



## LATE TESTIMONY

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Via Capitol Website

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**House Committee on Transportation  
Hearing Date: February 18, 2009, at 8:30 AM in CR 309**

**Testimony in Opposition to HB 1462: Relating to Residential Development  
(Highway concurrency requirement for county permits)**

Honorable Speaker Emeritus and Transportation Committee Chair Joseph M. Souki,  
Honorable Vice-Chair Karen Leinani Awana, and Transportation Committee Members:

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 understands that HB 1462 is well-intentioned, however, we must **respectfully oppose HB 1462**, which directs that, as a condition precedent to the issuance of any grubbing, grading, or building permit for any residential development (as defined in the bill), the responsible county official must certify that all county and state highways that are or will be contiguous to the residential development are under construction. LURF's opposition is based on, among other things, the following:

- **When Hawaii is facing a severe shortage of affordable and workforce housing, HB 1462 will further delay the production of such housing and will increase the costs of housing for new homeowners;**
- **HB 1462 does not provide any stated purpose, facts, data or information to justify said legislation;**
- **It appears that HB 1462 attempts to implement a "concurrency" requirement on the development of residential housing by "simply shifting the state and county responsibility" to provide county and state highways to the residential developer;**
- **HB 1462 is unenforceable, because it is an "unfunded mandate" which directs county officials to perform construction investigations and certifications prior to issuing each county permit for grading, grubbing and building permits;**

- **Instead of simply shifting the responsibility of providing highways to the residential developers, the state and county should develop and implement realistic alternatives to finance the construction of highway improvements.**

LURF is willing to work with state and county elected officials and agencies to develop and implement realistic alternatives to finance the construction of highway improvements.

**HB 1462.** This bill proposes to amend Chapter 46, Hawaii Revised Statutes, by adding a new section to be appropriately designated and to read as follows:

“§46- Highway development, residential developments. (a) As a condition precedent to the issuance of any grubbing, grading, or building permit for any portion or phase of a residential development, the county official responsible for issuing the permit shall certify that all county and state highways that are, or will be contiguous to the residential development have been completed or are under construction at the time of issuance of the permit.

(b) For purposes of this section:

‘Residential development’ means any development that comprises over \_\_\_\_\_ residential units.

‘Residential unit’ includes single-family, duplex, and multi-family units.”

(New statutory material is underscored.)

## **BACKGROUND**

- **The State and County have the authority to direct growth and housing to certain areas and the corresponding responsibilities to prepare infrastructure plans and to fund capital improvements for those areas; and the developer’s role is to build housing in areas designated by government.** The State and County administrative agencies prepare, and legislative approve various state plans and county general plans, development plans and community plans, which “direct growth and housing” to certain areas. On Oahu, the State and County have determined that future residential housing projects should be in West Oahu/Kapolei or Central Oahu (and not in the North Shore, Windward Oahu or East Honolulu). By directing growth to certain areas, it is also the traditional responsibility of the State and Counties to develop the construction plans and provide the capital improvement funding for the infrastructure which is necessary for such directed growth.
- **The fallacy of “Concurrency” legislation.** Legislation requiring “Concurrency,” or “having adequate public facilities”(highways, sewer, water, park improvements, etc.) are similar in that they seek to require completion of new infrastructure, or a certain level of infrastructure improvements to provide increased service or capacity of existing infrastructure or municipal services prior to approving new developments.

The somewhat misdirected premise for concurrency legislation is that new development should not be permitted unless State and County public facilities and services and capital improvements are built to meet the required level of service for the new residential development. The premise fails, however, because oftentimes the State and County do not fulfill their responsibilities to plan and provide funding for the necessary capital improvements on a timely basis. Usually the funding is delayed because lawmakers are not willing to increase taxes or otherwise increase the governments' budgets to pay for such infrastructure.

- **Developers pay the costs of all on-site infrastructure and make “fair share contributions” for schools.** Currently, all residential developers are required to build all on-site infrastructure improvements to county standards. This includes all internal roads, water and waste water collection and distribution systems, and parks. The increased demand for police, fire and emergency services will be paid for by the increased county revenue in real property taxes generated by the new development. Thus, the only infrastructure **not** being entirely built or paid for by the new development are regional road, wastewater, and water improvements. Also, public schools are the responsibility of the State Department of Education (DOE); however, the present requirement for new developers is to, at a minimum, either provide an improved, vacant parcel of land for the school site or a cash “fair share contribution” for the school site.

### **LURF'S POSITION**

- **HB 1462 has the potential to improperly “shift the responsibility” of planning, funding and the construction of all off-site infrastructure improvements from the state and county, to the private residential developer.** Under this bill - - If the State and County does not have the funds and developer does not agree to fund the infrastructure - - the residential project will not be able to obtain the county permits necessary to construct the housing. Such “concurrency” legislation does not encourage or facilitate the building of sorely needed affordable/work force housing.
- **New residential developments should not be required to pay for the costs of improving existing highways or for the construction costs of building new highways, just to obtain ministerial permits.** This bill does not differentiate between existing level of service and new level of service standards. If the existing level of service is substandard, this bill could require the developer to upgrade existing highway infrastructure to the new level of service standard adopted by the State or County. Absent a legal and proportionate nexus, new development should **not** pay for the cost of bringing existing infrastructure up to a new standard. If there is a proven legal nexus, new development should only be responsible for its “proportionate share” of the infrastructure improvements attributed to accommodate the new residential development.
- **Shifting infrastructure costs to residential developers will have the unintended consequence of the increased costs being passed on to new home-buyers or will result in fewer new affordable residential**

**projects.** If HB 1462 forces residential developers to pay for the planning and construction of government highways, those additional costs will be passed-on to new first time, owner-occupant home buyers. If the costs of the government highway is too great, a Concurrency policy such as HB 1462 may have the unintended consequences of halting the construction of affordable/work force housing in the State of Hawaii.

- **HB 1462 must properly recognize the State’s and Counties’ responsibilities to timely plan infrastructure improvements (pursuant to State plans and approvals and County General/Development/Community Plans) as well as to fund infrastructure improvements based on increased state taxes, county real property taxes, or other sources of revenue.** There are no “timeliness” requirements for the State or County to plan, fund and construct the necessary highway infrastructure.. Historically, these plans are adjusted as funding priorities shift or based on the political will of the Administration and legislative bodies. We respectfully submit that it is not responsible or prudent for the Legislature to pass HB1462, without first requiring accountability from the State and County in planning ***and funding*** infrastructure improvements.
- **“Concurrency” legislation such as HB 1462 does not solve the problem of inadequate infrastructure capacity – the focus should be on finding alternative infrastructure financing measures.** HB 1462 shifts the focus away from how to pay for the infrastructure, by giving the public the impression that new development will pay for growth. Rather than consider “concurrency” issues right now, perhaps the focus should be on State infrastructure financing tools and the various forms of “Municipal Infrastructure Financing” that the County should review and adopt in order to provide funding sources for existing and future infrastructure needs.
- **SB 1462 is an unenforceable “unfunded mandate” directed at county officials.** HB 1462 would require each county official who is tasked with issuing permits for grubbing, grading, or building permits for any portion or phase of a residential development to perform a check on state and county highway projects which are, or will be contiguous to a residential development project; and each of those county officials will be required to certify that all county and state highways that are, or will be contiguous to the residential development have been completed or are under construction at the time of issuance of the permit. Such a state law that requires the counties to establish and enforce rules, based on a state initiative or policy, could be an “unfunded mandate,” which the counties could refuse to implement, and thus, SB 1462 would be unenforceable.

**ALTERNATIVES TO HB 1462.** We recognize the need to address the current highway infrastructure deficiencies. We suggest that the legislature and counties find alternative ways to increase public infrastructure capacity for existing and future growth by bundling the following tools to provide the necessary financing:

1. **Increase taxes.** Increase and/or dedicate a portion of state taxes and/or real property tax revenues to fund specific infrastructure.

2. **Sale of government bonds.** The State and Counties may also issue and sell bonds to provide funds for such improvement districts.
3. **Community Facilities Districts.** The County has the power to levy and assess a special tax on property located in a district to finance the special improvements (Community Facilities Districts) and to pay the debt service on any bonds issued to finance the special improvements.
4. **Tax increment financing (TIF).** TIFs are a way for governments (usually municipal authorities) to help finance new capital projects by taking advantage of expected property tax returns. A county, for example, may designate as a TIF district a plot of land that is planned to be redeveloped. Then the county can borrow against expected increased tax revenues to build infrastructure such as sewers, roads and transportation services.
5. **Impact fees.** Impact fees are a government assessment against new residential, industrial or commercial development projects to compensate for the added costs of public services generated by new construction. Impact fees can be imposed only if there is a rational and proportionate nexus between the impacts of the project and the necessary public infrastructure improvements.

Based on the above, we **respectfully request that HB 1462 be held** in your Transportation Committee. LURF is willing to work with state and county elected officials and agencies to develop and implement realistic alternatives to finance the construction of highway improvements which have a legal nexus to new residential housing projects.

Thank you for the opportunity to express our **opposition to HB 1462**.