which also requires the opportunity for contested cases.⁶ The purpose of these contested case hearings is to provide the LUC with the complete picture – containing all relevant information – for the LUC to make an informed and appropriate decision on any petition to reclassify those lands. Contested cases are an exercisable right of individuals who will likely be impacted by the decision of the LUC. This

³ State of Hawaii Office of Planning, *Hawaii 2050 Sustainability Plan – Ten Year Measurement Update (2008-2017)*, March 7, 2018, page 39.

⁴ State of Hawaii, Office of Planning, *Increased Food Security and Food Self-Sufficiency Strategy*, October 2012, page 16, available at http://files.hawaii.gov/dbedt/op/spb/INCREASED_FOOD_SECURITY_AND_FOOD_SELF_SUFFICIENCY_STRATEGY.pdf, last accessed February 9, 2023.

⁵ State of Hawaii Land Use Commission, *Completed Dockets: Boundary Amendments*, available at <https://luc.hawaii.gov/completed-dockets/boundary-amendments/>, last accessed 1/31/2023.

⁶ HRS §205-19.



HB676 HD1 SD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
Senate Committee on Judiciary

specific process is not available at the county level and would deprive impacted residents from being able to contest the reclassification of lands based on the LUC's mandated criteria for review. The measure as written does not further explicitly require that residents will retain an opportunity for contested cases nor guarantee the resident's right to contest cases.

Accordingly, the measure does not explicitly require that County DBA processes comply with Chapter 92 Sunshine Law requirements. By not mandating that DBA petitions must be reviewed and approved by a public decision making body in a public hearing, this measure limits Hawaii residents' opportunities to inform good governance and participate in the decision-making process that is currently guaranteed under existing law before the LUC.

IV. County authority to reclassify Conservation lands is a violation of Hawaii residents' Environmental Rights under the Hawaii State Constitution.

Article XI, Section 9 of the Hawaii State Constitution states that "[e]ach person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources."⁷ The measure allows Counties to reclassify all lands over 15 acres within the Conservation District without guaranteeing the rights of the public to inform good governance. Conservation district lands exist to protect Hawai'i's natural beauty and to promote and enhance a clean and healthful environment. The Department of Land and Natural Resources (DLNR) is mandated to protect and maintain Conservation lands by closely regulating the permitted uses of Conservation district lands. By allowing the Counties to reclassify Conservation district lands, this would allow Counties to circumvent DLNR's mandate and put at risk all lands within the Conservation district.

The end result of the measure as written is that the LUC would only have the authority to oversee DBAs for IALs and for land areas in the Conservation District less than 15 acres in size. This would effectively put the existence of Conservation districts state-wide in the hands of the Counties to develop for affordable housing only as defined by the Counties themselves.

OHA appreciates the opportunity to provide testimony on this measure and urges the Legislature to DEFER HB676 HD1 SD1. Mahalo nui loa.

⁷ Art. XI, Sec. 9, Haw. Stat. Con.

JOSH GREEN, M.D.
GOVERNOR



DEAN MINAKAMI
INTERIM EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
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IN REPLY PLEASE REFER TO:

Statement of
DEAN MINAKAMI
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON JUDICIARY

April 5, 2023 at 9:45 a.m.
State Capitol, Room 016

In consideration of
H.B. 676 HD1 SD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS.

HHFDC **strongly supports** H.B. 676 HD1 SD1, which authorizes the appropriate county land use decision-making authority to determine State Land Use District boundary amendments involving land areas over 15 acres (except certain important agricultural lands) when the land will be used for affordable housing, subject to certain county ownership, affordability level, and other conditions.

Last fall, HHFDC and the Hawaii Public Housing Authority convened the working group established under Act 305, Session Laws of Hawaii 2022, also known as the Yes In My Backyard (YIMBY) Act, to explore ways to reduce zoning, regulatory, and statutory barriers to affordable housing development.

Currently, applicants for boundary amendments involving land areas of 15 acres or less apply directly to the counties instead of to the Land Use Commission. There was a strong desire by several members of the YIMBY Act working group to give the counties greater authority to process applications for State Land Use District boundary amendments to reduce the time and costs of affordable housing development.

Thank you for the opportunity to provide testimony on this bill.

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director



Susan K. Kunz
Housing Administrator

Harry M. Yada
Assistant Housing Administrator

County of Hawai'i
Office of Housing and Community Development

1990 Kino'ole Street, Suite 102 • Hilo, Hawai'i 96720 • (808) 961-8379 • Fax (808) 961-8685
Existing Housing: (808) 959-4642 • Fax (808) 959-9308
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April 3, 2023

TESTIMONY IN SUPPORT OF HOUSE BILL 676 HD1, SD1
A BILL FOR AN ACT RELATING TO DISTRICT BOUNDARY AMENDMENTS
COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Hearing Date and Time: Wednesday, April 5, 2023, at 9:45 AM
Place of Hearing: Conference Room 016 and via Videoconference

Aloha Honorable Chair Rhoads, Vice Chair Gabbard, and
Members of the Committee on Judiciary,

On behalf of the Office of Housing and Community Development of the County of Hawai'i, I am providing testimony in House Bill 676 HD1, SD1 that authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres if the county has adopted an ordinance that meets certain requirements.

The Office of Housing and Community Development supports measures that streamline affordable housing production by reducing regulatory and statutory barriers that delay time and increase costs of such development.

HRS 205 §3.1 delegates decision-making authority to the County for district boundary amendments on parcels of 15 acres or less. Hawai'i County has an established procedure for approving district boundary amendments using established criteria as well as conducting public hearings at every step of the process.

House Bill 676 HD 1 simply expands the County's decision-making process for larger parcels that include affordable housing development while continuing to allow for community input at the local level.

Thank you for the opportunity to provide testimony in **support** of this measure.

Mahalo,


Susan K. Kunz
Housing Administrator

2294adkjr





SIERRA CLUB OF HAWAI'I

SENATE COMMITTEE ON JUDICIARY

April 5, 2023

9:45 AM

Conference Room 016

Offering **COMMENTS** on **HB676 HD1 SD1**: Relating to District Boundary Amendments

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i offers the following **COMMENTS AND CONCERNS** regarding HB676 HD1 SD1, which may remove important protections for natural and cultural resources, Native Hawaiian traditional and customary practices, food security, employment opportunities, and other public interests in major land use district boundary amendments – without a commensurate benefit to our islands' affordable housing goals.

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, employment opportunities, and other public interests that may be affected by the reclassification of conservation, rural, agricultural, and urban lands. The institutional knowledge garnered by the LUC over the decades also allows it to oversee such reclassification actions, and resolve and mitigate conflicts and concerns, in a highly efficient manner.

Moreover, unlike county land use decisionmaking, the quasi-judicial nature of the LUC district boundary amendment process also ensures that testimony and other evidence from experts, cultural practitioners, and other stakeholders are adequately and explicitly considered in district boundary amendment approvals, serving as a key mechanism for objectivity, transparency, and accountability.

Accordingly, the Sierra Club of Hawai'i has significant concerns regarding the proposed elimination of the LUC's role in evaluating and administering land use district boundary amendment petitions for county-owned lands. **While the Sierra Club does appreciate the “guardrails” provided for under this measure, as detailed further below, the overall approach of removing the LUC's important functions will not help, and could potentially exacerbate, our housing challenges, while inviting conflict and unintended consequences for our environment and social fabric.**

The Sierra Club does offer below an alternative approach of promoting housing production through the expansion of the LUC's enforcement authorities, to ensure that promised housing units are actually developed as required under district boundary amendment approvals.

The LUC is Not a Barrier to Affordable Housing

The Sierra Club does appreciate this measure's intent to promote the production of affordable housing, as well as its inclusion of conditions to provide for county land ownership and to acknowledge the need for due process¹ in the potentially vast land use changes that would be exempted from LUC review. **However, the Sierra Club notes that the LUC is not the 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 section 201H-38 "affordable housing" projects such as those described in HB676 HD1 SD1, this deadline is shortened to 45 days.² **According to LUC staff, throughout the 2010s, all major 201H affordable housing projects were approved by the LUC within the 45 day timeline.**³

County Administration of Large-Scale Land Use Changes May Inhibit Affordable Housing

Notably, by having county planning departments solely shoulder the responsibility of balancing the various cultural, environmental, food security, housing, job production, and other interests and rights of the public in large-scale and complex development proposals, **this measure may only inhibit their capacity to process other permits and applications (such as for accessory dwelling units, new or retrofitted infrastructure, increased density for existing housing structures, variances, smaller land use changes, etc.) that may be critical to addressing our multi-faceted housing crisis.**

Expansion of the LUC's Enforcement Authorities May Much More Effectively Promote Housing Production

The Sierra Club does believe that amendments to the LUC's authorities could facilitate housing production, and encourages 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, tens of thousands of units approved by the LUC have not been constructed, despite the assurances of district boundary amendment petitioners; 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:**

¹ It is unclear whether this measure seeks to ensure that county ordinances employ a quasi-judicial contested case hearing process in evaluating land use district boundary amendment petitions. The Sierra Club emphasizes the important role played by this quasi-judicial process in resolving conflicts and mitigating concerns. Long employed by the LUC, the quasi-judicial process specifically permits intervening parties to present expert and kama'aina evidence and testimony and cross-examine witnesses; the quasi-judicial process ensures that evidence on record is explicitly considered and used as the basis for transparent decisionmaking, in sharp contrast to the potentially arbitrary quasi-legislative process typically employed by the counties in their land use decisionmaking.

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

³ 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/>.

"§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."

Accordingly, the Sierra Club of Hawai'i strongly cautions the Committee against pursuing a strategy that is unlikely to meet our affordable housing needs, and that may only result in significant and long-lasting consequences for our islands and communities. Mahalo nui for the opportunity to testify.

April 5, 2023

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

State Capitol, Conference Room 016 & Videoconference

RE: House Bill 676, HD1, SD1, Relating to District Boundary Amendments

HEARING: Wednesday, April 5, 2023, at 9:45 a.m.

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR **supports** House Bill 676, HD1, SD1, which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the Land Study Bureau's detailed land classification as overall (master) productivity class A or B if the county has adopted an ordinance that meets certain requirements. Effective 7/1/3000.

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. Currently, 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 County Council.

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 45,497, housing units to meet demand in Hawai'i by 2030.¹ Ultimately, we have a housing supply problem, and this measure is a creative approach to address those challenges, by allowing the counties to reclassify lands over 15 acres that it owns and retains, provided that the land is used for affordable housing.

For the foregoing reasons, Hawai'i REALTORS® supports this measure. Mahalo for the opportunity to testify.

¹ Department of Business, Economic Development & Tourism. (2019). *Hawaii Housing Demand 2020-2030*. <https://files.hawaii.gov/dbedt/economic/reports/housing-demand-2019.pdf>



Senate Committee on Judiciary

Hawai'i Alliance for Progressive Action (HAPA) Opposes: HB676 HD1 SD1

Wednesday, April 5th, 2023 at 9:45am, Conference Room 016

Dear Chair Rhoads, Vice Chair Gabbard and members of the committee,

HAPA **opposes HB676 HD1 SD1**, which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over 15 acres.

There are a range of public interests that may be impacted, potentially for generations, by large scale land use changes. These interests - environmental, cultural, agricultural, socioeconomic, and others – must be carefully and transparently balanced, to address concerns, minimize unnecessary impacts, and minimize conflict and controversy. The Land Use Commission has decades of experience in doing just this, and should not have its ability to oversee land use district reclassifications limited or eliminated.

Even with the conditions proposed under this measure, this bill still poses the risk of unintended consequences and unnecessary impacts to a wide range of public interests by forcing county planning departments to take on the new burden of solely administering large-scale land use district reclassification petitions. This could even have the inadvertent effect of delaying affordable housing production, by reducing planning departments' capacity to administer other permits and applications needed for housing development and redevelopment.

Rather than reduce the LUC's authority, the committees may wish to consider providing it with enforcement tools that can better hold developers accountable when they fail to produce promised affordable and workforce housing units after their petitions for district boundary reclassifications are approved.

Accordingly, I respectfully urge the committees to defer HB676 HD1 SD1. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne Frederick', is written over a light blue horizontal line.

Anne Frederick
Executive Director



April 5, 2023
9:45 a.m.
Conference Room 016
Via Videoconference

To: Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

HB676 HD1 SD1 — RELATING TO DISTRICT BOUNDARY AMENDMENTS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB676 HD1 SD1](#), which would authorize Hawaii's counties to determine district boundary amendments for certain county-owned land areas greater than 15 acres, provided the counties enact ordinances that meet criteria specified by the bill.

Those criteria include that all the housing constructed on the lands be used for affordable housing as defined by county ordinance; that the counties retain ownership of the lands for at least 99 years; that the district boundary amendments be consistent with the county or community plans, if such plans exist; that the counties mitigate the impact that the housing development might have on roads and schools; that at least 75% of the housing units on the land be set aside for persons and families with incomes at or below 100% of the area median income; and that the ordinance incorporates due process into the procedure for determining DBAs pursuant to state law and the public trust doctrine.

This measure correctly diagnoses one of the causes of Hawaii's housing crisis: excessive red tape. The state Land Use Commission's authority over district boundary amendments greater than 15 acres often puts a roadblock in the way of new housing projects.

A 2020 Grassroot Institute of Hawaii report, "[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. Expanding the counties' powers to reclassify land through the district boundary amendment process was just one of the report's suggestions.¹

That means for us at the Grassroot Institute, HB676 is a welcome proposal, but too narrow in its focus. County-owned housing projects might benefit from this measure, but should it become law, housing developments on private lands would still be stuck in the same arduous DBA process.

This measure's potential could be better realized if it were amended to extend to privately held lands as well, not just those owned by the counties.

In addition, HB676 is ambiguous about the point that the counties own and retain ownership of the lands for 99 years. This raises questions about whether the houses could be sold fee simple or through some other mechanism, such as a leasehold.

Moreover, the length of that term suggests that this situation— leasehold or fee simple — is intended to end at some point, creating further difficulties for the counties and uncertainty around the home developments in particular.

Ultimately, the ambiguity of the 99-year ownership provision, combined with the budgetary and administrative implications involved, would create an unnecessary limit on the power of the counties to use their lands to increase the supply of housing.

The fundamental requirement that the counties own the lands makes sense in the context of this bill, but we suggest that the 99-year ownership and maintenance requirements be removed, thereby allowing the counties to develop housing according to local needs.

In addition, the measure's limitation to affordable housing projects as defined by county ordinance creates a confusing redundancy when combined with the requirement that 75% of the housing units be set aside for persons and families with incomes at or below 100% of median area income. First, the county affordable housing requirements already include provisions to define who qualifies for affordable housing, and these requirements will definitely overlap with the additional 75% affordable clause.

¹ Jackson Mekanikeoe Grubbe, "[Reform the Hawaii LUC to encourage more housing](#)," Grassroot Institute of Hawaii, September 2020.

In addition, this double affordable housing requirement is likely to raise project costs for the counties. Known as “inclusionary zoning,” this type of requirement for homebuilding can make private projects financially unfeasible, leading to fewer housing units being constructed.

A large body of research shows that inclusionary zoning makes housing less affordable, since developers respond to such mandates by building fewer homes.² To make matters worse, the mandates force developers to raise the prices of their 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 such as Maui that have a 50% inclusionary zoning requirement, it is nearly impossible to make a profit building housing without a government subsidy.³ As the required percentage goes up, 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%.⁴

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.”⁵

A 2004 study by the Reason Foundation found that inclusionary zoning led to reduced housing growth in the San Francisco Bay Area region.⁶

² 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.

³ “[Inclusionary Housing Calculator 2.0](#),” Grounded Solutions Network, 2019.

⁴ “[Project Summary](#),” Grounded Solutions Network, accessed Feb. 9, 2021.

⁵ Carl Bonham, “[The Unintended Consequences of Affordable Housing Policy](#),” The Economic Research Organization at the University of Hawaii, Sept. 8, 2013.

⁶ Benjamin Powell and Edward Stringham, “[Housing supply and affordability](#),” Reason Foundation, April 1, 2004.

While well-intentioned, the inclusionary zoning requirement could frustrate the intent of the bill by creating a regulatory roadblock to the increase of the housing supply.

For example, a 2020 survey of 1,030 municipalities across the U.S. showed that only three had inclusionary zoning requirements higher than 75%: Aquinnah, Massachusetts and Santa Paula and Oxnard, California.⁷ All three required 100% affordable housing, and all three saw construction of new homes decline by more than 60% during the decade after the policies were adopted.

Change in units built after 100% affordable housing requirement

Municipality	Policy adopted	Units built 2000-2009	Units built 2010-2019	% change
Santa Paula, Calif.	2012	350	118	-66.29%
Oxnard, Calif.	2012	6,948	2,642	-61.97%
Aquinnah, Massl	2016	82	27	-67.07%

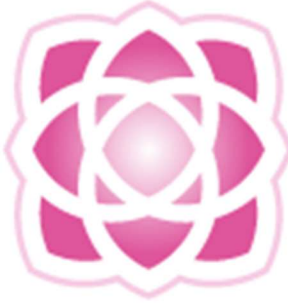
Source: [“Selected Housing Characteristics,”](#) U.S. Census Bureau, Table DP04, 2019. [“Inclusionary Housing Database,”](#) Grounded Solutions Network, 2020.

We suggest amending this measure to eliminate or reduce the inclusionary zoning mandate. This would help prevent the counties from being bogged down in expensive projects that might ultimately discourage the construction of new units.

Thank you for the opportunity to submit our comments.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

⁷ [“Inclusionary Housing Database,”](#) Grounded Solutions Network, 2020.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE SENATE COMMITTEE ON
JUDICIARY
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 016
WEDNESDAY, APRIL 5, 2023 AT 9:45 A.M.

To The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the committee on Judiciary

SUPPORT FOR HB676 HD1 SD1 RELATING TO DISTRICT BOUNDARY AMENDMENTS

The Maui Chamber of Commerce **supports HB676 HD1 SD1** which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the land study bureau's detailed land classification as overall (master) productivity class A or B if the county has adopted an ordinance that meets certain requirements.

The State land use commission (LUC) is responsible for the classification of certain land parcels in the urban, rural, agricultural, and conservation districts. The LUC also acts on land use district boundary amendment petitions involving the reclassification of lands in the conservation district, land areas greater than fifteen acres, and lands delineated as important agricultural lands. The county Planning Commissions, currently, handle the hearings for the LUC for parcels 15 acres or less.

The Chamber feels that enabling the counties to reclassify certain lands intended for affordable housing development in which the county owns, will make larger scale projects economically feasible for 100% affordable housing to be built. Counties are able to reclassify lands that are up to 15 acres in size. Removing that limit for 100% affordable housing (with 75% allocated for families at 100% or less of the area median income) should expedite the permitting process therefore lowering the costs for affordable housing.

For these reasons, we **support HB676 HD1 SD1**.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.