



LAND USE COMMISSION

Komikina Ho'ohana 'Āina

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
Ka 'Oihana Ho'omōhala Pā'oihana, 'Imi Wai wai a Ho'omāka'ika'i

JOSH GREEN, MD
GOVERNOR

DANIEL ORODENKER
EXECUTIVE OFFICER

235 S. Beretania Street, RM 406, Honolulu, Hawai'i 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804
Email Address: dbedt.luc.web@hawaii.gov

Telephone: (808) 587-3822
Fax: (808) 587-3827
Website: luc.hawaii.gov

March 17, 2023

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

Before the
Senate Committees on Water and Land
and
Government Operations

Monday March 20, 2023
1:00 PM
State Capitol, Room 229

In consideration of
HB 676 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS

Chairs Inouye and McKelvey; Vice Chairs Elefante and Gabbard; and members of the Senate Committees on Water and Land; and Government Operations:

The Land Use Commission (LUC) provides the following comments on HB 676 HD1.

The LUC is not opposed, at this time, to this measure. We believe amendments made by the House have strengthened the bill, requiring that any county procedures or rules with respect to district boundary reclassifications adhere to and incorporate necessary due process consistent with Hawai'i Revised Statutes ("HRS") Chapters 91 and 92. In addition, consideration of the Public Trust doctrine will also apply to the counties in their decision-making process.

The Commission also feels that the definition of affordable housing should be restricted to at or below 100% of median area incomes, consistent with Governor Green's initiatives on increasing local housing.

Thank you for the opportunity to testify on this matter.

JOSH GREEN, M.D.
GOVERNOR



DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

IN REPLY PLEASE REFER TO:

677 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813
PHONE: (808) 587-0620
FAX: (808) 587-0600

Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

**SENATE COMMITTEE ON WATER AND LAND
AND
SENATE COMMITTEE ON GOVERNMENT OPERATIONS**

March 20, 2023 at 1:00 p.m.
State Capitol, Room 229

In consideration of
H.B. 676 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS.

HHFDC **strongly supports** H.B. 676 HD1, which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the land study bureau's detailed land classification as overall (master) productivity class A or B if the county has adopted an ordinance that meets certain requirements.

Last fall, HHFDC and the Hawaii Public Housing Authority convened the working group established under Act 305, also known as Yes In My Backyard (YIMBY), to explore ways to reduce zoning, regulatory, and statutory barriers to affordable housing development.

Currently, applicants for land use changes of 15 acres or less apply directly to the counties instead of the Land Use Commission. There was a strong desire by several members of the YIMBY working group to give the counties greater authority to process state land use district boundary amendments to reduce the time and costs of affordable housing development.

Thank you for the opportunity to provide testimony.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON WATER AND LAND
AND GOVERNMENT OPERATIONS**

**MONDAY, MARCH 20, 2023
ROOM 229
1:00 P.M.**

**HOUSE BILL NO. 676, HOUSE DRAFT 1
RELATING TO DISTRICT BOUNDARY AMENDMENTS**

Chair Inouye, Chair McKelvey and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 676, HD1 that authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas 15 acres and greater if the county has adopted an ordinance that meets six requirements. The Department of Agriculture (Department) offers the comment that HD1 excludes from application for a district boundary amendment under the process proposed in this measure, agricultural lands that are designated as Important Agricultural Lands or land with Land Study Bureau Overall Productivity Ratings of "A" or "B". These aforementioned agricultural lands and their unfettered availability for agricultural production are important for the State and each of the counties in their efforts to achieve local food self-sufficiency.

Thank you for the opportunity to present our testimony.





HB676 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
Senate Committee on Water and Land
Senate Committee on Government Operations

March 20, 2023

1:00 PM

Room 229

The Office of Hawaiian Affairs (OHA) **STRONGLY OPPOSES HB 676 HD1**, which would allow Counties to amend State Land Use district boundaries and require ownership of the lands by the applicable County for 99 years. OHA's opposition to this measure stems from the fact that the State Land Use Commission (LUC) was created as a necessary 'check-and-balance' to ensuring that Hawai'i's lands were preserved and protected, while encouraging best uses, that the LUC is subject to Hawaii Revised Statutes (HRS) Chapter 91 Rulemaking Authority requirements and HRS Chapter 92 Sunshine Law requirements, and that the measure would allow for the County level reclassification of Conservation district lands.

Granting County level authority to oversee the delineation of Conservation lands and Agricultural land for the purposes of removing those lands from conservation and agricultural use in favor of housing without explicitly requiring the same or greater protections than what is specified under HRS Chapters 91 and 92 would permanently harm Native Hawaiian traditional practices, harm Hawai'i's food sustainability and security, and infringe upon all Hawai'i residents' rights to inform good governance, to contested cases which could cause harm to their persons and/or property, and their right to a clean and healthful environment.

I. Permanent Harm to Native Hawaiian Traditional and Cultural Practitioners

The LUC is obligated, by law, to review all petitions for the reclassification of land and to consider the impact of that reclassification, as a matter of State concern, on the “preservation or maintenance of important natural systems or habitats;” the “maintenance of valued cultural, historical, or natural resources;” and the “maintenance of other natural resources relevant to Hawai'i's economy, including agricultural resources.”¹ **This measure proposes to hand over the authority to reclassify all lands over 15 acres, with the exception of important agricultural lands (IALs), potentially resulting in their permanent alienation, to a county division that is not mandated to make these same considerations for the benefit of the State.**

II. Permanent Harm to Hawai'i's Food Sustainability

Currently, “more than 80% of Hawai'i's food is imported”². The Hawai'i 2050 Sustainability Plan – Ten Year Measurement Update noted that “[t]he 2008 Hawaii 2050 Sustainability Plan measured that about 15% of the food consumed in Hawaii was grown locally, and 35% of the fruits

¹ HRS §205-17.

² City and County of Honolulu Office of Climate Change, Sustainability and Resiliency, *Food Systems*, <https://www.resilientoahu.org/food-systems> last accessed February 9, 2023.



HB676 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
House Committee on Judiciary & Hawaiian Affairs

and vegetables consumed were locally grown.³ The Office of Planning has previously stated that food production in Hawai‘i is hampered in part by “pressure on the use of important agricultural land for higher value purposes.”⁴

While housing is a critical need in the State of Hawai‘i, so too is reliable access to food. Nearly every district boundary amendment (DBA) reviewed by the LUC in recent history has been to convert Agricultural or Conservation District lands to Urban or Rural District lands. A total of 24 DBAs have been filed with the LUC from 2010 as of the beginning of February 2023. A review of each DBA application filed with the LUC from 2010 to present indicates that, of the 24 DBAs filed with the LUC in this 13-year period, a total of 17 DBAs have been granted with one DBA being denied on initial submission but granted upon reconsideration; 3 DBAs have been withdrawn by the petitioner, 1 other was terminated by the petitioner, and 3 DBAs appear to be currently in progress.⁵ Of these 24 DBA applications, the vast majority have been to redistrict Agricultural or Conservation lands to Urban, with several applications including a request for amendment to Rural, while only one request was to reclassify lands to Agricultural from Conservation.

It is clear from the numbers that there is immense pressure to reclassify Agricultural lands for housing. It is also clear from the numbers that for the sake of Hawai‘i’s food sustainability and security, the reclassification of Agricultural lands must only be done under the most stringent of reviews, taking into consideration not only the direct community level impacts of that reclassification, but what the impacts are at the community and state levels from the permanent removal of each acre of agricultural lands from agricultural production.

III. Infringement upon Hawai‘i Residents’ Rights to Inform Good Governance and Contest Cases which Could Cause Them Harm.

The LUC’s decision-making process is subject to Chapter 91 rulemaking authority, which also requires the opportunity for contested cases.⁶ The purpose of these contested case hearings is to provide the LUC with the complete picture – containing all relevant information – for the LUC to make an informed and appropriate decision on any petition to reclassify those lands. Contested cases are an exercisable right of individuals who will likely be impacted by the decision of the LUC. This

³ State of Hawaii Office of Planning, *Hawaii 2050 Sustainability Plan – Ten Year Measurement Update (2008-2017)*, March 7, 2018, page 39.

⁴ State of Hawaii, Office of Planning, *Increased Food Security and Food Self-Sufficiency Strategy*, October 2012, page 16, available at http://files.hawaii.gov/dbedt/op/spb/INCREASED_FOOD_SECURITY_AND_FOOD_SELF_SUFFICIENCY_STRATEGY.pdf, last accessed February 9, 2023.

⁵ State of Hawaii Land Use Commission, *Completed Dockets: Boundary Amendments*, available at <https://luc.hawaii.gov/completed-dockets/boundary-amendments/>, last accessed 1/31/2023.

⁶ HRS §205-19.



HB676 HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS
House Committee on Judiciary & Hawaiian Affairs

specific process is not available at the county level and would deprive impacted residents from being able to contest the reclassification of lands based on the LUC's mandated criteria for review. The measure as written does not further explicitly require that residents will retain an opportunity for contested cases nor guarantee the resident's right to contest cases.

Accordingly, the measure does not explicitly require that County DBA processes comply with Chapter 92 Sunshine Law requirements. By not mandating that DBA petitions must be reviewed and approved by a public decision making body in a public hearing, this measure limits Hawaii residents' opportunities to inform good governance and participate in the decision-making process that is currently guaranteed under existing law before the LUC.

IV. County authority to reclassify Conservation lands is a violation of Hawaii residents' Environmental Rights under the Hawaii State Constitution.

Article XI, Section 9 of the Hawaii State Constitution states that "[e]ach person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources."⁷ The measure allows Counties to reclassify all lands over 15 acres within the Conservation District without guaranteeing the rights of the public to inform good governance. Conservation district lands exist to protect Hawai'i's natural beauty and to promote and enhance a clean and healthful environment. The Department of Land and Natural Resources (DLNR) is mandated to protect and maintain Conservation lands by closely regulating the permitted uses of Conservation district lands. By allowing the Counties to reclassify Conservation district lands, this would allow Counties to circumvent DLNR's mandate and put at risk all lands within the Conservation district.

The end result of the measure as written is that the LUC would only have the authority to oversee DBAs for IALs and for land areas in the Conservation District less than 15 acres in size. This would effectively put the existence of Conservation districts state-wide in the hands of the Counties to develop for affordable housing only as defined by the Counties themselves.

OHA appreciates the opportunity to provide testimony on this measure and urges the Legislature to DEFER HB676 HD1. Mahalo nui loa.

⁷ Art. XI, Sec. 9, Haw. Stat. Con.

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director



Susan K. Kunz
Housing Administrator

Harry M. Yada
Assistant Housing Administrator

County of Hawai'i
Office of Housing and Community Development

1990 Kino'ole Street, Suite 102 • Hilo, Hawai'i 96720 • (808) 961-8379 • Fax (808) 961-8685
Existing Housing: (808) 959-4642 • Fax (808) 959-9308
Kona: (808) 323-4300 • Fax (808) 323-4301

March 17, 2023

TESTIMONY IN SUPPORT OF HOUSE BILL 676 HD1
A BILL FOR AN ACT RELATING DISTRICT BOUNDARY AMENDMENTS
COMMITTEE ON WATER AND LAND
Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair
COMMITTEE ON GOVERNMENT OPERATIONS
Senator Angus L.K. McKelvey, Chair
Senator Mike Gabbard, Vice Chair
Hearing Date: Monday, March 20, 2023, at 1:00 PM
Time/Place of Hearing: Via Video Conference/ Conference Room 229

Aloha Honorable Chairs Inouye and McKelvey and Honorable Vice Chairs Elefante and Gabbard, and Members of the Committee on Water and Land and Government Operations,

On behalf of the Office of Housing and Community Development of the County of Hawai'i, I am providing testimony on House Bill 676 HD1 that authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres if the county has adopted an ordinance that meets certain requirements.

The Office of Housing and Community Development supports measures that streamline affordable housing production by reducing regulatory and statutory barriers that delay time and increase costs of such development.

HRS 205 §3.1 delegates decision-making authority to the county for district boundary amendments on parcels of fifteen acres or less. Hawai'i County has an established procedure for approving district boundary amendments using established criteria as well as conducting public hearings at every step of the process.

House Bill 676 HD1 simply expands the County's decision-making process for larger parcels that include affordable housing development while continuing to allow for community input at the local level.

Thank you for the opportunity to provide testimony in **support** of this measure.

Mahalo



Susan K. Kunz
Housing Administrator



March 20, 2023

The Honorable Lorraine R. Inouye, Chair

Senate Committee on Water and Land

The Honorable Angus L.K. McKelvey, Chair

Senate Committee on Government Operations
State Capitol, Conference Room 325 & Videoconference

RE: House Bill 676, HD1, Relating to District Boundary Amendments

HEARING: Monday, March 20, 2023, at 1:00 p.m.

Aloha Chair Inouye, Chair McKelvey, and Members of the Joint Committees:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i and its over 11,000 members. HAR **supports** House Bill 676, HD1, which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the land study bureau's detailed land classification as overall (master) productivity class A or B if the county has adopted an ordinance that meets certain requirements. Effective 7/1/3000.

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. Currently, 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.

Hawai'i has been struggling with the issue of affordable housing for decades. Challenges range from land and infrastructure costs, financing, regulatory challenges, and permitting. According to the Department of Business Economic Development and Tourism's 2019 report on Housing Demand in Hawai'i, the state needs up to 45,497, housing units to meet demand in Hawai'i by 2030.¹ Ultimately, we have a housing supply problem, and this measure is a creative approach to address those challenges, by allowing the counties to reclassify lands over 15 acres that it owns and retains, provided that the land is used for affordable housing.

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

¹ Department of Business, Economic Development & Tourism. (2019). *Hawaii Housing Demand 2020-2030*. <https://files.hawaii.gov/dbedt/economic/reports/housing-demand-2019.pdf>



SENATE COMMITTEE ON WATER & LAND, AND GOVERNMENT OPERATIONS
State Capitol
415 South Beretania Street
1:00 PM

MARCH 20, 2023

RE: HB 676 HD1 - RELATING TO DISTRICT BOUNDARY AMENDMENTS

Chairs Inouye & McKelvey, Vice Chairs Elefante & Gabbard, and members of the committees:

My name is Max Lindsey, 2023 Government Relations Committee Chair 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 support of HB 676 HD1, Relating to District Boundary Amendments. This bill authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the land study bureau's detailed land classification as overall productivity class A or B if the county has adopted an ordinance that meets certain requirements.

The bill addresses the overlapping land use entitlement process used in Hawaii. Allowing the counties to reclassify lands, especially in areas which the county has identified for urban growth, removes the time-consuming process of having the state Land Use Commission reclassify the lands. The counties are responsible for identifying areas for future urban expansion, and are best suited to make these types of urban land use decisions.

Hawaii is in a major housing crisis, which continues to worsen. As the Legislature is aware, the cost of housing in Hawaii is extremely high, with Oahu's median price of homes being currently over \$1 million. Approximately 153,967 U.S. households are priced out of buying a home for every \$1000 increase in price, according to the National Association of Home Builders (NAHB). We are in support of legislation that would allow for the building of much-needed housing at every price point in Hawaii.

Thank you for the opportunity to share our support of HB 676.

HB-676-HD-1

Submitted on: 3/18/2023 10:55:22 AM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Henry Curtis	Testifying for Life of the Land	Oppose	Remotely Via Zoom

Comments:

Aloha

HB 676 harms the protection of natural and cultural resources, Native Hawaiian traditional and customary rights, and the public trust.

Please hold the bill.

Mahalo

Henry Curtis

Executive Director



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

March 20, 2023

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

TESTIMONY ON HB 676, HD1
RELATING TO DISTRICT BOUNDARY AMENDMENTS

Conference Room 294 & Videoconference
1:00 PM

Aloha Chairs Inouye and McKelvey, Vice-Chairs Elefante and Gabbard, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau respectfully opposes HB 676, HD1, which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the land study bureau's detailed land classification as overall (master) productivity class A or B if the county has adopted an ordinance that meets certain requirements.

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 Hawai'i 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.

Hawai'i 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 Hawai'i'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 Hawai'i's need for affordable housing should not be allowed to eliminate Hawai'i's use of productive agricultural land.

Thank you for your consideration of our concerns.



SIERRA CLUB OF HAWAI'I

SENATE COMMITTEE ON WATER AND LAND SENATE COMMITTEE ON GOVERNMENT OPERATIONS

March 20, 2023

1:00 PM

Conference Room 229

Offering **COMMENTS** on **HB676 HD1**: Relating to District Boundary Amendments

Aloha Chairs Inouye and McKelvey, Vice Chairs Elefante and Gabbard, and Members of the Committees,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i offers the following **COMMENTS AND CONCERNS** regarding HB676 HD1, which may remove important protections for natural and cultural resources, Native Hawaiian traditional and customary practices, food security, employment opportunities, and other public interests in major land use district boundary amendments – without any commensurate benefit to our islands' affordable housing goals.

The Land Use Commission (“LUC”) has long administered a critical, comprehensive process to identify and mitigate impacts to natural and cultural resources, Native Hawaiian traditional and customary rights, food security, employment opportunities, and other public interests that may be affected by the reclassification of conservation, rural, agricultural, and urban lands. The institutional knowledge garnered by the LUC over the decades also allows it to oversee such reclassification actions, and resolve and mitigate conflicts and concerns, in a highly efficient manner.

Moreover, unlike county land use decisionmaking, the quasi-judicial nature of the LUC district boundary amendment process also ensures that testimony and other evidence from experts, cultural practitioners, and other stakeholders are adequately and explicitly considered in district boundary amendment approvals, serving as a key mechanism for objectivity, transparency, and accountability.

Accordingly, the Sierra Club of Hawai'i has significant concerns regarding the proposed elimination of the LUC's role in evaluating and administering land use district boundary amendment petitions for county-owned lands. While the Sierra Club does appreciate the “guardrails” provided for under this measure, as detailed further below, the overall approach of removing the LUC's important functions will not help, and could potentially exacerbate, our housing challenges, while inviting conflict and unintended consequences for our environment and social fabric.

The Sierra Club does offer below an alternative approach of promoting housing production through the expansion of the LUC's enforcement authorities, to ensure that promised housing units are actually developed as required under district boundary amendment approvals.

The LUC is Not a Barrier to Affordable Housing

The Sierra Club does appreciate this measure's intent to promote the production of affordable housing, as well as its inclusion of conditions to provide for county land ownership and to acknowledge the need for due process¹ in the potentially vast land use changes that would be exempted from LUC review. **However, the Sierra Club notes that the LUC is not the barrier to affordable housing production it is often purported to be.** The LUC is already required to approve or deny completed district boundary amendment applications within a year of receipt; for section 201H-38 "affordable housing" projects such as those described in HB676 HD1, this deadline is shortened to 45 days.² **According to LUC staff, throughout the 2010s, all major 201H affordable housing projects were approved by the LUC within the 45 day timeline.**³

County Administration of Large-Scale Land Use Changes May Inhibit Affordable Housing

Notably, by having county planning departments solely shoulder the responsibility of balancing the various cultural, environmental, food security, housing, job production, and other interests and rights of the public in large-scale and complex development proposals, **this measure may only inhibit their capacity to process other permits and applications (such as for accessory dwelling units, new or retrofitted infrastructure, increased density for existing housing structures, variances, smaller land use changes, etc.) that may be critical to addressing our multi-faceted housing crisis.**

Expansion of the LUC's Enforcement Authorities Would Much More Effectively Promote Housing Production

The Sierra Club does believe that amendments to the LUC's authorities could facilitate housing production, and encourages the Committee to explore the potential expansion of the LUC's enforcement authority. Since 1980, more than 25% of all the housing authorized by the LUC has not yet been built, much of which was proposed to be affordable and workforce housing. On O'ahu alone, 23,000 units approved by the LUC have not been constructed, despite the assurances of district boundary amendment petitioners; this includes Ho'opili (DR Horton), Koa Ridge (Castle & Cooke), Gentry Waiawa (now owned by Kamehameha Schools), and Royal Kunia Phase II. **Providing the LUC with reasonably enhanced enforcement authority will help to encourage developer follow-through on commitments made during the district boundary amendment process, including with**

¹ It is unclear whether this measure seeks to ensure that county ordinances employ a quasi-judicial contested case hearing process in evaluating land use district boundary amendment petitions. The Sierra Club emphasizes the important role played by this quasi-judicial process in resolving conflicts and mitigating concerns. Long employed by the LUC, the quasi-judicial process specifically permits intervening parties to present expert and kama'āina evidence and testimony and cross-examine witnesses; the quasi-judicial process ensures that evidence on record is explicitly considered and used as the basis for transparent decisionmaking, in sharp contrast to the potentially arbitrary quasi-legislative process typically employed by the counties in their land use decisionmaking.

² See <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/>.

regards to the production of affordable housing units. Possible statutory language to accomplish this could read as follows:

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

(1) Violates; 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."

Accordingly, the Sierra Club of Hawai'i strongly cautions the Committees against pursuing a strategy that is unlikely to meet our affordable housing needs, and that may only result in

significant and long-lasting consequences for our islands and communities. Mahalo nui for the opportunity to testify.

HB-676-HD-1

Submitted on: 3/18/2023 12:37:31 PM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Moran	Testifying for Kihei Community Assocoation (KCA)	Oppose	Written Testimony Only

Comments:

Aloha Chairs inouwe and Mc Kelvey

Please see our attached testimony in strong opposition to HB 676

Mahalo

Mike Moran for the Kihei Community Association

HB-676-HD-1

Submitted on: 3/18/2023 12:59:46 PM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dr. Kioni Dudley	Testifying for The Friends of Makakilo	Oppose	Written Testimony Only

Comments:

This bill is so wrong. After so many decades of governors stuffing the commission with developers, we finally have an honest LUC. What a blessing it is to have state level intervention saving our lands for future generations before the counties get active. Please vote against this bill.



Hawaii's Thousand Friends

335 Hahani Street #342132 * Kailua, HI 96734 * Phone/Fax (808) 262-0682 E-Mail: htf3000@gmail.com

March 20, 2023

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

COMMITTEE ON GOVERNMENT OPERATIONS

Senator Angus L.K. McKelvey, Chair
Senator Mike Gabbard, Vice Chair

HB 676 HD1 RELATING TO DISTRICT BOUNDARY AMENDMENTS

Hawaii's Thousand Friends, a statewide non-profit water and land use planning organization dedicated to protecting the environment, human health, and cultural and natural resources opposes HB 676 HD1, which authorizes county land use decision-making authorities to determine and approve district boundary amendments involving land areas over fifteen acres bypassing the Land Use Commission.

HB 676 HD1 not only sets up the potential to remove thousands of acres of land from the agricultural district across the state with unknown consequences but also undermines the purpose of the Hawai'i Land Use Law.

The Land Use Law, overseen by the State Land Use Commission, is intended to protect agricultural land from urban encroachment, to prevent scattered and premature development, to limit land speculation in urban areas, prevent scattered subdivisions and prevent the premature conversion of agricultural land to residential use.

The Land Use Commissions parcel-by-parcel review of proposals to take land out of the agricultural district allows for the protection of natural and cultural resources, prevents scattered and premature development, protects important state interests, and encourages those uses to which lands are best suited.

In the quest to make more land available for housing we must not forget that we live on islands with limited land. Where all proposals must be considered and deliberated in a comprehensive way to ensure that the State's obligation to ... *conserve and protect agricultural lands, promote*

diversified agricultural and increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands is upheld. (Hawaii Constitution Article XI Section 2)

One of the provisions of the Aloha+ Challenge is to increase local food production. The 2020 Benchmark Report notes that the goal to at least double local food production – 20-30% of food consumed is grown locally *needs significant improvement to be achieved by 2030*.

By passing the State interests in preserving adequate agricultural land to ensure we meet our Aloha+ Challenge goals is not good land use planning and could lead to those scattered subdivisions that prompted the 1961 legislature to adopt Hawaii's Land Use Law.

We urge you to hold HB 676 HD1 in committee.

HB-676-HD-1

Submitted on: 3/18/2023 7:12:05 PM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Toni Withington	Testifying for Ka Makani O Kohala Ohana	Oppose	Written Testimony Only

Comments:

Please DO NOT vote for this bill. It is a developers' dream to be free of State Land Use review. NO,NO,NO. This is our only check on the instant gratification of projects on Agricultural land. If a project is worthy, it will be recognized as such by the State. Those of us on the Neighbor islands need this State requirement to keep from being further overdeveloped by large projects.

Toss this bill out the door. Say NO.

aloha, Toni Withington for Ka Makani Kohala Ohana

HB-676-HD-1

Submitted on: 3/19/2023 6:48:50 AM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ted Bohlen	Testifying for Hawaii Reef and Ocean Coalition and Climate Protectors Hawaii	Oppose	Written Testimony Only

Comments:

Aloha Chairs Inouye and McKelvey, Vice Chairs Elefante and Gabbard, and Members of the Committees!

The Hawaii Reef and Ocean Coalition and Climate Protectors Hawaii respectfully **OPPOSE** this bill!

While we appreciate the intent to support more affordable housing, the Land Use Commission (LUC) is not a barrier to affordable housing. Throughout the 2010s, the LUC staff indicates, the LUC approved all major 201H affordable housing projects within 45 days. **This bill is therefore not needed to develop affordable housing in a timely fashion.**

It is also **inappropriate to allow counties rather than the Land Use Commission (LUC) to make decisions on district boundary reclassifications.** The LUC has a well-established quasi-judicial process that can identify and mitigate potential harms to important natural and cultural resources. The counties lack that expertise.

Please defer this bill!

Hawaii Reef and Ocean Coalition and Climate Protectors Hawaii (by Ted Bohlen)



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEES ON
WATER AND LAND and GOVERNMENT OPERATIONS
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229
MONDAY, MARCH 20, 2023 AT 1:00 P.M.**

To The Honorable Senator Lorraine R. Inouye, Chair
The Honorable Brandon J.C. Elefante, Vice Chair
Members of the Committee on Water and Land
To The Honorable Senator Angus L.K. McKelvey, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the Committee on Government Operations

SUPPORT FOR HB676 HD1 RELATING TO DISTRICT BOUNDARY AMENDMENTS

The Maui Chamber of Commerce **supports HB676 HD1** which authorizes the appropriate county land use decision-making authority to determine district boundary amendments involving land areas over fifteen acres, except lands that are designated as important agricultural land or lands where the soil is classified by the land study bureau's detailed land classification as overall (master) productivity class A or B if the county has adopted an ordinance that meets certain requirements.

The State land use commission LUC) is responsible for the classification of certain land parcels in the urban, rural, agricultural, and conservation districts. The LUC 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 Chamber feels that enabling the counties to reclassify certain lands intended for affordable housing development in which the county owns, will make larger scale projects (up to 100 acres) economically feasible for 100% affordable housing to be built. Counties are able to reclassify lands that are up to 15 acres in size. Increasing that limit to 100 acres should expedite the permitting process therefore lowering the costs for affordable housing.

For these reasons, we **support HB676 HD1**.

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.



March 20, 2023

1 p.m.

Conference Room 229

Via Videoconference

To: Senate Committee on Water and Land

Senator Lorraine R. Inouye, Chair

Senator Brandon J.C. Elefante, Vice Chair

Senate Committee on Government Operations

Senator Angus L.K. McKelvey, Chair

Senator Mike Gabbard, Vice Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

HB676 HD1 — RELATING TO DISTRICT BOUNDARY AMENDMENTS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB676 HD1](#), which would authorize Hawaii's counties to determine district boundary amendments for certain county-owned land areas greater than 15 acres, provided the counties enact ordinances that meet criteria specified by the bill.

Those criteria include that all the housing constructed on the lands be used for affordable housing as defined by county ordinance; that the counties retain ownership of the lands for at least 99 years; that the district boundary amendments be consistent with the county or community plans, if such plans exist; that the counties mitigate the impact that the housing development might have on roads and schools; and that the ordinance incorporates due process into the procedure for determining DBAs pursuant to state law and the public trust doctrine.

This measure correctly diagnoses one of the causes of Hawaii's housing crisis: excessive red tape. The state Land Use Commission's authority over district boundary amendments greater than 15 acres often puts a roadblock in the way of new housing projects.

A 2020 Grassroot Institute of Hawaii report, "[Reform the Hawaii LUC to encourage more housing](#)," discussed how state policymakers could encourage the growth of housing by reexamining the role and purpose of the LUC. Expanding the counties' powers to reclassify land through the district boundary amendment process was just one of the report's suggestions.¹

That means for us at the Grassroot Institute, HB676 is a welcome proposal, but too narrow in its focus. County-owned housing projects might benefit from this measure, but should it become law, housing developments on private lands would still be stuck in the same arduous DBA process.

This measure's potential could be better realized if it were amended to extend to privately held lands as well, not just those owned by the counties.

In addition, HB676 is ambiguous about the point that the counties own and retain ownership of the lands for 99 years. This raises questions about whether the houses could be sold fee simple or through some other mechanism, such as a leasehold.

Moreover, the length of that term suggests that this situation— leasehold or fee simple — is intended to end at some point, creating further difficulties for the counties and uncertainty around the home developments in particular.

Ultimately, the ambiguity of the 99-year ownership provision, combined with the budgetary and administrative implications involved, would create an unnecessary limit on the power of the counties to use their lands to increase the supply of housing.

The fundamental requirement that the counties own the lands makes sense in the context of this bill, but we suggest that the 99-year ownership and maintenance requirements be removed, thereby allowing the counties to develop housing according to local needs.

¹ Jackson Makanikeoe Grubbe, "[Reform the Hawaii LUC to encourage more housing](#)," Grassroot Institute of Hawaii, September 2020.

The measure’s limitation to affordable housing projects might also raise project costs for the counties. Known as “inclusionary zoning,” this type of requirement for homebuilding can make private projects financially unfeasible, leading to fewer housing units being constructed.

For example, a 2020 survey of 1,030 municipalities across the U.S. showed that only three had inclusionary zoning requirements higher than 75%: Aquinnah, Massachusetts and Santa Paula and Oxnard, California.² All three required 100% affordable housing, and all three saw construction of new homes decline by more than 60% during the decade after the policies were adopted.

Change in units built after 100% affordable housing requirement

Municipality	Policy adopted	Units built 2000-2009	Units built 2010-2019	% change
Santa Paula, Calif.	2012	350	118	-66.29%
Oxnard, Calif.	2012	6,948	2,642	-61.97%
Aquinnah, Massl	2016	82	27	-67.07%

Source: “[Selected Housing Characteristics](#),” U.S. Census Bureau, Table DP04, 2019. “[Inclusionary Housing Database](#),” Grounded Solutions Network, 2020.

We suggest amending this measure to eliminate or reduce the inclusionary zoning mandate. This would help prevent the counties from being bogged down in expensive projects that might ultimately discourage the construction of new units.

Thank you for the opportunity to submit our comments.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

² “[Inclusionary Housing Database](#),” Grounded Solutions Network, 2020.

HB-676-HD-1

Submitted on: 3/17/2023 3:27:01 PM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keani Rawlins-Fernandez	Individual	Oppose	Remotely Via Zoom

Comments:

I stand on my previous testimony in opposition to HB 676.

HB-676-HD-1

Submitted on: 3/18/2023 11:53:02 AM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bianca Isaki	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha Senators, please oppose/ hold HB676. The bill would give county planning commissions the authority to bypass the State Land Use Commission, which is responsible for preserving and protecting agricultural lands from urban encroachment and preventing premature conversion of agricultural land to residential use, when they are seeking to convert 15 acres or greater of agricultural land to urban use. Our county planning commissions are dominated by construction, real estate, and tourism industries and have wielded their authority nearly exclusively towards increasing development/ land values at every turn. This robs future generations of valuable agricultural opportunities.

Yours

Bianca Isaki

HB-676-HD-1

Submitted on: 3/19/2023 1:40:45 PM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Linda Gray	Individual	Oppose	Written Testimony Only

Comments:

Please consider the importance of maintaining agricultural land and cultural heritage sites. Allowing local county officials the option to skip review of proposals by the Land Use Committee may lead to loss of important agricultural opportunities and cultural heritage sites. Diminishing opportunities for agricultural operations to expand and diversify will threaten and harm Hawaii. Citizen involvement is critical to a great land use process. Please vote no on this proposal. Thank you for your consideration.

HB-676-HD-1

Submitted on: 3/16/2023 11:44:08 PM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cards Pintor	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I do NOT support this bill. Do NOT pass this bill.

Mahalo nui,

Cards Pintor

HB-676-HD-1

Submitted on: 3/19/2023 8:11:26 AM

Testimony for WTL on 3/20/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mark Hyde	Individual	Oppose	Written Testimony Only

Comments:

I vehemently oppose this bill.

I've participated close-up and individually in the LUC land use reclassification process and found it to be fair, deliberate and inclusive. The process of reclassification includes input from county planning departments, concerned citizens, the State Office of Planning, and other interested parties so everyone is at the table. It's decisions are guided by a clear set of excellent principles embedded in statute and rules. Members of the board, in my experience, have been knowledgeable, intelligent, diligent and largely free of conflict of interest.

My experience with the County of Maui has been the opposite in a case dubbed the Kihei Mega Mall case in which the weakness and crony influence in county government was on full display in a demonstration of what can happen when an elected mayor unduly influenced by insiders and cronies acts contrary to the wishes of the community, an existing LUC Order, and the community plan, everything else be damned, even in the face of opposition from the State Office of Planning, community groups and individual citizens which only had a chance to be heard through access to the LUC. Had it not been for the honest venue the LUC provided, south Maui would now be unlawfully burdened with a gigantic shopping center off Pi'ilani Highway without regard to community input, consideration of the shopping center's impact on traffic, Native Hawaiian interests, and in undeniable violation of explicit language in Kihei-Makena Community Plan addressing the subject parcel with particularity. The Kihei Mega Mall case is a poster child for what this proposed bill would allow.

Vote NO!

HB-676-HD-1

Submitted on: 3/19/2023 4:53:44 PM

Testimony for WTL on 3/20/2023 1:00:00 PM



Submitted By	Organization	Testifier Position	Testify
Glenn Teves	Individual	Oppose	Written Testimony Only

Comments:

My name is Glenn Ioane Teves, and I am an agriculturalist with and farmer on Molokai and I represent myself in opposition to any change in State Land Use Commission laws. The counties are part of the state of Hawaii and they have attempted to circumvent state purview of many laws too many times, including the Hawaiian Homes Act, the State Water Code, and especially State Land Use laws, including HRS Section 421.

There's a need for two layers of government to protect and enforce the purpose and intent of state laws, including implementation of these laws by the Counties because we have so many examples of abuse and circumvention of these laws.

A good example is the role of 'parceling' to circumvent review by LUC. By keeping each subdivision piece below 15 acres, the county can bypass LUC review, but in many instances this ploy is only one step in many to develop adjacent parcels with a total area far greater than 15 acres. This has happened so many times in our history with glaring examples on each island. Without two layers of government seeing to it that the purpose and intent of these laws are upheld, it will be easy for the Counties to slide these developments through.

Another issue that has become more prevalent recently is the role of individuals in the county planning departments accepting bribes and engaging in illegal activities, and we have examples on Oahu, Maui, and Hawaii Island. A related example includes planning department personnel leaving the county to join development companies and giving these companies the inside track and preferential treatment in developing parcels through the Counties, and one glaring example is the Hokuli'a Development near Kealakekua. We need two levels of government to create the checks and balances required to prevent this from happening again and again.

The intent of LUC laws, including HRS Section 421, is to protect good agricultural land for true agricultural development, and even these laws leave holes for agricultural subdivisions that are nothing more than gentlemen's estates or fake farms that don't produce agricultural product nor create agricultural jobs. The intent of agricultural tax laws is to invest in agriculture with the understanding that products and jobs will be created that can be taxed, and this is not happening in most agricultural subdivisions. By allowing fake farms to occur, the state loses substantial tax revenues that should be taxed as large residences. The abuse of agricultural tax laws increases the costs of agricultural land at a time when food security is so critical to our survival since we produce less than 10% of our food and supply chain issues put our survival in jeopardy.

Please maintain existing laws and at the minimum look at strengthening agricultural land use laws. Mahalo,

Glenn Ioane Teves