

TESTIMONY

HB193 HD1

Measure Title: RELATING TO LAND USE.

Report Title: Land Use Commission; Boundary Amendment; Time Period Extension

Description: Requires the land use commission, upon request, to extend the time period for which a boundary amendment is effective for at least two years if the appropriate county officer or agency determines that the petitioner has substantially commenced development or if other good cause exists. Effective July 1, 2030. (HB193 HD1)

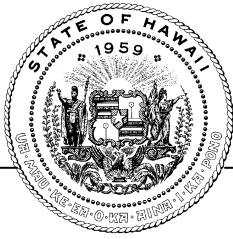
Companion:

Package: None

Current Referral: WTL/EGH, WAM

Introducer(s): EVANS

<u>Sort by Date</u>		Status Text
3/7/2013	S	Received from House (Hse. Com. No. 190).
3/7/2013	S	Passed First Reading.
3/7/2013	S	Referred to WTL/EGH, WAM.
3/12/2013	S	The committee(s) on WTL/EGH has scheduled a public hearing on 03-19-13 1:15PM in conference room 225.



**OFFICE OF PLANNING
STATE OF HAWAII**

NEIL ABERCROMBIE
GOVERNOR

JESSE K. SOUKI
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OFFICE OF PLANNING

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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON WATER AND LAND
AND
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT
OPERATIONS AND HOUSING**
Tuesday, March 19, 2013
1:15 PM
State Capitol, Conference Room 225

in consideration of
**HB 193 HD1
RELATING TO LAND USE.**

Chairs Solomon and Dela Cruz, Vice Chairs Shimabukuro and Slom, and Members of the Senate Committees on Water and Land and Economic Development, Government Operations and Housing.

The Office of Planning (OP) offers the following comments on HB 193 HD1, 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.

This measure is not necessary. Petitioners may 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.

NEIL ABERCROMBIE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

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

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Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
Senate Committee on Water and Land
and
Senate Committee on Economic Development, Government Operations and Housing
State Capitol, Conference Room 225
Tuesday, March 19, 2013
1:15 p.m.
In consideration of

HB 193 HD1 RELATING TO LAND USE

Chairs Solomon and Dela Cruz, Vice Chairs Shimbukuro and Slom, and members of the Committee on Water and Land, and Committee on Economic Development, Government Operations and Housing.

The Land Use Commission opposes HB 193 HD1.

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 HD1 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.



March 18, 2013

Senator Malama Solomon, Chair
Senator Maile S. Shimabukuro, Vice Chair
Senate Committee on Water and Land

Senator Donovan M. Dela Cruz, Chair
Senator Sam Slom, Vice Chair
Senate Committee on Economic Development, Government Operations and Housing

Support of HB 193, HD1 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.)

Tuesday, March 19, 2013, 1L15 p.m., in Conference Room 225

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 **supports HB 193, HD1**, and to offers the comments below.

HB 193, HD1. 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, HB1**, based on the following:

- **HB 193, HD1, 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, HD1, 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, HD1, 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, HD1, 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.). In addition to economic cycles (when the economy and employment are down, the housing market and development stagnates); 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, HD1.

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



Testimony of Cindy McMillan
The Pacific Resource Partnership

Senate Committee on Water and Land
Senator Malama Solomon, Chair
Senator Maile Shimabukuro, Vice Chair

Senate Committee on Economic Development, Government Operations and Housing
Senator Donovan M. Dela Cruz, Chair
Senator Sam Slom, Vice Chair

HB 193, HD 1 – RELATING TO LAND USE
Tuesday, March 19, 2013
1:15 p.m.
State Capitol – Conference Room 225

Chairs Solomon and Dela Cruz, Vice Chairs Shimabukuro and Slom, and Members of the Committees:

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, HD 1 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, HD1 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, HD 1. Thank you for the opportunity to share our views on this important initiative with you.

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Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 19, 2013

TO: HONORABLE MALAMA SOLOMON, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON WATER AND LAND

HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE MALAMA SOLOMON AND MEMBERS OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

SUBJECT: **SUPPORT OF H.B. 193, HD1, 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 two years if the appropriate county officer or agency determines that the petitioner has substantially commenced development or if other good cause exists. Effective July 1, 2030. (HB193 HD1)

HEARING

DATE: Tuesday, March 19, 2013
TIME: 1:15 p.m.
PLACE: Room 225

Dear Chairs Solomon and Dela Cruz, Vice Chair Shimabukuro and Members of the Committees:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in **support** of H.B. 193, HD1, Relating to Land Use which provides that upon request the Land Use Commission may extend the time period that a previously approved boundary amendment is effective for at least two years, if the appropriate county officer or agency finds that certain conditions have been met.

This measure makes economic sense due to the extended period of time it takes for a development to be fully built out and given the numerous state and county permitting regulatory requirements that a developer must comply with. This measure would allow an applicant who already has a district boundary amendment approved by the land use commission, the opportunity to request an extension to further comply with any "requirements, terms, or conditions that were imposed by the commission as part of the approval of the amendment" upon meeting certain requirements set forth by the proper county official.

Over the years, issues have been raised relating to the LUC's detailed timing deadlines and other specific requirements and conditions. Additionally, questions have been raised regarding 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 Chapter 205, Hawaii Revised Statutes and county laws. This measure provides assurance that a development can reach its full potential. For these reasons, GCA respectfully requests that this measure be passed out by this Committee.

Thank you for this opportunity to present our views on this measure.

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: hankhawaiian@yahoo.com
Subject: *Submitted testimony for HB193 on Mar 19, 2013 13:15PM*
Date: Tuesday, March 12, 2013 7:59:04 PM

HB193

Submitted on: 3/12/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Hank Fergerstrom	Individual	Oppose	No

Comments:

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Subject: *Submitted testimony for HB193 on Mar 19, 2013 13:15PM*
Date: Wednesday, March 13, 2013 8:44:13 AM

HB193

Submitted on: 3/13/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Oppose	No

Comments:

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Date: Wednesday, March 13, 2013 11:31:52 AM

HB193

Submitted on: 3/13/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Pono Kealoha	Individual	Oppose	No

Comments:

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Date: Wednesday, March 13, 2013 12:30:46 PM

HB193

Submitted on: 3/13/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Graham Ellis	Individual	Oppose	No

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HB193

Submitted on: 3/13/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
April Lee	Individual	Oppose	No

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Date: Thursday, March 14, 2013 5:29:24 AM

HB193

Submitted on: 3/14/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Raye	Individual	Oppose	No

Comments:

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HB193

Submitted on: 3/14/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
joy cash	Individual	Oppose	No

Comments:

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HB193

Submitted on: 3/14/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Kea Kapaua	Individual	Oppose	No

Comments:

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Date: Thursday, March 14, 2013 10:47:28 AM

HB193

Submitted on: 3/14/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
David Bennett	Individual	Oppose	No

Comments:

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Date: Sunday, March 17, 2013 10:17:53 PM

HB193

Submitted on: 3/17/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Petricci	Individual	Oppose	No

Comments:

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HB193

Submitted on: 3/17/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Oppose	No

Comments:

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HB193

Submitted on: 3/17/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
sherrian witt	Individual	Oppose	No

Comments:

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HB193

Submitted on: 3/17/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Toni Wlthington	Individual	Oppose	No

Comments: Non-compliance with performant time limits set by the commission is a big problem which ties up use of important land by developers who gain entitlements to land solely for the purpose of selling the land or development rights. Some developments have languished for 20 or 30 years with no move by developers. This is pure and simple speculation of our valuable land. The SLUC should be encouraged to enforce time limits, not be saddled with legislative "freebees." VOTE NO to this developer-initiated bill.

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HB193

Submitted on: 3/14/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Katie Horgan	Individual	Oppose	No

Comments:

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Date: Monday, March 18, 2013 6:22:59 AM

HB193

Submitted on: 3/18/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
brian Murphy	Individual	Oppose	No

Comments:

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Date: Sunday, March 17, 2013 10:28:41 PM

HB193

Submitted on: 3/17/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Subiono	Individual	Oppose	No

Comments:

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HB193

Submitted on: 3/14/2013

Testimony for WTL/EGH on Mar 19, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Freitas Jr.	Individual	Oppose	No

Comments: I oppose this bill.

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