



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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February 1, 2023

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

LATE

Before the
**House Committee on
Housing**

Wednesday February 1, 2023
9:30 AM
State Capitol, Room 312

In consideration of
HB 670
RELATING TO THE LAND USE COMMISSION

Chair Hashimoto; Vice Chair Aiu; and members of the House Committee on Housing:

The Land Use Commission (LUC) provides the following comments on HB 670. The LUC is not opposed to Section 1 of this measure which reduces the number of required votes to approve a petition from 6 to 5. However, the LUC has concerns with Section 3 of this measure which shortens the time that the Commission has to hear a matter before it is automatically approved from 365 days to 180 days.

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.



HB670
RELATING TO THE LAND USE COMMISSION
HOUSE COMMITTEE ON HOUSING

February 1, 2023

9:30 AM

Room 312

The Office of Hawaiian Affairs (OHA) **STRONGLY OPPOSES** HB670, 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 reduce the LUC’s review process window for DBA applications from 365 days to 180 days.

Article XII, Section 6 of the Constitution of the State of Hawaii mandates that OHA “formulate policy relating to affairs of native Hawaiians and Hawaiians[.]”¹ As part of this mandate, OHA advocates on behalf of native Hawaiians to protect, preserve, and advance native Hawaiian interests. One of the core interests of native Hawaiians is the preservation, protection, and proper utilization of conservation and agricultural lands for sustainable agricultural development and traditional rights and practices. For the sake of the preservation, protection, and proper utilization of conservation and agricultural lands, and the interests of native Hawaiians, OHA must **STRONGLY OPPOSE** HB670 on the basis that the proposed measure would violate the powers and duties granted to the State by the Constitution of the State of Hawaii and directly harm native Hawaiian interests.

Article XI, Section 1 of the Constitution of the State of Hawaii mandates that “the State and its political subdivisions **shall conserve and protect Hawaii’s natural beauty and all natural resources**, including land, water, air, minerals, and energy sources, and **shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State**. All public natural resources are held in trust by the State for the benefit of the people. [emphasis added]”² The stated purpose of this measure is to explicitly benefit new housing developments by “reform[ing] the decision-making process of the land use commission.” As written, the purpose of this measure is not related to the conservation and protection of Hawaii’s natural beauty, nor is it to promote the development and utilization of land in a manner consistent with their conservation and the self-sufficiency of the State.

While housing is a critical need in the State of Hawaii, DBAs have generally been used to convert Agricultural or Conservation District lands to Urban or Rural District lands. A

¹ Haw. Const. art. XII, § 6.

² Haw. Const. art. XI, § 1.

HB670
RELATING TO THE LAND USE COMMISSION
HOUSE COMMITTEE ON HOUSING

review of every 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 only one being initially denied only to be granted upon reconsideration; three DBAs have been withdrawn by the petitioner, one other was terminated by the petitioner, and finally, three DBAs appear to be currently in progress.³ 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. Based on the history of DBA decisions by the LUC over the past 13 years, the proposed measure will have the effect of promoting the development of land that is NOT consistent with the conservation of land, and will actively reduce the ability of the State to achieve self-sufficiency, by making it easier to permanently remove Agricultural lands from present and future cultivation. As such, the proposed measure will violate the State’s Article XI, Section 1 duty to **“promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.”**

Article XI, Section 3 of the Constitution of the State of Hawaii 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.**”⁴ The proposed measure, as written, amends Hawaii 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 under Article XI, Section 3 of the State Constitution. As such, the proposed measure is unconstitutional by explicitly attempting to authorize the LUC to grant any DBA by a simple majority vote, regardless of if that DBA affects important agricultural lands.

OHA appreciates the opportunity to express our concerns with the implications of this measure and urge the Legislature to **DEFER** HB760. Mahalo nui loa.

³ 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.

⁴ Haw. Const. art. XI, § 3.

February 1, 2023

The Honorable Troy Hashimoto, Chair

House Committee on Housing

State Capitol, Conference Room 312 & Videoconference

RE: House Bill 670, Relating to the Land Use commission

HEARING: Wednesday, February 1, 2023, at 9:30 a.m.

Aloha Chair Hashimoto, Vice Chair Aiu, 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 670, which specifies that a simple majority of affirmative votes by members of the Land Use Commission 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.

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, that this measure may help streamline the land use process and help our State address our housing challenges.

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

¹ <https://files.hawaii.gov/dbedt/economic/reports/housing-demand-2019.pdf>



Feb. 1, 2023
9:30 a.m.
Conference Room 312
Via Videoconference

To: House Committee on Housing
Rep. Troy N. Hashimoto, Chair
Rep. Micah P.K. Aiu, Vice Chair

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

RE: HB670 — 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 [HB670](#), which would streamline the process by which the state Land Use Commission acts on boundary amendments.

Under this bill, the number of affirmative votes required for a boundary amendment would be reduced from six to a simple majority.

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 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.