



HB260
RELATING TO HOUSING

Ke Kōmike Hale o ke Kuleana Hale Noho
Ke Kōmike Hale o ka Wai a me ka ‘Āina

Pepeluali 9, 2021

8:30 a.m.

Lumi 423

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment will recommend that the Board of Trustees **OPPOSE** HB260, which would shift State Land Use Commission (LUC) oversight to the counties for District Boundary Amendments (DBAs) for rural, urban, and non-important agricultural (non-IAL) lands between **15 to 100 acres** if at least 50% of the land areas would be dedicated for those with incomes at or below 140% of the area median income (AMI). Although OHA appreciates this bill’s intention to provide affordable housing for Hawai‘i residents, as written, **HB260 would not provide a solution to affordable housing development delays and instead substantially impair the LUC’s ability to consider and mitigate impacts to natural and cultural resources and associated Native Hawaiian traditional and customary practices.** Should the Committees choose to move HB260, OHA respectfully urges the Committees to consider amendments that will decrease the likelihood for potential parceling like the language found in SB3104 (2020).

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.”¹ 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.² **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.”³ LUC DBA review accordingly entails an analysis of various environmental, cultural, and socioeconomic

¹ State of Hawai‘i Land Use Commission website, History, last accessed on Feb. 4, 2020, available at <https://luc.hawaii.gov/about/history-3/>.

² *Id.*

³ *Id.*

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.”⁴ **In many cases, such LUC review may also 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.**

Currently, the LUC oversees DBAs for (1) lands within conservation districts (regardless of acreage), (2) lands designated (or sought to be designated) as important agricultural lands (regardless of acreage), and (3) lands greater than 15 acres in the agricultural, rural, and urban districts. County authorities already enjoy decision-making authority over DBAs for lands comprising up to 15 acres in the (non-IAL) agricultural, rural, and urban districts – for comparison purposes, 15 acres is roughly equal to about 11.5 football fields worth of land. By further eliminating the LUC’s authority over DBAs involving rural and non-IAL agricultural lands between 15 to 100 acres – equivalent in area to roughly 75 football fields – **this measure may undermine critical procedural mechanisms and substantive safeguards that represent one of the few means by which natural and cultural resources and their associated Native Hawaiian traditional and customary practices are protected in land use decision-making.**

Notably, the loss of the LUC’s careful and comprehensive consideration of the needs of and impacts to both Native Hawaiians and the State generally would not be balanced by any marginal benefit gained in the production of truly affordable housing units most needed by Hawai’i residents. **No data or other factual information suggests that the LUC review process contributes to delays in housing development timelines.**⁵ In fact, the LUC consistently decides on 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.⁶ Indeed, between 2010 to 2017, the LUC approved seven housing-related petitions proposing 9,389 housing units, with an estimated 3,675 of those units being reserved as affordable; over the past two decades, **the LUC has already approved DBAs on O’ahu to develop over 20,000 residences that have not yet been built due to other delays, such as**

⁴ *Ka Pa’akai o ka ‘Āina v. Land Use Commission*, 94 Haw. 31 (2000).

⁵ Jonathan Likeke Scheuer, *How to Redefine the Housing Crisis in Hawai’i*, HONOLULU CIVIL BEAT, December 13, 2020, available at <https://www.civilbeat.org/2020/12/how-to-redefine-the-housing-crisis-in-hawaii/>.

⁶ THE STATE LAND USE TASK FORCE, STATE LAND USE SYSTEM REVIEW DRAFT REPORT III (2015).

water and sewer infrastructure capacity. 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.

Accordingly, OHA urges the Committees to **HOLD** HB260, for the reasons provided above. Mahalo nui loa for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEES ON HOUSING AND WATER AND LAND

**TUESDAY, FEBRUARY 9, 2021
8:30 A.M.
VIA VIDEO CONFERENCE**

**HOUSE BILL NO. 260
RELATING TO HOUSING**

Chairpersons Nakamura and Tarnas and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 260. If enacted, this measure would authorize the counties to process boundary amendment petitions on the Agricultural District greater than 15 acres but not more than 100 acres, provided that the land areas:

- Are not designated as Important Agricultural Lands, and
- Fifty percent of the housing units on the to be reclassified are for persons and families with incomes at or below 140 percent of the area median income.

The Department of Agriculture has strong concerns about the potential impact on the State's agricultural land resources should this measure be adopted. The measure does not provide guidance where these petitions may be located on agricultural land other than not on Important Agricultural Land. The Department offers the following amendments to reduce some of the potential adverse impacts this measure poses as written.

Page 3, line 11 to page 4, line 2

Additions are bold and double-underscored, deletions are bracketed and struck through.



" (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~~]:

(1) Less than fifteen acres presently in the rural and urban districts [~~and lands less~~];

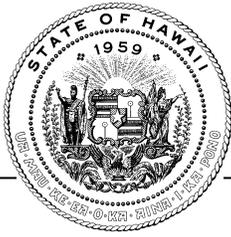
(2) Less than fifteen acres in the agricultural district that are not designated as important agricultural lands[~~and~~]; [~~and~~]

(3) Fifteen to one hundred acres in the rural and urban districts; and

(4) [~~and~~] Fifteen to one hundred acres in the agricultural district that are not designated as important agricultural lands[~~and~~], **the soil is classified by the land study bureau's detailed land classification as overall (master) productivity rating class C or lesser, and the land is contiguous to the urban district;** provided that at least fifty per cent of the housing units on the land sought to be reclassified under this paragraph are set aside for persons and families with incomes at or below one hundred forty per cent of the area median income. "

Further, the Department recommends that the agricultural lands considered for reclassification pursuant to these amendments be identified within the county's urban expansion area, or equivalent designation.

Thank you for the opportunity to comment on this measure



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Statement of
MARY ALICE EVANS
Director, Office of Planning
before the
HOUSE COMMITTEES ON HOUSING AND ON WATER AND LAND
Tuesday, February 9, 2021
8:30 AM
State Capitol, Conference Room via Videoconference

in consideration of
HB 260
RELATING TO HOUSING.

Chairs Nakamura and Tarnas, Vice Chairs Hashimoto and Branco, and Members of the House Committees on Housing and Water and Land:

The Office of Planning (OP) provides **comments** on HB 260 that would allow the counties to reclassify lands from 15 to 100 acres in certain Rural, Urban, and Agricultural land use districts for affordable housing projects.

HB 260 would amend § 205-3.1, Hawaii Revised Statutes (HRS), to authorize the counties to amend the State Land Use District Boundary for lands of 15 to 100 acres in the Rural and Urban District and 15 to 100 acres in the Agricultural District that are not designated as Important Agricultural Lands for development projects in which at least 50 percent of the housing units are set aside for households with incomes at or below 140 percent of the area median income.

OP supports the intent of measures that increase the availability of affordable housing. HB 260 would streamline the approvals process to allow affordable housing to be built in a timely, less costly manner. However, the requirement that at least 50 percent of the units be affordable housing would qualify these projects for the expedited process under HRS § 201H. This would not allow enough time for agencies, in particular State agencies, to review the projects. HRS § 201H-38 should also be amended to require approval within 180 days in cases where the counties exercise their expanded authority under HB 260. In addition, any county reclassification of lands of more than 15 but not more than 100 acres should be consistent with county general plans and community development plans.

Thank you for this opportunity to testify.



DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

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

DANIEL ORODENKER
Executive Officer

SCOTT A.K. DERRICKSON AICP
Chief Planner

RILEY K. HAKODA
Chief Clerk/Planner

NATASHA A. QUINONES
Program Specialist

FRED A. TALON
Drafting Technician

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

Before the
House Committee on Housing
And
The House Committee on
Water and Land

Tuesday February 9, 2021
8:30 AM
State Capitol, Virtual Video Conference

In consideration of
HB 260
RELATING TO HOUSING

Chairs Nakamura and Tarnas; Vice Chairs Hashimoto and Branco; and members of the House Committee on Housing and the House Committee on Water and Land:

The Land Use Commission, while it supports the goal of increasing affordable housing in the state, cannot support of HB 260, which seeks to allow the counties to approve state district boundary amendments up to 100 acres from the currently allowable 15 acres, in its current form.

The LUC believes that the justification for this bill is unsupported by any empirical data, lacks clarity as to purpose, severely negatively impacts comprehensive land use planning, puts many other a state initiatives such as food security and clean energy self sufficiency at risk and will not accomplish its purported purpose of increasing affordable housing.

This measure is also contrary to the extensively negotiated omnibus bill that was put forward last session. It is also clear, based on the discussions that were held last session and prior, that this measure does not address the actual impediments to affordable housing development and will not result in any increase in the affordable housing inventory in the state.

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.

Just as importantly this measure is a serious threat to issues and competing land use needs outside of the housing crisis, as well as the over-all policy goals of the state with regard to land use and sustainability. Much has been written and discussed, and we have all been made critically aware during the course of the pandemic, how critical it is that Hawaii have a healthy agricultural industry and that Hawaii develop policies that will promote food independence and sustainability as well as clean energy resources that are not dependent on imported oil. These are significant economic and environmental initiatives that require preservation of lands for these intended uses. This large scale planning and balancing of needs does not take place at the county level. These state-wide issues must be balanced against the need for housing.

Sprawling development, rather than re-development of the already urbanized lands in Hawaii will not serve Hawaii well as a whole. Allowing county housing projects to skip over any analysis on these policy goals puts them in immediate jeopardy. Of significant concern is the potential fragmentation of viable agricultural land into parcels that are too small for commercially-viable farming.

A recent article in Civil Beat revealed that land costs are the second largest costs to farmers behind personnel costs. The potential reduction in usable agricultural land and the potential re-classification of 100 acre parcels by the counties, without any balancing of state-wide policy concerns could significantly increase these costs.

The benefit of the such projects clearly will not be to the house-less or those looking for affordable homes. The definition of affordable at 140% of median is not an attempt at developing housing for residents in need. 140% of median, for a family of four is approximately \$170,000 and for an individual is \$122,000 (extrapolating from 2019 numbers). This is hardly an attainable average for most families.

The justification section claims that passage of this measure will result in some cost savings to small projects by requiring larger projects to pay for infrastructure. The LUC is completely baffled by this claim. Petitioners for DBAs to the LUC are always required as a condition of approval to pay for, construct or contribute to ALL necessary infrastructure to meet state and county requirements, including water, sewer, and transportation. If this is the sole justification for the measure it is unnecessary or unjustified and based on a misunderstanding of what actually occurs.

There is also a significant and very real concern that this bill will result in landowners engaging in "parceling", or breaking up large parcels to smaller ones to avoid rigorous environmental review and the state process. This has already occurred in projects on Maui at the 15 acre threshold.

There will be no cost savings to developers that would stimulate affordable housing projects with this measure. Developers will still have to meet chapter 343 requirements and, under state law, as directed by the Supreme Court in the Towne case, contested case hearings will still have to be held before the District Boundary Amendment can be approved. The counties are not set up to handle this type of proceeding and have not shown a willingness in the

past to do so. All rights of appeal and all rights to cross examine and required procedural safeguards will still have to be adhered to, to protect constitutional rights to due process. The counties cannot grant a DBA “ministerially” without violating the constitution.

The LUC is also the only land use body that meets the state constitutional requirements of applying Public Trust Doctrine principles to its decisions. The public interest in water, the environment, cultural practices, cultural resources and public access rights must be taken into account in any decision-making on district boundary changes. The counties are not designed to handle these issues, which also require contested case proceedings for proper adherence to the law.

The LUC is not opposed to changes that will make a difference in the development of affordable housing that have been well thought out and vetted. This measure is a portion of SB 3104, (SLH2020) 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 this measure represents a significantly, negatively modified small portion of that larger proposal, those checks and balances do not exist.

If this measure were to move forward we strongly urge it be amended to track SB3104 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 House Draft 1 for the committees consideration.

Thank you for the opportunity to testify on this matter.

A BILL FOR AN ACT

RELATING TO HOUSING.

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

SECTION 1. The legislature finds that Hawaii has been struggling with the issue of affordable housing for decades. Challenges range from land and infrastructure costs to funding, over-regulation, and permitting. According to the department of business, economic development, and tourism report "Measuring Housing Demand in Hawaii, 2015-2025", the forecast demand for additional housing units in the counties totals 64,693 during the 2015-2025 period. The legislature recognizes the immense housing supply problem in the State and that creative solutions are needed to build more housing at all price points.

The legislature recognizes that the land use commission is responsible for the classification of certain land parcels into the urban, rural, agricultural, and conservation districts. The land use commission 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 legislature recognizes that the land use commission, between 1990 and 2020, has approved the development of over 80,000 housing units through district boundary amendment petitions; the majority of which remain undeveloped to date.

~~Enabling the counties to reclassify certain lands intended for affordable housing development will make larger scale projects economically feasible for infrastructure to be built, such as a water treatment plant or connectivity to an existing sewer system, which are added costs that smaller projects cannot absorb. Opening up land for affordable housing projects will also facilitate the State's goal of increasing the supply of much needed affordable housing while being budget neutral to the State.~~

The purpose of this Act is to allow the counties to reclassify lands that are fifteen to ~~[one hundred]~~ twenty-five acres in certain rural, urban, and agricultural districts in which at least fifty per cent of the housing units on the land to be classified are set aside for persons and families with incomes at or below one hundred forty per cent of the area median income.

SECTION 2. 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."

SECTION 3. 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[+] 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 4. 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 5. 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 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

February 5, 2021

TESTIMONY OF MICHAEL P. VICTORINO
MAYOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEES ON HOUSING and WATER & LAND

Tuesday, February 9, 2021, 8:30 a.m.
House Conference Room via Videoconference

HB260, RELATING TO HOUSING

Honorable Nadine K. Nakamura and David A. Tarnas, Chairs
Honorable Troy N. Hashimoto and Patrick Pihana Branco, Vice Chairs
Honorable Members of the House Committees on Housing, and Water & Land

Thank you for this opportunity to offer comments in **strong support** of **HB260**.

This bill will help create more affordable housing. The entitlement process is often a major obstacle in the development of such housing. By enabling the counties to reclassify certain lands intended for affordable housing development the State will make larger-scale projects economically feasible for infrastructure, such as a water treatment plant or connectivity to an existing sewer system, to be built; those are added costs that smaller projects cannot absorb. Counties would be allowed to reclassify lands that are fifteen to one hundred acres in certain rural, urban, and agricultural districts in which at least fifty per cent of the housing units on the land to be classified are set aside for persons and families with incomes at or below one hundred forty per cent of the area median income.

Opening up land for affordable housing projects will increase the supply of much-needed affordable housing while being budget-neutral to the State.

I strongly urge you to pass measure **HB260**.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 7, 2021

TO: Honorable Nadine K. Nakamura, Chair
House Committee on Housing

Honorable David A. Tarnas, Chair
House Committee on Water and Land

FROM: Alice L. Lee
Council Chair

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

DATE: February 8, 2021

SUBJECT: **SUPPORT OF HB 260, RELATING TO HOUSING**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to authorize the counties to reclassify lands 15 to 100 acres in certain rural, urban, and agricultural districts in which at least 50 percent of the housing units on the land sought to be reclassified are set aside for persons and families with incomes at or below 140 percent of the area median income.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I **SUPPORT** this measure for the following reasons:

1. The measure opens land up for building affordable housing.
2. This measure would help support the development of much-needed housing units in Maui County.
3. This measure would help ensure skilled employees stay in Maui County, providing economic and social benefits to the community, instead of leaving because of a lack of housing options.

For the foregoing reasons, I **SUPPORT** this measure.



**HOUSE COMMITTEES ON HOUSING, AND WATER & LAND
Hawaii State Capitol
415 South Beretania Street
Via Videoconference
8:30 am**

February 9, 2021

RE: HB 260, Relating to Housing.

Chairs Nakamura & Tarnas, Vice Chairs Hashimoto & Branco, and members of the committees:

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 HB 260, which authorizes the counties to reclassify lands 15-100 areas in certain rural, urban, and agricultural districts in which at least 50% 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 HB 260, and appreciate the opportunity to express our views on this matter.

tel. 808-629-7501
fax. 808-629-7701

94-487 Akoki St., Ste 213
Waipahu, HI 96797

www.biahawaii.org
info@biahawaii.org



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON HOUSING

HOUSE COMMITTEE ON WATER AND LAND

February 9, 2021 8:30 AM

In **OPPOSITION** of **HB 260**: Relating to Housing

Aloha Chair Nakamura, Chair Tarnas, and members of the committees,

On behalf of our 27,000 members and supporters, the Sierra Club of Hawai'i **opposes HB 260** 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. In addition, we believe this bill fails to ensure truly affordable housing because it requires only 50% of the housing units to be built for residents earning 140% AMI, which is priced too high to meet actual housing needs.

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.

I. 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."¹

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

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

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 requiring petitions for district boundary amendments are required to be heard and decided upon within 45 days after the filing of a petition.**² 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.³ The LUC has not had to automatically approve any affordable housing projects because it meets its deadlines.

II. Truly affordable housing is for residents at 100% AMI or below

According to the 2016 Hawaii Housing Planning Study conducted by the Hawaii Housing Finance and Development Corporation, the Counties, and the Office of Hawaiian Affairs, nearly 70% of all housing demand in our State is from our low- and moderate-income households earning less than 100% the area median income (AMI). Market priced units are out-of-range for at least 89% of our population. Statewide, demand for units priced higher than 140% AMI is at only 11%.⁴

This bill fails to ensure truly affordable housing because it defines affordable housing as that intended for residents earning 140% AMI. In addition, this bill requires only 50% of the housing units to be “set aside for persons and families with incomes at or below 140% of the area median income.” It is unclear exactly what “set aside” actually means. Lastly, this bill provides no time frame as to how long these units would stay affordable to address long-term housing demands. Although pricing new units as “affordable” might translate to lower sale prices initially, there is no guarantee that units will be kept at this price with each re-sale. How do we ensure homeowners capture the value of their homes when they are sold while at the same time ensure that homes are sold at truly affordable prices? This bill does not provide an answer to this crucial question.

² <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/>

⁴ https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf

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 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 HB 260**.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 9, 2021

HEARING BEFORE THE
HOUSE COMMITTEE ON HOUSING
HOUSE COMMITTEE ON WATER AND LAND

TESTIMONY ON HB 260
RELATING TO HOUSING

Conference Room 423
8:30 AM

Aloha Chairs Nakamura and Tarnas, Vice Chairs Hashimoto and Branco, and Members of the Committees:

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 HB 26, which would allow district boundary amendments without Land Use Commission approval for agricultural land of a certain acreage, provided that at least 50 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.

February 9, 2021

The Honorable Nadine K. Nakamura, Chair

House Committee on Housing

The Honorable David A. Tarnas, Chair

House Committee on Water & Land

Via Videoconference

RE: H.B. 260 Relating to Housing

HEARING: Friday, February 9, 2021, at 8:30 a.m.

Aloha Chair Nakamura, Chair Tarnas, and Members of the Joint Committees,

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** House Bill 260 which authorizes the counties to reclassify lands 15 to 100 acres in certain rural, urban, and agricultural districts in which at least 50 percent of the housing units on the land sought to be reclassified are set aside for persons and families with incomes at or below 140 percent of the area median income.

Hawai'i has been struggling with the issue of affordable housing for decades. Challenges range from land and infrastructure costs, financing, and regulatory challenges. 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 County Council.

This change will allow more affordable housing on larger affordable multifamily housing projects. Fifteen acres would allow at most 35-45 affordable, small lot homes to be constructed. Increasing the amount to 100 acres would increase the supply of available affordable housing while being budget neutral to the State.

Mahalo for the opportunity to testify.

HB-260

Submitted on: 2/4/2021 3:19:41 PM

Testimony for HSG on 2/9/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Zara Nicholson	Individual	Support	No

Comments:

Aloha e Chair, Vice Chair, Members of the Committee,

My name is Zara Nicholson and I am testifying in support of Bill HB260.

I believe this bill will create a great positive impact in our community. There is a huge need for affordable housing in our islands. Too often are our resources and attention given to visitors with high incomes rather than our local residents. Setting aside housing units for families with incomes at or below 140 percent of the median income will ensure that our local residents have safe and reliable homes that keep them healthy and create generational wealth. Please push to pass this Bill HB260.

Mahalo nui loa for the opportunity,

Zara Nicholson, CPA

LATE



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON HOUSING AND
COMMITTEE ON WATER & LAND
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 423
TUESDAY, FEBRUARY 9, 2021 AT 8:30 A.M.**

To The Honorable Nadine K. Nakamura, Chair;
The Honorable Troy N. Hashimoto, Vice Chair; and
Members of the Committee on Housing,

To The Honorable David A. Tarnas, Chair;
The Honorable Patrick Pihana Branco, Vice Chair; and
Members of the Committee on Water & Land,

SUPPORT HB260 RELATING TO HOUSING

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our support of HB260.

With the affordable housing and rental crisis our state is facing, it is always one of our top priorities. We support this bill as it is a step in the right direction as more reclassifications could happen at the county level, speeding up and streamlining the process to get more affordable housing and rentals built.

Mahalo for your consideration of our testimony and ask that you please pass this bill.

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.