



LATE TESTIMONY

LAND USE RESEARCH FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org



February 21, 2012

Representative Gilbert S.C. Agaran, Chair
Representative Karl Rhoads, Vice Chair
House Committee on Judiciary

Opposition to HB 2611, HD1 Relating to Environmental Impact Statements (“EIS”)
(Temporarily amends HRS Chapter 343 to clarify current exemptions for secondary actions.)

Tuesday, February 21, 2012, 2:00 p.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 **strongly opposes HB 2611, HD1, but strongly supports the original version of HB 2611**, which provides for a permanent amendment to clarify current exemptions for secondary actions.

HB 2611, HD1. The HD1 amendments to HB 2611 temporarily amend Chapter 343, Hawaii Revised Statutes to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments (“EAs”) when required. **The bill would also add a new requirement for agency staff, which had not previously existed – it would require staff review and preparation of a finding that the secondary action is “not significant.”** It would be effective for only one year, July 1, 2012 and repealed on July 1, 2013.

On the other hand, the **original version of HB 2611** permanently amends Chapter 343, Hawaii Revised Statutes (“HRS”), to clarify current exemptions for secondary actions within the highway or public right-of-way and requires that applicants prepare EAs when required.

LURF's Position. LURF **supports the original version of HB 2611**, as it would allow the Department of Transportation (“DOT”) and the Department of Health's Office of Environmental Quality Control (“OEQC”) to avoid unnecessary work effort on the processing of minor secondary actions which would clearly be exempt from EA requirements.

- **“If it ain't broke, no need to fix it.”** The existing law has been in effect for several years, without any problems.

- **Consensus based.** The existing law was a result of a consensus between government agencies, private developers and OEQC. The revisions proposed by HD1 did not go through the collaborative process with parties who prepare EAs and EIS, and those most directly impacted.
- **Current law relieves unnecessary major backlogs, delays and expenses.** The existing law was a result of unnecessary major backlogs, delays and expenses to private individuals and agencies. In the recent past, the DOT and the OEQC have been inundated with a large number of minor secondary action project reviews, which greatly increase the processing time and expense for applications affecting rights-of-way, including, in some cases, requiring EAs for telephone and cable telephone connections.
- **Sufficient environmental oversight exists on “primary actions.”** Sufficient oversight will continue to exist for “primary actions,” on private property which is outside of the highway or public right of way, as applicants for such actions will continue to be required to prepare an EA or and Environmental Impact Statement relating to the proposed action at the earliest practicable time.

LURF **opposes** the HD1 version, based on, among other things the following:

1. **The HD1 version defeats the purpose of the exemption, and is not an exemption at all.**
2. **Creates unnecessary additional staff work (and positions?) and project-related expenses.** It would require agency staff to do a review and prepare a “finding” that the secondary action is “not significant.”
3. **Could create more expenses for agencies and private applicants to do another report regarding “finding” of non-significance.** To do their review, the agency staff, could require the applicant’s consultant to prepare a report similar to an EA!
4. **Creates opportunities for lawsuits relating to the sufficiency of agency review and finding.** It would provide an opportunity for lawsuits, challenging the sufficiency or insufficiency of the agency staff’s review and “finding.”
5. **Creates additional opportunities for lawsuits relating the finding that the secondary action is “not significant.”** It would provide a second opportunity for lawsuits, challenging the agency staff’s finding that the secondary action is “not significant.”
6. **Lawsuits based on HD1 could stop major projects important to the State and Hawaii’s economy.** The lawsuits based on the HD1 version could stop or delay many projects, including the Governor’s New Day proposals and public-private partnership projects approved by the Public Lands Development Corporation.
7. **Temporary law – only one year?** The “exemption” proposed by HD1 is temporary, and would only be in effect for one year. The existing law has worked with no problems for several years.

8. **No collaborative process for HD1 amendments.** The revisions proposed by HD1 did not go through the collaborative process with parties who prepare EAs and EIS, and those most directly impacted.

For the reasons stated above, LURF is in **opposition to the HD1**, but **strongly supports the original version of HB 2611**, and respectfully urges your favorable consideration of this bill.

Thank you for the opportunity to present testimony regarding this matter.

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

February 22, 2012

The Hon. Gilbert S.C. Keith-Agaran, Chair, and
Members of the House Committee on
Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Supplemental Testimony Regarding House Bill No. 2611, H.D. 1, Relating to
Environmental Impact Statements

Dear Chair Keith-Agaran and Members of the Committee:


I am submitting this supplemental testimony on behalf of NAIOP Hawaii. We are the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which is the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate. The local chapter comprises property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii.

We had not realized that the HD1 of this bill actually exacerbates the problems that the original form of the bill sought to address, by creating another layer of investigation and findings the agency has to make, instead of just providing a blanket exemption. We believe there should be a permanent blanket exemption of such minor actions as connecting utilities, because they do not have an effect on the environment, and agencies should not have to waste time or resources going through an individual exemption analysis on these situations. It is not reasonable to expect people to have to go through an environmental review of such minor actions, and it will simply bog the agency staff down with unnecessary investigations and paperwork.

We recommend going back to the original form of the bill.

Thank you for the opportunity to testify on this measure.

Very truly yours,



James K. Mee
Chair, Legislative Affairs Committee