

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 4:08 PM  
**To:** waltestimony  
**Cc:** thee@dbedt.hawaii.gov  
**Subject:** Submitted testimony for HB193 on Feb 8, 2013 08:30AM  
**Attachments:** HB0193\_BED-OP\_02-08-13\_WAL.pdf

**HB193**

Submitted on: 2/6/2013

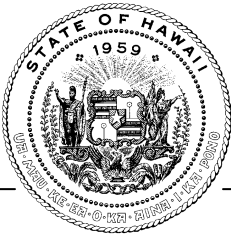
Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jesse K. Souki	State Office of Planning	Comments Only	No

Comments: See comments in Testimony file.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Statement of  
**JESSE K. SOUKI**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the

### HOUSE COMMITTEE ON WATER AND LAND

Friday, February 8, 2013

8:30 AM

State Capitol, Conference Room 325

in consideration of  
**HB 193**  
**RELATING TO LAND USE.**

Chair Evans, Vice Chair Lowen, and Members of the House Committee on Water and Land.

The Office of Planning (OP) offers the following comments on HB 193, which requires the Land Use Commission (LUC) to extend the period of time for compliance with conditions of approval for at least two years if there has been substantial commencement of development or if other good cause exists.

OP believes this measure may not be necessary. Petitioners have the ability to appear before the LUC and request extensions if they are experiencing difficulties in meeting any time requirements imposed in conditions of approval. In our experience, petitioners have not hesitated to request extensions of time for good cause, and the LUC has been generous in granting even multiple extensions to comply with imposed time requirements.

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

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 06, 2013 4:34 PM  
**To:** waltestimony  
**Cc:** Daniel.E.Orodenker@dbedt.hawaii.gov  
**Subject:** Submitted testimony for HB193 on Feb 8, 2013 08:30AM  
**Attachments:** LUC Testimony on HB 193 2-6-2013.pdf

**HB193**

Submitted on: 2/6/2013

Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daniel Orodenker	State Land Use Commission	Oppose	No

Comments:

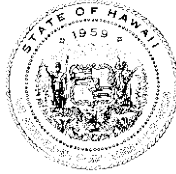
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**RICHARD LIM**  
Director



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

**DANIEL ORODENKER**  
Executive Officer  
Planner

**Bert K. Saruwatari**  
Planner

**SCOTT A.K. DERRICKSON AICP**  
Planner

**RILEY K. HAKODA**  
Chief Clerk

**FRED A. TALON**  
Drafting Technician

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Statement of  
**Daniel E. Orodener**  
Executive Officer  
Land Use Commission  
Before the  
House Committee On Water and Land  
State Capitol, Conference Room 325

In consideration of

**HB 193 RELATING TO LAND USE**

Chair Evans, Vice Chair Lowen, members of the Committee on Water and Land

The Land Use Commission opposes HB 193.

This measure seeks to create an automatic two year extension of time to comply with requirements of the Land Use Commission Decisions and Orders where a County officer or agency concludes that Petitioner has substantially commenced development after being granted a district boundary amendment or the County officer or agency concludes there is good cause shown.

This proposed amendment is not necessary in application and is also a dangerous erosion of the Land Use Commissions power and authority which could lead to confusion and unnecessary delay in managing development and land use planning.

It should be noted at the outset that the deciding agency is generally the best determiner of the propriety of a modification to its decisions and the circumstances under which it should be granted.

Second, the remedy currently proposed is already available to any petitioner of a district boundary amendment. Petitioners regularly come before the commission and request extensions of time and other modifications of Decisions and Orders. These are liberally granted.

The conditions contained in an order granting a district boundary amendment are the result of a careful factual analysis by the Commission and are designed to protect the interest of the State and County as well as the public. Time limits are often placed on conditions to prevent required public improvements from being put off so long that issues they were designed to address are severely or dangerously impacted.

The Land Use Commission, having all of the evidence from the initial application before it, combined with the evidence associated with the application for modification, is in the best position to analyze the legitimacy of the request and the proper remedy or time frame for the extension. The County's should not have the ability to unilaterally grant an extension without a complete record of the proceedings and without knowledge of, or concern for, the impact on state agencies such as DOT, DOH, DOE, and DLNR. There is a real concern that such unilateral decisions will result in cost to the state, problems with infrastructure, damage to the environment or threats to public health and safety.

Further there is a potential that there will be a redundancy or duplication of decision-making on compliance with Decisions and Orders. The Commission has the ability to make a determination, on its own motion or by motion of an interested party that a Petitioner is in violation of an order. If a County official or agency grants a request for an extension, it does not preclude a public organization or a state agency from bringing the matter before the commission and having a contrary order issued. This could result in significant expense to developers, uncertainty in the development process and expense to the public and state agencies.

As it currently stands there is an established and well understood comprehensive process for amendments to Decisions and Orders that works well and is regularly utilized by petitioners. Proposed HB 193 will only serve to confuse the process and could result in harm to the public and the state agencies involved in the Land Use District Boundary Amendment proceedings.

Thank you for the opportunity to testify on this matter.



February 6, 2013

Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair  
House Committee on Water & Land

Representative Chris Lee, Chair  
Representative Cynthia Thielen, Vice Chair  
House Committee on Environment

**Support of HB 193 Relating to Land Use. (Requires the land use commission, upon request, to extend the time period for which a boundary amendment is effective for at least 2 years if the appropriate county officer or agency determines that the petitioner has substantially commenced development or if other good cause exists.)**

**Friday, February 8, 2013, 8:30 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 193**, and to offer comments.

**HB 193.** This bill provides that if a person who has petitioned for a district boundary amendment that has been approved by the State Land Use Commission (LUC), requests an extension of time to comply with any requirements, terms, or conditions (collectively referred to as "conditions") that were imposed by the LUC as part of the approval of the amendment, the LUC shall extend the date or time by which the condition must be completed for at least two years; provided that: (1) the petitioner has substantially commenced development of the property in accordance with the LUC-imposed conditions of the district boundary amendment, or (2) other good cause exists to extend the date or time for completion of the LUC-imposed conditions of the district boundary amendment; and (3) the conditions of the extension shall not be more restrictive than those contained in the LUC decision which approved the district boundary amendment on which the extension is based. The appropriate county officer or agency identified under HRS §205-12 determines whether a petitioner has substantially commenced development of the property.

**Background.** Pursuant to Chapter 205, Hawaii Revised Statutes ("HRS"), the LUC is charged with grouping contiguous land areas suitable for inclusion in one of the four major State land use districts (urban, rural, agricultural and conservation; and determining the land use boundaries and boundary amendments based on applicable standards and criteria. Thereafter,

for projects within the urban district, the counties control the specific uses, development and timing through detailed county ordinances, zoning and subdivision rules.

After the LUC approves a district boundary amendment for an urban land use (with certain conditions), then it is up to the counties to review and disapprove or approve the zoning (with additional specific conditions); disapprove or approve subdivisions (with additional specific conditions); and to disapprove or approve other development permits (with additional specific conditions) to address health, safety and environmental issues related to the development. The various county development approval and permitting processes require review, approval and imposition of specific conditions by county councils and/or planning commissions, as well as the county administrations and numerous county departments, which employ hundreds of employees, planners, architects and engineers who are knowledgeable and experienced with health, safety and environmental requirements and the nature of development and delays. LURF understands that in some cases, the City and County of Honolulu (City) has not imposed strict “deadline” dates in their zoning approvals, and instead, the City and some other counties have addressed the development of master-planned projects in a sequential manner; by reasonably requiring the satisfaction of certain specific conditions before subsequent permits will be granted.

Over the years, issues have been raised relating to the LUC’s imposition of detailed timing deadlines and other specific requirements and conditions and the LUC’s continued monitoring and enforcement of conditions which involve detailed development issues and requirements which the counties are responsible to establish and enforce under HRS Chapter 205 and county laws.

**LURF’s Position.** Given the existence of specific “timing” and other detailed conditions in current LUC decision and orders, LURF **supports HB 193**, based on the following:

- **HB 193 is consistent with the two-tiered (State/County) system of land use approvals established by HRS Chapter 205.** The relevant HRS provision is as follows:

**§205-12 Enforcement.** The appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition relating to agricultural districts under section 205-4.5 and shall report to the commission all violations.

- **HB 193 is consistent with the intent and application of HRS Chapter 205 and its two-tiered government land use approval process (State/county).** Most State agencies and all of the counties operate with the understanding that the LUC should perform its duties under the law and take a broad focus of state land use issues and the four State land use districts, while deferring the issues relating to specific project development details and timing, specific conditions and enforcement to the counties. The more itemized, specific and detailed the LUC conditions are, the more chance of conflicts with county laws, procedures and policies, thereby creating more uncertainty in the land use process. This analysis is based on HRS Chapter 205, the state land use district boundary amendment process, the county processes relating to general plans, development/sustainable communities plans, zoning, subdivisions, and other permits, and is consistent with Hawaii case law, land use legal treatises (including “*Regulating Paradise – Land Use Controls in Hawaii*”, Second Edition by David L. Callies), and the ruling in the recent Aina Lea case by Third Circuit Judge Elizabeth A. Strance.

- **HB 193 specifically addresses the reality of development projects, enforcement of conditions, the reasons for delays in compliance with conditions and the expertise and experience of the counties to address such matters.** LURF’s support for HB 193 is also based on the following:
  - **Determinations of “substantial commencement” and “good cause” should be made by government officials with expertise and experience in planning and development.** Given their extensive expertise and experience, the appropriate county officials who understand the planning and development process and would be in the best position to determine whether “substantial development has commenced” and whether “good cause” exists for an extension. Such determinations should not be made at a later date by a court as a result of a lawsuit.
  - **The “good cause” provision addresses the reality of development delays which are beyond the control of the land owner or developer.** It is common knowledge that many master-planned projects or areas that have developed (or are still developing) over the span of many years result in very good and sustainable projects which provide affordable housing and jobs for Hawaii’s residents (Mililani, Kakaako, the Second City of Kapolei, etc.). Sometimes development delays are based on the following:
    - ✦ **Force Majeure (“greater force”).** These 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 the satisfaction of that condition is dependent 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 ever be approved.

Based on the above, we respectfully request your favorable consideration of HB 193.

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





Testimony of Cindy McMillan  
The Pacific Resource Partnership

House Committee on Water & Land  
Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair

House Committee on Environment  
Representative Chris Lee, Chair  
Representative Cynthia Thielen, Vice Chair

HB 193– RELATING TO LAND USE  
Friday, February 8, 2013  
8:30 a.m.  
State Capitol – Conference Room 325

Chairs Evans and Lee, Vice Chairs Lowen and Thielen, and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

**PRP supports HB 193, which requires the Land Use Commission (LUC), upon request, to extend the time period for which a boundary amendment is effective for at least 2 years if the appropriate county officer or agency determines that the petitioner has substantially commenced development or if other good cause exists.**

This legislation addresses an issue that arises if the LUC imposes a specific timeline for a project in its approval of a district boundary amendment. Following LUC approval, the counties assess the specific uses, development and timing through detailed county ordinances, zoning and subdivision rules. This process includes intense scrutiny of the application and includes reviews by numerous departments and agencies. As a result, the approvals process is often lengthy and specific deadlines imposed by the LUC difficult, if not impossible to meet. HB 193 recognizes this reality and provides a reasonable solution to the challenge faced by developers.

For these reasons, we respectfully ask for your support on HB 193. Thank you for the opportunity to share our views on this important initiative with you.