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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON HOUSING
Tuesday, January 30, 2018
9:30 AM
State Capitol, Conference Room 423

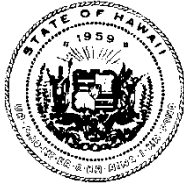
in consideration of
HB 1866
RELATING TO HOUSING.

Chair Brower, Vice-Chair Nakamura, and Members of the House Committee on Housing.

The Office of Planning (OP) supports the concept of streamlining the process of regulating land use for the provision of affordable housing, and we provide the following comments on HB 1866 which amends several sections of the statutes relative to land use and affordable housing.

Part II of HB 1866 proposes to amend Hawaii Revised Statutes § 205-4, which pertains to amendments to land use district boundaries for land areas greater than fifteen acres. This section applies to the Land Use Commission (LUC) district boundary amendments (DBA) rather than the respective County agency. Currently, the respective County land use decision-making authority can only decide on DBAs less than fifteen acres of land, as specified in HRS § 205-3.1. Therefore, the proposed bill amendments in HB 1866 would be inconsistent with HRS Chapter 205.

Thank you for the opportunity to testify on this measure.



STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HOUSING

January 30, 2018 at 9:30 a.m.
State Capitol, Room 423

In consideration of
H.B. 1866
RELATING TO HOUSING.

HHFDC **opposes** Part III of H.B. 1866, which adds new sections to Chapter 201H, HRS. These new sections would require Counties to provide HHFDC with annual housing production reports, and if their housing production does not meet their production goals, established pursuant to proposed new subsection §205-4(d), HRS, two years in a row, they are made subject to a new streamlined approval process for ministerial permits.

The proposed new process would allow developers to apply to the Counties for streamlined approval of its ministerial permits, not subject to any non-code related reviews and not subject from conditions or exactions, if it meets certain criteria. This county-administered process is erroneously placed in Chapter 201H, HRS.

We take no position on the remainder of this bill.

Thank you for the opportunity to testify.

DAVID Y.IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



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

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Chief Clerk/Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on Housing
Tuesday January 30, 2018
9:30 AM
State Capitol, Conference Room 423

In consideration of
HB 1866
RELATING TO HOUSING

Chair Brower, Vice Chair Nakamura, and members of the Committee on Housing:

The Land Use Commission opposes this measure in that it seeks to allow the amendment of district boundaries through the use of County General and Development/Community Plans.

It must first be noted that while this bill purports to be an effort to address Hawaii's housing shortage, there has never been any indication that the boundary review process, or even the district boundary amendment process is a cause of such a shortage. Chapter 205 HRS and the Land Use Commission are effective tools to ensure that development occurs in a manner that will not negatively impact public infrastructure, cultural and environmental resources as well as preventing unregulated development from being a burden on the taxpayer. The impediments to housing development are myriad and complex. This measure would have little impact on solving the problem while putting much at risk.

We would also note that there are legal issues associated with undertaking district boundary amendments in this manner. Supreme Court cases have been clear in stating that constitutional due process requires every property owner the right to a contested case hearing when the value of their land is impacted. District boundary amendments create such an impact. As a result, attempts to change district boundaries legislatively or unilaterally may be unconstitutional.

It should also be noted that the bill creates an unworkable framework. It is not clear what is meant by the "concurrence" of the LUC and does not set forth a process by which such concurrence is to occur. Additionally, it does not provide any leeway for the LUC to make any adjustments to the General Plan based on the public trust doctrine or incompatibility with the

State Plan or State Functional Plans. As such, the bill may result in little or nothing being accomplished.

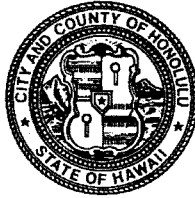
We do however, support the concept of requiring a large scale plan to provide infrastructure to expansion areas. Such efforts would in fact encourage the development of more housing in a regulated and thoughtful manner.

Thank you for the opportunity to testify on this matter.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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DEPUTY DIRECTOR

LATE

January 30, 2018

The Honorable Tom Brower, Chair
and Members of the Committee on Housing
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Brower and Committee Members:

Subject: House Bill No. 1866
Relating to Housing

The Department of Planning and Permitting (DPP) **opposes** House Bill No. 1866, which would tie State Land Use boundary amendments to annual housing production goals.

While innovative, this Bill assigns a role to the Land Use Commission that goes beyond its mission. The DPP is in favor of a simplified approval process for developments reflected in adopted county plans, but this proposal will actually prolong the process, especially if the action continues to be under a quasi-judicial process.


It is also unrealistic to require agencies to prepare infrastructure budgets within one year of the effective boundary amendment that support the subject land use approvals, and prioritize funding for identified projects. As the county plans generally have a longer timeframe (25 years or longer) than capital improvement project (CIP) budgeting, it is difficult to reconcile these different planning horizons. Moreover, this requirement does not acknowledge that CIP budgets are adopted by county councils, not agencies.

Lastly, there are numerous provisions of the Bill that are vague, and require further clarification, such as the process by which the Land Use Commission will take action. Therefore, we ask that House Bill No. 1866 be deferred in committee.

The Honorable Tom Brower, Chair
and Members of the Committee on Housing
Hawaii House of Representatives
House Bill No. 1866
January 30, 2018
Page 2

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy K. Sokugawa". The signature is fluid and cursive, with the first name "Kathy" being more prominent.

Kathy K. Sokugawa
Acting Director



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Housing
Tuesday, January 30, 2018 at 9:30 A.M.
Conference Room 423, State Capitol**

RE: HOUSE BILL 1866 RELATING TO HOUSING

Chair Brower, Vice Chair Nakamura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 1866, which proposes to reclassify land, that would normally require a boundary amendments, upon approval by county land use decision-making authority of various county General/Development/ Sustainable Community plans, with concurrence from Land Use Commission. Increase housing inventory by prioritizing funding for public infrastructure in areas of planned growth, and provides a streamlined approval process for those projects.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The proposed bill is attempting to address a long-standing problem in the States' lengthy and cumbersome land use entitlement process. Under the current process, the State Land Use Commission (LUC) reclassifies land (typically Agricultural) to Urban based on:

1. County Approved plan showing the area is part of the planned urban expansion;
2. An application by the landowner of a parcel or parcel that has been included in the Counties urban expansion area.

Once the applicant receives approval from the State LUC, the applicant starts the zoning and subdivision requirements at the County.

The proposed bill would consolidate the State LUC boundary review process with the County's urban expansion plan process. The County process is fully vetted through numerous public hearings with final approval by the respective County Council. The State LUC would participate in the County's urban expansion planning process, and assuming the impact on state programs and resources have been adequately mitigated through the County process, reclassify the lands to urban upon approval of the final plans by the County Council.

The bill also proposes to link the prioritization of funding infrastructure to the urban expansion areas once the plans have been adopted. This will insure adequate infrastructure will be provided to support the areas of planned growth.



Chamber of Commerce HAWAII

The Voice of Business

Finally, the bill proposes to establish county housing production goals tied to the urban expansion areas. This is modeled after legislation adopted in California in September of 2017 to address their housing crisis. If the respective County fails to achieve its housing production goal for two consecutive years, the permit for the next housing project that conforms with the existing zoning will be processed “Administratively.” No discretionary approvals will be imposed on the project. The goal is to increase the production of new housing projects on lands identified and zoned for housing.

The State is falling farther and farther behind in providing sufficient housing units at all price points. The Department of Business, Economic Development and Tourism forecasted demand for additional housing units by county is 25,847 units for Honolulu, 19,610 for Hawaii, 13,949 for Maui, and 5,287 for Kauai during the 2015-2025 period (DBEDT Report—Measuring Housing Demand in Hawaii, 2015-2025).

Unless something is done to get the Counties into a “Production Mode” to get more housing built, we will fall farther and farther behind satisfying our projected demand. We are living with the consequences of not having a sufficient supply of housing, including but not limited to:

- High prices for entry level houses
- Increase of people choosing to be homeless
- More and more multi-generational houses
- “Monster Homes”

While the proposed bill will not address all of the problems, we believe it is a step in the right direction if our goal is to increase the supply of housing at all price points in Hawaii.

We are in **support** of H.B. 1866, and appreciate the opportunity to express our views on this matter.

Thank you for the opportunity to testify.



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LATE

Testimony to the Committee on Housing Tuesday, January 30, 2018 9:30 am State Capitol, Room 423

RE: HB 1866 – Relating to Housing

Chair Brower, Vice-Chair Nakamura, & members of the Committee:

My name is Gladys Quinto-Marrone, CEO 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.

BIA-HAWAII is in **strong support** of H.B. 1866 which proposes to reclassify land, that would normally require a boundary amendments, upon approval by county land use decision-making authority of various county general/development/sustainable community plans, with concurrence from the Land Use Commission. This bill would increase housing inventory by prioritizing funding for public infrastructure in areas of planned growth, and provides a streamlined approval process for those projects.

The proposed bill is attempting to address a long standing problem in the States' lengthy and cumbersome land use entitlement process. Under the current process, the State Land Use Commission (LUC) reclassifies land (typically agricultural to urban) based on:

1. County-approved plan showing the area is part of the planned urban expansion;
2. An application by the landowner of a parcel or parcel that has been included in the Counties urban expansion area.

Once the applicant receives approval from the state LUC, the applicant starts the zoning and subdivision requirements at the County.

The proposed bill would consolidate the State LUC boundary review process with the county's urban expansion plan process. The county process is fully vetted through numerous public hearings with final approval by the respective County Council. The LUC would participate in the county's urban expansion planning process, and assuming the impact on state programs and resources have been adequately mitigated through the county process, reclassify the lands to urban upon approval of the final plans by the County Council.

The bill also proposes to link the prioritization of funding infrastructure to the urban expansion areas once the plans have been adopted. This will insure adequate infrastructure will be provided to support the areas of planned growth.

Finally, the bill proposes to establish county housing production goals tied to the urban expansion areas. This is modeled after legislation adopted in California in September of 2017 to address their housing crisis. If the respective County fails to achieve its housing production goal for two consecutive years, the permit for the next housing project that conforms with the existing zoning will be processed “administratively”. No discretionary approvals will be imposed on the project. The goal is to increase the production of new housing projects on lands identified and zoned for housing.

The state is falling farther and farther behind in providing sufficient housing units at all price points. The Department of Business, Economic Development and Tourism forecasted demand for additional housing units by county is 25,847 units for Honolulu, 19,610 for Hawaii, 13,949 for Maui, and 5,287 for Kauai during the 2015-2025 period (DBEDT Report—Measuring Housing Demand in Hawaii, 2015-2025).

Unless something is done to get the counties into a “production mode” to get more housing built, we will fall farther and farther behind in satisfying our projected demand. We are living with the consequences of not having a sufficient supply of housing, including but not limited to:

- High prices for entry level houses;
- Increase of people choosing to be homeless;
- More and more multi-generational houses;
- “Monster Homes”.

While the proposed bill will not address all of the problems, we believe it is a step in the right direction if our goal is to increase the supply of housing at all price points in Hawaii.

We are in **strong support** of H.B. 1866, and appreciate the opportunity to express our views on this matter.

LATE

LATE



HB1866
RELATING TO HOUSING
House Committee on Housing

January 30, 2018

9:30 am

Room 423

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **OPPOSE** HB1866, which would substantially impair the State Land Use Commission's (LUC's) ability to consider and mitigate impacts to natural and cultural resources and associated Native Hawaiian traditional and customary practices, and exempt certain developments from otherwise applicable environmental assessment requirements, with little benefit to the expedited production of much-needed affordable housing.

OHA is the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians. OHA is required to serve as the principle public agency in the State of Hawai'i responsible for the performance, development, and coordination of programs and activities related to Native Hawaiians; the assessment of policies and practices impacting Native Hawaiians; and advocacy on behalf of Native Hawaiians. It is because of this kuleana (responsibility) and the potential impact of development on Native Hawaiian cultural practices that OHA opposes this bill.

The LUC was created nearly 60 years ago with the paramount purpose of serving as the State agency "responsible for preserving and protecting Hawai'i's lands and encouraging those uses to which lands are best suited."¹ The State's need for the LUC arose from "a lack of adequate controls," where shortsighted consumption of Hawai'i's incredibly finite land inventory and resources had resulted in "long-term loss to the income and growth potential of our State's economy."² The inadequate oversight of comprehensive state-wide development had resulted in "creating problems of expensive yet reduced public services and the conversion of prime agricultural land to residential use[.]"³ With these impacts in mind, the LUC was tasked with establishing State land use district boundaries and to act "on petition for boundary changes submitted by private landowners, developers and State and county agencies."⁴

There is no data to suggest that review by the LUC is meaningfully contributing to the development timeline for housing production. Currently, the LUC reviews district boundary amendment petitions involving 15 acres or more of land; accordingly, the LUC is only required to review housing-related projects when they are proposed for non-urban lands, and only when such projects require at least 15 acres. The LUC is also required to approve or deny a complete

¹ State of Hawai'i Land Use Commission website, History, <http://luc.hawaii.gov/about/history-3/>, accessed on Jan. 29, 2018.

² *Id.*

³ *Id.*

⁴ *Id.*

petition within 365 days from its submission, or 45 days for petitions for affordable housing projects; the LUC has also rarely if ever denied a complete petition. In addition, LUC review has found to not be the main source of delay in development generally, with the median timeframe for LUC decisionmaking between 1995-2014 as approximately 14 months, compared to 24 months for the development of necessary infrastructure and facilities;⁵ “substantial delays” in final LUC decisionmaking have been infrequent, and have generally occurred only for projects involving significant land use policy conflicts. Notably, since 2010, the LUC has approved seven housing-related petitions, proposing 9,389 housing units – with an estimated 3,675 reserved as affordable.

However, LUC review does ensure that large development projects are consistent with the high standards that the State has set for the present and future advancement of these islands, including with respect to Native Hawaiian cultural perpetuation.⁶ Such LUC review entails an analysis of various environmental, cultural, and socioeconomic impacts, in areas in which the LUC has particular expertise and institutional knowledge. LUC decisionmaking 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.”⁷ **In many cases, LUC review may also be the only opportunity for Native Hawaiian to assert their constitutionally-protected traditional and customary rights with respect to development proposals, in a government forum intended to meaningfully address their concerns.**

By limiting LUC review of district boundary amendments to mere “concurrence” with quantified county housing goals, this measure may therefore eliminate the only opportunity for Native Hawaiians to assert their constitutionally protected rights in development decisionmaking, as well as a critical land use planning mechanism that properly balances development with Native Hawaiian cultural perpetuation and other critical considerations of importance to the public. **With ever-growing development pressure by speculators and land investment corporations, the needs and concerns of this State that gave rise to the establishment of the LUC may be even greater today, than they were nearly 60 years ago.** 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 provide minimal benefit to the production of units most needed by Hawai’i residents.

Similarly, the “streamlined, ministerial” approval process described in Part III of this bill would significantly curtail even the counties’ ability to assess, much less mitigate, impacts to natural and cultural resources of high importance to Native Hawaiians and the general public. Notably, the proposed “ministerial” process may allow housing projects to proceed without the

⁵ THE STATE LAND USE TASK FORCE, STATE LAND USE SYSTEM REVIEW DRAFT REPORT III (2015).

⁶ See State of Hawai’i Land Use Commission website, Boundary Amendment Procedures, <http://luc.hawaii.gov/about/district-boundary-amendment-procedures/>, accessed on Jan. 29, 2018.

⁷ Ka Pa ‘akai O Ka ‘Āina v. Land Use Commission, 94 Haw. 31 (2000).

consideration of environmental and cultural impacts, or of alternative approaches to mitigate such impacts, as may otherwise be required under the state environmental review law.⁸ **This in turn may result in significant and unnecessary impacts to natural and cultural resources, again with little benefit to the actual production of housing.**⁹

Accordingly, OHA urges the Committee to **HOLD** HB1866. Mahalo for the opportunity to testify on this measure.

⁸ See Haw. Admin. R. §§ 11-200-2 (definition of “approval” excluding ministerial consent), -6 (applicant requests for “approval” of certain developments triggering environmental assessment requirements).

⁹ THE STATE LAND USE TASK FORCE, *supra* note 5, at 2-6. Notably, agency facility/infrastructure needs are identified as having the greatest average contribution (2 years/24 months) to the development timeline.