Recommendation

Stated as a general principle, it is impossible to disagree with the concept of concurrency. The difficulty is in putting it into practice, particularly with the conditions that exist in Hawai'i County, and coming out with policies that have the intended results. It is especially difficult to establish a concurrency policy by ordinance that has to apply generally to a wide range of situations, rather than as a general principle to be applied to rezonings, and possibly to subdivisions and other post-zoning approvals, on the circumstances of an individual application.

This recommendation will discuss the bills primarily with reference to roads. Water is not that urgent an issue from a concurrency standpoint. Although some rezonings have been granted for properties for which there was not an assured supply of water, the subdivision code and plan approval processes, as well as Department of Water Supply regulations, prevent actual development and occupancy from occurring without a water supply. (The major exception is the availability of water variances, although there is at least some consistency now in the treatment of this due to the adoption an administrative rule, Planning Department Rule 22.) The same is generally true for sewers and individual wastewater systems. (Bill 329 appears to prohibit development using individual wastewater systems, even though these are allowed in many circumstances by the Department of Health.)

The four bills in question all have the basic strategy of delaying or denying development approvals until public facilities are at a desireable level of service. There are two basic difficulties with this strategy: first, that it does not necessarily lead to the construction of the public facilities, and second, that it will not affect development that is occurring on already-subdivided land, such as in the Puna and Ka'u subdivisions that were created from the 1950's to the late 1960's, and some other development that will create the same or worse traffic and other impacts.

Taking the first point: most private developments, since the era in the 1950's and 60's that resulted in the creation of more than 60,000 lots with poor roads and no water supply, have incorporated decent on-site infrastructure. They typically have good roads within the subdivisions, and county water systems or equivalent private water systems. The public facilities outside the private developments—the regional roads, the community parks, the schools—have not kept up. The difficulty for the private developer is that, except perhaps for some large developments, the necessary regional road improvements are too large for their project to bear the costs. For example, the current congestion problem on the Queen Kaahumanu Highway can probably only be cured by its widening to four lanes. This is currently underway between Henry St. and Kealakehe Parkway, but even after this section is widened, the remaining areas may still be at an undesireable level of service. Generally, it is not practical, and makes little sense, to have a private developer do a project like widening their "fair share" of something like Queen Kaahumanu Highway. The rezonings discussed earlier which had road construction requirements involved fairly large projects, and, in the case of the Honokohau Business Park and Pua'a rezonings, relatively short sections of road.

It is not necessarily a bad thing that a concurrency ordinance will delay or deny development in areas that are already experiencing road congestion or otherwise do not have adequate public facilities, but this leads to the second point: that there is a great deal of potential development that will escape concurrency controls, but still have an impact on the roads, parks, and other public facilities in the areas where the concurrency controls apply. The most important sources of development that will not be affected by concurrency controls are the lots created by the 1950's and 1960's subdivisions. About 50% of the home construction in Hawai'i County is occurring on these lots, mostly in Puna, but there is significant activity in the Hawaiian Ocean View-Hawaiian Ranchos area, where about 450 building permits were issued for new homes in 2005-2006—about half as many as in all of North Kona. If there are no options for workforce housing closer to the employment centers in West Hawaii, workers will continue to have to commute from long distances, putting additional strain on roads. While a concurrency ordinance could have the result of delaying further subdivision or other development in the Kailua-Kona area, it will not prevent traffic growth from people who have to commute through Kailua-Kona on their way to work.

The only type of land use regulation that would affect development in the already-approved subdivisions would be a moratorium on building permits. The county administration has not been in favor of this because the homes being built in these subdivisions constitute almost all of the new middle-income housing created on the island during a time when rapid price increases have pushed housing beyond the reach of many families. A building permit moratorium would mostly hurt individuals and small landowners.

In addition to the lots in the rural subdivisions, development on the major resorts north of the Kona Airport would also probably continue in spite of a concurrency ordinance. These do not need rezoning, and are generally outside the area where the Queen Kaahumanu Highway is currently below a desireable level of service.

As a practical matter, the area that would most likely be affected by a concurrency ordinance would be the area between Keauhou and the Kona Airport, because the highways are already badly congested. A concurrency ordinance could prevent rezoning in this area, and, if applied at the subdivision level, further residential subdivisions, at least until the next phase of the Queen Kaahumanu widening has been completed, when the level-of-service might improve enough that concurrency would be satisfied. This area is, however, also the prime area in North Kona where the General Plan encourages growth, and the results of the community development plan process so far also direct growth to this general area. A concurrency policy should not choke off the development of affordable housing in this area. On the other hand, current zoning for commercial development already far exceeds probable demand in the North Kona area, so there is no pressing need for additional commercial zoning, except perhaps for truly neighborhood-oriented projects that give shopping opportunities to people close to their homes. There are vacant commercially-zoned sites across from Pualani Estates, along Henry St. south of the current Lanihau shopping center, next to the Kona Industrial area on Queen Liliuokalani Trust estate land, in the recently-rezoned Honokohau Business Park, in TSA

increment IV above the current Kaloko Industrial Park, and more than 200 acres of vacant commercial zoning around Makalapua Center.

On the east side of the island, while there are severe traffic problems on Highway 130 from Pahoa to Kea'au, and the situation on Highway 11 is getting worse, controls on further subdivision or rezoning will not help the situation because almost all development is occurring on existing lots and there is such a large potential for future development on those lots. On the other hand, some new commercial zoning might alleviate traffic congestion by providing places for people to shop closer to their homes.

Specific recommendations

Bills 328 and 329: the director recommends denial of these bills. Both are very far-reaching and would result in a very profound change in the land use system, but both are very sketchy on the implementation. Bill 328 has the widest scope of the four bills. It requires that the planning director establish level of service standards for parks, roads, fire, water, police, solid waste, and wastewater systems. The director would have to deny development approvals unless the level-of-service is adequate, unless the developer constructed the necessary facilities. This poses a dilemma. On the one hand, you would not want to say that the current conditions in many parts of the county are adequate. On the other hand, if the director determines that the current level-of-service is too low, this results in a moratorium on new subdivisions, and possibly multifamily buildings, but development in the existing subdivisions can continue. For example, if the director determined that there weren't enough parks on the island, the director could stop the development of new subdivisions, shopping centers, and apartment buildings, but people could continue building in the older subdivisions, which may be the areas that have the worst shortage of parks. While larger developers could proceed by building the necessary park space, it would not be practical for developers of small subdivisions and apartment buildings to do so, and their projects would be on hold until the county built enough parks to catch up to the required level of service.

Bill 329 has requirements for roads, water supply, and sewer systems, and would apply to projects at the subdivision and plan approval level, as well as the rezoning level. The road requirements are not well formulated. They do not have any standard for determining adequacy. As stated earlier, the present system with respect to water prevent significant development without water (except for variances.) Bill 329 also appears to make a sewer system a requirement of further development, which would greatly limit where future development can occur.

Bill 318 applies to new zoning. It states that if a new development would cause the road level of service to fall (or remain) below D, the rezoning shall not be approved, unless "transportation improvements or strategies to accommodate the impacts of the development will be made concurrent with the development." The requirement for "improvements or strategies" is vague, and does not give any guidance to what would be enough.

The planning director does believe that the Zoning Code should contain guidance on how traffic is handled in major new zonings, and that mitigation should be required when the traffic is already bad, or will likely become bad in the near future. The director also believes that current practices that assure water supply should be part of the Zoning Code. As an alternative to Bill 318, the director recommends the bill attached as Ex. _____ be recommended for approval as a modification of Bill 318.

To explain the major elements of the alternative bill, Ex. :

The bill would require a traffic impact analysis report (TIAR) when a project would result in additional traffic demand of 100 trips or more at the peak hour. This "100 trips/hr." standard is recommended as the threshold for requiring a TIAR by the Institute of Transportation Engineers (ITE). There are nationally-recognized guidelines, including the "Trip Generation Handbook", that give estimates of peak trips/hr. generated by various land uses. Examples of projects that would generate 100 trips/hr. at the peak hour include 150 single-family homes, 225 apartments, or a 15,500 square foot shopping center.

Often the final uses on a property are not clear at the time of zoning. For example, commercial zoning allows a wide range of uses that generate different traffic demands, including homes, fast-food restaurants, offices, and gas stations. All of these have different trip generation rates given by the Trip Generation Handbook. To handle this, the bill would permit some averaging.

The TIAR would have to cover traffic impacts to the affected collector and arterial roads, in addition to the intersections. This is important to specify, because in practice, many TIAR's only study intersections. For example, for a commercial rezoning on Hina Lani St., the TIAR should study the project intersection with Hina Lani, the Hina Lani intersections with Queen Kaahumanu and Mamalahoa, and the overall flow of traffic on Queen Kaahumanu and Mamalahoa in the vicinity of the Hina Lani intersection. The TIAR would have to estimate increases in traffic for at least five years.

The director's bill then follows Bill 318 in identifying a level-of-service of "E" or "F" as triggering additional scrutiny and mitigation requirements. There are nationally-recognized guidelines for determining "level-of-service" for intersections and for highways. "E" is considered "undesireable" and "F" is considered "unacceptable" in these guidelines. "F" is a near-gridlock situation, where, on a highway, there is continual stop-and-go.

In lieu of requiring a TIAR for regional roads, the director can also simply determine that the roads are at "E" or worse based on available studies. For example, portions of Queen Kaahumanu, Palani, and Mamalahoa are already at "E" based on recent traffic studies.

Traffic problems, and their mitigation, can be divided into two types: the local and the regional. Local problems are those that are in the immediate vicinity of the proposed project, and may be solved by improvements in the vicinity. Examples would include

turn lanes in and out of a project. Generally, a project should be required to pay for its own local mitigation. These kinds of improvements might be required for safety and convenience even if not strictly required by the congestion at a particular site.

Regional traffic problems are those that are on the arterial and collector roads that ultimately carry traffic to and from the project, like Mamalahoa and Queen Kaahumanu in the example given above. In most cases, congestion on these roads results from many factors and any one project will have only a limited effect. The idea behind the director's modification of Bill 318 is that when a new rezoning is considered for an area where the arterial and collector roads are already above capacity, or will be in the near future, and it may add significant new traffic to the roads, that the occupancy of the area to be rezoned should wait for improvements that mitigate this problem. These improvements can be public improvements, such as the Queen Kaahumanu Highway widening, or private improvements, such as those required with the Palamanui rezoning.

In order for this policy not to have the adverse effects on the county's overall growth policy and the desire to have workforce and other affordable housing near urban centers (which are also often the areas of the worst traffic congestion), the bill would have some exceptions where regional mitigation would not be required. The main one is for rezoning where the developer commits to provide at least twice the level of affordable housing normally required under the county's affordable housing policy. The basic level is 20% of the total units being affordable at 120% of median; to get the exemption from regional mitigation, the developer would have to provide at least double that. The developer would still have to provide local mitigation, such as turn lanes into the project, but this is a normal safety/convenience requirement.

The second major exception to regional mitigation allows commercial areas that serve a neighborhood area. For example, additional commercial zoning between Kea'au and Pahoa may provide places where people can get groceries closer to their homes and avoid commuting to either town, and reduce overall traffic problems. If the council finds that they will reduce regional traffic problems, they can be exempted from regional mitigation.

There is also an exemption for projects that conform to an adopted community development plan. The community development plans should include basic infrastructure requirements for new areas to be developed. For example, it is our expectation that the Kona community development plan would require that new zoning between the end of Kealaka'a St. and Hina Lani would need the extension of Kealaka'a all the way to Hina Lani, creating a through road (rather than allowing housing to be built along incremental extensions of Kealaka'a.) Projects built in conformance with a CDP should be deemed to conform to regional mitigation requirements.

The revised Bill 318 also contains basic requirements for water. They require that either the water commitments be available, or that there be specific improvements that will make it available. It would not be enough for the developer to simply say that they would wait for water to be available.

There is an exception to the water requirement for commercial and light industrial areas in rural areas identified for such uses in the General Plan, but where there is no public water service and no prospect of such service. The prime examples would be the areas identified as alternate urban expansion in the Hawaiian Ocean View-Ranchos area, and in the "medium density" area in Volcano. In the HOVE-Ranchos area, there has already been quite a bit of commercial development allowed by special permit where water supply is done through storage tanks or reservoirs. Further expansion of this area should be allowed by zoning, but developing a water system is financially infeasible for the typical commercial development, and may not be physically possible either. In Volcano, the same is true with respect to the water system, and commercial zoning has been allowed with fire flow and sanitation requirements being met by storage.

Bill 319. The director has a negative recommendation on Bill 319. This would apply at the subdivision stage. Because portions of the Queen Kaahumanu Highway and Mamalahoa Highway in the Kailua-Kona area are already at LOS "E", subdivisions in these areas would have to come up with "transportation improvements or strategies to accommodate the impacts of the development will be made concurrent with the development," or the subdivision would have to wait for traffic to improve. Again, the requirement for "improvements or strategies" is vague, and does not give any guidance to what would be enough. The planning director would have to engage in negotiations with various subdividers to determine whether they could go forward, without any standards to guide what is fair.

Property that is zoned but not subdivided has a different status than unzoned property. Normally, such property can be subdivided in accordance with the subdivision code. The owner is not asking for a new entitlement as in the case of zoning. Most subdivisions are too small to support any meaningful improvement in traffic conditions. With respect to the larger subdivisions, properties have very different histories. For example, the largest pending residential subdivision in North Kona is the "Kaloko Heights" project, on the upper portion of Hina Lani St. The owners of this property, as well as some others, paid into an improvement district that created Hina Lani St. in the 1980's. It wouldn't be fair to hold up this subdivision based upon current bad traffic conditions when the prior owners helped create a major road improvement years ago.