

HB 193 HD1

LATE

TESTIMONY

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

March 20, 2014

The Honorable Malama Solomon, Chair
and Members of the Committee on Water and Land
The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Economic
Development, Government Operations and Housing
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Solomon, Dela Cruz, Espero
and Committee Members:

SUBJECT: House Bill No. 193, Proposed SD1
Relating to Land Use

The Department of Planning and Permitting (DPP) and the City's Transit Oriented Development (TOD) Program **oppose** House Bill No. 193, Proposed SD1. The Bill would require all State agencies within one-half mile of the proposed rail stations to enter into a Memorandum of Understanding (MOU) and convene working groups with the Honolulu Authority for Rapid Transportation (HART) to address how the transit stations will affect the surrounding workforce and housing.

As we testified on Senate Bill No. 2437 and Senate Bill No. 2267, Proposed HD1, the DPP applauds interest in getting State agencies more involved in implementing TOD projects. The State owns a significant amount of land around many of the stations, and has access to resources, partnerships, incentives, and financing capacity that can be used to catalyze development on several of those parcels. We share your interest in maximizing the impact of State policies, land, and resources to support TOD projects that will enhance Oahu's neighborhoods, and look forward to continuing our partnership with the State. However, many of the proposed tasks in the Bill would appear to duplicate what the City's TOD Program and our partners (including many State agencies) have been working on for the last seven years.

The Bill mentions working with the Honolulu Authority for Rapid Transportation (HART), which is responsible only for the actual transit stations or development directly on limited HART-owned station sites, rather than the DPP and our TOD Program, which are responsible for

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developing plans, updating zoning, financial tools, and implementation strategies in the TOD areas. House Bill No. 193 focuses on the impact of the transit station itself, rather than the TOD plans, policies, codes, investments, and implementation strategies. The proposed process seems overly complex, requiring separate working groups and MOUs for each of the eight stations selected, which could take a significant amount of agency staff time for limited results.

The DPP's TOD Program has developed six draft Neighborhood TOD Plans for the areas around 15 of the transit stations, and we are preparing to conduct the Airport and Aloha Stadium TOD plans for four stations (the remaining two station areas are under the Hawaii Community Development Authority [HCDA] jurisdiction). Each plan is based on extensive community participation, with three to four public workshops in each area, several smaller stakeholder meetings with land owners, business and community groups, and detailed community surveys. Thorough technical analysis underlies each plan, including market analysis and feasibility studies. All of this work is available at www.todhonolulu.org and has been shared with State agencies. In fact, several key State agencies have been members of the advisory committee that shaped these plans, and participated at community workshops (see list of State agency involvement below).

The stations are, for the most part, located in well-established neighborhoods, many members of which have spent years talking with us about how the TOD plans mesh with neighborhood goals. It would be difficult to start those conversations again, and we wouldn't want to suggest dramatically new ideas without taking them back to the community. Forming a new working group would put us all back at least a year in that regard.

For the last year, we have focused on an implementation strategy to catalyze development opportunities, infrastructure investments, and neighborhood enhancements. We have started drafting Land Use Ordinance and zoning updates, based on the Neighborhood TOD plans, which will make it easier to develop mixed-use projects that reflect the community's vision. The City's new TOD Sub-cabinet is a working group of infrastructure, transportation, environmental, housing, and planning directors who meet weekly to focus inter-agency efforts on expediting catalytic projects in the TOD areas, with a focus on feasibility, infrastructure availability, market interest, and ability to leverage other investments. Three catalytic projects were selected for this year, along with multimodal access and safety improvements around the first half of the rail stations that will open in 2017. We are also working with landowners and developers to generate interest in potential projects in key areas. These efforts have identified several potential sites, projects, and policies where the State's efforts could help leverage City and private developer investments.

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DPP has already been working with several State agencies on TOD-related issues, including the Department of Education (potential redevelopment opportunities and school access); Department of Health (potential bike share system and environmental/brownfields issues); Department of Accounting and General Services (potential State facilities and projects in TOD areas); Office of Planning (TOD planning and policy); Department of Hawaiian Home Lands (East Kapolei, Kalihi, and Downtown TOD plans); HCDA (Downtown and East Kapolei Plans, and mobility and infrastructure improvements in Kakaako); HHFDC ((housing policy and project finance); Hawaii Public Housing Authority (Kalihi and Downtown TOD plans); Department of Land and Natural Resources (development of the East Kapolei TOD Plan); and the University of Hawaii system (West Oahu, Leeward Community College, and Honolulu Community College campuses and long-term redevelopment potential). We are preparing to initiate the Aloha Stadium TOD Plan, and have been meeting with DAGS and the Stadium Authority. We are also initiating the Airport Neighborhood TOD Plan, and will be working closely with the Hawaii Department of Transportation on that plan, as well as transit station access and safety improvements for the station areas along Farrington and Kamehameha highways.

Rather than develop a series of MOUs, we respectfully suggest that it may be more effective – and quicker – to use our TOD program's efforts as a starting point. Perhaps the DPP could host a series of work sessions with key State agencies to walk through each of the TOD Plans, present what we have learned about community goals, needs and potential, explore infrastructure issues, and highlight key development opportunities. This effort could identify several potential sites, projects, and policies where the State's efforts could help leverage City and private developer investments. We suggest that the emphasis should be on implementing projects – getting State resources directed geographically to the transit corridor. This effort could also help locate any new State facilities, especially offices, near rail stations. This is in keeping with recommendations from Smart Growth America in a study last year led by the State Office of Planning.

In summary, the DPP and the TOD Program **oppose** House Bill No. 193, Proposed SD1. We recommend that State agencies meet with our TOD team to identify potential target areas where State land, resources, and policies can be focused to expedite affordable and middle-class housing development. We have included State agencies from the beginning of our TOD program in 2007, initially in the formulation of neighborhood TOD plans, and then broadening into defining regional policies and identifying sites for development of TOD projects. In lieu this Bill, we would support a Resolution that endorses the continued joint efforts by State agencies to work with the City, and asks them to work together to focus on constructing projects that meet shared goals related to economic development, affordable housing, and sustainability.

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This effort might include an annual report on how the State is using State lands (and other resources) to leverage TOD to meet State growth objectives. For these reasons, we respectfully ask that House Bill No. 193, Proposed SD1, be held in committee.

Thank you for this opportunity to testify.

Very truly yours

A handwritten signature in blue ink that reads "George I. Atta". The signature is written in a cursive style with a large, stylized initial "G".

George I. Atta, FAICP
Director

GIA:cl
HB193, Proposed SD1-hbr



IN REPLY REFER TO:
CMS-AP00-00621

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

March 20, 2014

BOARD OF DIRECTORS

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Carrie K.S. Okinaga, Esq.

Dear Chair Solomon, Chair Dela Cruz, Chair Espero, and Senators:

Subject: HB193, HD1, Proposed SD1, Relating to Land Use
Committees on Water and Land; Economic Development, Government Operations
and Housing; Public Safety, Intergovernmental and Military Affairs
Thursday, March 20, 2014, at 3:30 PM

The Honolulu Authority for Rapid Transportation (HART) supports the intent of House Bill 193, HD1, Proposed SD1, which encourages collaboration and coordination between State agencies that own property within transit-oriented development (TOD) zones around planned rail stations.

Attached is a copy of HART Board Resolution 2013-12, which reflects the Board of Directors' position regarding TOD-related legislation. HART is committed to working with State agencies, as well as the City Department of Planning and Permitting (DPP), Department of Transportation Services and other City departments, to develop TOD and joint development projects.

HART respectfully recommends that the City should maintain advisory capacity over areas under its control, unless they are State-owned properties. HART also recommends that the mission of the advisory committee should be to identify TOD projects for development on State property. The identified projects can result in a memorandum of understanding (MOU).

We respectfully suggest limiting advisory capacity to areas with adjacent State property owners, and limiting the advisory group to nine (9) members with staggered terms, and membership as described below:

- (3) Community representatives: developer, resident living in a TOD area, and cultural representative

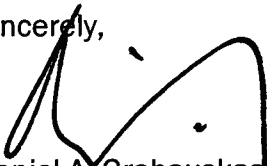
The Honorable Malama Solomon, Chair
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- (2) City representatives: DPP-TOD (Chair), DTS
- (3) State agency representatives: Hawaii Department of Transportation, State Office of Planning, Governor appointee
- (1) HART representative

HART notes the proposed legislation requires State agencies to enter into an MOU, but does not address prioritization of agency activities or resources in TOD areas. It should be noted that DPP is the lead City agency for TOD as HART is a supporting agency for DPP in its efforts to perform TOD studies and capital projects in these areas. As such, DPP may be a more appropriate agency for this legislation.

We thank you for this opportunity to provide written testimony.

Sincerely,



Daniel A. Grabauskas
Executive Director and CEO

Attachment

cc: HART Board of Directors

Honolulu Authority for Rapid Transportation

RESOLUTION NO. 2013 - 12

**REGARDING THE POSITION OF THE BOARD OF DIRECTORS OF
THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION ON
TRANSIT-ORIENTED DEVELOPMENT**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (RCH); and

WHEREAS, RCH Section 17-103.1 authorizes HART to “develop, operate, maintain and expand the city fixed guideway system;” and

WHEREAS, RCH Section 17-103.2(n) empowers HART to “promote, create and assist transit oriented development projects near fixed guideway system stations that promote transit ridership, and are consistent with the intent of the adopted community plans and zoning”; and

WHEREAS, the HART Board of Directors recognizes that transit oriented development (TOD) will benefit the Honolulu Rail Transit Project (HRTTP) and its ridership through:

- Encouraging convenient, safe multi-modal access to transit;
- Encouraging the creation of mixed-use, pedestrian and bicycle-friendly communities that provide employment, housing, and services;
- Creating housing options including market-rate and affordable units;
- Supporting economic development efforts; and
- Promoting sustainability by reducing pollution, noise and reliance on automobiles; and

WHEREAS, TOD provides a unique opportunity to foster more livable communities that take advantage of the benefits of transit, specifically, reducing transportation costs for residents, businesses and workers while improving mobility and circulation in the station area for all modes of travel; and


WHEREAS, In order to capitalize on this tremendous opportunity, development around future rail station stations needs to be focused, balanced and well-planned.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. The HART Board of Directors favors and supports legislative measures which maximize the potential for TOD, promote effective community planning and provide a vision for neighborhood improvements and future urban redevelopment.
2. The HART Executive Director and CEO is authorized to submit testimony on pertinent legislation consistent with the overall policies set forth herein.

3. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on
DEC 19 2013.


Board Chair

ATTEST:


Board Administrator



March 20, 2014

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, 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

Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair
Senate Committee on Public Safety, Intergovernmental and Military Affairs

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 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).

Thursday, March 20, 2014, 3:30 p.m., in Conference Room 224

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. The effective date of this measure is July 1, 2030.

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, HD1**, 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.



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COMMITTEE ON WATER AND LAND
Senator Malama Solomon, Chair, Senator Brickwood Galuteria, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING
Senator Donovan Dela Cruz, Chair
Senator Sam Slom, Vice Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
Senator Will Espero, Chair
Senator Rosalyn Baker, Vice-Chair

Thursday, March 20, 2014, 3:30 p.m., Room 224
HB193, HD1, Proposed SD1-1, Relating to Land Use

TESTIMONY
Janet Mason, League of Women Voters of Hawaii

Chairs Solomon, Dela Cruz, Espero, Vice-Chairs Galuteria, Slom and Baker and Committee Members:

This is a "Gut and Replace" bill. The purpose of the HD1 version of this bill (that was re-referred on March 18th to a triple-joint Senate hearing) was to require the land use commission, 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. At this point the purpose of the bill related solely to land use permits.

In the past two days there have been two hearing notices for the measure because the bill has "morphed" not once, but twice. The proposed SD1 is not recognizable as the original bill, because ***it substituted not one, but two new purposes!*** Part 1: Requires all state agencies within one-half mile of proposed rail stations to enter into memoranda of understanding with each other and convene working groups that include representatives of the Honolulu authority for rapid transportation. These working groups are supposed to submit annual reports to the legislature. Part 11: Establishes the transit- oriented development advisory committee to make recommendations about sustainable development projects close to transit.

It's entirely possible the first version, Part 1 or Part 2 have merit, but what is this the purpose of this bill? You managed to obscure what it's about with repeated changes in the purpose of the bill. Acting in a less than open manner undermines trust. Perhaps it is time for the legislature to develop rules that allow worthwhile bills to be introduced without such a sleight of hand.

For this reason, **the League of Women Voters of Hawaii opposes HB 193, Hd1, Proposed SD1.**



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“Gut and replace” actions undermine public confidence in government because it seems something sneaky is happening in the legislative process. In order for citizens to participate actively in the legislative process, they need to be sure the process is working in a fair and transparent way.

Given the negative publicity that the “gut-and-replace” tactic has received, it is disheartening and discouraging that lawmakers who should know better continue to employ it.

Since this clearly is a “gut and replace,” any action you take should be on the HD1 version of the bill. But we hope you will defer the measure.

Thank you for the opportunity to present our testimony.