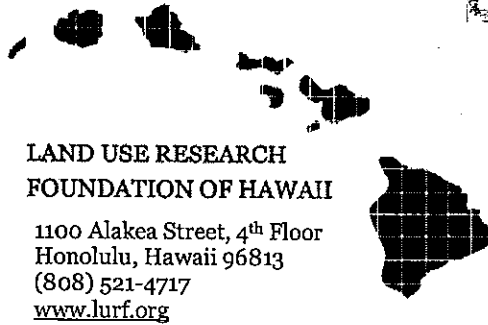


# LATE TESTIMONY



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February 3, 2012

Representative Jerry L. Chang, Chair  
Representative Sharon E. Har, Vice Chair  
House Committee on Water, Land & Ocean Resources

**Support of HB 2384 Relating to Land Use. (Upon the determination of the appropriate county officer or agency that the petitioner has substantially commenced development, requires the land use commission, upon request, to extend the time period for which a boundary amendment is effective.)**

**Friday, February 3, 2012, 9:00 a.m., in CR 325**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **support of HB 2384**, and to offer comments.

**HB 2384.** This bill requires the land use commission (LUC), upon the request of a petitioner in a district boundary amendment approved by the LUC for an extension of time to comply with any condition that was imposed by the LUC as part of the amendment approval, to extend the date or time by which the condition must be completed for at least two years, provided 1) that the appropriate county officer or agency determines that the petitioner has substantially commenced development of the property; and 2) that any terms or conditions of the extension shall not be more restrictive than those contained in the LUC decision which approved the boundary amendment.

**LURF's Position.** Based on our familiarity with the state land use district boundary amendment process, the county processes relating to general plans, development plans, zoning, subdivisions, and other permits, it is unnecessary for the LUC to impose such detailed timing deadlines and it is unnecessary for the LUC to continue to monitor the timing of the project – those issues should be deferred to the counties. The LUC approves the land use with certain conditions, and then it is up to the counties to approve the **zoning** and later to approve **subdivisions**, and review and approve **other permits** to protect the specific health, safety and the environmental issues related to the development. The counties are knowledgeable and familiar with the nature of development and delays, and we understand that the City and county of Honolulu (City) no longer imposes strict deadline dates in their zoning approvals. **Instead, of establishing a strict "deadline date," the counties, like the City look at projects sequentially; and require satisfaction of certain conditions before subsequent permits will be granted.**

However, given the existence of timing conditions in current LUC decision and orders, LURF **supports HB 2384**, and offer some revisions that take into account the reality of development projects and the reasons for the delays. LURF's position and recommended revisions include the following:

**Reasons for development delays.** We all know of projects or areas that have developed over the span of many years into very good projects (Kakaako, Mililani, Kapolei, etc.). Sometimes development delays are based on the following:

- **Force Majeure** ("greater force"), which are actions that cannot be predicted or controlled by the Petitioner, such as war, strikes, shortage of construction materials or fuel, etc., government action or inaction, or being caught in a bad economic cycle; and which include **Acts of God**, which are unpredictable natural events or disasters, such as earthquakes, storms, floods, etc.
- **Certain permit conditions can also actually delay projects.** There are instances where a developer cannot commence development until a certain condition is met, and sometimes that condition is based on the action of a third party – sometimes government, over which the developer has no control. Therefore, requiring the developer to "substantially commence development" in order to qualify for an extension of time, may mean that no extension would be approved.

**HB 2384 should be amended to add the opportunity to apply for an extension based on "good cause."** To address the above realities of developments, LURF would strongly recommend that the bill should be amended to allow the Petitioner to file a request for extension with the County based on "good cause." A revision could include the following:

- (1) The appropriate officer or agency identified under section 205-12 of the county in which the land is situated determines that:
  - a. The petitioner has substantially commenced development of the property in accordance with the commission-imposed requirements, terms and conditions of the district boundary amendment; [and] or
  - b. Other good cause exists to extend the commission-imposed requirements, terms and conditions of the boundary amendment; and

**Section (b), which limits the petitions for extensions, should be deleted.** Based on the fact that there may be force majeure and Acts of God occurrences, or other good cause, there should not be an artificial limit on the number of extensions for commission-imposed requirements. As noted above, we understand that instead of establishing a strict "deadline date," the City requires the satisfaction of certain conditions before subsequent permits will be granted.

Thank you for the opportunity to present comments in support of this bill.



# Sierra Club Hawai'i Chapter

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## LATE TESTIMONY

### HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

February 3, 2012, 9:00 A.M.  
(Testimony is 2 pages long)

#### TESTIMONY IN OPPOSITION TO HB 2384

Aloha Chair Chang and Members of the Committee:

The Sierra Club, Hawaii Chapter, with 9,000 dues paying members and supporters statewide, opposes HB 2384. This bill is a reactionary measure to a recent Land Use Commission decision. It requires the LUC to extend a district boundary amendment deadline by two years if the petitioner has substantially commenced development of the property.

This proposal is misdirected. In anything, we should require the LUC to strictly enforce its conditions in a timely fashion because all too frequently the LUC fails to do so.

The LUC's failure to enforce conditions imposed on the proposed development at Turtle Bay is a fairly clear example of a body ignoring the law in order to further development interests and to the detriment of the public at large.<sup>1</sup>

In 1986, the Land Use Commission reclassified 236 acres in Kahuku based on a fifteen year market analysis and representations by Kuilima Development Company that the project would be completed by 2000.<sup>2</sup> Kuilima repeatedly promised that thousands of new jobs would be created "over the next 20 years." Dozens of residents testified in support of the project based largely on the promise of new jobs and affordable homes.

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<sup>1</sup> In the spirit of complete disclosure, Robert Harris previously represented Defend O'ahu Coalition, a petitioner that requested the Land Use Commission consider this matter. He has no current relationship with Defend O'ahu Coalition.

The Sierra Club, Hawai'i Chapter is also a plaintiff in a lawsuit pending before the Supreme Court of Hawai'i as to whether Kullima Development Company's environmental impact statement is legally sufficient.

<sup>2</sup> The Environmental Impact Statement indicated the project would be completed by 1994-1995.

Unfortunately, Kuilima lied. Upon receiving this reclassification, ownership interest in the property exchanged hands several times. Little or no development on the property occurred. No new jobs. No new affordable housing.

Over twenty years elapsed. Few of the conditions imposed by the Land Use Commission were followed. For example, it is relatively uncontested that:

- A 4.8 acre park at Kawela Bay was never dedicated to the County;
- A 2-acre privately owned park was never opened to the public;
- Full-service hotels were never finished;
- Low and moderate income housing was never built;
- Improvements to Kamehameha Highway were never finished; and
- Continuous pedestrian access along the shoreline was never provided.

As a result of the LUC's failure to enforce its conditions, critical services were not provided to the community. Few new jobs. No affordable housing. This has a real and measurable impact on long term planning. How can others determine if the project will ever proceed forward? What if additional development projects offer the same services?

In short, not only is this bill unnecessary, but it addresses the wrong problem.

Mahalo for the opportunity to testify.