



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

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March 1, 2023

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

Before the
Senate Committees on
Judiciary
and
Ways and Means

Friday March 3, 2023
10:00 AM
State Capitol, Room 211

In consideration of
SB 937 SD1
RELATING TO THE LAND USE COMMISSION

Chairs Rhoads and Dela Cruz; Vice Chairs Gabbard and Keith-Agaran; and members of the Senate Committees on Judiciary; and Ways and Means:

The Land Use Commission (LUC) provides the following comments on SB 937 SD1. The LUC is not opposed to Section 1 of this measure. However, the LUC has concerns with Section 3 of this measure which shortens the time that the Commission must hear a matter before it to 120 days and the time to issue a final decision to 180 days before it is automatically approved.

The Commission does not control filings and its workload. Petitions are filed by land owners/developers and they are then scheduled for hearing as soon as possible. The statutes and rules surrounding contested case hearings and legal notice, requires the parties be provided with the time to prepare their case and to notify the public of their intentions. Currently, the Office of Planning and Sustainable Development (OPSD), which is party to all of our proceedings, requires a minimum of 60 days to prepare answering briefs. Another 15 to 20 days is then required for the State and county submission of responses and witness lists. Once that is complete another three weeks are required for the LUC to prepare its board package and notice the hearing. Simply put, due process requirements can take up to 100 days on their own.

The Commission always hears matters within 180 days from when a petition is deemed complete. However, when matters are complicated, such as the Ho`opili and Koa Ridge petitions, and the Commissions schedule is full, the shortened time frame may cause projects to get approved without hearing. This will cause extreme prejudice to the State and the community. It could result in the destruction of cultural resources and the loss of Native Hawaiian gathering rights. In addition, there could be negative impacts to public infrastructure, and significant damage to surrounding lands, watersheds and the nearshore environment from adverse impacts resulting from the project.

It should be remembered that the Land Use commissioners are volunteers, serving without compensation. Currently they donate 20% of their time to public service. This is a significant sacrifice. If the LUC were required to hold additional meetings to meet this compressed deadline it would cause them severe hardship.

We would strongly suggest that Section 3 be removed from this measure.

Thank you for the opportunity to testify on this matter.

March 3, 2023

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means
State Capitol, Conference Room 211 & Videoconference

RE: Senate Bill 937, SD1, Relating to the Land Use Commission

HEARING: Friday, March 3, 2023, at 10:00 a.m.

Aloha Chair Rhoads, Chair Dela Cruz, and Members of the Joint Committees:

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 670, HD2, which specifies that a simple majority of affirmative votes of the members of the Land Use Commission present at a meeting and qualified to vote is required for any boundary amendment. Reduces the number of days by when the Land Use Commission must act for certain actions related to amendments to district boundaries. Effective 7/1/2050.

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 As the Land Use Commission is an integral part of the district boundary amendment process, this measure may help streamline the land use process and help our State address our housing challenges.

For the foregoing reasons, Hawai'i Association of 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>



March 3, 2023
10 a.m.
Conference Room 211
Via Videoconference

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

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

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

RE: SB937 SD1 — RELATING TO THE LAND USE COMMISSION

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [SB937 SD1](#), which would streamline the process by which the state Land Use Commission acts on district boundary amendments.

Under this bill, the number of affirmative votes required for a boundary amendment would be reduced from six to a simple majority of LUC members present and qualified to vote.

In addition, the number of days from filing a petition in which the commission must hold a hearing would be reduced from 180 to 120, and the number of days in which the commission must act to approve, deny, or modify the petition would be reduced from 365 to 180.

This bill correctly identifies and addresses one of the major causes for the slow growth of housing in this state: the delays caused by multiple layers of bureaucratic approvals.

Delays in county and state approvals — whether caused by permitting backlogs or the difficulties of navigating Hawaii’s multitiered approval process — are one of the reasons Hawaii’s average approval delay is three times the national mean.¹

We commend this committee for considering a bill that would reduce such delays at LUC.

Over time, the LUC has evolved into a kind of state-level zoning and approval agency, which has added to the delay and bureaucracy faced by those looking to develop more housing. A 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.

The Grassroot Institute report focused heavily on ways to reduce the scope of the LUC, leaving it free to focus on statewide environmental issues and district boundary amendments of conservation lands. But it also promoted the idea of making the LUC more efficient in general.

Further reform should look at ways to continue refocusing the LUC to better achieve its original purpose, but in the short term, this bill would help reduce the wait for housing developments that require LUC approval.

For anyone who wants to see more homes built, enactment of this bill would be an important and very welcome step forward. We urge the committee to pass this bill.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

¹ Rachel Inafuku, Justin Tyndall and Carl Bonham, [“Measuring the Burden of Housing Regulation in Hawaii,”](#) Economic Research Organization at the University of Hawaii, April 14, 2022, p.7.



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Senate Committee on Judiciary
Senate Committee on Ways and Means

March 3, 2023

10:00 AM

Room 211

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees of OHA to **STRONGLY OPPOSE SB937 SD1**, which would reduce the number of Land Use Commission (LUC) votes needed to approve a district boundary amendment (DBA) from a super majority of the LUC to a simple majority and to reduce the period of time the LUC has to act on a petition. **OHA’s opposition to this measure stems from the measure’s disregard for the State’s constitutional duties, the direct harm such a measure may cause for Hawai‘i’s sustainability goals, and from the fact that the LUC was created as a necessary ‘check-and-balance’ to ensuring that Hawai‘i’s lands were preserved and protected, while encouraging best uses.¹ Removing these requirements erodes this system of protection.**

Article XI, Section 3 of the Hawai‘i State Constitution states that “[l]ands identified by the State as **important agricultural lands... shall not be reclassified by the State or rezoned by its political subdivisions without... [being] approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.**”² The proposed measure, as written, amends Hawai‘i Revised Statutes §205-1 to authorize the LUC to approve any DBA by a simple majority, including DBAs for important agricultural lands, rather than requiring a two-thirds vote of the body as required. This would not only threaten IAL, but also negatively affect food sustainability in Hawai‘i.

Currently, “more than 80% of Hawai‘i’s food is imported”³. 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 35% of the fruits and vegetables consumed were locally grown.”⁴ The Office of Planning has previously stated that

¹ State of Hawai‘i Land Use Commission, Purpose of the Law, available at, <https://files.hawaii.gov/luc/about.htm#:~:text=The%20Commission%20is%20responsible%20for,which%20lands%20are%20best%20suited.&text=The%20Commission%20is%20composed%20of,each%20of%20the%20four%20counties>.

² Haw. Const. art. XI, § 3.

³ 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.

⁴ State of Hawaii Office of Planning, *Hawaii 2050 Sustainability Plan – Ten Year Measurement Update (2008-2017)*, March 7, 2018, page 39.



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food production in Hawai'i is hampered in part by “pressure on the use of important agricultural land for higher value purposes.”⁵

While housing is a critical need in the State of Hawai'i , so too is reliable access to food. Nearly every 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.⁶ 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.

As of September 4, 2020, a total of 136,489 acres of land has been designated by the LUC as IAL, with approximately 37,410 acres of IAL on Kauai, 15,205 acres of IAL on Oahu, 27,102 acres of IAL on Maui, and 56,772 acres of IAL on the island of Hawai'i .⁷ In designating IAL, the LUC has played a protective role in protecting IAL from “higher value” uses, which in turn has helped support Hawai'i ’s food sustainability goals.

By simplifying the DBA process for the LUC, this measure would permanently remove more Agricultural lands from use for food production and directly impact food sustainability in Hawai'i . Removing Agricultural lands from agricultural uses is only a “higher value” for developers making money, it would not be a higher value for all of the residents in Hawai'i that depend on imported food that can be disrupted by supply chain issues, such as what the State just experienced during the pandemic.

⁵ 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.

⁶ 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.

⁷ State of Hawaii, Department of Agriculture, *Designated Important Agricultural Lands – by Island*, September 4, 2020, available at <https://hdoa.hawaii.gov/wp-content/uploads/2022/03/IAL-voluntary-summary-updated-9-4-20.pdf>, last accessed February 9, 2023.



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By weakening the 2/3 majority requirement of the LUC for all DBAs, including DBAs involving IAL, this measure would violate the Hawai'i State Constitution.

The proposed removal of the minimum requirement of “not less than sixty” days under HRS §205-1(b) would severely infringe upon the ability for residents and communities to be informed of pending action by the LUC and to organize and participate in the planning process. The removal of the sixty day minimum period would create pressure on the LUC to render decisions as quickly as possible while disincentivizing the LUC from pursuing its primary purpose as a body to protect lands state wide and ensure that the best, most appropriate use of land is pursued, rather than what would make developers the most money.

OHA appreciates the opportunity to express our concerns with the implications of this measure and urges the Legislature to **DEFER SB937 SD1**. Mahalo nui loa.