



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 937, RELATING TO THE LAND USE COMMISSION.

BEFORE THE:

SENATE COMMITTEE ON WATER AND LAND

DATE: Wednesday, February 15, 2023 **TIME:** 12:30 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Melissa D. Goldman, Deputy Attorney General

Chair Inouye and Members of the Committee:

The Department of the Attorney General offers the following comments.

This bill would amend section 205-1, Hawaii Revised Statutes (HRS), by amending subsection (a) to specify that a simple majority of affirmative votes by members of the Land Use Commission (LUC) is sufficient to approve any boundary amendment. The bill also shortens the timeframe for the LUC to act on certain matters related to district boundary amendments. The Department has identified one minor issue with the proposed text regarding the votes by LUC members and offers the following suggestion to address it.

In the amendment made to section 205-1(a) by section 2 on page 3, lines 2-3, of the bill the proposed wording would read, "A simple majority of affirmative votes shall be necessary for any boundary amendment." We believe that the wording is vague with respect to how this "simple majority" should be calculated. Elsewhere in the HRS, this distinction is made explicit. See, e.g., section 171-5, HRS ("Any action taken by the board shall be by a simple majority *of the members of the board*; provided that a simple majority *of the members present at a meeting and qualified to vote* shall be required to allow any decision pursuant to section 183C-6(b)" (emphases added)).

Although this vagueness is not fatal to the bill, we believe that clarification would be useful to guide the LUC members, practitioners and members of the general public who appear before the LUC, and also the Deputy Attorneys General who advise the

LUC during its public meetings. Specifically, we recommend that the bill be amended to indicate whether the "simple majority" wording is a reference to "a simple majority of members to which the commission is entitled" or "a simple majority of members present at a meeting and qualified to vote." A third option, which would account for situations when fewer than nine commissioners are currently serving on the LUC, would be to reference "a simple majority of members currently serving on the commission."

Thank you for the opportunity to testify.



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
EXECUTIVE OFFICER

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February 13, 2023

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

Before the
Senate Committee on
Water and Land

Wednesday February 15, 2023
12:30 PM
State Capitol, Room 229

In consideration of
SB 937
RELATING TO THE LAND USE COMMISSION

Chair Inouye; Vice Chair Elefante; and members of the Senate Committee on Water and Land:

The Land Use Commission (LUC) provides the following comments on SB 937. 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.



February 15, 2023
12:30 p.m.
Conference Room 229
Via Videoconference

To: Senate Committee on Water and Land
Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

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

RE: SB937 — 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](#), 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.

February 15, 2023

The Honorable Lorraine Inouye, Chair

Senate Committee on Water and Land
State Capitol, Conference Room 229 & Videoconference

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

HEARING: Wednesday, February 15, 2023, at 12:30 p.m.

Aloha Chair Inouye, Vice Chair Elefante, 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** Senate Bill 937, 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, 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>