



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

February 4, 2008

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 3415

COMMITTEE ON TRANSPORTATION

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

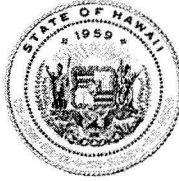
We oppose this bill. Contested case hearings are likely not a workable solution to resolving "roads in limbo". In many cases, the hearings officer will probably conclude that:

- Counties have jurisdiction for public highways they are not willing to maintain
- Private roads used by the public, for which no public agency asserts jurisdiction, are not public highways.

We support the approach recommended by the Legislative Reference Bureau's 1989 report titled, "*Roads in Limbo: an Analysis of the State-County Jurisdictional Dispute.*" According to the 1989 LRB report, prior to 1947, the counties had jurisdiction and were responsible for the maintenance of all public highways in the Territory of Hawaii. In 1947, jurisdiction for certain highways (primarily federal-aid highways) was transferred to territorial agencies. These territorial highways evolved into highways under the jurisdiction of the Department of Transportation (DOT).

Under Sections 264-1 and 265-1, Hawaii Revised Statutes, counties are responsible for maintenance of all public highways, which are not under the jurisdiction of the DOT. However, even with these state laws in place, there are county roads that are not being maintained.

The DOT has developed a listing of roads considered as "roads in limbo" and plans to meet with the four counties, beginning with Maui, to work towards practical solutions to addressing the public highways, which are not being maintained. Currently, only the listed roads on Maui are considered disputed by the respective Counties.



**LINDA LINGLE**  
GOVERNOR  
**JAMES R. AIONA, JR.**  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**LAWRENCE M. REIFURTH**  
DIRECTOR  
**RONALD BOYER**  
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEES ON  
TRANSPORTATION  
AND  
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS**

**THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008**

**Monday, February 4, 2008  
9:00 a.m.  
Conference Room 309**

**TESTIMONY ON HOUSE BILL NO. 3415  
RELATING TO PUBLIC ROADS**

**TO THE HONORABLE JOSEPH M. SOUKI AND KEN ITO, CHAIRMEN, AND  
MEMBERS OF THE COMMITTEES:**

My name is Sheryl Nagata, and I am the Acting Senior Hearings Officer of the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify in opposition to House Bill 3415, Relating to Public Roads.

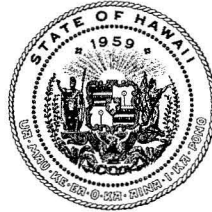
The Office of Administrative Hearings, which is a specially-funded agency, is currently charged with hearing a wide range of cases, including those involving violations of professional license laws, denials of professional licenses, and violations

of state securities laws. We also review agency denials of procurement protests and personal injury protection benefits and, more recently, have been charged with operating the Condominium Dispute Resolution Pilot Program under Hawaii Revised Statutes Chapters 514A and 514B. Additionally, all of the due process hearings brought under the Individuals with Disabilities Act ("IDEA") and Hawaii Revised Statutes §302A-443 are held by our Office.

We are currently staffed with five Hearings Officers, two of whom handle the IDEA cases exclusively, leaving only the three remaining Hearings Officer to manage all other cases. Moreover, cases that involve jurisdictional disputes over public roadways may present complex issues, involve multiple parties and be many in number. All of this would require the Hearings Officer to devote a significant amount of time to these cases at the expense of delaying the disposition of our current caseload.

Thus, while the Department understands and supports the intent of House Bill No. 3415 to expeditiously resolve disputes regarding our public roadways, we must respectfully oppose the bill given our current caseload and staffing.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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COMMISSION ON WATER RESOURCE MANAGEMENT  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**ON**

**House Bill 3415– RELATING TO PUBLIC ROADS**

**BEFORE THE HOUSE COMMITTEES ON  
TRANSPORTATION**

**AND**

**WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS**

**February 4, 2008**

House Bill 3415 allows any person to file for a contested case hearing to determine jurisdiction over a public road and establishes the determination process. The Department of Land and Natural Resources opposes this measure.

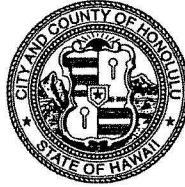
A contested case hearing is not an appropriate or effective mechanism for resolving the "roads in limbo" dispute. This issue has already been addressed by the Legislative Reference Bureau ("LRB") in their 1989 report entitled: *Roads in Limbo: an Analysis of the State-County Jurisdictional Dispute*.

According to the 1989 LRB report, prior to 1947, the Counties had jurisdiction of and maintenance responsibility for all public highways in the Territory of Hawaii. In 1947, territorial agencies assumed jurisdiction for certain highways which eventually evolved into the State Highways System under the Department of Transportation's jurisdiction. Under Sections 264-1 and 265-1, Hawaii Revised Statutes, counties are responsible for maintenance of all public highways which are not part of the State Highways System.

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

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MUFI HANNEMANN  
MAYOR



CARRIE K.S. OKINAGA  
CORPORATION COUNSEL

DONNA M. WOO  
FIRST DEPUTY CORPORATION COUNSEL

February 2, 2008

The Honorable Joseph M. Souki, Chair  
The Honorable Scott Y. Nishimoto, Vice Chair  
Committee on Transportation

The Honorable Ken Ito, Chair  
The Honorable Jon Riki Karamatsu, Vice Chair  
Committee on Water, Land, Ocean Resources  
& Hawaiian Affairs

House of Representatives  
Twenty-Fourth Legislature  
State of Hawaii  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Souki, Ito, Vice Chairs Nishimoto, Karamatsu, and Committee Members:

Re: House Bill 3415, Relating to Public Roads

Thank you for the opportunity to testify before you on House Bill 3415 relating to public roads. The City and County of Honolulu opposes this bill.

The dispute over ownership of public roads between the State and the counties has been ongoing for many years. Section 264-1, Hawaii Revised Statutes, basically provides that whatever public roads not under jurisdiction of the State Department of Transportation belong to the counties. This definition places the maintenance obligations on the counties for roads which they did not build, do not have title to and therefore do not own.

Believing that it is in the best interest of its citizens to end this debate with the State, in 1993 the City and County of Honolulu accepted all existing disputed roads within its jurisdiction. The City did so with the understanding that it will take over roads that are already built, even though many of these roads are not built up to City standards.

The Honorable Joseph M. Souki, Chair  
The Honorable Scott Y. Nishimoto, Vice Chair  
The Honorable Ken Ito, Chair  
The Honorable Jon Riki Karamatsu, Vice Chair  
February 2, 2008  
Page 2

In accepting the disputed roads, the City relied on an State Attorney General opinion that paper roads (roads that merely appear on a map but are not built) and unimproved way not open to the general public do not fall under the definition of "public highways" in Section 264-1, Hawaii Revised Statutes. Therefore, the City did not contemplate acceptance of paper roads and unimproved ways. House Bill 3415 provides that any confusion or dispute regarding the existence of or jurisdiction over a public road may be resolved by a hearing officer of the Department of Commerce and Consumer Affairs (DCCA). This bill, if enacted, may result on requiring the City to take on additional responsibility it is not now required to perform. Therefore, it may result in an unfunded mandate in violation of Article VIII, Section 5 of the Hawaii State Constitution.

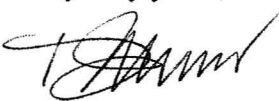
Furthermore, resolution of these disputes rightly belongs in the courts. A case by case review of disputed road by a State agency may create inconsistent results which will lead to further confusion over an already contentious issue.

House Bill 3415 further grants the hearing officer of the DCCA the authority to "order any relief that may be appropriate." This broad authority may be exercised without regard for the fiscal considerations of the State and the counties. A hearing officer of a department should not be given such broad authority which may impact the overall operation of a department of the State or county.

Finally, Section 264-\_\_ (g) requires the Director of Transportation to adopt rules to regulate the proceedings provided for in this bill. As the proceedings are run by the DCCA, perhaps it may be more appropriate that DCCA be the agency to adopt rules regulating these proceedings.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

  
for CARRIE K. S. OKINAGA  
Corporation Counsel

CKSO:dms



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Association of  
REALTORS®**  
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February 1, 2008

**The Honorable Joseph M. Souki, Chair**

House Committee on Transportation  
State Capitol, Room 433

**The Honorable Ken Ito, Chair**

House Committee on Water, Land, Ocean Resources  
& Hawaiian Affairs  
State Capitol, Room 420  
Honolulu, Hawaii 96813

**RE: H.B. 3415 Relating to Public Roads**  
**Hearing Date: Monday, February 4, 2008 @ 9:00 a.m., Room 309**

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports H.B. 3415.**

As REALTORS®, we often witness situations caused by the “roads in limbo” syndrome, public roads over which neither the state nor the appropriate county will take jurisdiction of nor will maintain. In many such cases, the affected community must maintain its road link to the rest of the world themselves, using their small community’s limited resources.

Property owners have been blocked from building on home sites because the community’s road has not been recognized by the county. Due to historic neglect, public safety is jeopardized because police, fire, and emergency medicine services cannot be delivered in a timely matter. However, because of the often complicated, poorly documented history of many of these roads, the affected communities have not had the ability to prove that they are indeed public roads that must be maintained by government.

An example of this problem is Honopou Rd. on Maui which is listed as a “Government Road “. For years, the County and State have refused to maintain the road although the county is very happy to accept property taxes. The road has existed for over 100 years and used to serve an old sugar mill. Maui County for years would not issue building permits for owners served by the road and this caused a proliferation of un-permitted residences along the roadway. Insurers will not insure properties along roads like this. Lenders do not like to lend because the title insurers claim such parcels do not have legal access.



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On the Big Island, there are properties that have become landlocked due to abandonment of roads by government when damage makes roads impassable. Two examples of this are:

1) Old "Government Road" in Waikaumalo to Maulua (North Hilo) that includes specifically TMK 3-3-4-3:23,62,66 & 68 (plus 20 other parcels). Over ten of those parcels are landlocked since the old bridge at Waikaumalo has fallen into the river and the Pohakupuka river has washed out a portion of the road where it transversed the river. The road is still described as a "Government Road" on the TMK and old maps but neither the State nor the County will accept responsibility for this road that services Homestead Lots (created by the Territorial Government).

2) Middle Road or Keanaina Road in Kurtistown, Puna, HI: TMK 3-1-7-31: various parcels that front this road which has serviced a residential community (Iwasaki Camp) for close to 90+ years is still not claimed by anyone (State or County). By ordinance the County had paved the road about 15 plus years ago due to community outcry but has not maintained it or claimed it officially.

H.B. 3415 will provide the necessary resolution to these cases and many more and, for this reason, we respectfully ask for your support of H.B. 3415.

Mahalo for the opportunity to testify.



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO  
Gentry Pacific Design Center, Suite 215A  
560 N. Nimitz Highway, #50  
Honolulu, Hawaii 96817  
(808) 524-2249 - FAX (808) 524-6893

February 2, 2008

Honorable Representative Joseph M. Souki, Chair  
Honorable Representative Scott Y. Nishimoto, Vice Chair  
Members of the House Committee on Transportation  
Hawaii State Capital  
415 South Beretania Street  
Honolulu, HI 96813

RE: IN OPPOSITION OF HB3415  
RELATING TO PUBLIC ROADS  
Hearing: Monday, February 4, 2008, 9:00 a.m.

Dear Chair Souki, Vice Chair Nishimoto and the House Committee on  
Transportation:

For the Record my name is Buzz Hong the Executive Director for the Hawaii  
Building & Construction Trades Council, AFL-CIO. Our Council is comprised  
of 16-construction unions and a membership of 26,000 statewide.

The Council opposes the passage of HB3415, which allows any person to file  
for a contested case hearing to determine jurisdiction over a public road and  
establishes the determination process.

Thank you for the opportunity to submit this testimony in opposition of  
HB3415.

Sincerely,

William "Buzz" Hong

WBH/dg

## TESTIMONY IN SUPPORT OF HB 3415 – RELATING TO PUBLIC ROADS

Representative Joe Souki, Chair TRN  
Representative Scott Nishimoto, Vice-Chair TRN  
Representative Ken Ito, Chair WLH  
Representative Jon Riki Karamatsu, Vice-Chair WLH  
Committee on Transportation  
Committee on Water, Land, Ocean Resources & Hawaiian Affairs

Mr. James P. Perry, Jr. – Heir, Private Citizen  
Mr. James P. Perry, Sr – Heir, Private Citizen

Monday, February 4, 2008

### Testimony in Support of House Bill 3415 – Relating to Public Roads

Aloha Chair Souki, Chair Ito and Members of the Joint Committees of Transportation and Water, Land , Ocean Resources & Hawaiian Affairs.

Please find this testimony in support of HB 3415 Relating to Public Roads. The passage of this bill will allow any person to file for a contested case hearing to determine jurisdiction over a public road and establishes the determination process.

In our case, `Ulaino road is a gravel road just outside of Hana that runs from the Hana Highway junction to the muliwai in `Ulaino. Maui County provides the upkeep and maintenance of this road.

For many years, `Ulaino road has allowed my family access to the burial sites of our ancestors, access to the ocean to swim, to gather fish, gather watercress, `opihi, crab and prawns for subsistence. `Ulaino was a special place where people could freely come and go. Not today. Vigilantes control that place and choose who can come and go. Ownership of the road is unclear and the dispute is dividing family members, members of the community, local visitors as well as tourist from abroad. Please vote in favor of HB 3415.

Should you have any questions, please feel free to contact me via email at [perjam@hotmail.com](mailto:perjam@hotmail.com).

February 2, 2008

To: Representative Joseph Souki, Chair-TRN  
Representative Scott Nishimoto, Vice Chair-TRN  
Representative Ken Ito, Chair-WHL  
Representative Jon Riki Karamatsu-vice Chair-WHL  
Members of the Transportation Committee  
Members of the Committee on Water, Land, Ocean Resources and Hawaiian Affairs

From: Helen K. Cosma-Landowner-Private Citizen  
HCR1 Box 9  
Hana, Hi 96713

Re: Hearing on HB3415-Relating to Public Roads  
February 4, 2008 at 9:00 a.m.  
Conference Room 309, State Capitol

TESTIMONY IN SUPPORT OF HB 3415

Dear Chair Souki, Vice Chair Nishimoto, Chair Ito, Vice Chair Karamatsu and Members of the Committees on Transportation and Water, Land, Ocean Resources, and Hawaiian Affairs,

Thank you for the opportunity to provide testimony of HB 3415-Relating to Public Roads. This bill allows any person to file for a contested case hearing to determine jurisdiction over a public road and establishes the determination process. There are statewide public road issues coming forth now and it is creating mass confusion within government entities and private landowners bordering such roads. We need to pass HB 3415 so all Hawaii residents with public road issues will have the proper protocol to utilize when jurisdiction issues of such roads are challenged. We support HB 3415.

Sincerely,

Helen K. Cosma  
Steven J. Cosma  
Waiho'I Cosma