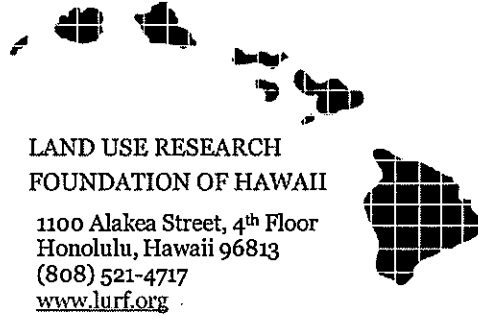


LATE TESTIMONY



March 17, 2011

Senator Will Espero, Chair and Senator Michelle Kidani, Vice Chair
Senate Committee on Public Safety, Government Operations and Military Affairs

Opposition to HB 453, HD1, Relating to Public Access. (Clarifies that where public access is required as a condition of a subdivision, either the county must accept dedication of and maintain the access or identify an entity to own and maintain the access.)

Thursday, March 17, 2011 2:55 p.m. in CR 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.

HB 453, HD1. This bill is proposing a major change in the county's role where public access is required as a condition of a subdivision and essentially shifts the burden of maintaining public rights-of-way to the developer or planned community associations and therefore passes cost burdens on to the individual homeowner. HB 453, HD1 provides that upon dedication of land for right-of-way, as required by this section, the county shall either:

- (1) accept dedication, whereupon it may require the subdivider to establish, and initially fund, a stewardship fund to be controlled by the county for improvement and maintenance of the right-of-way; or
- (2) Require the subdivider or the planned community association to improve and maintain the right-of-way.

LURF's Position. While LURF understands the importance of public access and the importance of maintaining public rights-of-way; LURF is in **opposition** to shifting the burden of maintaining such public rights-of-way from the county or state to a private entity.

HB 453, HD1 is **unfair**. "**Public**" rights-of-way are for the benefit of the "**public**." Therefore, the cost of maintenance and liability should be the responsibility of a **public** (county or state) government agency. The cost burdens associated with a **public** right-of-way should not be shifted to individual homeowners who are members of community associations.

Discussion. The law governing the county's role in maintaining public access is codified in Section 46-6.5 of the Hawaii Revised Statutes (HRS), which was adopted in 1973. In 1973, the legislature recognized that after such land has been dedicated by a subdivider or developer "the county concerned shall thereafter assume the cost of improvements for the maintenance of the right-of-way and the maintenance of the right-of-way, and **the subdivider shall accordingly be**

relieved from such costs." Section 46-6.5, HRS has not been amended since 1973 and has maintained the county's role in maintaining such rights-of-way after a subdivision has been approved. This bill is proposing to change a law that has been followed for almost three decades.

Further, this bill is proposing to have the developer or an entity that applied for subdivision or the subdivider's successor in interest, i.e. planned community association, be responsible to improve and maintain the right-of-way if the county does not require, by ordinance that the subdivider establish and initially fund a stewardship fund for the future improvement and maintenance of such rights-of-way.

Under current law, improvements and maintenance of a dedicated public right-of-way in perpetuity is the responsibility of the state or county, and not of a private entity. Moreover, under HB 453, HD1, the liability and insurance costs attached to ensuring proper improvements and maintenance to such right-of-ways will be the responsibility of planned community associations and passed on to the individual home owners.

Based on the above, LURF is in **opposition** to HB 453, HD1 and we respectfully request that it be **held** by Committee.

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