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
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Drafting Technician

LATE

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

Before the
Senate Committee on
Judiciary

Thursday February 27, 2020
10:30 AM
State Capitol, Conference Room 016

In consideration of
SB 2620 SD1
RELATING TO LAND USE

Chair Rhoads; Vice Chair Keohokalole; and members of the Senate Committee on Judiciary:

The Land Use Commission (LUC) opposes SB2620 SD1 in its current form. It should first be noted that language intending to change the timeframe for the LUC to act upon 201H projects is unnecessary. Under the current statutory language (HRS §§201H-38 and 205-4) the LUC is required to review and act upon boundary amendments over 15 acres for affordable housing projects within 45 days. The LUC has consistently met this expedited time frame in its approval of all §201H-38 affordable housing projects that have come before it.

With regard to the language relating to §205-4, the LUC strongly prefers the language proposed in SB3104 SD1 that proposes similar changes while also providing a disincentive to parceling of lands and enhanced enforcement powers to the LUC. This language was derived after significant discussion and negotiation with various stakeholders. It would be unfair to move SB2620 SD1 forward without such language being included.

Should the committee decide to move the measure forward we would recommend making appropriate changes to language in Sections 1 and 2 to mirror the language contained in the most current version of SB3104. A copy of that language is attached for reference.

Thank you for the opportunity to testify on this matter.

235 SOUTH BERETANIA STREET ❁ SUITE 406 ❁ HONOLULU, HAWAI'I 96813 ❁ TEL (808) 587-3822 ❁ Fax (808) 587-3827 ❁ EMAIL: dbedt.luc.web@hawaii.gov
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

SB2620 SD1
RELATING TO LAND USE
Ke Kōmike ʻAha Kenekoa o ka Hoʻokolokolo

Pepeluali 27, 2020 10:30 a.m. Lumi 016

The Office of Hawaiian Affairs (OHA) provides the following **COMMENTS** on SB2620 SD1, which would shift State Land Use Commission (LUC) oversight to the counties for District Boundary Amendments (DBAs) to rural and non-important agricultural land (IAL) agricultural lands between 15 to 25 acres if (1) the land areas are proposed for reclassification to the urban district and contiguous to the urban district, and (2) at least 60% of the land areas would be dedicated for affordable housing development. Along with comments related to retaining the LUC's oversight over certain DBAs, OHA respectfully offers amendments for the committee's consideration that may improve the LUC's enforcement authorities to facilitate the production of housing units, similar to the language found in SB3104 SD1.

First, OHA recognizes and **appreciates** this SD1 draft's amendments (1) lowering the size of DBAs that may be approved by the counties and without LUC review from 30 acres to 25 acres; (2) further restricting such DBAs to land areas that are contiguous to the urban district; (3) prohibiting the parceling of these lands; and (4) defining "affordable housing" to require the purchaser(s) of such housing to, in perpetuity, be a Hawaiʻi resident, be owner-occupant, and own no other real property. Due to these substantial amendments, OHA no longer opposes this measure.

OHA does note, however, that the reduction of the LUC's review of DBAs **would likely not reduce affordable housing development delays, and instead may further impair the LUC's ability to consider and mitigate impacts to natural and cultural resources and associated Native Hawaiian traditional and customary practices**. The loss of the LUC's careful and comprehensive considerations in DBAs would not be balanced by any marginal benefit gained in the production timeline for affordable housing units needed by Hawaiʻi residents. **No data or other factual information suggests that the LUC review process contributes to delays in housing development timelines**. The LUC consistently decides on Hawaiʻi Revised Statutes (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.[1] Over the past two decades, **the LUC has already approved DBAs on Oʻahu to develop roughly 23,000 residences that have not yet been built due to other delays, such as water and sewer infrastructure capacity**. The few actual instances of "substantial delays" in final LUC decision

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

making have been infrequent, and generally occurred only for projects involving significant land use policy conflicts.

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."[2] 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.[3] **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."[4] LUC DBA review accordingly entails an analysis of various environmental, cultural, and socioeconomic 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."[5] **In many cases, LUC review may 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.**

Second, if the Committee decides to pass this measure, OHA offers the following additional amendments to clarify language regarding enforcement of LUC authority, as proposed by the LUC in its testimony regarding similar measure, SB3104 SD1. These additions would better ensure that the LUC has the enforcement powers it needs to best perform its duties, including proper construction of affordable housing projects.

By inserting a new section in the measure, to read as follows:

> SECTION __. Chapter 205, Hawai‘i Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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[2] State of Hawai‘i Land Use Commission website, History, last accessed on Feb. 4, 2020, available at https://luc.hawaii.gov/about/history-3/.
[3] *Id.*
[4] *Id.*
[5] *Ka Pa‘akai o ka ‘Āina v. Land Use Commission*, 94 Haw. 31 (2000).

"§205-__ Penalty. (a) Any petitioner for an amendment to a district boundary that:

(1) After a hearing 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 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."

And by amending page 6, lines 7-14, to read as follows:

"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 part 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 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, the commission may:

(1) Record a notice of noncompliance on the land

with the bureau of conveyances; or

(2) Modify the existing conditions or impose new conditions to ensure compliance with the decision and order.

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 intervenors, that resulted in the reclassification."

Mahalo nui loa for the opportunity to testify on this measure.

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

February 25, 2020

TO: The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Alice L. Lee
Council Chair

SUBJECT: **HEARING OF FEBRUARY 27, 2020; TESTIMONY IN SUPPORT OF SB 2620 SD1, RELATING TO LAND USE**

Thank you for the opportunity to testify in **support** to this important measure. The purpose of this measure is to authorize county authorities to amend district boundaries involving land areas up to 25 acres if at least 60 percent of the land is used to develop affordable housing.

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. This measure would expedite decision-making in land use cases where the majority of the land is being used to develop affordable housing, thereby expediting the provision of much-needed affordable housing in Maui County.
2. Preventing delays in the approval process for developments results in cost savings, encouraging more development of affordable housing.
3. The misapplication of this measure by parceling lands greater than 25 acres would be prohibited, and such lands would remain under the authority of the State Land Use Commission.

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

ocs:proj:legis:20legis:20testimony:sb2620_paf20-061(35)_ans

Hawai'i Association of REALTORS®
808-733-7060
808-737-4977
1259 A'ala Street, Suite 300
Honolulu, HI 96817

February 27, 2020

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
State Capitol, Room 016
Honolulu, HI 96813

RE: S.B. 2620, SD1, Relating to Land Use

HEARING: Thursday, February 27, 2020, at 10:30 a.m.

Aloha Chair Rhoads, Vice Chair Keohokalole and Members of the Committee,

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 **supports** of S.B. 2620, SD1, which authorizes county land use decision-making authorities to amend district boundaries involving land areas greater than 15 acres, except non important agricultural land or rural land areas greater than 15 acres but no more than 25 acres if the land areas are proposed for reclassification to the urban district and at least 60% of the land areas will be dedicated for the development of affordable housing.

Hawai'i has been struggling with the issue of affordable housing for decades. Challenges range from land and infrastructure costs, funding and over-regulation and permitting. According to the Department of Business Economic Development and Tourism's report on Housing Demand in Hawai'i, the state needs 64,493 housing units to meet demand in Hawai'i by 2025. Ultimately, we have a housing supply problem, and we need creative solutions to build more housing at all price points.

As such, this measure is a creative approach to address Hawaii's housing challenges. HAR would respectfully recommend that the acres be increased from 25 to 100 acres. This would make it economically feasible for environmental safeguards to be built, such as a wastewater treatment plan or connectivity to an existing sewer system. Smaller projects cannot absorb said costs.

Mahalo for the opportunity to testify.

Young Progressives Demanding Action
P.O. Box 11105
Honolulu, HI 96828
action@ypdahawaii.org

February 27, 2020
10:30 AM

TO: Senate Committee on Judiciary
RE: Testimony Offering Comments to SB2620 SD1

Aloha Chair Rhoads, Vice Chair Keohokalole, Members of the Senate Committee on Judiciary,

Young Progressives Demanding Action (YPDA) advocates for public policies that reflect the values of young people throughout the State of Hawaiʻi. One of those values is that we need housing that is actually affordable, while protecting our natural resources for the benefit of future generations. YPDA offering **Comments** on **SB2620 SD1**, Relating to Land Use.

This bill streamlines the zoning revision process going forward, if some "affordable housing" is built as a result. It portrays these changes as justified due to the increased "affordable housing" supply that will result. Our concern is, "affordable" is not well defined, and could be used to allow developers to sell units at luxury prices. This would remove any benefit to the low-income population it's intended to help. What is affordable needs to be defined at a price point that can be affordable to low-income residents.

YPDA supports the insertion of language that prohibits the parceling of lands that may have happened as a result of amendments being made in Hawaiʻi Revised Statutes §205-3.1. Which goes from having lands greater than 15 acres being considered for district boundary amendments coming under the review of the Land Use Commission (LUC) to now having lands greater than 25 acres being considered for district boundary amendments having to go under LUC review instead. Without the prohibition of land parceling, developers and other special interests, now with 10 extra acres to work with, could divide their projects into larger pieces for approval without triggering the need for LUC approval, allowing for these interests to circumvent the Land Use Commission process entirely.

We appreciate further clarification that even if there are currently parceled lands up for reclassification, these lands will be considered as greater than 15-25 acres. This makes sure that

these cases will need to go to the Land Use Commission (LUC), ensuring even further that the LUC is not skirted in the process. The LUC is an important body that allows for communities, notably Native Hawaiians (practicing their traditional and customary rights) a meaningful opportunity to participate in land use issues and developments that would affect them. Circumventing the LUC would mean developers would seek approval from the counties instead. Alongside the lack of expertise and lack of resources to take on tasks like public trust responsibilities, one major area that the counties lack is the proper process.

The Land Use Commission has contested cases hearings that they are legally obligated to do and commissioners that cannot enter into private political negotiations with affected developers. Hearings where beyond verbal and written testimony, citizens can participate in a quasi judicial process that allows them to cross-examine developers and bring in expert witnesses. In comparison, an average county council meeting requires you as a public participant to keep your presentation down to literal minutes and council members who could raise campaign funds from developers while making decisions on their projects. This is why we need to ensure that actual accountability takes place when the Land Use Commission isn't listened to or there is an attempt to circumvent their responsibilities, they need to be able to enforce their decisions. YPDA prefers the language in SB3104 SD1 that prohibits the parceling of land, but also includes enforcement power and penalties as well. YPDA supports the need for affordable housing as a priority, so that our members and all of Hawaiʻi can have a future here in these beautiful islands. However, we need to make sure our land and resources are protected, people are allowed to participate in decision making, and housing that is created in the end is actually affordable. We just want it done right.

Mahalo for the opportunity to testify,

Jun Shin,
Environmental Justice Action Committee Chair
Young Progressives Demanding Action (YPDA)
Cell: 808-255-6663
Email: junshinbusiness729@gmail.com

Nate Hix
Economic Justice Action Committee Chair
Young Progressives Demanding Action (YPDA)
Email: nate.hix@gmail.com

HAWAI'I ALLIANCE for PROGRESSIVE ACTION

LATE

Senate Committee on Judiciary

Hawai'i Alliance for Progressive Action opposes: SB 2620 S.D.1

Thursday, February 27, 2020 10:30 a.m. Conference Room # 016

Aloha Chair Rhoads, Vice Chair Keohokalole and and Members of the Committee,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony to in **opposition to SB 2620**.

We appreciate the amendments inserted into the S.D. 1 by the Senate Committees on Water and Land and Housing the to 1) ensure development occurs continguous with other urban areas, and 2) to begin to define affordability by requiring the purchaser to be, in perpetuity, a Hawaii resident, an owner occupant, and owner of no other real property. However we are still concerned with certain provisions in the bill which could exacerbate sprawl development, while not truly meeting the affordability needs of local working families and residents.

The Land Use Commission (LUC) is not the obstacle to affordable housing. We recommend removing provisions from legislation which weaken the LUC authority by delegating district boundary amendments to the counties.

SB2620 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

The ever-growing development pressure by speculators and land investment corporations, coupled with the incentive for counties to increase tax revenues from development make the need for LUC oversight even greater today than when it was founded nearly 60 years ago.

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.

The LUC was created in 1961 and is critical to protecting things like open space, agricultural fields, natural resources, native Hawaiian rights, taxpayers' money, the overall quality of life for Hawai'i residents, and the long-term health of our economy.

Hawai`i Alliance for Progressive Action, P.O. Box 1534, Kapa`a, Hawai`i 96746
Phone: (808) 212-9616 www.HAPAhi.org

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. This helps to prevent spot zoning and urban sprawl on agricultural and conservation lands.

The LUC already has a 45-day deadline to respond to boundary amendment petitions for affordable housing projects that qualify under HRS § 201H. The LUC has consistently met this expedited deadline.

Since 1980, more than 25% of all the housing authorized by the LUC has not been built. On O‘ahu alone 23,000 units approved by the LUC have not been constructed, many of these units are affordable housing or workforce housing units.

Instead of weakening LUC authority and delegating district boundary amendments to the counties, we support the LUC having enforcement authority to determine why the units approved have not been built and a course of action.

In addition to the amendments seeking to define affordability, more detailed information on AMI should be defined at levels that meet standards of affordability for local residents who fall into the so-called A.L I.C.E. (asset limited income constrained employed) population.

Thank you for your consideration.

Respectfully,

Anne Frederick
Executive Director

SIERRA CLUB OF HAWAI'I

LATE

SENATE COMMITTEE ON JUDICIARY

February 27, 2020 10:30 AM Room 016

COMMENTS on **SB2620 SD1:** Relating to Land Use

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i provides **comments on SB2620 SD1,** which amends the process for seeking district boundary amendments to develop more affordable housing in Hawai'i. We support significantly increasing the supply of affordable housing across the Hawaiian Islands, provided there is a balanced approach to changing our land use laws that ensures protection of our environment, smart community planning, and enforcement authority of the Land Use Commission. We appreciate the immense effort lawmakers are investing to find this balance and incorporate feedback from all stakeholders.

If the legislature is inclined to pass this bill, we urge this Committee to fully consider this option for a balanced approach to the Land Use Commission (LUC):

- Expand the acreage exempt from LUC oversight from 15 acres to 25 acres, provided that the parcel:
    - is contiguous with the existing urban district,
    - is not conservation lands,
    - is not important agricultural lands, **or lands with soil classifications of B or higher,**
    - was not subdivided into smaller parcels within the previous ten years, and
    - provides affordable housing defined as a majority of the square footage is affordable housing

    AND

- **Expand the enforcement authority of the LUC** to allow it collect evidence in review district boundary amendments for performance, modify conditions on previous decisions, and if necessary impose fines for a failure to perform without good reason.

SB2620 SD1 has many of these recommendations and is an improvement from the bill that was first introduced. However, to be consistent with the position outlined above, we recommend adding language throughout the bill that would:

1. Ensure that the Land Use Commission processes district boundary amendments not only for important agricultural lands, but also for agricultural lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B— as “A” and “B” rated ag lands have the highest potential for local food production and additional consideration of rezoning is warranted.
2. Add enforcement language to the Haw. Rev. Stat §205-13 Penalty for violation, to provide the LUC the tools needed to ensure compliance after granting district boundary amendments for the purpose of building affordable housing.

If all of these amendments cannot be incorporated into this bill, we would ask the committee to not amend the district boundary process entirely.

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 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 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.

[1] https://luc.hawaii.gov/about/history-3/

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.

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.

Thank you for the opportunity to provide testimony on this important measure.

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[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/

Hawaii's Thousand Friends
300 Kuulei Rd. Unit A #281 * Kailua, HI 96734 * Phone/Fax (808) 262-0682 E-Mail: htff3000@gmail.com

February 27, 2020

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Members of the Committee

LATE

SB 2620 SD1
RELATING TO LAND USE

Hawaii's Thousand Friends, a non-profit organization dedicated to ensuing that growth is reasonable and responsible and that planning and land use decisions protect natural and cultural resources and human health and are implemented in conformity with the law, opposes SB 2620 SD1 that grants authority to the counties, instead of the Land Use Commission, to amend agriculture district boundaries up to twenty-five acres to the Urban district.

The Hawai`i State Land Use Law was passed in 1961 because that first legislature determined that a lack of adequate controls had caused the development of Hawai`i's limited and valuable land for short-term gain and development of scattered subdivisions, created problems of expensive public services and the conversion of agricultural land to residential use.

The Land Use Commission (LUC) was created to administer the law, protect the states interests and ensure that areas of state concern – historic, cultural and archeological preservation, protection of native flora and fauna, impacts on farming operations, protection of water resources and forest areas are considered in the reclassification decision-making process.

The existing fifteen acre exemption for agricultural land administered by the counties promotes urban sprawl by allowing land to be used for urban development without regard for location, availability and proximity to infrastructure, impacts on the environment, historic and archeological sites and native flora and fauna and hampers the state's ability to protect agricultural land and farming activities.

Housing development should not continue to take agricultural land but follow the smart growth principles of planned community development that curbs urban sprawl, directs development towards existing communities, preserves the environmental, open space, and farmland.

Giving counties the authority to rezone agricultural designated land reduces public participation by eliminating the public's opportunity to protect their community's farmland, natural and cultural resources through the Land Use Commission contested case process.

The counties have expertise in urban land use and do not have the expertise to evaluate impacts to the environment, flora and fauna, water and forest reserves, historic and archaeological sites when considering changing agricultural farmland to urban uses.

One of the Sustainable Hawai`i Initiative *Strengthening our waters, land and food for Hawaii's communities* goals is "100% increase in local agricultural production by 2020."

If agricultural land is continually taken away for urban uses we will loose large tracks of contiguous land suitable for farming making it harder to reach the State's agricultural production goal.

The bill is silent on:

1. How the 60% will be enforced
2. Whether variances from the 60% requirement will be available
3. What can be built on the remaining 40% of recently urbanized agricultural land

We urge you to help protect Hawai`i's agricultural land by holding SB 2620 SD1 in committee.

SB-2620-SD-1
Submitted on: 2/25/2020 9:11:35 PM
Testimony for JDC on 2/27/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Marten	Individual	Oppose	No

Comments:

This measure seeks to make it easier to provide affordable housing, but does so at the expense of preserving our agricultural land.

SB-2620-SD-1
Submitted on: 2/26/2020 12:05:04 AM
Testimony for JDC on 2/27/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

This would distory Ag lands for Profit. Any changes should be put out to the Public to Vote on.

SB-2620-SD-1
Submitted on: 2/26/2020 10:15:59 AM
Testimony for JDC on 2/27/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Fern Anuenue Holland	Individual	Oppose	No

Comments:

Me and my ohana are in strong opposition to this bill. Please do not pass this measure. We can not afford to remove important processes there for our protection to speed through development. We will loose our way of life and countryside before we even know it.

LATE

SB-2620-SD-1
Submitted on: 2/26/2020 10:34:03 AM
Testimony for JDC on 2/27/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne	Individual	Oppose	No

Comments:

LATE

SB-2620-SD-1
Submitted on: 2/26/2020 2:57:26 PM
Testimony for JDC on 2/27/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Trinette Furtado	Individual	Oppose	No

Comments:

Aloha and Mahalo for the opportunity to testify on this measure.

I **strongly oppose** passage of **SB2620 SD1**, which would place the onus of balancing the continuing protection of Hawaiian rights and lands and the development of more housing, on the counties.

It remains the state's responsibility, since the Organic Act, to ensure Hawaiian rights and lands and our public trust resources are protected while serving the needs of all the people of Hawai`i. For the past 60 years the state has done this through our Land Use Commission.

Allowing counties' planning commissions and other county land decision-making authorities to decide a district boundary amendment (DBA) upon the first hearing of a project WITHOUT County Council approval, removes the public from meaningful involvement and opens counties up to potential contested case hearings and further costly litigation.

For me, I believe that the lack of actual built housing isnt due to the process; its partially due to the inability of developers to do the right thing once they've received their entitlements, incentives and exemptions on those "affordable housing" projects.

Eroding the authorities and scope of the LUC and placing those responsibilities on the Counties without first making sure that counties are adequately prepared, is short-sighted and does not address the state's responsiblity and kuleana to the Hawaiian people, nor does it guarantee the faster construction of affordable housing units.

I ask you to please **vote NO** on this measure.

LATE

SB-2620-SD-1
Submitted on: 2/26/2020 3:45:40 PM
Testimony for JDC on 2/27/2020 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Niki Kunioka-Volz	Individual	Oppose	No

Comments:

Chair Rhoads; Vice-chair Keohokalole; and Senate Judiciary Committee members:

While I appreciate the intent of this proposed bill, I do not believe that the implementation of this measure translates to improved access to affordable housing for Hawaii's residents, especially Native Hawaiians.

The Land Use Commission exists to protect the public's interests. This transition of oversight from LUC to the counties is too risky, as it has the strong potential to remove the public's opportunity to be engaged in the process of protecting Hawaii's natural and cultural resources, a process that should be fundamental to civics in Hawaii. Additionally, increasing the acreage that would qualify for an exemption would open the door to increased urban sprawl and reduce the push for smart low-impact development that is considerate of limited natural resources and also sensitive to the customary practices of Native Hawaiians.

Mahalo for the opportunity to testify.

Respectfully,

N. Kunioka-Volz

DAVID Y.IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

LATE

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

DANIEL ORODENKER
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Bert K. Saruwatari
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FRED A. TALON
Drafting Technician

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

Before the
Senate Committee on
Judiciary

Thursday February 27, 2020
10:30 AM
State Capitol, Conference Room 016

In consideration of
SB 2620 SD1
RELATING TO LAND USE

Chair Rhoads; Vice Chair Keohokalole; and members of the Senate Committee on Judiciary:

The Land Use Commission (LUC) opposes SB2620 SD1 in its current form. It should first be noted that language intending to change the timeframe for the LUC to act upon 201H projects is unnecessary. Under the current statutory language (HRS §§201H-38 and 205-4) the LUC is required to review and act upon boundary amendments over 15 acres for affordable housing projects within 45 days. The LUC has consistently met this expedited time frame in its approval of all §201H-38 affordable housing projects that have come before it.

With regard to the language relating to §205-4, the LUC strongly prefers the language proposed in SB3104 SD1 that proposes similar changes while also providing a disincentive to parceling of lands and enhanced enforcement powers to the LUC. This language was derived after significant discussion and negotiation with various stakeholders. It would be unfair to move SB2620 SD1 forward without such language being included.

Should the committee decide to move the measure forward we would recommend making appropriate changes to language in Sections 1 and 2 to mirror the language contained in the most current version of SB3104. A copy of that language is attached for reference.

Thank you for the opportunity to testify on this matter.

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

Before the
Senate Committees on
Ways and Means

Tuesday February 25, 2020
12:30 PM
State Capitol, Conference Room 211

In consideration of
SB 3104 SD1
RELATING TO LAND DEVELOPMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Senate Committee on Ways and Means:

The Land Use Commission (LUC) supports the intent of SB3104 SD1 and provides the following comments and suggestions for clarifying language on certain sections in Part III of the proposed bill. The bill is intended to make changes to fund and promote the development of affordable housing (Part II); authorizes state or county agencies to petition for district boundary amendments for lands between 15 and 25 acres subject to certain conditions (Part III); authorizes the delegation of responsibilities for historic preservation reviews to counties (Part IV); and, creates the office of the housing advocate (Part V).

For Part III of the proposed bill, our proposed additions are underscored while proposed deletions are in strikethrough where appropriate.

In order to better reflect the actual purpose in Section 12 (lines 16-18) we suggest the following language:

> "SECTION 12. The purpose of this part is to authorize any person, including a state or county department or agency, to petition the appropriate county land use decision-making authority, rather than the land use commission, for a change in the boundary of a district involving land areas between fifteen acres and twenty—five acres <u>where the majority of</u>

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> the square footage of the development for which the boundary change is sought shall be for affordable housing and will prioritize and give preference to projects that are able to deliver more lower cost housing.

To clarify language in Section 13 (line 6, 205– (a)(1)) pertaining to penalties, we suggest replacement with the following language:

> (1) After a hearing 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"

The LUC offers no comments on Section 14 of the bill.

To clarify language and conform to the intent of the legislature in Section 15 (page 19, lines 7-20) pertaining to amendments to district boundaries for affordable housing projects on lands between 15 acres and 25 acres. We suggest replacement of subsection (e) with the following language:

> "(e) Not withstanding 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 district lands, 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 square footage of the development for which the boundary change is sought shall be for affordable housing and will prioritize and give preference to projects that are able to deliver more lower cost housing; provided further that the district boundary amendments shall be limited to lands contiguous to the urban district."

We support the language in Section 15 (page 20, lines 1-18) providing subsections (f) through (h) that addresses parceling of lands.

We support the language in Section 16 (pages 22-23) providing additional language regarding enforcement of conditions and representations made by developers during a district boundary amendment, whether or not there has been substantial commencement. Additional language to clarify that this will only occur after a hearing pursuant to Land Use Commission administrative rules and HRS Chapter 91, should be added to Section 16 (page 22, line 13).

> "If the commission finds, after a hearing in accordance with commission rules and chapter 91, that…"

The commission chair and a member of commission staff participated in a discussion regarding the language in SB3104 SD1 on Saturday February 22, 2020 convened and facilitated by the Hawai`i Community Foundation with public and private sector advocates for development of affordable housing. The proposed language in this testimony has been influenced by, and seeks to reflect, general agreement by those participants (except for one participating group) with respect to the sections of the proposed bill that affect the Land Use Commission.

Thank you for the opportunity to testify on this matter.