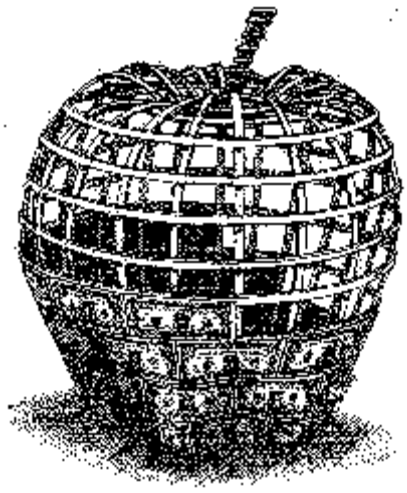
School Fair Share Contribution Study

prepared for the

State of Hawaii

Department of Education (DOE) and
Department of Accounting and General Services (DAGS)



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SECTION I: INTRODUCTION

Purpose of this Study

This study has been undertaken at the direction of the State Board of Education and the Superintendent of Schools. Specifically, the Facilities and Support Branch of the Department of Education (DOE) requested completion of the study. Funding is being provided from a DOE lump sum appropriation.

The study was undertaken largely because of concerns with the existing process used to determine developer contributions for new schools. For the most part, these concerns have been raised by developers and by the State Land Use Commission. Also, there is apparently some feeling in the development community that DOE does not have the expertise or objectivity to establish a reasonable "fair share contribution" process. Other basic DOE and developer concerns are:

- Application of the existing formula still involves case-by-case negotiation with developers in all instances, despite the existence of the formula. This often takes a long time and requires substantial resources.

- The current process does not provide for payment of the fee early enough to address the impact of the development.

- The amount of the contributions required under the existing formula may be less than "fair" since they are significantly less than the total actual costs of meeting the need for new school facilities being generated by new developments. In any event, the existing level of contributions is not substantially closing the gap between the need for new school facilities and the level of funding that is being provided.

- The requirement for developer contributions is not being uniformly applied to all new residential developments that generate a need for new school facilities.

- The credit currently being given for land dedications does not reflect legitimate variations and, in many cases, the actual per acre value of the land being dedicated.

To deal with these and other concerns, and to add credibility to the process, it was considered appropriate to have an "outsider" with significant credentials do a study that would either validate the fairness of the existing fee determination methodology and amount, or recommend a new process.

The consultant team of Group 70 International, located in Honolulu, and Duncan Associates, based in Austin, Texas, was hired to provide this outside perspective. This report presents the results of this study.

Summary of Findings and Recommendations

The study recommends that DOE seek to secure passage of two separate state acts, which would impose state-wide requirements for school land dedication and school impact fees. The legislation would require counties to ensure compliance with school land dedication requirements and fees in-lieu prior to approval of residential subdivision plats, and to ensure payment of school impact fees prior to approval of residential building permits.

Land Dedication Requirement

State passage of a land dedication and fee in-lieu requirement would ensure that all new residential developments pay their fair share for the cost of school sites. It would level the playing field between developers and get DOE and the State Land Use Commission out of the process of having to negotiate school land dedications or fees for each development project. Although the dedication requirement / fee per dwelling unit would be less than under DOE's current Fair Share Contribution formula, DOE might collect the same amount because all residential developments would be subject to it.

DOE's fair share contribution policy currently establishes the fee in-lieu at $1,125 per unit, although most developers have been subject to the previous fee of $850 per unit that was in effect until recently. The fees in lieu of land dedication calculated in this report are $899 per single-family unit and $356 per multi-family unit. These fees are based on an average land value of $100,000 per acre. It is recommended that these fees be used for smaller projects. For larger subdivisions, the fee in-lieu would be based on the dedication requirement and the market value of the land in the development subject to the requirement. A model state act that would implement these recommendations is provided in Appendix B.

School Impact Fee

DOE should also consider seeking state enactment of a school impact fee to cover at least a portion of the cost of constructing new schools. The proposed school impact fee act would phase in the fees gradually over a two-year period, and cap them at 50 percent of the maximum allowable fee calculated in this study. The fee revenues should be earmarked for school construction within the school district and island in which they were collected, and areas where no growth-related facility improvements are anticipated would be exempt from the fee.

The proposed school impact fees would vary by area to reflect differences in construction costs. After the two-year phase-in period, the fees for a single-family unit would range from $4,236 to $4,894 on the leeward side of Oahu, where most new residential development is occurring. Single-family fees would go as high as $6,540 on Lanai and part of Maui, but very little development is occurring there. The fees for multi-family units would only be 39% of the fees for single-family units, reflecting their

proportionately lower student generation. A model state act that would establish school impact fees consistent with the findings and recommendations of this study is provided in Appendix C.

SECTION II: LEGAL FRAMEWORK

This section describes the legal framework for development exactions and impact fees.[1] The evolution of regulatory practices and case law is described, from early forms of exactions through to the new legal environment in the wake of recent Supreme Court decisions.

Early Exactions

Early exactions for schools, parks and off-site facilities potentially serving more than the subdivision or project on which they are levied fell into two categories: land dedication requirements and negotiated exactions. Land dedication requirements ultimately raised practical, legal and policy problems. Under ordinances requiring developers to dedicate a portion of their property for parks purposes, communities wound up with large inventories of small parcels that were inefficient to develop and expensive to maintain if developed; those same communities sometimes had to buy the parkland or school sites that they needed. As a matter of policy, land dedications for facilities such as trails sometimes fell unevenly on landowners, raising issues of equity in public policy and equal protection under the law. See, for example, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994), discussed below.

In other cases, a community might have a plan for a park, a school or a major roadway affecting the site of a proposed project. In those cases, communities sometimes required dedication of the site as a condition of rezoning or subdivision approval. This raised serious questions of equity and equal protection and ultimately ran afoul of the "rough proportionality" test established by the Supreme Court in *Dolan*, discussed below.

The next generation of exactions for parks, schools and off-site improvements added a layer of fees in-lieu of dedication (often called simply "fees in-lieu"). All development was made subject to the exaction requirement, but the local government could in appropriate cases substitute a fee equal to a calculated or stipulated value of the land that would otherwise be dedicated.

Building on the base of "fees in-lieu" and on the long practice in some communities of charging substantial fees for the privilege of connecting to water and sewer lines, some communities began imposing calculated impact fees on all new development. This approach resolves most of the policy

[1]This section was prepared by Duncan Associates' Eric Damian Kelly, Esq., FAICP, a nationally-recognized land use attorney and past-president of the American Planning Association.

and equity questions at the local level and, if carefully done, falls squarely within the legal guidelines established by the U.S. Supreme Court and several state courts.

The law related to impact fees has evolved from litigation over local regulatory measures involving dedication requirements, fees imposed in-lieu of dedication, and impact fees, all of which are collectively called "exactions." The first reported "impact fee" systems were developed in Florida to create a system charge for roads, similar to the common system buy-in charges for water and sewer systems. However , such fees were more difficult to implement than similar fees for utility services for two reasons--first, road fees related to a general governmental service rather than to an enterprise that happened to be run by the government; second, there was no specific, controllable event (like the physical connection to the water system) which could be conditioned upon payment of the fee, except for the approval of a development or subdivision or the later approval of a building permit or certificate of occupancy.

The National Influence of the Florida Courts

That distinction becomes more important later in this analysis, as it approaches more sophisticated and complex issues of impact fee law. The early principles of that law, however, were applicable to all types of impact fees. Specifically, the Florida courts developed a detailed series of legal guidelines for impact fees in that state. The Florida cases established law as well as policy that have guided other courts and even legislatures in addressing the issue.

The landmark case on impact fees is *Contractors & Builders Assoc. of Pinellas County v. City of Dunedin*, 326 So.2d 314 (Fla 1976). In that case the Florida court struck down a water and wastewater capital expansion fee, but in doing so it gave guidelines for designing an acceptable fee system. Those guidelines were: the fee to be charged may not exceed the reasonable cost to the system of absorbing the new users; the fees must be reserved for the purpose for which they are charged; the fees must actually be used for the designated purpose and used in an area which will directly benefit (or absorb the impacts from) the development on which the fees are imposed.

In *Hollywood, Inc. v. Broward County*, 440 So.2d 352 (1983), a park dedication/fee-in-lieu system was upheld when the County was able to show that the requirement of three acres per thousand residents was not unreasonable, that the money would be spent within a reasonable amount of time and that the expenditure would benefit the residents of the platted area.

In 1983, a Florida court upheld a fee system in Palm Beach County, finding that it passed the tests set out in the *Dunedin* and *Hollywood, Inc.* cases. *Homebuilders and Contractors Assoc. of Palm Beach County v. Board of County Commissioners*, 446 So.2d 140 (Fla. App. 1983). The Palm Beach County

fee was a road fee and was based on a complex formula related to traffic generation and road construction costs. The fee was allocated to a road zone of about six square miles which included the proposed development. The fee was to be used specifically to build roads.

Impact Fee Law Today

The Florida cases remain important today. These cases are often cited in litigation and articles today, but they established the impact fee policy that has guided other courts in considering the issue of impact fees and that has guided committees that have developed impact fee legislation in a number of states. Among the states adopting legislation in the last ten years are Utah, New Mexico, Idaho, Hawaii, New York, New Hampshire, Pennsylvania, Maine, Indiana, Virginia, West Virginia, New Jersey, Washington (included in the Growth Management Act), Georgia, Oregon (used the phrase "system development charges"), Illinois, Nevada Vermont, California, Arizona and Texas.

What is interesting about these new state statutes is that they have largely followed the tests evolving from the Florida line of cases. Almost all of them require a plan of some sort. The most common requirement is for a capital improvements plan or program, although some use the phrase "capital facilities plan." A couple of them actually require a land use plan as the basis for the facilities plan. Most contain requirements for the computation of the fees, based on the actual costs of the facilities; some include detailed specifications about what planning and management charges can be included. Several prohibit the use of the fees to cure existing deficiencies in the system or to upgrade the level of service in developed parts of a community. All require that the fees be segregated for actual use for the purpose for which they are collected. Virtually all require that the fees be refundable if not actually used for that purpose.

One of the most interesting of the recent state court cases came out of Utah, where Salt Lake County imposed a drainage fee on a school district. The school district argued that the fee was a local tax assessment, from which it would be exempt. The county argued that the fee was an "impact fee." The court ruled that the fee was an impact fee and that the school district had to pay it. *Salt Lake County v. Board of Education of Granite School District*, 808 P.2d 1056 (Utah 1991). The issues in the case predated impact fee legislation passed in Utah while the case was pending. Thus, it is one more of a significant number of cases upholding impact fees without specific enabling legislation for them.

School Exactions and Fees

The leading case on exactions and schools is *Jordan v. Village of Menomonee Falls*, 28 Wis. 2d 608, 137 N.W.2d 442 (1965), appeal dismissed, 385 U.S. 4 (1966). That case involved a challenge to a $5,000 fee in-lieu of dedication assessed on a development; the fee was to be used to acquire park and school sites. The court held:

> We conclude that a required dedication of land for school, park or recreational sites as a condition for approval of the subdivision plat should be upheld as a valid exercise

> of police power if the evidence reasonably establishes that the municipality will be required to provide more land for schools, parks and playgrounds as a result of approval of the subdivision. 137 N.W. 2d at 448.

The Florida Supreme Court held that a $448 per unit school impact fee met the "rational nexus" test but failed a "proportionality" test. *St. Johns County v. Northeast Florida Builders Ass'n Inc.*, 583 So. 2d 635 (Fla. 1991). Both the "rational nexus" and "proportionality" tests are discussed below. Note that the "proportionality" test in this case pre-dated Dolan, discussed below, but was basically a precursor to Dolan and was entirely consistent with the holding of the Supreme Court in that later case.

A California court upheld the application of a school development fee levied against a private college when it built a business school. *Loyola Marymount Univ. v. Los Angeles Unified Sch. Dist.*, 53 Cal. Rptr. 2d 424 (1996). The issue in the case was one of construction, turning on whether the business school was a "commercial" development under the ordinance or whether it fell under a school or governmental exemption from the fees; the court agreed with the county in applying the ordinance to the project.

Candid Enters., Inc. v. Grossmont Union High Sch. Dist., 39 Cal. 3d 878, 705 P.2d 876 218 Cal. Rptr. 303 (1985) upheld school impact fees in response to a challenge urging that California's state school finance act implicitly preempted such a financing mechanism. Another California case upheld the imposition of impact fees on a retirement home development. *McClain W. No. 1 v. San Diego County*, 194 Cal. Rptr. 594 (1983).

The Colorado Supreme Court struck down school impact fees levied in Boulder and Douglas Counties in *Board of County Commissioners of Douglas Co., Colo. v. Homebuilders Ass'n of Metropolitan Denver*, 929 P.2d 691 (Colo. 1996). The case turned on issues of statutory construction and was entirely consistent with Colorado's long history of narrow construction of county powers. Specifically, Colorado law authorizes counties to levy certain development charges related to schools and, under an amendment to the state's school finance act, prohibits others. These fees clearly fell outside the scope of the statutory authority. Although the decision was nominally a split decision (4-3), the dissent actually focused on a narrow issue; the dissent argued that the fees had been within the scope of county powers for a short period, before the amendment to the school finance act, which even the dissent tacitly acknowledged barred the fees.

Rulings of the U.S. Supreme Court

The most important recent legal development regarding development fees is the decision of the U.S. Supreme Court in *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994). In that case, the Court held that

Tigard, Oregon's, requirement that Florence Dolan dedicate land to the city for use as a floodway, a greenway and a bike path amounted to an unconstitutional taking of her land. The case arose when Dolan applied for a building permit to expand an existing hardware and plumbing supply store from 9,000 square feet to 17,000 square feet and to pave a 39-car parking lot. The project conformed with existing zoning, but the city imposed the exactions as conditions on the issuance of a building permit.

This was the first exactions case to be decided by the Court since *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). The Nollans wanted to demolish an existing single-family dwelling and replace it with another, larger single-family dwelling on valuable beachfront property. Their proposal conformed with local zoning and subdivision regulations, but it also required approval under the state's coastal zone regulatory program. The Coastal Commission was willing to approve the building permit, but it conditioned issuance of the permit on the dedication of a trail across the Nollans' beach, connecting into a larger trail system. In that case, the U.S. Supreme Court created the "rational nexus" test, suggesting that there was in fact no "rational nexus," or reasonable connection between the proposal to replace one house with another and the need for additional trails in the area.

In Dolan, the Supreme Court expanded upon the rational nexus test, adding to it a requirement that there be a "rough proportionality" between the impact of a proposed development and the burden of the exaction imposed on it. In Dolan, there clearly was a rational nexus--the expansion of a commercial enterprise is bound to lead to some increase in runoff and some increase in traffic, probably even in bicycle and pedestrian traffic. Thus, Tigard satisfied the basic requirement of the Nollan test. The Supreme Court sought more.

The City of Tigard's goal in seeking trail dedication was to develop a trail network as part of its transportation system. That is a perfectly reasonable public goal. The problem was not with the goal. The problem was with its implementation. The City did not seek an impact fee. It wanted land. The amount of land it wanted had nothing to do with the probable trail usage of customers of the hardware store. It was not even based on the probable traffic generation of customers of the hardware store. That might have provided a reasonable basis for dedication, if the town had argued that it had a public policy of encouraging at least XX percent of all trips to be by bicycle or foot and that some bicycle and foot traffic would thus be imputed to every traffic generator. That is not what the City did, however--at least not initially. What it did was to map its trails. The Dolans' hardware store lay along a mapped trail. The city needed the land to link up the trail. The amount of land and the route of the land that the city sought in the dedication was based on the trail routing and design, not on traffic impact.

Tigard's city staff ultimately computed some traffic generation figures for the hardware store and even argued that some trips might be by bicycle. The argument failed, as it should have. All of that figuring was spurious. There is every indication that the city would have sought precisely the same exaction for the trail if the hardware store expansion had been 1/10 the proposed size or twice the proposed size. The city wanted that land, because it provided a key link in the trail--regardless of the extent of the impact of the proposed development.

The Supreme Court has not invalidated all forms of exactions. In Dolan, it simply clarified its earlier holding in Nollan, adding to it a requirement that exactions should bear a "rough proportionality" between the exaction and the impact of the proposed development. The Court suggested that the calculation of proportionality should be based on an "individualized determination." That is exactly what an impact fee system does. An impact fee system takes the individualized facts of a proposed development and computes the estimated traffic impact of that development (an individualized determination) and then bases the fee on that computation (giving us something that we hope is actually better than a "rough" proportionality). Although critics of the Dolan decision have argued that it can be interpreted as requiring a complete impact study of every development, there is nothing in the Court's language to indicate that. In fact, given the anti-regulatory bias of some members of the Court, it seems likely that they would find the simplicity of an impact fee system far preferable to a regulation that required complex impact assessments of every project.

State Mandates

Most of the alternative financing options described in the following section (the exceptions are the Mello-Roos special districts and the real estate transfer tax) rely on the authority of local government to regulate the development of land. It is control over the approval of subdivisions and the issuance of building permits that gives local governments the power to condition such approvals on the payment of a fee or the dedication of land. School districts generally are independent of cities and counties and consequently must rely on cities and counties to do this for them.

The likelihood of financial cooperation between school districts and other branches of local government is greatly enhanced when they share the same geographic boundaries. In Florida, school districts are coterminous with counties, and 12 counties have adopted school impact fees. The only county in Colorado that has adopted adequate public facility standards for schools, Douglas County, is served by a single school district.

Local governments that are served by a multitude of school districts, or that are only a small part of a much larger district, tend to be less likely to cooperate with them, if for no other reason than the logistical problems involved. This is the case in many parts of the country, and may help explain why

school impact fees are relatively rare compared to the types of facilities directly provided by cities and counties.

State legislative mandates provide one way to encourage such cooperation. In California, state law authorizes school districts to levy development fees, and requires cities and counties to require compliance before issuing building permits. In Washington, state law not only authorizes school impact fees, but also requires local governments to take the need for school facilities into consideration when reviewing development proposals. It is no accident that these two states, along with Florida, lead the country in the adoption of school impact fees.

SECTION III: THE HAWAII EXPERIENCE

This section of the report reviews the current situation in Hawaii with respect to developer contributions for new public facilities in general, and for new school facilities in particular. It begins with an overview of Hawaii's perspectives and experiences with the basic issue of fairness in the assessment of developers for the costs of "off-site" public facility improvements (i.e., improvements that are not an integral part of a development). A brief history is then presented of how the practice of obtaining developer contributions toward the provision of new school facilities has evolved. Immediately following is a description of the Department of Education's (DOE's) current method of determining the value and form of developer contributions for new schools. Other State and County agency practices with respect to developer contributions (also commonly referred to as exactions or impact fees) are then highlighted. The section concludes with a discussion of various agency and developer perspectives on existing DOE assessment practices and the potential benefits or impacts of changing them.

The Question of Fairness

Developers in Hawaii have for more than 30 years been requested or required to provide a wide variety of public facility improvements that are not an integral part of their projects. Many of these facilities clearly benefit the projects that in whole or in part pay for them. However, it needs to be acknowledged that, in some cases, developer exactions are also required where there is arguably not a clear or direct connection between the new development and the need being addressed. An example of the latter is the requirement to reserve discounted tee times for Hawaii resident use in developments that include new golf courses.

In a nutshell, developer contributions or impact fees are generally regarded to be "fair" only when they are intended to provide or fund the cost of off-site public facilities that will be required to serve the new development. In other words, there needs to be a "reasonable connection" between the development being assessed and both (1) the impacts that generate the need for the assessment and (2) the beneficiaries of the improvements being financed with the assessment. The more legalistic term that is frequently used to describe this is "rational nexus." (A comprehensive discussion of the legal framework for developer assessments that has evolved over time at the national level is provided in Section II of this report.)

While the fairness of developer exactions has been a central issue with the development approval process in Hawaii for decades, it has become a much more prominent concern since the mid- to late-1980s, when the types of exactions and their total costs increased significantly. The State

Legislature attempted to address this issue with the adoption of Act 282 (HRS Sec. 49-141 through Sec. 49-148) in 1992. As indicated by its title–"An Act Relating to Impact Fee Authorization"– the purpose of this Act was only to authorize, but not require, counties to impose developer exactions. In other words, it provided the counties with "enabling legislation," but not a mandate, for county adoption of impact fee ordinances.

Act 282 clearly strengthened the legal basis for county imposition of developer exactions, but it also attached significant requirements to the impact fee process that it authorized. Included in the Act are "uniform general guidelines" and required provisions and processes that must be incorporated in any impact fee ordinances that the counties may decide to adopt. These parameters closely reflect national legislative experience and court decisions with respect to the fairness or "rational nexus" of impact fee regulations. The principal ones in Act 282 include the following:

1. Need for Expanded Facilities – The need for additional public facilities or services created by new development must be documented with a "needs assessment study." This study must take into account facility development costs, level of service standards, and long-range capital improvement plans.

2. Proportionate Share – The fee charged must not exceed the cost of improvements attributable to the new development.

3. Avoidance of Double Payment – The ordinance must ensure that new development does not pay for facilities twice – i.e., once through impact fees and again through past or future taxes or user charges.

4. Benefit to New Development – The improvements funded by the impact fee revenues must benefit the development that paid the fee. (Others may also benefit.)

5. Segregation of Funds -- Separate trust funds must be established to segregate impact fee revenues from other revenue sources.

6. Reasonable Time for Expenditures – Fees must be expended for improvements within a reasonable time (six years under Act 282), or they must be refunded.

7. Challenge Procedure – A process by which a developer may contest the amount of the impact fee being assessed must be included.

As described following the discussion of DOE assessment practices, the counties have so far opted to continue with their existing developer assessment practices, rather than adopt a new impact fee

process in accordance with the provisions of Act 282. However, it needs to be noted that this study is not intended to address the question of fairness from the broad or state-wide perspective. Nor it there any intent to evaluate the specific merits, fairness or legality of other individual agency assessment practices. The focus of this study is strictly on the equity or fairness of the developer assessment practices being used by DOE with respect to the provision of new school facilities.

History of School Exactions

As noted, the practice of requesting or requiring developers in Hawaii to contribute to the provision of new public schools has been in effect for many years. The primary vehicle for accomplishing this has been to condition the approval of new residential developments that require changes in State Land Use District classifications from a non-urban to the Urban District.

In the early years following the establishment of the State Land Use Districts in 1962, DOE would only comment as to the adequacy of existing schools when asked to review reclassification petitions. No requests were made for developer contributions of land or facilities. The philosophy at that time was that schools would be built by the State, and DOE would need to "make do" with what the State could provide.

However, after a few years it was realized that under this system the State would never get to the point where school facilities are adequate to meet the needs of new developments. Consequently, DOE began to look at ways to obtain additional funds. This led to developers being asked to cover some of the costs.

The form of developer contributions was determined strictly on a case-by-case basis, and was negotiated with each individual developer. There were no "formulas" or formally established policies to guide the process of negotiating what constituted a reasonable developer contribution. Initially, DOE asked developers for a place to build a school. While some sites were provided, many were not in good locations – an example is a school in Waipahu that is located in a gully. DOE often was not able to get developers to agree to provide well located sites because they were also prime locations for building homes.

Negotiating just for school sites still was not significantly closing the gap between the need for new schools and the funding available to build them. In the late 1980's, DOE started asking for a "fair share" of the cost of building the new schools. The request was based on the student impact of the project. Fair share was determined by dividing the total number of new students by the standard class size to obtain the number of required new classrooms. Then this number was multiplied by the

average cost of building a new classroom, determined by DOE by island, to obtain the total fair share contribution.

The amounts were not small, especially for projects with affordable housing, which typically have a high number of school children per residence. Developers complained, and DOE had a hard time getting a contribution. In fact, they did not obtain a commitment from anyone in terms of actually paying a fee for new school construction.

DOE realized that, since this approach was not working, it apparently was not real. They then came up with the present formula type approach, which establishes a monetary contribution per housing unit as the basis for determining developer contributions. One of the primary criteria for setting up this new system was to treat all developers equally.

Current Method of School Exactions

DOE efforts to obtain developer contributions for new schools are based on adopted Board of Education policy. There currently is no specific statutory authority that authorizes or mandates the assessment of developers for these costs.

The current assessment formula is land-based – i.e., it is intended to provide sufficient funds only to cover the cost of purchasing land for new schools. Land requirements are based on the Board of Education's *Educational Specifications and Standards for Facilities* and its *School Size Standards Policy (No. 6701)*. The initial amount was calculated to be $850 per housing unit. DOE consulted with developers on the establishment of the new formula, including the initially used per unit amount. Some considered it reasonable; others felt it was too high.

The *School Size Standards Policy* was revised by DOE in March 1997 to reduce maximum enrollment standards per school by a little over 30% on the average. However, school site size standards were reduced by only an average of 8%, resulting in a significant increase in the required site area per student. Consequently, the fee per unit was raised from $850 to the current level of $1,125.

Where land for a school site is to be dedicated in lieu of paying the per unit fee, a land value of $100,000 per acre is currently being assumed to determine the amount of credit given for the land dedication. This is based on the average cost per acre of new school sites purchased since 1985.

Any fees that are collected are deposited in a trust account. There are separate trust accounts for each high school complex. This in intended to ensure that impact fees are expended in the same areas where the developments paying them are located.

Even with the established formula and fee per unit, developers' contributions to new school facilities are still being negotiated on a case by case basis. Most have agreed to the $850 per unit fee that was in use until recently, but the actual amounts in current agreements range from $500 to $1,000 per unit.

A more significant reason for the negotiations in many cases is DOE's need for one or more new school sites in the area where the new development is to occur. Generally, the wording of the condition in land use reclassification petition approvals does not specify whether a fee is to be paid or land for a new school site is to be dedicated. (Typical wording for this condition is provided at the end of the next paragraph.) The current formula addresses only the monetary value of the contribution required from developers. An agreement on the dedication of land, as opposed to payment of a fee, must in each case be negotiated between the developer and DOE.

As noted, developer contributions for new school facilities have been obtained primarily from developments that were required to petition the State Land Use Commission for a change in the State Land Use District classification. This has been possible because, being a State agency, the Commission has generally been willing to support DOE's efforts to get developers of residential projects to contribute to the cost of new schools, and has made the negotiated developer contribution a condition of approval. Typical wording of this condition is as follows:

> The Petitioner shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by and to the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon by the Petitioner and the DOE prior to Petitioner applying for county rezoning.

Not all new development proposals require State Land Use Commission approval. Requests for approvals go directly to the counties where a planned development involves land that is either already in the State Urban District or is 15 acres or less in size. Obtaining developers' contributions for new school facilities has proved to be more difficult at the county level.

Other Developer Exaction Practices

The purpose of reviewing what other agencies in Hawaii are doing at this time, and for the brief review of Act 282 included above, is to provide a more local context for the review of current DOE practices. (The national context is presented in Section IV of this report.) It is also intended to evaluate whether any of these other practices would be appropriate for incorporation into a revised DOE process.

All four county governments routinely require developers to contribute to part or all of the costs of providing new off-site public facilities, the need for which is generated by the new developments. Like DOE, other State agencies and authorities responsible for providing public facilities also work through the State Land Use Commission and/or County governments to obtain developer contributions. A prominent example is the State Department of Transportation with its requests for State highway widenings or the construction of new freeway interchanges, etc. The Hawaii Community Development Authority, which adopts and administers its own development regulations in established community development districts, has its own requirements for developer contributions.

As indicated by the following discussion, while many agencies in Hawaii impose developer exactions, specific assessment practices vary considerably from agency to agency.

State Land Use Commission

Virtually all major new developments on vacant land require a reclassification of land to Urban, and thus require State Land Use Commission (SLUC) approval. As a result, the SLUC is one of the most significant arenas in which development approval conditions are determined.

The SLUC imposes a wide range of conditions when approving reclassifications, depending on the types of impacts the developments are expected to have. Many of the conditions, such as that for schools as described above, have standard wording. The details are then left to be worked out between the developer and the individual agencies with jurisdiction. However, the initial applicability of these conditions must first be determined on a case-by-case basis. This also is done with conditions related to impacts that are uncommon or unique to a particular development, or are substantially different for different developments.

Hawaii Community Development Authority

Hawaii Community Development Authority (HCDA) has a statutory mandate to require the "dedication of public facilities" in connection with the approval of planned new developments. It implements this mandate by requiring new developments to dedicate land for public facilities in an amount equal to three percent (3%) of the total commercial and community service floor area within a development, and/or four percent (4%) of the total residential floor area within the development. Floor area devoted to industrial uses and "reserve" (affordable) housing units is exempt from these requirements.

In lieu of the actual dedication of land, developers may, with HCDA approval, pay a fee equal to the fair market value of the land that would have otherwise been dedicated. The determination of fair market value is usually set by mutual agreement between developers and HCDA. This can involve considerable negotiations. Where an agreement cannot be reached, HCDA sets the market value.

HCDA is not specifically required to pay to DOE any portion of the impact fees it collects, and it has no formula for distributing collected public facilities dedication fees among school, park and community center type projects. However, to help finance the planned new elementary school in Kakaako, the Authority is currently intending to provide to DOE an amount equal to $850 out of the fees it collects for each new housing unit built in the Kakaako district.

Housing Finance and Development Corporation

Housing Finance and Development Corporation (HFDC) works with developers to ensure compliance with affordable housing conditions imposed by the State Land Use Commission. It is not involved directly in the imposition of impact fees or developer exactions.

City and County of Honolulu

The City and County currently addresses the public facility impacts of new developments through fee and land dedication requirements that are established by ordinance for water, sewer and park improvements. Other types of impacts are addressed through case-by-case negotiations and unilateral agreements. In the view of City officials, this practice has been working very well. It views the current case-by-case negotiation process as important and necessary to providing the flexibility required to effectively address the variations in development impacts. Honolulu currently has no plans for adopting an Act 282 type impact fee ordinance.

County of Maui

The County of Maui is currently imposing impact fees both through adopted impact fee ordinances and on an ad-hoc or case-by-case negotiation basis. Three specific or targeted impact fee ordinances have been adopted: for traffic and roadway improvements required to support new development in the West Maui and Kihei-Makena regions (two separate ordinances), and for the construction of affordable housing, the need for which is generated by hotel-related development anywhere in the County.

There is also a park dedication ordinance in effect that applies to all residential and apartment developments in the County. In addition to these requirements, other exactions (e.g., additional park land or improvements, road widenings in areas not covered by the above-referenced ordinances, off-site school facilities or drainage improvements, etc.) may be imposed on projects requiring rezoning. These are negotiated on a case by case basis.

All of the pieces of this process have been in effect since 1992, when the affordable housing requirement was adopted. In the view of County officials, the current combination of mandated and ad-hoc assessments has been working well. The County is aware of the adoption of Act 282, and actually contracted with a consultant to develop a more comprehensive impact fee process for addressing transportation impacts. However, the study never went forward. At this time there are no plans to change the existing process.

County of Hawaii

Hawaii County does not have an adopted impact fee ordinance, but the County Council is currently imposing impact fees on new developments based on the pricing formulas developed in the 1990 "Development Impact Fee Pricing Technical Report." These formulas were essentially designed to meet "rational nexus" or fairness requirements as defined in legal decisions involving national lawsuits on this issue. (See Section II for a detailed discussion.)

Although Act 282 was adopted two years after the completion of 1990 study, the formulas being used closely reflect its requirements. The County government has on several occasions taken a close look

at formally adopting an impact fee ordinance that follows the guidelines specified in Act 282, but it has not yet done so.

County of Kauai

Kauai adopted an impact fee ordinance in 1981–11 years before the adoption of Act 282. This ordinance requires monetary contributions from developers, which are then deposited in a special fund that is used only to pay for capital improvements. The methodology involves charging developments a specified fee per residential lot or dwelling unit, per visitor unit, per number of required parking spaces (for commercial development), or per square feet of floor area, depending on the type and size of the uses in the project.

While the amount of the fee differs according to the type of development, it is not supported by any analysis of the actual costs of off-site facilities. Ad-hoc exactions are also imposed in some cases as conditions on rezoning approvals, where the County feels the ordinance-required monetary contributions do not adequately offset the public costs or burdens resulting from the development.

In the view of County officials, this existing process has generally been working satisfactorily. An infrastructure financing and impact study was initiated in 1993, but it was never completed. There are no current plans to change the existing process.

Perspectives on a New Process

As indicated in the opening section on the reasons for this study, the principal reasons for undertaking it are to address concerns raised by the development community and the State Land Use Commission. Their perspectives, as well as those of the State Office of Planning and the Hawaii Community Development Authority, on the need for and value of establishing a new process are discussed below.

State Land Use Commission

The issue of what constitutes a petitioner's fair share contribution to the Department of Education for impacts on school facilities, and how that fair share contribution is determined, has been a major concern in several petitions considered by the State Land Use Commission. The Commission has encouraged DOE to establish an impact fee policy and process that would constitute a fair and equitable requirement for all petitioners, and would also provide the necessary school facilities to accommodate enrollment increases generated by proposed developments.

State Office of Planning

The director supports the completion of the DOE Study. He feels a coherent, consistent policy on how to handle the impacts of developments on educational facility requirements is needed. This

could also resolve any questions about equity in application and the statutory authority for what is being done now.

However, the Governor is concerned about the whole general issue of the impact of government regulations and requirements on new development, and in particular is questioning the basic concept of impact fees. Given the current economic conditions in Hawaii, he is not convinced that impact fees make sense.

Hawaii Community Development Authority

The Authority intends to provide a portion of the impact fees it is collecting to DOE for the construction of a new elementary school in Kakaako. However, it wants to maintain control over the total amount of impact assessment it imposes on new development, and as part of that, on the portion it pays to help cover the costs of building the new school. Its mission is to facilitate the redevelopment of Kakaako, and the bottom line is that impact fees must be reasonable and not serve as a significant disincentive to redevelopment.

Land Use Research Foundation

Many developers are philosophically opposed to the collection of school impact fees. They believe schools should be funded from the broad tax base. However, LURF in general supports the completion of the DOE Study. It is hoped that the study will result in the establishment of a clear and well-defined policy and bring greater rationality and equity to the process.

The bottom-line issue with developers is cost. If there is going to be a systematic process established for imposing impact fees on developers for new school construction, then there should be a cap on the amount of the fee in order to keep it affordable. There should also be a lot of flexibility with respect to how it is paid. From the developers' perspective, the best type of impact fee would be one that includes incentives and splits the cost of building new schools between new development and the general population in order to keep the amount of the fee reasonable.

SECTION IV: THE NATIONAL EXPERIENCE

This section of the report explores alternative financing techniques that potentially are available to help fund school capital costs in Hawaii. Historically, there are only a few mechanisms that have been used by local governments in the U.S. to secure developer contributions toward school capital costs. These include:

- land dedication requirements,
- negotiated developer exactions,
- adequate public facility (APF) requirements,
- impact fees,
- development taxes,
- special districts, and
- real estate transfer taxes.

Land dedication requirements are the oldest and most common form of developer exaction for schools. Negotiated exactions have not been widely used for school facilities, and although still widely employed by local governments across the nation for other facilities, this method of developer exaction has been placed under a cloud of legal uncertainty by recent U.S. Supreme Court decisions. APF requirements can sometimes have the same result as negotiated exactions, although they operate under a much more rigorous framework of level-of-service standards, monitoring and technical analysis. Impact fees and development taxes are the most direct methods of charging new developments for their impacts on the need for new school facilities. A major distinction between them is that development taxes can be assessed on both residential and nonresidential development, whereas school impact fees are generally assessed only on new residential development. Special districts have been used extensively in California to fund public school construction in particular growth areas. And real estate transfer taxes, while not exclusively charged on new construction, are an increasingly popular funding alternative for school construction.

Land Dedication Requirements

Land dedication requirements are among the oldest type of development exaction used in the United States. They are also the most commonly-used method of development exactions for school facilities.

Prior to the advent of zoning and subdivision controls in the 1920s, developers typically made only minimal improvements to their projects. By the 1940s, it had become widely accepted that

developers would provide all public improvements within a subdivision that were designed to serve that subdivision.

The first tools by which local governments could require new development to shoulder some of the burden placed on off-site public facilities were devised during the development boom following World War II. Local governments, experiencing difficulty funding parks and schools needed to serve new residents through traditional tax-supported bond issues, began to require mandatory dedication of park and school sites. For smaller subdivisions and those with unsuitable sites, fees in lieu of land dedication were required.

The fees in-lieu of dedication are superficially similar to impact fees, and in fact are a direct precursor of impact fees. The distinction lies in the manner in which the fee is assessed and the purposes of the fee. "In lieu" fees are based on land costs only and are ill-suited for public services not requiring extensive amounts of land. Impact fees, on the other hand, are designed to cover total capital facility costs and may be applied to a wider variety of services.

Mandatory park or school dedication requirements with in-lieu fee provisions typically apply only to residential subdivisions, and are based on the number of dwelling units proposed. Requirements based on a percentage of site area have been overturned by the courts, since they do not recognize the differing service demands created by low and high density developments. Land dedication usually is required at the subdivision stage of the development process.

Land dedication exactions have the advantage of being closely related to on-site needs created by new development. They have a long history of use and are generally accepted as legitimate exercises of local police power. They are also relatively simple to administer and treat all residential subdivisions similarly.

A major drawback, however, is that they only cover the cost of land and make no contribution toward the cost of new capital improvements required by new development. In addition, since they are generally administered through the subdivision ordinance, developments not requiring land subdivision are exempted from the requirements.

Negotiated Exactions

Exactions are generally defined as the private provision of land or facilities to serve public infrastructure needs created by new development, made as a condition of development approval. Monetary or in-kind exactions, other than for land or on-site facilities, are generally the result of open-ended negotiations between the developer and the local government, rather than from the

application of a previously defined methodology. They may be imposed at any stage of the development process, particularly during requests for regulatory approvals, such as zoning, special permits or planned unit developments, where the local governing body has broad discretionary authority. Such exactions typically involve public improvements in close proximity to the development.

While negotiated exactions are standard procedure in many communities, they are tightly regulated in some states. In North Carolina and Virginia, for example, state government has authorized two kinds of zoning districts, general use districts and conditional use districts. Local governments cannot require developer contributions as a condition of granting general use zoning, and can accept proffers only when conditional use zoning is requested. In Virginia, jurisdictions that have not been expressly granted conditional zoning authority are severely limited by the types of proffers that may legally be accepted.

In comparison with land dedication requirements, negotiated exactions have the advantage that they may cover the capital cost of public facilities in addition to land costs. In addition, since such exactions are based on the specifics of an individual development proposal, they can address public facility improvement needs, such as driveway turning lanes, that are directly related to the development.

A drawback of negotiated exactions is that they lack the attributes of predictability and equity that gained park and school land dedication requirements their early and wide acceptance. The amount of the exaction may depend on accidents of geography, such as the amount of land owned by a developer that happens to correlate with right-of-way needs, or on the political or bargaining skill of the applicant. Small developments, although they may cumulatively result in the need for significant capital improvements, often escape such exaction requirements because individually they are not capable of making significant contributions. Developers often feel that they are victims of extortion. Negotiations are often time-consuming and expensive for both the developer and the local permitting authority. Finally, in light of recent U.S. Supreme Court decisions, negotiated exactions are becoming increasingly difficult to defend against constitutional challenges.

Adequate Public Facility Requirements

Adequate public facility (APF) requirements, also known as "concurrency requirements," are intended to ensure that off-site facilities are available as impacts occur from new development. APF requirements are a means of preventing premature development in remote areas where facilities are inadequate, or of controlling the pace of development in areas where facilities are congested. If existing public facilities are not adequate to accommodate the development, the developer will have

several options: reduce the density of the project, wait for facilities to be improved, finance the needed improvements or select a different site.

APF requirements are a formal mechanism used to enforce one of the most fundamental tenets of land use planning–that development should not be permitted where it can not be adequately accommodated by critical public facilities and services. While land development regulations have historically been used as a means of ensuring that residents and end users of a development project can be adequately served by community facilities, adequate public facility regulations go further, by ensuring that new development will not cause an unacceptable decline in service for existing area residents.

APF regulations are most defensible in the context of a long-range plan for the provision of major public facilities. They are not designed to be a means of preventing growth, or of requiring developers to construct major system facilities having community-wide benefit. In the event that a developer offers to construct or contribute a portion of the cost of such a facility in order to have it in place earlier than would be possible with existing funding sources, reimbursement agreements, pro rata agreements or other mechanisms should be used to ensure that the developer is not forced to contribute a disproportionate share of the cost.

APF regulations should be based on quantifiable standards that can be measured, mapped and monitored. This necessitates background studies to ensure that such standards are realistic and maintainable. Second, the regulations should be back by a capital improvements plan (CIP) that identifies projects and funding sources to meet these standards. Third, development review procedures should involve the issuance of a "certificate of adequate facilities" after analysis of a proposed project's impacts and mitigation. Fourth, service levels should be monitored over time to ensure that public facilities are keeping pace with development.

Florida has pioneered a form of adequate public facility regulations known as "concurrency." Under the provisions of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163 of the Florida Statutes), cities and counties must adopt "adequate facilities" regulations requiring that all future development be served by infrastructure operating at or above adopted levels of service. According to the provisions of the Act and its accompanying administrative rules (9J-5 and 9J-24), no new development can be permitted unless it is first determined that public facilities are in place at the time the facilities are needed for the development.

However, schools are not included in the list of facilities for which concurrency is mandated in Florida. Only one Florida county (school districts, while independent, have the same boundaries as counties) has attempted to develop school concurrency regulations. The Broward County School District is the fifth largest in the country, with a 1996 enrollment of 217,000 housed in about 200

schools. Fifty-five of those schools were built in the last ten years. Broward County's effort to develop school concurrency requirements has met with strong opposition from the state homebuilders association. A state administrative ruling is requiring the County and school district to prepare annual enrollment projections by school attendance zone for the next five years and identify capacity improvements to meet any projected deficiencies before the regulations can take effect. County officials, who began working on the issue in 1992, estimate that it will be another year before school concurrency regulations take effect. The intent of the regulations is not to exact contributions from developers (the County already has a school impact fee), but to delay development in some instances until the County's school building program can accommodate the new students.

The 1990 Washington State Growth Management Act and the 1991 amendment to the Act require local governments in that state to make appropriate provisions for schools in reviewing development proposals, and grants counties and cities the authority to impose school impact fees. King County, the most populous county in the state, adopted a comprehensive plan in 1994 that established a policy of coordinating land development with the provision of services, including schools. This policy was implemented with a new zoning code adopted in 1995 that included school concurrency requirements. A finding of concurrency for schools is required for all preliminary residential plats, preliminary planned unit developments, site plan approvals for mobile home parks, requests for multi-family zoning and building permits for multi-family projects. If it is determined that school capacity will not be available at the time development impacts occur, the proposal may be denied or mandatory phasing or other mitigation may be required. The King County system entails coordination with 11 independent school districts.

Douglas County, Colorado, one of the fastest-growing counties in the nation, adopted a "concurrency management system" in 1995 that includes school concurrency requirements. The County's program is made simpler by the fact that the county is served by only one school district. Although most of the residential development has been occurring in the unincorporated area, the program has been hampered somewhat by the fact that the towns are not currently participating in the concurrency system. Since the concurrency system was implemented, the school district has been able to secure voter approval for several bond issues for new school construction. To date, no developments have been denied or delayed due to inadequate school capacity, although several developers have been required to provide portable buildings to help mitigate temporary capacity shortages.

Some of the advantages of school APF or concurrency programs include the following:

- They can be used to pace development to match desired levels of service.
- They can help direct development to areas where existing school capacity is available.
- They provide a structure and resources for implementation of the community's CIP.

Some of the disadvantages of APF or concurrency programs include the following:

- Such programs require systems of data collection and monitoring.
- They can cause some over-building during the initial implementation period from fear that available capacity will be consumed.
- Such programs may create a bias in favor of large projects that are able to marshal resources and manage their timing.

Special Districts

A type of special district, known as Mello-Roos, has been widely used in California to finance new school construction. This use of the special district technique was a response to (a) limited property tax funding due to Proposition 13 and (b) a desire for an alternative to high up-front lump sum payments in the form of school impact fees. Proposition 13 was enacted in California in 1978. With the new cap on property taxes, public agencies found their ability to finance new projects to be severely limited. Senator Henry Mello and Assemblyman Mike Roos facilitated the passage of the Community Facilities District Act in 1982, which enabled local governments and developers to create Community Facility Districts (also known as Mello-Roos Districts) for the purpose of selling tax-exempt bonds to raise money for public improvements.

Establishment of a new Mello-Roos District requires a two-thirds margin of qualified voters in the district. Upon approval, a Mello-Roos District has all the legal privileges of a legally sanctioned government body. A Mello-Roos District has the legal right to implement severe penalties and foreclosure priorities in the event the payment of district assessment fees is delinquent. District assessments are levied in the form of special charges on the owner's property tax bill.

Mello-Roos Districts can levy assessment fees on undeveloped land, as well as developed residential, commercial, industrial, and religious properties within the District. The assessments to be levied on the taxable property within the District are based on lot size or square footage of the home and the benefits expected to be received by each parcel from the various public improvements to be financed with the proceeds of the district bonds.

The City of Antioch, California, established a Mello-Roos assessment program in a developing part of the community to fund the building of eight new schools to serve the area. Since 1995, there has been an option allowing the Mello-Roos assessment to be paid off early by the homeowner.

If a builder's project is subject to Mello-Roos, the per unit cost could be built into the pricing of the home, as would be the case if the financing tool was an impact fee, rather than the same amount

being financed through annual district assessments. But builders don't generally deal with the Mello-Roos obligation this way, primarily because the interest rates for financing Mello-Roos levies as general obligation bonds are low. Such bonds are exempt from both state and federal income taxes on the interest they earn, and therefore are sold to investors as tax-free municipal bonds, with interest rates at about half the going rate for residential mortgage loans. For example, if the lump sum per unit amount of a Mello-Roos bond obligation was $11,000, the annual interest as a general obligation bond might cost the homeowner $846 at 4.5% annual interest rate as a municipal bond. However, the very same amount could cost $1,205 at 9% interest financed at regular market rates.

The special district financing mechanism represented by California's Mello-Roos Districts is not entirely appropriate for Hawaii school finance, since Hawaii has a state-wide school district and does not need to create a special purpose governmental entity to escape property tax limitations such as those imposed by California's Proposition 13. However, one of the key features of the Mello-Roos District may be applicable to Hawaii. This feature is the ability to allow the school construction cost obligation of a new residence to be paid in annual installments over an extended period of time.

In fact, there are a number of communities that have included extended payment options in their impact fee systems. For example, the Village of Ruidoso, New Mexico, included the following provision in its water and wastewater impact fee ordinances:

> The impact fees due for any new development shall be due and payable at the time of building permit. However, the Governing Body may, by resolution, provide applicants with the alternative of paying the amount of impact fees due over a period of time through a surcharge to be added to the monthly utility bill for the property. The amount of such monthly surcharge shall be calculated to include an appropriate interest rate, and the period of payment shall not exceed fifteen years. Applicants desiring to exercise this option shall be required to provide notice to future owners of the property of the monthly surcharge obligation.

Similarly, the City of Colorado Springs, Colorado has included an extended payment option in the draft ordinance designed to implement a proposed road impact fee to fund an interchange in one area of the community. The provision gives the developer the option of paying the impact fee in a lump sum at the time of building permit or in annual installments over a period of up to 20 years at an interest rate of 7 percent. The obligation to make the annual payments is to be secured by a promissory note or a lien on the property.

Thus, while Mello-Roos special districts are not needed in Hawaii to escape property tax limitations on the issuance of government bonds, they do offer they concept of the extended payment option that could be incorporated into any impact fee or development tax system.

Real Estate Transfer Taxes

Another school funding alternative is a real estate transfer tax. A real estate transfer tax is not a property tax, but is an excise tax on the privilege of selling property. Like the other financing alternatives under consideration, a real estate transfer tax would have to be authorized by the state legislature.

Real estate transfer taxes are increasingly being turned to as an alternative to development fees or taxes as a means of financing school construction in growing areas of the country. Bills were introduced in the most recent legislative sessions in Florida and Tennessee to enact statewide or local option transfer taxes that would substitute for school development fees or taxes. Florida's enacted a bill in 1999 (SB 172) that placed a moratorium on new or increased school impact fees until July 1, 2000 and established a committee to explore alternatives to financing for new school construction. A state-wide real estate transfer tax was the favored alternative, but a followup bill passed in May 2000 (HB 2179) failed to include any definite state funding source and was vetoed by the governor. HB 2179 would have frozen school impact fee assessments at 37.5 percent of the frozen rates unless the state legislature failed to appropriate enough funds to make up the difference.

The state of Tennessee currently assesses a tax of $0.37 per $100 on the value of real estate transactions for general revenue purposes. A bill was introduced in the legislature in June 2000 that would have given local governments the option of imposing an additional $0.37 per $100 to be used "exclusively to pay interest or principal on county or municipal debt obligations issued to fund school facilities." No county or municipality that exercised this option would be able to impose a development tax, although they would be allowed to impose impact fees. Different versions of the bill passed the house and senate, but died in conference committee.

The amount of Tennessee's transfer tax is comparable to that imposed by other states that use this taxing device. As can be seen in Table 1, state transfer taxes tend to cluster around $0.30 to $0.40 per $100. Local governments that have a transfer tax charge more varied rates.

In some cases, modifications to the flat percentage rate have been made to make the tax more progressive and to encourage affordable housing. For example, the province of Ontario, Canada, which has imposed a real estate transfer tax since 1921, currently charges based on a sliding scale:

0.5% on amounts up to and including $55,000;
+1.0% on the amount exceeding $55,000 up to and including $250,000;
+1.5% on amounts above $250,000 up to and including $400,000;
+2.0% of the amount in excess of $400,000.

Table 1
REAL ESTATE TRANSFER TAX RATES, SELECTED JURISDICTIONS

Jurisdiction	Tax per $100
States:	
Georgia	$0.10
New Hampshire (1)	$1.00
New York	$0.40
Tennessee	$0.37
Wisconsin	$0.30
Local Governments:	
Chicago, IL	$0.75
Palo Alto, CA (2)	$0.44
Philadelphia, PA	$3.00
Portland, OR (proposed) (3)	$0.50 - $0.75
Suffolk County, NY	$2.00

Notes: (1) split between buyer and seller; (2) combined city ($0.33) and county ($0.11) taxes; (3) *The Oregonian*, April 20, 2000.
Source: Duncan Associates, internet search, May 2000.

Real estate transfer taxes can obviously be used to fund many other things besides school construction. Portland, Oregon's proposed regional transfer tax is intended to raise money to fund the construction of affordable housing, a scarce commodity in the region. A recent proposal from the 1998 Hawaii State Democratic Convention urged the state to enact legislation to give the counties authority to tax transfers of real estate at the rate of up to 2 percent or less, for the purpose of acquiring land for a community lands and open space acquisition program.

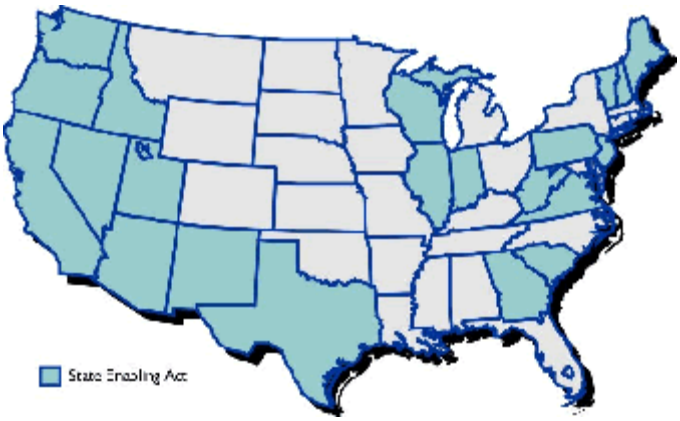
Some advantages of the real estate transfer tax over impact fees or development taxes include significantly greater revenue potential and less dependence on building cycles, since the resale of existing real estate is subject to the tax. Like the development tax, the real estate transfer tax to fund schools could be charged on both residential and nonresidential development, whereas school impact fees are generally charged only on residential development. Like the development tax, the real estate transfer tax has the disadvantage of bearing the tax label. It also lacks the dedicated nature of an impact fee and could be used to fund a variety of things other than new school construction.

Impact Fees

Impact fees are one of the most direct ways for local government to require new development to pay a larger portion of the costs they impose on the community. Impact fees are charges that are assessed on new development based on a standard formula such as the amount of square footage or the number of bedrooms per dwelling unit. Fees are one-time, up-front charges, with the payment

usually made at the time of development approval, although some jurisdictions allow extended payments over a period of years. Essentially, impact fees require that each developer of a new residential or commercial project pay its pro-rata share of the cost of new infrastructure facilities required to serve that development.

Figure 1
IMPACT FEE ENABLING ACTS



Since impact fees were pioneered by local governments in the absence of explicit state enabling legislation, such fees have generally been legally defended as an exercise of local government's broad "police power" to protect the health, safety and welfare of the community. The courts have gradually developed guidelines for constitutionally valid impact fees, based on a "rational nexus" that must exist between the regulatory fee or exaction and the activity that is being regulated. The standards set by court cases generally require that an impact fee meet a three-part test:

1) The need for new facilities must be created by new development;

2) The amount of fee charged must not exceed a proportional fair share of the cost to serve new development; and

3) All fee revenues must be spent within a reasonable period of time and benefit the fee-paying development.

To date, 22 states, including Hawaii, have adopted impact fee enabling legislation. Like most other state enabling acts, Hawaii's impact fee enabling act for counties reflects the constitutional standards enumerated above. However, some states where impact fees are popular, such as Florida, still do not have impact fee enabling legislation. One of the reasons that Florida does not have an impact fee enabling act is that local governments felt that they had more freedom under Florida and national case law than they would under an explicit enabling statute. Indeed, one of the provisions in most state enabling acts is a limitation on the types of facilities for which impact fees can be assessed. Of the 22 enabling acts, only seven authorize impact fees for school facilities. The types of facilities that are eligible for impact fees are listed in Table 2. School impact fees appear to be most common in California, Washington and Florida.

Table 2
FACILITIES ELIGIBLE FOR IMPACT FEES

State	Roads	Water	Sewer	Storm Water	Parks	Fire	Police	Library	Solid Waste	School
Arizona (cities)	#	#	#	#	#	#	#	#	#	
Arizona (counties)	#	#	#	#	#					
California	#	#	#	#	#	#	#	#	#	#
Georgia	#	#	#	#	#	#	#	#		
Hawaii	#	#	#	#	#	#	#	#	#	#
Idaho	#	#	#	#	#	#	#			
Illinois	#									
Indiana	#	#	#	#	#					
Maine	#	#	#		#	#			#	
Nevada	#	#	#	#						
New Hampshire	#	#	#	#	#	#	#	#	#	#
New Jersey	#	#	#	#						
New Mexico	#	#	#	#	#	#	#			
Oregon	#	#	#	#	#					
Pennsylvania	#									
Rhode Island	#	#	#	#	#	#	#	#	#	#
South Carolina	#	#	#	#	#	#	#			
Texas	#	#	#	#						
Utah	#	#	#	#	#	#	#			
Vermont	#	#	#	#	#	#	#	#	#	#
Virginia	#									
Washington	#				#	#				#
West Virginia	#	#	#	#	#	#	#			#
Wisconsin (cities)	#	#	#	#	#	#	#	#	#	
Wisconsin (counties)		#	#	#	#	#	#	#	#	

Source: Ariz. Rev. Stat. Ann., § 9-463.05 (cities), § 9-11-1101 et seq. (counties); Cal. Gov't Code, § 66000 et seq.; Colo. Rev. Stat., § 29-1-801 et seq.*; Ga. Code Ann., § 36-71-1 et seq.; Haw. Rev. Stat., § 46-141 et seq.; Idaho Code, § 67-8201 et seq.; 605 Ill. Comp. Stat. Ann., § 5-901 et seq.; Ind. Code Ann., § 36-7-4-1300 et seq.; Me. Rev. Stat. Ann., Title 30-A, § 4354; Nev. Rev. Stat., § 278B; N.H. Rev. Stat. Ann., § 674:21; N.J. Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42; New Mexico Stat. Ann., § 5-8-1 et seq.; Or. Rev. State, § 223.297 et seq.; Pa. Stat. Ann., Title 53, § 10501-A et seq.; General Laws of Rhode Island, §45-22.4; Code of Laws of S.C., § 6-1-910 et seq.; Tex. Local Gov't Code Ann., Title 12, § 395.001 et seq.; Utah Code, § 11-36-101 et. seq.; Vt. Stat. Ann., Title 24, § 5200 et seq.; Va. Code Ann., § 15.1-498.1 et seq.; Wash. Rev. Code Ann., § 82.02.050 et seq.; W. Va. Code, § 7-20-1 et seq.; Wis. Stats., § 66.55

Hawaii's impact fee enabling act, adopted in 1992, authorizes counties to adopt impact fees for any "types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study." No county has yet used this authority to adopt school impact fees or any other type of impact fee.

Washington is one of the newest arenas for school impact fees, following passage of the Washington State Growth Management Act in 1990, which granted counties and cities the authority to impose school impact fees. Since that time, the three counties in the Seattle area–King, Pierce and

Snohomish–have adopted school impact fees for all 33 school districts within their borders, averaging about $2,000 per single-family unit. King County's school impact fees, which average almost $2,500 per single-family unit, were reportedly adopted at only 50 percent of the full cost of providing new schools.

School impact fees have been explicitly authorized in California since 1987, when the legislature passed AB 2926, authorizing school districts to levy a development fee on all new construction for the purpose of paying their share of school building construction. The school district, upon adoption of such a fee, must notify city and county building officials, who must then require proof that such fees have been paid before issuing building permits. The fee is levied based on the square footage of construction. The maximum fees are established by law and are adjusted annually for inflation. Currently, the maximum fees are $1.93 per square foot for residential buildings and $0.31 per square foot for commercial buildings.

The California impact fee act is unique in that it specifically anticipates the imposition of school impact fees on nonresidential development. It requires that, if school fees are to be assessed on nonresidential development, the school district must first conduct a study of the impact of the increased number of employees on the need for school facilities. No other state impact fee act specifically addresses this issue.

We are not aware of any adopted school impact fee outside of California that applies to nonresidential development. The reason is that it is more difficult to establish the link between commercial development and the need for new school capacity. For example, while an employee of a manufacturing facility may have children that go to public school, the employee may not live in the same school district where the factory is located. This would be less of a problem in Hawaii, where districts are large and geographically isolated. In addition, a school impact fee that charges both residential and nonresidential development must find a way to allocate school costs between the residential units where the children live and the employment centers where their parents work.

Unlike developer exactions that typically address only on-site or nearby facilities, impact fees can be used to cover the broad range of capital facilities required to serve new development. Impact fees are more predictable and equitable than informal systems of negotiated exactions and are likely to generate considerably more revenue. Impact fees can also be used to fund a wider variety of services and types of facilities than is possible with exactions.

The primary strengths of impact fees include applicability to a wide range of public facilities, ability to recover the full net costs of growth-related infrastructure, proportionality to impacts, predictability for both the public and private sectors and acceptability due to a clear linkage with the needs of new development. Their limitations include the necessity for detailed studies and accounting procedures,

inability to fund operating or deficiency costs, dependence on growth cycles and lack of bonding capability.

The requirement that impact fees be spent to benefit the fee-paying development is typically met by earmarking revenues for expenditure in the zone in which they are collected. If impact fees cannot be used to finance bonds, enough fees must accumulate before construction on a project can begin. The requirement that fee revenues be spent within a reasonable period of time following fee payment imposes an additional constraint. However, proper design of benefit zones, provisions for pooling revenues from adjacent zones and supplementing impact fee revenues with funds from other sources can overcome obstacles to successful fee implementation.

Development Taxes

Development taxes, which are also called impact, excise or privilege taxes, are special taxes levied on development. Development taxes are a special type of excise tax, which in general refers to any tax that is not an ad valorem tax or an income tax. Development taxes are local taxes imposed on the business or occupation of real estate development in general (or a part of that business) in order to raise monies to pay for the added costs that development imposes on the community.

Because they are an exercise of the taxing power, rather than the police power, development taxes must be specifically authorized by state law. Most states reserve the right to levy excise taxes to the state government. In the 1960s, home rule cities in California became the first in the nation to assess development taxes. Several other states, including Colorado and Arizona, authorize municipalities to impose excise taxes, and some communities in those states have used this authority to impose development excise taxes on the occupation of building.

Development taxes differ from ad valorem property taxes in several important ways. They are not taxes on property at all, but taxes on the exercise of an occupation. They are therefore generally not subject to constitutional and statutory requirements of uniform real property taxation. They are seldom based directly on the value of a property; they are usually calculated based on some measure of the amount of construction itself, such as building square feet. When development taxes are directly based on the value of real property, they have sometimes been held to be unconstitutional ad valorem taxes, and have been overturned. Finally, unpaid ad valorem property taxes are generally secured by a lien on the property, while payment of the excise tax is not secured by a lien. Instead, it is usually collected at the time of building permit issuance.

Development taxes also differ from impact fees in important ways. First, they are primarily a tool for raising revenue, as opposed to a land use regulation designed to finance facilities for specific

developments. Second, they do not have to be earmarked or segregated or accounted for separately from the city's general revenues. Third, they can be used to pay for operations and maintenance of facilities, as well as for their construction. Fourth, they generally do not need to be based on either general or specific studies to document a reasonable relationship of burdens and benefits. For all of these reasons, the excise tax mechanism offers municipalities substantially more flexibility in raising revenues to cover the costs of development.

Perhaps most importantly, development taxes are adopted pursuant to municipal taxation powers, and not police powers. As a result, they are generally not subject to the body of law dealing with the limits of police power regulations and exactions. Court-defined standards for "nexus," "reasonable relationships," and "rough proportionality" generally do not apply. While development taxes must be rationally related to a corporate purpose, that is generally easy to show, since revenues are generally needed from somewhere to fund public facilities made necessary by the new development activity subject to the tax.

Development taxes are not without disadvantages. In spite of the fact that they are not subject to the strict nexus/rational relationship test, studies may still need to be compiled. Generally, it is good practice to calibrate development taxes carefully, based on the types of expenses that they are intended to cover. In addition, the adoption of new taxes is generally more unpopular than the adoption of new development fees or special assessments, even though the practical results and burdens of the different tools may be the same.

Development taxes tend to be more popular than other kinds of taxes because they are levied on new construction rather than existing development. However, reroofing, remodeling and alterations to existing structures may also be subject to such a tax. Even in a high-growth community like San Jose, California, over one-third of total building permit valuation in the 1980s was for such remodeling activities.

Impact Fees Versus Development Taxes

Impact fees and development excise taxes are different mechanisms for achieving the same broad goal of shifting more of the cost of growth onto the developments creating the need for expanded infrastructure. The key differences between the two may be summarized as the "legitimacy and predictability" of impact fees versus the "flexibility and simplicity" of development excise taxes.

Impact fees have a certain legitimacy that derives from the strong, required linkage between the amount of the fee and the actual costs required to serve the new development with new or expanded capital facilities. Their legitimacy also derives from the even-handed treatment of all development

projects according to their impacts. This sense of fairness is reinforced by the fact that developers who are required to make improvements for the same type of facilities as a condition of development approval must be given credit against their impact fees for the value of the improvements. Finally, the constitutional standards developed by the courts to ensure that local governments do not abuse their regulatory authority over development provide developers an assurance that the local government must treat them fairly or end up in court.

These characteristics may lead developers to prefer impact fees over development taxes, even when the impact fees are higher than the development taxes would be. Duncan Associates recently worked with the City of Mesa, Arizona, to develop a set of impact fee and development tax alternatives. The development tax alternative spread the cost of park, library and cultural facilities over both residential and nonresidential development and resulted in a lower fee for residential development than the impact fees, which placed the full cost of these facilities on residential development. It had been assumed that the residential homebuilders would prefer a lower development tax to the higher impact fee. Surprisingly, the homebuilders association expressed a strong preference for the higher impact fee. Their reasoning was that even if the development tax was initially calculated in the same manner as an impact fee, it lacked the safeguards that would prevent future governing bodies from arbitrarily increasing the tax.

The impact fee approach is generally indicated for facilities that, by their nature, are the subject of regulatory exactions that should be creditable against the impact fees. Developers, for example, are often required to oversize water and sewer lines and drainage facilities, and to construct or widen internal or adjacent arterial streets. These types of required improvements benefit the community at large, and developers should not be required to provide such improvements and pay development charges intended to fund the same types of improvements, without some credits or other form of compensation. School facilities, however, do not fall in this category, because developers are rarely required to construct schools.

While legitimacy and predictability may be the major advantage of impact fees, development excise taxes would provide much more flexibility and are simpler to develop, administer and update. Detailed studies would not have to be performed to determine the appropriate amount of the tax, development taxes would not have to be segregated from other revenue sources, and revenues could fund maintenance as well as capital costs.

While the differences between impact fees and development excise taxes seem fairly clear in their typical manifestation, things get murkier when development taxes are calculated and assessed in ways that are virtually identical to impact fees. Most case law on the distinction between impact fees and development taxes has involved impact fees being struck down by the courts as an unlawful tax. It is unclear how the courts would look upon a development excise tax that in most respects functions

like an impact fee. One legal observer advises municipalities considering adoption of an excise tax on the business of development to take pains to ensure that the fee is not interpreted by the court as being an impact fee, by, for example, avoiding earmarking the revenues collected.

One community that has designed a development tax that looks very much like an impact fee is the City of Boulder. In 1996, the City commissioned a study that used impact fee methodologies to calculate the maximum fees for a wide variety of public facilities, but adopted them as a Development Excise Tax (DET). The DET has most of the other trappings of an impact fee, including the earmarking of revenues for capital facilities, segregating funds according to the type of facility and a provision for credit against the tax for required developer contributions. Interestingly, one of the partners of the law firm advising the City of Boulder authored the article, cited above, that advised against designing excise taxes that look too much like impact fees.

The more a development tax is designed to function like an impact fee, the more it loses the advantages of the development tax approach. It is not clear, for example, what advantage there is to the City of Boulder to adopting what appears to be an impact fee as a development excise tax. Since this approach takes the risk that the courts may decide it is an impact fee after all, it would appear the more prudent course to develop an excise tax that takes advantage of not having to comply with all of the requirements attendant to impact fees.

One reason for choosing development taxes over impact fees for certain facilities would be to promote housing affordability. Impact fees for schools, parks, libraries and cultural facilities, for example, must generally be assessed only on residential development. The cost of these facilities could be addressed with a much lower development tax that applied to nonresidential as well as residential development. Another situation favoring a development tax would be a facility like stormwater drainage for which there may be inadequate data to support defensible impact fee calculations. Finally, a development tax can be more easily designed to be progressive by being assessed per square foot of residential development, without the burden of having to show how the impacts of the development are directly related to the size of the dwelling.

In summary, impact fees and development excise taxes have very different characteristics, and one should not try to get the advantages of both. The impact fee approach has the advantages of legitimacy and predictability that come from the constitutional requirements for detailed studies to determine attributable costs, earmarking of funds, expenditure only for capital expansion, provision of credits for required developer contributions, etc. In contrast, the development excise tax approach offers the advantages of flexibility and simplicity that come with the use of the taxing authority. Consequently, the development tax approach, if forthrightly done, is generally immune from legal challenge, does not require detailed studies, is simpler to administer and update, and can be used to

promote goals, such as affordable housing or progressive taxation, that are more difficult to address within an impact fee framework.

SECTION V: POLICY ANALYSIS

This section addresses several major issues facing the Department of Education relating to development exactions for school facilities in Hawaii:

1. Should DOE seek authorizing legislation from the state?
2. Should DOE retain a land-based exaction or land dedication requirement?
3. Should DOE pursue an impact fee or development tax approach?

The section concludes with a summary of the consultant's recommendations.

State-Level Approach

DOE's current Fair Share Contribution formula is formally similar to a land dedication requirement or a land-based impact fee, but since it is not imposed by statute or ordinance, it is implemented in a manner similar to a negotiated developer exaction. DOE must rely on the State Land Use Commission and counties to impose school exactions on developers, and often gets involved in negotiating the amount of the dedication or fee with developers.

Obviously there is a need for some negotiation when DOE wants to secure a school site within a development. But when the amount of the fee to be paid in lieu of dedication is the only issue, it is difficult to see why negotiation should be required. There should be a consistent formula applied to determine the cost of a residential development's impact on the need for new school facilities.

DOE has an explicit formula, but cannot consistently apply it because it lacks the force of state law or county ordinance. In Hawaii, there are two potential mechanisms for implementing a rational system of developer exactions for schools– the state legislature or the counties. We recommend the state-level approach.

School facility capital funding in Hawaii is unique in certain respects from the experience of the mainland. The most significant difference is that the public school system in Hawaii is provided by a single, state-level agency–the Department of Education (DOE). A state-wide school system provides less incentives to counties to implement school dedication requirements or to enact school impact fees than if there was a local school district that matched county boundaries. Certainly, if counties in Hawaii had direct financial and administrative control of their individual school districts, as they do in some other states, they would almost certainly be more interested in the subject of developer exactions for schools. Yet as county officials are undoubtedly aware, the capital funding provided by

school exactions or impact fees in one county would likely result in available state capital funding being shifted to other counties that do not impose impact fees or developer exactions.

Still, none of the four counties has adopted school land dedication requirements, which are the most common form of developer exactions for schools on the mainland. DOE has had more consistent success in implementing its current limited development exaction system when state approval is required in the development process (e.g., through the State Land Use Commission). Even there, however, developers are required to negotiate with DOE.

The result is a system that is uneven in its application and is perceived by some to be unfair. Small projects generally are not required to contribute, and projects that do not require a change in state land use designation are less likely to be required to contribute than those that do. And those projects that are required to make some contribution negotiate with DOE and end up making various levels of contributions. These individual negotiations are not informed by a consistent framework for determining an individual development's impact on the need for school facilities.

Hawaii's system of developer exactions for schools could be made more consistently and uniformly applied through state legislative action. Only if the Fair Share Contribution policy or some other form of school exaction or impact fee has the force of state law will the "playing field" be leveled and individual developers treated equitably.

Land Dedication Component

Should DOE retain a land-based exaction and attempt to have it enforced as a true dedication requirement? Or should DOE forego the idea of requiring dedication and instead concentrate on securing sufficient school fees to purchase school sites? These are the questions we address in this section.

School land dedication requirements are among the oldest and most widespread types of developer exactions. And with good reason—public school sites, particularly for elementary schools, need to be located in proximity to residential developments. School districts need to be interacting with developers in the early planning stages, and land dedication requirements are typically imposed at the time of subdivision approval.

On the surface, DOE's current Fair Share Contribution policy is virtually identical to the typical school land dedication/fee-in-lieu requirement imposed by a city or county on the mainland. However, because DOE cannot require compliance with it, the policy is not truly a dedication requirement.

Dedication requirements always require some amount of negotiation, since it is not possible to identify the most appropriate site for a school with predetermined rules. The fact that the location of a site is a major determinant of its value gives the developer an incentive to resist school district requests for dedication of prime home-building sites. The negotiation over school sites within new development projects would be much easier if DOE already had secured land acquisition funds from some other source and was simply interested in reaching agreement on the fair market value of the desired site.

DOE could, of course, avoid these difficult negotiations over the site to be dedicated by always asking for the fee-in-lieu and then using those funds to purchase its desired site. Or it could go one step further and abandon the concept of a land-based exaction completely, by folding land costs into a school impact fee or development tax to be assessed at building permit.

We believe that there are some good reasons for retaining a land-based exaction, regardless of whether an additional fee for construction costs is pursued. First, despite the fact the developers often want to have a school within their development, there may be occasions when DOE needs to be able to require a developer to provide a site that is appropriately located within the school's service area. Second, the fact that a land dedication requirement or fee-in-lieu is imposed at the time of subdivision means that it is paid by the developer rather than the homebuilder. The earlier in the development process such fees are assessed the more likely they are to be absorbed by the landowner in lower land costs. Third, despite their complaints about its fairness, developers are used to the current land-based policy. And finally, it may be strategically wise to carry forward proposals to the legislature for both land-based requirements and construction-based fees that can be adopted independently of each other.

Land Value

One issue that must be addressed in a land dedication or fee-in-lieu requirement is how to determine the value of land. The fees-in-lieu can be based on 1) the average land value for the entire jurisdiction or a subarea, or 2) on the average value of land within the development making the dedication. DOE's current Fair Share Contribution policy takes the first approach, with the fees-in-lieu based on a standard land value of $100,000 per acre. This has led to some complaints from developers, who view it as if they are being paid only $100,000 an acre for land they are required to dedicate that they consider to be worth considerably more. An alternative to using a uniform cost per acre across the state would be to develop cost regions for land costs similar to the 26 cost regions developed by the Department of Accounting and General Services for construction costs.

The second approach would be to base the fee-in-lieu on the value of the property subject to the exaction. This approach is used in many park and school land dedication requirements on the mainland, and is also the approach currently used by the Hawaii Community Development

Authority. It is perhaps most "fair" because it better ensures equal treatment between developers and equitable compensation for the dedicated land. However, this approach can require multiple appraisals before the parties come to agreement on the value of the land and therefore the amount of the fees to be paid.

A third approach would be to blend the first two approaches. This approach would use a standard fee-in-lieu per unit for smaller projects, but base the fee-in-lieu for larger projects on the value of the property.

While there are pros and cons to all three approaches, our initial recommendation is to pursue the blended approach. Projects below a certain size threshold should be exempt for the dedication requirement, and should have their fees-in-lieu based on a standard land value. Developers who believe the value of their land is significantly below the standard land value would have the option to hire appraisers to attempt to demonstrate that their fees should be lower. For larger projects where DOE does not want to require dedication of a site, the fees-in-lieu would be based on the value of the property.

A related issue is the time at which the property should be valued. Should the value be based on raw land prices, or on the value of the land once subdivision improvements have been made? Generally, land dedication requirements stipulate that the land to be dedicated must have road access, proper drainage and utilities installed to the perimeter of the site. Consequently, it makes sense to base the value of the property for the purpose of determining fees in lieu of dedication on improved land after the completion of road, drainage and utility improvements.

Level of Service

DOE's current Fair Share Contribution formula uses acres-per-student ratios that are derived from design standards for future schools. A review of schools constructed over the last ten years, however, reveals that the desired ratios are not being provided. This raises an issue about the fairness of holding new development to a higher standard than existing development.

The rational nexus standards that have been developed by case law dealing with impact fees and development exactions include the requirement that such fees and exactions be based on a level of service that applies equally to both existing and new development. This requirement has been explicitly embodied in many of the state impact fee enabling acts, including Hawaii's, which states that the needs assessment study used as the basis of the impact fees

> "...shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities."

To be consistent with legal requirements governing development exactions, we recommend that the formula for determining the amount of land required to be dedicated be based on the existing amount of school land per student, rather than desired ratios based on adopted school design standards. This same formula would obviously also apply for determining the amount of land to which the above-discussed land value is applied in order to determine the in-lieu payment.

Since the existing level of service is considerably below DOE's design standards, and since a school site will often serve more than one development, DOE will often desire a larger site within a development than the developer could be required to dedicate. To address this need, DOE should be authorized to require a developer to reserve additional acreage at the time of subdivision for eventual purchase at full market value. The amount of land that DOE could require to be dedicated and reserved should be limited to a reasonable percentage of a development project (e.g., 20 percent).

Other Issues

DOE's current Fair Share Contribution formula treats all dwelling units alike. Yet national data reveal that multi-family units generate far fewer public school children than do single-family units. Legal standards for development exactions require that the amount of the exaction be proportional to the impact of the development. We recommend that the formula be revised to have separate dedication and fee-in-lieu requirements for single-family and multi-family units.

Currently, Fair Share Contribution fees are earmarked for land acquisition or school improvements in the high school complex in which they were collected. We recommend that the fees be earmarked solely for land acquisition. This will more clearly set the land dedication requirement apart from the school impact fee that is designed to cover construction costs. However, if the funds are restricted to land acquisition, they must be pooled into larger areas than high school complexes if DOE is to have sufficient flexibility to spend the funds. Recommendations on appropriate benefit districts are presented in Section VI: Technical Analysis.

Construction Cost Component

Impact Fee or Tax

In the event that DOE were to seek state authorization for a school exaction that would recover some of the costs of constructing new schools, the primary choice is between an impact fee and a development tax. As noted in the "national experience" section, the basic choice is between the "legitimacy and predictability" of impact fees versus the "flexibility and simplicity" of development excise taxes. A completely different alternative would be to seek enactment of a state-wide real estate transfer tax dedicated to fund new school construction.

Several of the typical advantages of impact fees do not apply to school facilities in Hawaii. The fact that impact fee systems provide credit for developer contributions is less relevant for school facilities, since developers rarely are required to construct schools as a condition of development approval. In some states, local governments can adopt impact fees without state authorization, but in the context of Hawaii's state-wide school system, any funding mechanism will require state legislation. Finally, developers tend to prefer impact fees because the technical analysis is required that establishes the maximum fee that can be charged, whereas a tax rate can be raised at the whim of the legislative body. Yet the impact fee analysis presented in the final section of this report indicates that the maximum fees for school construction costs in Hawaii would be extremely high ($8,500 to $13,100 per single-family unit), and it is likely they would need to be capped at some percentage of the full cost attributable to new development. Since the theoretical maximum fee is so high relative to school impact fees on the mainland, it is unlikely that developers will embrace the impact fee approach over the development tax approach.

Still, impact fees for schools in Hawaii would have many of the same advantages over development taxes that they have elsewhere. These include the legitimacy that comes with required studies, the need to comply with rational nexus standards, the relationship between the impact of the development on the need for facilities and the amount of the fee, the earmarking of funds, expenditure to benefit the fee-paying development, refunds if funds are not spent within a certain time period, and other procedural and constitutional protections.

A major advantage of the development tax approach is that it is more sensitive to housing costs and affordability. Development taxes are often assessed as a fee per square foot of building space, which means that larger, more expensive dwelling units would pay a higher fee than smaller, less expensive units. This can also be done with an impact fee approach, but it is much more complicated since the relationship between unit size and student generation must be established with detailed study and data analysis. In addition, a development tax can be applied to nonresidential as well as residential development, thus reducing the burden placed on residential development. Again, it is very difficult to demonstrate the link between nonresidential development and the need for additional school facilities required to charge school impact fees to nonresidential development.

While development taxes offer some advantages, on balance we still recommend the impact fee approach. If the housing affordability advantages of development taxes have strong appeal, we would encourage DOE to fund the additional studies necessary to design school impact fees that are related to the size of the unit and can be assessed on nonresidential development as well as residential development.

As noted in the first subsection, DOE should seek state legislative action. Since DOE does not have development approval authority to implement school impact fees on its own, it would need to secure the cooperation of the counties. The legislation would need to state that no county building permits for new residential units shall be issued until the required school impact fees are paid.

The state-wide school impact fee act should be consistent with the requirements of Act 282 for county impact fee ordinances. The next section of this report presents the technical analysis required by the Act for the "needs assessment study." As required by the Act, this analysis sets forth the data sources and methodology upon which the fee calculations are based, bases the fees on the existing level of service that is provided to existing development (fees are reduced by the percentage of classrooms in portable buildings), bases the fees on actual historical costs of recent school construction, takes into account available capital funding, and reduces the fee to account for past and future contributions by new development toward school capital funding through other taxes or fees.

The legislation to enact school impact fees should contain provisions similar to those required by Act 282 for county impact fee ordinances. These include provisions for credits against the fees for any required developer contributions toward school facilities (other than land dedication or payment of a fee in-lieu of dedication), earmarking of funds for school capital improvements, restriction of funds for expenditure in the benefit district in which they were collected, refunding of fees if not expended within six years, and a provision allowing an applicant to request an independent fee calculation to take into account unique characteristics of the development.

Age-restricted retirement housing or assisted living communities for the disabled or elderly will not generate school children and should be exempted from payment of school impact fees. It may also be desirable to include exemptions for legitimate affordable housing projects.

Given their potential magnitude, the impact fees should probably be charged at some percentage of the maximum fees calculated in this study. Our preliminary recommendation is that fees be assessed at 50 percent of the maximum amount legally permissible. This would split the cost of new schools evenly between new residential development and existing development.

In addition, impact fees should be phased-in gradually to avoid disrupting development plans already underway. For example, fees could be adopted initially at ten percent of the maximum fee, and then raised an additional ten percent every six months until they are at 50 percent of the maximum after two years.

The fees should not be assessed in areas not anticipating any significant enrollment growth over the six-year horizon during which impact fee revenues must be expended. For example, the analysis in

the next section indicates that no net growth in student enrollment is anticipated in the Honolulu and Windward school districts on Oahu. If no new growth-related facilities will be required in these areas, they should not be subject to school impact fees. The converse is of course true: no impact fee revenues collected in other districts could be spent in these districts.

Finally, a school impact fee act could include an extended payment provision that would allow developers the option of paying the fee in a lump sum or in annual payments that would be added to the property tax bill. Such a provision would include safeguards to ensure that new home buyers were aware of the annual fee.

Summary of Recommendations

We recommend that DOE seek to secure passage of two separate state acts, which would impose state-wide requirements for school land dedication and school impact fees. The legislation would require counties to ensure compliance with school land dedication requirements and fees in-lieu prior to approval of residential subdivision plats, and to ensure payment of school impact fees prior to approval of residential building permits. The major characteristics of these acts are summarized below.

Land Dedication Requirement

State passage of a land dedication and fee in-lieu requirement would ensure that all new residential developments pay their fair share for the cost of school sites. It would level the playing field between developers and get DOE and the State Land Use Commission out of the process of having to negotiate school land dedications or fees for each development project. Although the dedication requirement / fee per dwelling unit would be less than under DOE's current Fair Share Contribution formula, DOE might collect the same amount because all residential developments would be subject to it. Key characteristics of the recommended dedication requirement include the following:

- the amount of the dedication requirement would be based on existing levels of service, rather than desired standards;

- fees in-lieu of dedication would be based on the value of the applicant's property, although smaller projects would have the option of paying fees based on a uniform cost per acre;

- fees-in-lieu would be based on the value of improved land, after typical subdivision improvements such as roads, drainage and utilities are installed;

- fees would be earmarked for expenditure within the same school district and island on which they were collected; and

- dedication requirements and fees would distinguish between single-family and multi-family units based on their relative student generation.

A model state act that would implement these recommendations is attached as Appendix B.

School Impact Fee

DOE should also consider seeking state enactment of a school impact fee to cover at least a portion of the cost of constructing new schools. The school impact fee act should have the following features:

- it should be consistent with the requirements of Act 282 for county impact fee ordinances;

- it should apply only to new residential units;

- retirement housing or affordable housing projects should be exempt;

- fees should be collected at the time of issuance of building permits (possibly with the option of an extended payment plan);

- fees should be capped at 50 percent of the maximum allowable fee;

- fees should be phased in gradually over a two-year period;

- revenues should be earmarked for school construction within the school district and island in which they were collected; and

- areas where no growth-related facility improvements are anticipated should be exempt from the fee.

A model school impact fee act is attached as Appendix C.

SECTION VI: TECHNICAL ANALYSIS

This section calculates the maximum school fees in lieu of land dedication and the maximum school impact fees that could be charged in Hawaii in conformance with the legal standards described in the previous section and the data and analysis presented in this section.

Geographic Areas

One of the advantages of a state-wide school system is that it is possible to develop a uniform system of developer contributions toward school capital funding. However, within a uniform state-wide approach there may need to be differences that reflect the geography of the islands.

The most fundamental concession to geography would be to establish "benefit districts." School development fees collected within each benefit district would be earmarked for expenditure within the same district. The establishment of benefit districts would help to establish the link between the fees paid and the benefit received from the expenditure of funds.

When different fee schedules are applied to geographic areas, these areas are often referred to as "assessment districts." Assessment districts can be identical to benefit districts, or they may be different areas. The main reason to establish multiple assessment districts is to take geographic differences in demand generation or cost into account. Student generation rates are likely to be pretty consistent across the state. However, school construction costs differ dramatically across the state.

There are a number of possible candidates among already-defined geographic areas to serve as benefit or assessment districts for school impact fees, development taxes or fees-in-lieu of land dedication. These include high school complexes, cost regions, school districts, islands and counties.

Benefit Districts

Currently, fees collected under DOE's Fair Share Contribution policy are earmarked for expenditure in the high school complex in which they are collected. There are 40 high school complexes in the state school system. While the high school complexes provide the strongest link between the fee-paying development and benefit from new facilities, the number of trust accounts will make it difficult to accumulate sufficient funds to make improvements and will limit the flexibility of DOE to respond to priority capital needs.

An alternative is to use the 26 cost regions defined by the Department of Accounting and General Services (DAGS). Each island has one or more contiguous areas that has been identified and

assigned a cost factor that represents a multiple of construction costs in the Honolulu area of Oahu. While the cost regions are generally somewhat larger than high school complex areas, they are still somewhat small for benefit districts, and may make it difficult to accumulate funds for improvements.

While public schools for the entire state of Hawaii are administered by a single state agency, the Department of Education has divided the state into seven "districts" for administrative purposes. The island of Oahu is divided into four school districts (Honolulu, Central, Leeward and Windward), while the other islands are served by three districts (Hawaii, Maui and Kauai) whose boundaries are coterminous with the county boundaries. The natural geography of the islands and the political boundaries of the four counties also present themselves as candidates for benefit or assessment districts.

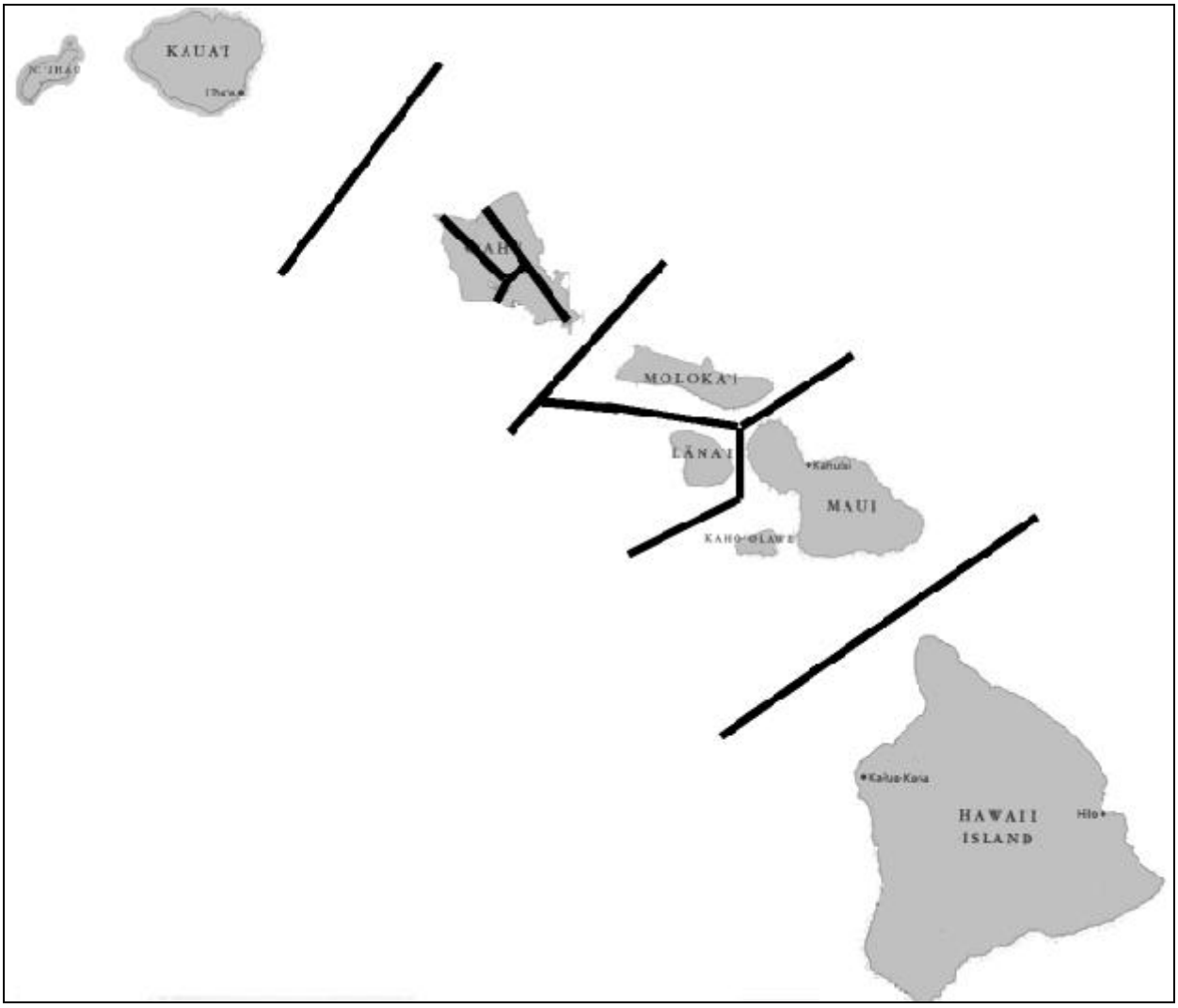
The seven school districts provide a natural choice for dividing the state into benefit districts. Within a school district, the ability to redraw school attendance zones means that new facilities constructed in one part of the district can provide benefit to new development throughout the district. Conversely, a fee-paying development on one island clearly will not benefit from facilities constructed on another island. This suggests that Molokai and Lanai should be treated as separate benefit districts, even though they are part of the Maui school district.

In sum, it is recommended that the state be divided into nine benefit districts for the purposes of earmarking where the expenditure of collected school impact fees or fees in-lieu of land dedication must occur. The recommended benefit districts are listed in Table 3 and shown in Figure 2.

Table 3
RECOMMENDED BENEFIT DISTRICTS

Island	School District	High School Complexes
Oahu	Honolulu	All Complexes
Oahu	Central	All Complexes
Oahu	Windward	All Complexes
Oahu	Leeward	All Complexes
Hawaii	Hawaii	All Complexes
Maui	Maui	All except Molokai and Lanai
Molokai	Maui	Molokai
Lanai	Maui	Lanai
Kauai	Kauai	All Complexes

Figure 2
RECOMMENDED BENEFIT DISTRICTS



Assessment Districts

The Department of Accounting and General Services (DAGS) has identified construction cost factors for 26 regions of the state, which are shown in Table 4. These construction cost factors represent multiples of the cost of school construction in the Honolulu area. For example, school construction is ten percent more costly on the opposite end of Oahu from Honolulu, and 35 percent more expensive on Lanai. If the impact fee approach to school exactions for construction costs is taken, it is recommended that determinations of the amount of the impact fees to be assessed in different areas reflect the construction cost differences between these 26 assessment districts, as illustrated in Figures 3 through 6. On the other hand, these assessment districts may not be applicable to land dedication requirements or development taxes, since they do not necessarily correspond to land values and since development taxes are generally assessed uniformly throughout a political jurisdiction.

Table 4
RECOMMENDED ASSESSMENT DISTRICTS

Benefit District	Assessment District	Cost Factor
Honolulu	Honolulu	1.00
Central	Ewa	1.00
Central	Wahiawa	1.05
Central	Waialua	1.10
Windward	Koolaupoko	1.00
Windward	Koolauloa	1.10
Leeward	Ewa	1.00
Leeward	Waianae	1.10
Hawaii	Hilo	1.15
Hawaii	Puna	1.20
Hawaii	Kona	1.20
Hawaii	Hamakua	1.20
Hawaii	South Kohala	1.20
Hawaii	North Kohala	1.25
Hawaii	Pohakuloa	1.25
Hawaii	Kau	1.30
Maui	Wailuku	1.15
Maui	Makawao	1.25
Maui	Lahaina	1.30
Maui	Hana	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Kauai	Lihue	1.15
Kauai	Koloa	1.20
Kauai	Kawaihau	1.20
Kauai	Waimea	1.25
Kauai	Hanalei	1.25

Source: Department of Accounting and General Services, "Table A9: Regional Cost Factors," 1/1/82.

Figure 3
OAHU ASSESSMENT DISTRICTS

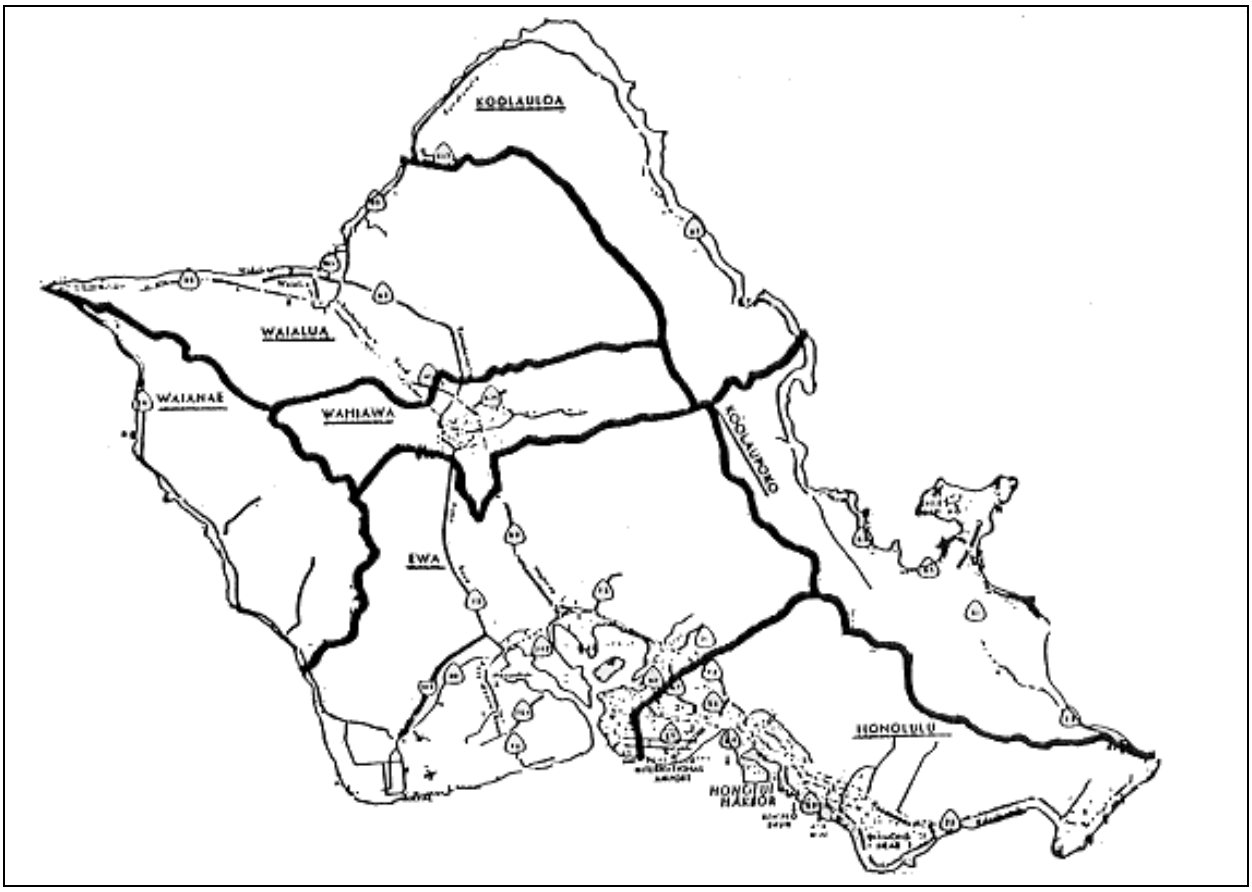


Figure 4
HAWAII ASSESSMENT DISTRICTS

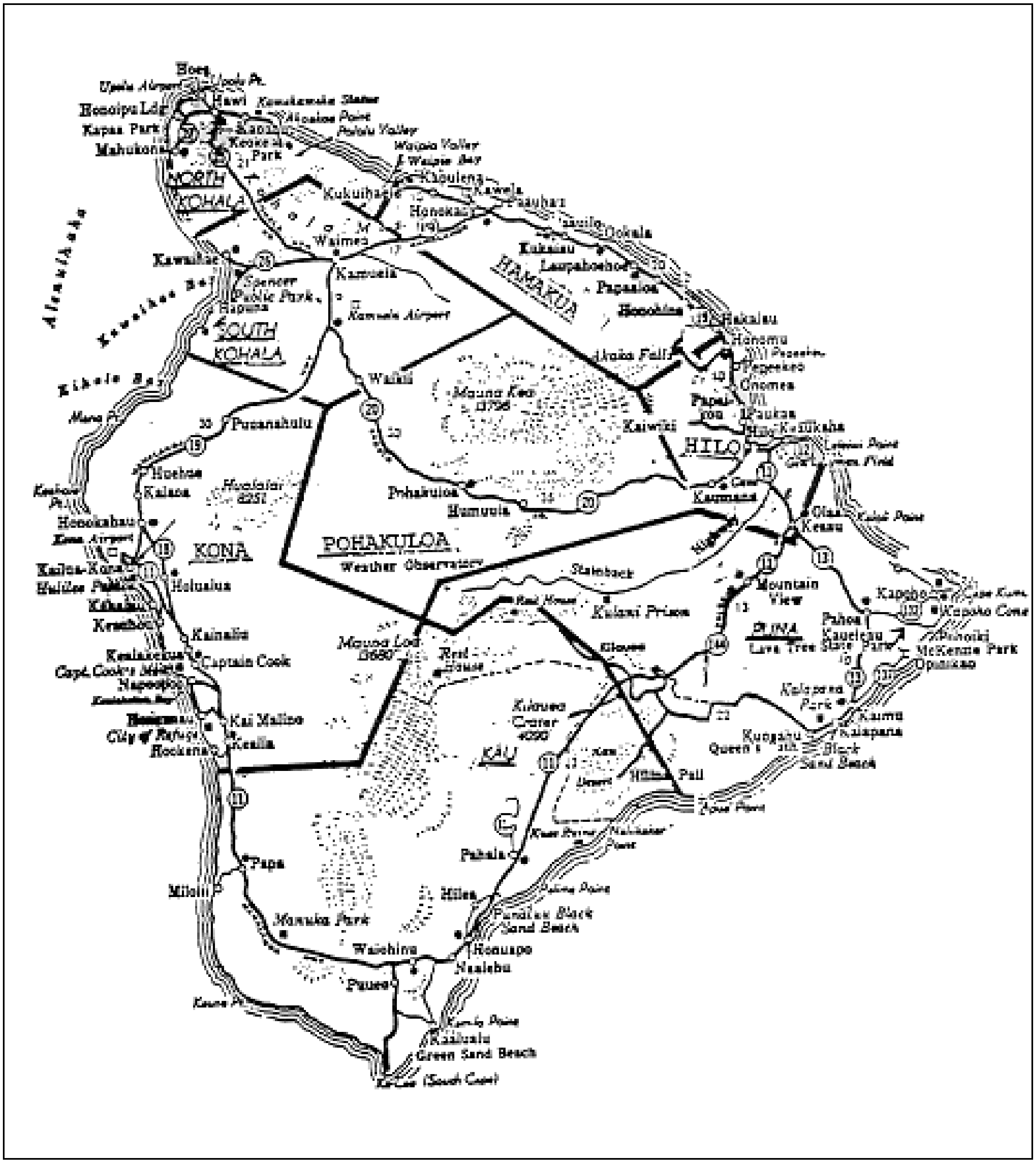


Figure 5
MAUI ASSESSMENT DISTRICTS

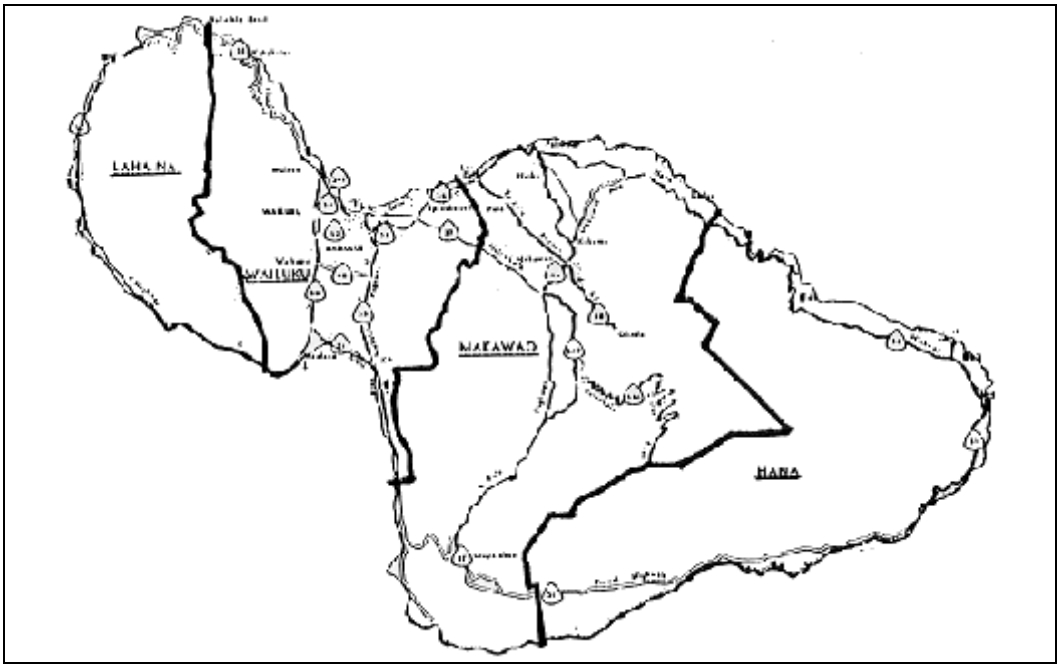
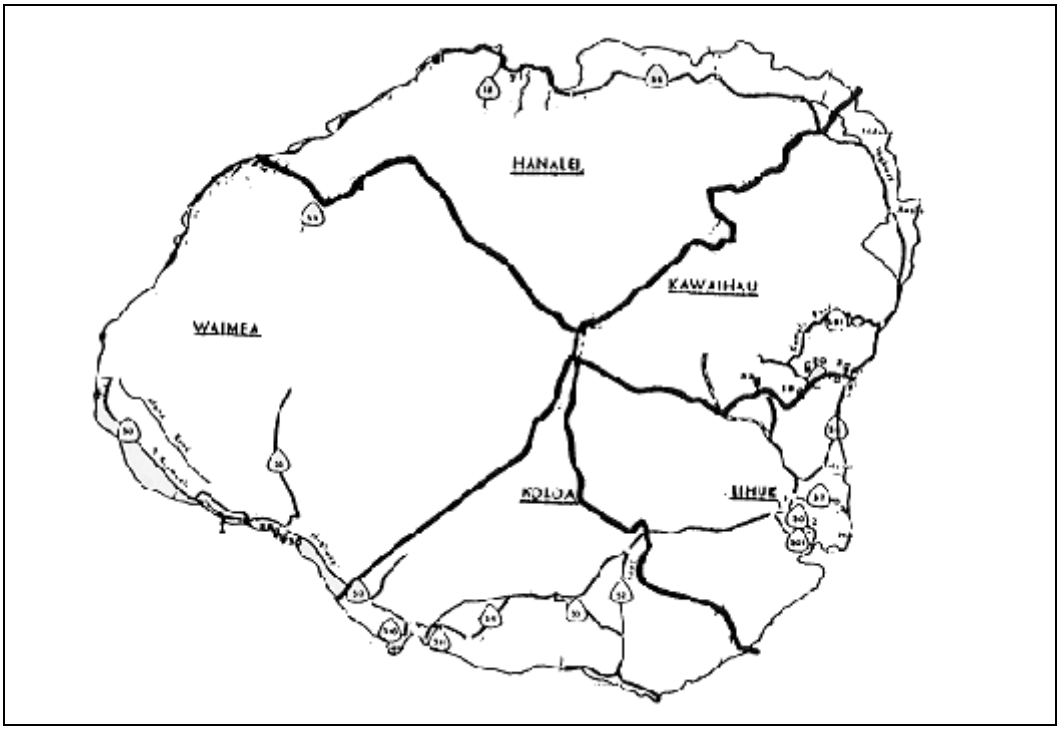


Figure 6
KAUAI ASSESSMENT DISTRICTS



Enrollment Growth Projections

An important prerequisite for impact fees or other forms of developer exactions is a demonstration that growth and development is occurring and creating the need for new capital facilities. The Department of Education regularly prepares six-year projections of student enrollment. The most recent projections, for the period 1997-2003, indicate that there will be more than 8,300 new public school students over the six-year period. Most of the increase will occur in the Leeward District of Oahu and on Maui, as shown in Table 5.

Table 5
PROJECTED ENROLLMENT GROWTH, 1997-2003

Benefit District	1997	2003	Increase	Percent
Honolulu District	35,354	34,356	(998)	-2.8%
Central District	35,538	36,304	766	2.2%
Leeward District	37,071	43,290	6,219	16.8%
Windward District	19,980	19,582	(398)	-2.0%
Hawaii	28,506	29,152	646	2.3%
Maui	19,262	21,176	1,914	9.9%
Molokai	1,789	1,897	108	6.0%
Lanai	661	748	87	13.2%
Kauai	11,039	11,049	10	0.1%
State-wide Total	189,200	197,554	8,354	4.4%

Source: Department of Education, Facilities Branch, April 1998 (see Appendix Table A-1).

Demand for new facilities may be even higher than is indicated by net enrollment growth projections. A decline in enrollment in one district does not necessarily free up facilities for use by new students in another district. In addition, declines in enrollment in one grade level (e.g., elementary) do not necessarily free up facilities that are appropriate for use by new students in another grade level (e.g., high school). If we assume that enrollment declines by district and grade level do not free up facilities to accommodate increasing enrollment in other district and grade levels, the demand created by net student growth could be up to 50 percent greater, as shown in Table 6.

Over the next six years, no significant enrollment growth is projected in any grade level in the Honolulu or Windward Districts on Oahu. The question arises, then, as to whether school impact fees or land dedication requirements should be imposed in these three areas. If it is unlikely that there will be a need for new school facilities in any benefit district, then there is little reason to collect school impact fees, require land dedication or collect fees in lieu of dedication. Any collected funds would be earmarked for expenditure in the same benefit district, and thus would eventually have to be returned since no new school facilities would be built in the district to meet a demand resulting from new development.

Table 6
PROJECTED ENROLLMENT GROWTH BY GRADE, 1997-2003

Benefit District	Elementary	Middle	High	Total	New Demand
Honolulu District	(774)	(36)	(188)	(998)	0
Central District	(1,063)	1,558	271	766	1,829
Leeward District	3,008	1,770	1,441	6,219	6,219
Windward District	(364)	11	(45)	(398)	11
Hawaii	(309)	492	463	646	955
Maui	793	399	722	1,914	1,914
Molokai	57	26	25	108	108
Lanai	43	22	22	87	87
Kauai	(491)	980	(479)	10	980
State-wide Total	900	5,222	2,232	8,354	12,103

Source: Department of Education, Facilities Branch, April 1998 (see Appendix Table A-1).

Since it appears that no facilities will be needed in the Honolulu and Windward school districts in the near future, it is recommended that school impact fees or exactions not be imposed in those areas at this time. In the case of Kauai, the projections appear to indicate that new middle school facilities will be needed if it is not possible to convert surplus elementary and high school facilities to middle school use. However, this need appears to be attributable to changes in the school age composition of existing Kauai residents, not to a demand created by new development. Therefore, it is recommended that school impact fees or exactions not be imposed at this time on Kauai as well.

Student Generation Rates

The impact of new residential development on the demand for school facilities is based on the number of public school students generated per dwelling unit. DOE's current student generation multipliers are the same for all housing types. However, data for Hawaii provided by DOE show that the number of public school students per dwelling unit varies significantly by type of housing, as presented in Table 7. We recommend that multipliers varying by housing type be used in DOE's school development exactions.

Table 7
STUDENT MULTIPLIERS BY HOUSING TYPE

Housing Type	Elementary	Middle	High	Total
Single-Family, Townhouse and Duplex	0.279	0.143	0.154	0.576
Multi-Family	0.109	0.040	0.069	0.218
All Housing Types	0.200	0.096	0.116	0.412

Source: Hawaii Department of Education, May 1999.

Land Component

DOE's current Fair Share Contribution formula is based on ratios of school land per student station. As noted earlier, the land requirements are derived from the Board of Education's *Educational Specifications and Standards for Facilities* and its *School Size Standards Policy*. The *School Size Standards Policy* was revised by DOE in March 1997 to reduce maximum enrollment standards per school by a little over 30% on the average. However, school site size standards were reduced by only an average of 8%, resulting in a significant increase in the required site area per student. As shown in Table 8, the change in the desired school enrollment and site size increased the needed acreage per student from 0.69 to 0.93 acres. Since the other components of the formula, including 0.40 students per unit and $100,000 per acre, remained unchanged, the change in policy had the effect of increasing the fee in-lieu of dedication from $850 to $1,125 per dwelling unit.

Table 8
ACRES PER STUDENT BASED ON DESIGN STANDARDS

	Typical Capacity	Typical Acres	Acres Student
Elementary (K-5)	750	12	0.016
Intermediate (6-8)	900	18	0.020
High (9-12)	1,500	50	0.033
Total, "Old" Formula			0.069
Elementary (K-5)	550	11	0.020
Intermediate (6-8)	600	17	0.028
High (9-12)	1,000	45	0.045
Total, "New" Formula			0.093

Source: Department of Education, "Explanation of $850 per unit calculation," undated and "Explanation of $1,125 per unit calculation," undated.

That a single revision to a policy document could justify increasing the fee in-lieu of land dedication by almost 50 percent indicates the problem with basing the formula on a desired, rather than actual, level of service. Impact fees and development exactions should not be a means of requiring new development to provide a higher level of service than is already being provided to existing development. This principle is incorporated into Hawaii's Act 282, which states that impact fees shall be based on a level of service standard that "shall apply equally to existing and new public facilities."

In general, impact fees and development exactions should be based on the existing level of service. Data is not available on the design capacity and site area of all existing public schools. However, such data is available for schools built over the last ten years. These data are shown in Table 9.

Table 9
ACRES PER STUDENT BASED ON RECENT NEW SCHOOLS

School	District	Year Opened	Site Size (acres)	Design Enrollment	Acres/ Student
Princess Nahienaena	Maui	1988	15.00	750	0.0200
Kaleiopuu Elem*	Leeward	1989	6.00	900	0.0067
Kamaile Elem	Leeward	1989	7.06	840	0.0084
King Kaumaulii*	Kauai	1990	8.63	775	0.0111
Mililani Mauka Elem	Central	1992	9.32	775	0.0120
Waikoloa Elem	Hawaii	1994	12.00	825	0.0145
Kamalii Elem	Maui	1996	12.01	850	0.0141
Holomua Elem*	Leeward	1996	8.02	850	0.0094
Kapolei Elem	Leeward	1993	10.72	800	0.0134
Waikele Elem	Leeward	1998	10.00	750	0.0133
Total, Elementary Schools			98.76	8,115	0.0122
Lokelani Intermediate	Maui	1988	12.31	900	0.0137
Maui Waena Inter	Maui	1989	11.96	1,180	0.0101
Kapaa Middle	Kauai	1997	18.01	1,100	0.0164
Mililani Middle*	Central	1998	15.48	1,875	0.0083
Total, Middle Schools			57.76	5,055	0.0114
King Kekaulike High	Maui	1995	50.00	1,650	0.0303
Kealakehe High	Hawaii	1997	48.85	2,200	0.0222
Total, High Schools			98.85	3,850	0.0257

* School sites that adjoin county parks
Source: DOE, Facilities and Support Division, "New Schools—Last 10 Years," July 1998.

The recent data on school capacity and site size indicate that DOE is currently providing significantly less acreage per student station than the desired ratios in either the "old" or "new" Fair Share Contribution formula. The comparisons are shown in Table 10.

Table 10
COMPARISON OF ACRES PER STUDENT RATIOS

Grade Level	"Old" Formula	"New" Formula	Recent Schools
Elementary (K-5)	0.016	0.020	0.0122
Intermediate (6-8)	0.020	0.028	0.0114
High School (9-12)	0.033	0.045	0.0257
Total	0.069	0.093	0.0493

Source: Tables 8 and 9.

The current Fair Share Contribution formula uses an average school land cost of $100,000 per acre. This figure is loosely based on the average cost of land acquisitions for school sites since 1988. Excluding the recent purchase of 50 acres for Keaau High School for a bargain price, and adjusting to current dollars, the average cost of school land has been $116,500 per acre, as shown in Table 11.

Table 11
RECENT LAND ACQUISITION COSTS

School	Year	Original Cost	Inflation Factor	Cost in 1998 $	Acres	Cost/Acre in 1998 $
Kamaile Elem	1988	$673,000	1.310	$881,630	7.07	$124,700
Kahuku Elem	1990	$663,733	1.251	$830,330	4.93	$168,400
Lahaina Intermediate	1990	$8,796	1.251	$11,004	0.11	$100,000
Maui Waena Intermediate	1990	$1,124,559	1.251	$1,406,823	11.96	$117,600
Kamalii Elem	1993	$2,360,000	1.136	$2,680,960	12.00	$223,400
King Kekaulike High	1994	$3,445,435	1.095	$3,772,751	50.00	$75,500
Kapaa Intermediate	1995	$974,000	1.082	$1,053,868	17.28	$61,000
Konawaena Elem	1996	$825,000	1.053	$868,725	10.45	$83,100
Keaau High	1998	$525,000	1.000	$525,000	50.42	$10,400
Kauai Intermediate	1998	$2,250,000	1.000	$2,250,000	4.28	$525,700
Total		$12,849,523		$14,281,091	168.50	$84,800
Total, excluding Keaau High		$12,324,523		$13,756,091	118.08	$116,500
Assumed Average Cost per Acre						$100,000

Source: Year of acquisition, original land cost and acres purchased from DOE, "Total Cost of Recent New Schools," 8/17/98; inflation factor based on *Engineering News-Record* Construction Cost Index using average for 1998 divided by average for year of purchase.

As noted in the previous section, the consultant recommendation is to base the fee in-lieu of dedication on the improved value of land within the subdivision. However, this will require appraisals and may be burdensome for small developments (e.g., less than 15 acres). It is recommended that they have the option of paying a standard in-lieu fee.

Based on updated student generation multipliers, the existing level of service currently being provided in terms of acres per student, and the average school land cost of $100,000 per acre currently being used by DOE, the standard fee in-lieu of land dedication should be $899 per single-family, townhouse and duplex unit and $356 per multi-family unit, as shown in Table 12.

Table 12
FEE-IN-LIEU SCHEDULE

	Students/ Unit	Acres/ Student	Acres/ Unit	Cost/ Acre	In-Lieu Fee/ Unit
Single-family, Townhouse and Duplex					
Elementary	0.279	0.0122	0.00340	$100,000	$340
Middle School	0.143	0.0114	0.00163	$100,000	$163
High School	0.154	0.0257	0.00396	$100,000	$396
Total					$899
Multi-family					
Elementary	0.109	0.0122	0.00133	$100,000	$133
Middle School	0.040	0.0114	0.00046	$100,000	$46
High School	0.069	0.0257	0.00177	$100,000	$177
Total					$356

Source: Students per unit from Table 7; acres per student from Table 9; cost per acre from Table 11.

Construction Cost Component

As noted earlier, the cost of building schools varies significantly between regions of the state. Consequently, the costs of recent school construction projects were divided by the appropriate regional cost factors to arrive at adjusted costs that represent construction costs within the Honolulu area. The fees will be ultimately be multiplied by the same regional cost factors to determine fees by region. The average building cost per student station, normalized for Honolulu area construction costs, ranges from $21,300 for elementary students to $38,500 for high school students, as shown in Table 13.

Table 13
SCHOOL CONSTRUCTION COST PER STUDENT
(Adjusted to Represent Honolulu Area Costs)

School District	School	Cost	Cost Factor	Adjusted Cost	Capacity	Cost/ Student
Leeward	Waikele	$16,188,000	1.00	$16,188,000	750	$21,600
Hawaii	Keaau II	$24,364,850	1.15	$21,186,826	945	$22,400
Leeward	Kapolei	$19,963,555	1.00	$19,963,555	800	$25,000
Leeward	Holomua	$20,304,408	1.00	$20,304,408	850	$23,900
Central	Mililani Mauka	$17,517,296	1.05	$16,683,139	900	$18,500
Leeward	Kamaile	$11,148,046	1.10	$10,134,587	840	$12,100
Hawaii	Waikaloa	$25,353,820	1.20	$21,128,183	825	$25,600
Total, Elementary Schools		$134,839,975		$125,588,698	5,910	$21,300
Leeward	Mililani	$36,930,740	1.00	$36,930,740	1,875	$19,700
Kauai	Kapaa	$28,405,682	1.20	$23,671,402	1,100	$21,500
Leeward	Kapolei	$36,589,084	1.00	$36,589,084	1,200	$30,500
Kauai	Kauai	$35,470,050	1.20	$29,558,375	1,300	$22,700
Total, Middle Schools		$137,395,556		$126,749,601	5,475	$23,200
Hawaii	Kealakehe	$69,465,146	1.20	$57,887,622	2,200	$26,300
Leeward	Kapolei	$92,640,884	1.00	$92,640,884	1,800	$51,500
Hawaii	Keaau II	$76,666,300	1.15	$66,666,348	1,300	$51,300
Maui	Kekaulike	$63,315,032	1.25	$50,652,026	1,650	$30,700
Total, High Schools		$302,087,362		$267,846,880	6,950	$38,500

Source: Building cost and student capacity from DOE, "Total Cost of Recent New Schools," 8/17/98; cost factors from Department of Accounting and General Services, "Table A9: Regional Cost Factors," 1/1/82.

A principle of impact fees, discussed earlier in the context of fees in-lieu of land dedication, is that new development should not be charged for a higher level of service than is being provided to existing development. An important measure of the level of service is the percent of classrooms that are in permanent structures, as opposed to portable buildings. This is especially important because the cost per student station is based on "brick and mortar" school construction, not on the much lower cost of portable buildings. Consequently, the building cost per student should be multiplied by the percent of classrooms in permanent structures to derive the adjusted cost per student station that reflects the existing level of service, as shown in Table 14. It should be kept in mind that this cost per student is representative of costs in the Honolulu area, and will need to be modified by regional cost factors in calculating the impact fees.

Table 14
ADJUSTED CONSTRUCTION COST PER STUDENT
(Based on Honolulu Area Construction Costs)

Grade Level	Building Cost/ Student	% Permanent Classrooms	Adjusted Cost/ Student
Elementary	$21,300	85%	$18,105
Middle	$23,200	91%	$21,112
High	$38,500	86%	$33,110

Source: Building cost per student from Table 13; percent permanent classrooms from Table A-1.

To get from cost per student to cost per dwelling unit, it is necessary to multiply by the expected number of public school students to be generated per dwelling unit. As noted earlier, student generation differs significantly by housing type. The school construction costs per dwelling unit in the Honolulu area are shown in Table 15.

Table 15
SCHOOL CONSTRUCTION COST PER DWELLING UNIT
(Based on Honolulu Area Construction Costs)

	Students/ Unit	Adjusted Cost/ Student	Cost/ Unit
Single-family, Townhouse and Duplex			
Elementary	0.279	$18,105	$5,051
Middle School	0.143	$21,112	$3,019
High School	0.154	$33,110	$5,099
Total			$13,169
Multi-family			
Elementary	0.109	$18,105	$1,973
Middle School	0.040	$21,112	$844
High School	0.069	$33,110	$2,285
Total			$5,102

Source: Students per unit from Table 7; adjusted cost per student from Table 14.

Revenue Credit

An important principle of impact fees is that new development should not have to pay more than once for the same facilities. Thus, state revenues that will be generated by a new residential unit and used to fund school capital facilities should be credited to new development against school impact fees. DOE's capital improvements plan requests for the last seven fiscal years indicate a capital need of about $156 million annually to renovate and replace existing capital facilities, to address the backlog of capacity needs (illustrated by the fact that one out of every eight classrooms is in a portable building) and to accommodate growth. However, only about $115 million per year in capital funding has been available to meet these needs, leaving a capital funding shortfall of about $41 million annually.

Table 16
SCHOOL CAPITAL FUNDING, FY 1992-1998
($ millions)

	1992	1993	1994	1995	1996	1997	1998	Average
Requested	$140	$107	$144	$200	$153	$174	$176	$156
Actual Funding	$90	$96	$91	$121	$96	$161	$151	$115
Shortfall	$50	$11	$53	$79	$57	$13	$25	$41

Source: DOE Facilities and Support Branch, December 1998.

The current level of capital funding amounts to about $608 per student per year. Over the life of new school facilities, which is assumed to be 25 years, this annual revenue stream is equivalent to a current lump-sum payment of $8,156, as shown in Table 17. The 25-year period used in this credit calculation is consistent with Act 282, Hawaii's impact fee enabling act for counties, which requires credit for developer contributions over the last five years and the next 20 years. It is also considerably more generous than required, in that it attributes all credit to residential development, even though some of these capital funds are doubtless generated by nonresidential development.

Table 17
STATE CAPITAL FUNDING PER STUDENT

Annual Capital Funding	$115,000,000
Current Enrollment	189,200
Annual Capital Funding per Student	$608
Net Present Value over 25 years	$8,156

Source: Annual funding from Table 16; current (1997) enrollment from Table A-1; net present value based on 5.5% discount rate.

Multiplying the number of students expected to be generated by a dwelling unit by the revenue credit per student calculated above yields the revenue credit per dwelling unit. As shown in Table 18, a new

single-family unit can be expected to contribute the equivalent of about $4,700 in state capital school funding, while a multifamily unit will contribute about $1,800.

Table 18
REVENUE CREDIT PER DWELLING UNIT

Housing Type	Students/ Unit	Credit/ Student	Credit/ Unit
Single-Family, Townhouse and Duplex	0.576	$8,156	$4,698
Multi-Family	0.218	$8,156	$1,778

Source: students per unit from Table 7; credit per student from Table 17.

Net Cost per Dwelling Unit

The maximum school impact fees in each assessment district are represented by the net costs per dwelling unit shown in the following schedule (Table 19). The cost per dwelling in each assessment district is determined by multiplying the cost per unit in the Honolulu area by the cost factor for the region. The net cost is derived by subtracting the revenue credit per unit from the cost per unit.

Because the maximum fees are relatively high, we do not recommend that they be enacted at the full amount. Instead, they should be charged at some percentage of the full net cost. The consultants' preliminary recommendation is that they be capped at 50 percent of maximum fees, essentially splitting the costs evenly between new development and existing taxpayers.

In addition, we recommend that the fees be phased in over a two-year period. The fees could be adopted at 10 percent of the maximum amount, and then increased by an additional 10 percent every six months up to 50 percent of the maximum amount. The recommended initial fee amounts and the fees after the two-year phase-in period are shown in Table 20.

The recommended school impact fee per single-family unit in the Leeward District, where most of the growth is occurring, would range from about $4,200 to $4,900 after the two-year phase-in period. The recommended fees would go up to about $6,500 per single-family unit on Lanai and parts of Maui, although relatively little growth is now occurring in those areas.

Table 19
NET COST SCHEDULE BY REGION

Benefit District	Assessment District	Cost Factor	Single-Family/Townhouse/Duplex			Multi-Family Dwellings		
			Cost	Credit	Net Cost	Cost	Credit	Net Cost
Honolulu	Honolulu	1.00	$13,169	$4,698	$8,471	$5,102	$1,778	$3,324
Central	Ewa	1.00	$13,169	$4,698	$8,471	$5,102	$1,778	$3,324
Central	Wahiawa	1.05	$13,827	$4,698	$9,129	$5,357	$1,778	$3,579
Central	Waialua	1.10	$14,486	$4,698	$9,788	$5,612	$1,778	$3,834
Windward	Koolaupoko	1.00	$13,169	$4,698	$8,471	$5,102	$1,778	$3,324
Windward	Koolauloa	1.10	$14,486	$4,698	$9,788	$5,612	$1,778	$3,834
Leeward	Ewa	1.00	$13,169	$4,698	$8,471	$5,102	$1,778	$3,324
Leeward	Waianae	1.10	$14,486	$4,698	$9,788	$5,612	$1,778	$3,834
Hawaii	Hilo	1.15	$15,144	$4,698	$10,446	$5,867	$1,778	$4,089
Hawaii	Puna	1.20	$15,803	$4,698	$11,105	$6,122	$1,778	$4,344
Hawaii	Kona	1.20	$15,803	$4,698	$11,105	$6,122	$1,778	$4,344
Hawaii	Hamakua	1.20	$15,803	$4,698	$11,105	$6,122	$1,778	$4,344
Hawaii	South Kohala	1.20	$15,803	$4,698	$11,105	$6,122	$1,778	$4,344
Hawaii	North Kohala	1.25	$16,461	$4,698	$11,763	$6,378	$1,778	$4,600
Hawaii	Pohakuloa	1.25	$16,461	$4,698	$11,763	$6,378	$1,778	$4,600
Hawaii	Kau	1.30	$17,120	$4,698	$12,422	$6,633	$1,778	$4,855
Maui	Wailuku	1.15	$15,144	$4,698	$10,446	$5,867	$1,778	$4,089
Maui	Makawao	1.25	$16,461	$4,698	$11,763	$6,378	$1,778	$4,600
Maui	Lahaina	1.30	$17,120	$4,698	$12,422	$6,633	$1,778	$4,855
Maui	Hana	1.35	$17,778	$4,698	$13,080	$6,888	$1,778	$5,110
Molokai	Molokai	1.30	$17,120	$4,698	$12,422	$6,633	$1,778	$4,855
Lanai	Lanai	1.35	$17,778	$4,698	$13,080	$6,888	$1,778	$5,110
Kauai	Lihue	1.15	$15,144	$4,698	$10,446	$5,867	$1,778	$4,089
Kauai	Koloa	1.20	$15,803	$4,698	$11,105	$6,122	$1,778	$4,344
Kauai	Kawaihau	1.20	$15,803	$4,698	$11,105	$6,122	$1,778	$4,344
Kauai	Waimea	1.25	$16,461	$4,698	$11,763	$6,378	$1,778	$4,600
Kauai	Hanalei	1.25	$16,461	$4,698	$11,763	$6,378	$1,778	$4,600

* includes townhouse and duplex

Source: Cost factors from Table 4; cost per single-family and multi-family units is base cost from Table 15 times cost factor; credit per unit from Table 18.

Table 20
RECOMMENDED SCHOOL IMPACT FEE SCHEDULE

Benefit District	Assessment District	Single-Family/Townhouse/Duplex		Multi-Family Units	
		Initially	After 2 Yrs.	Initially	After 2 Yrs.
Honolulu	Honolulu	$847	$4,236	$332	$1,662
Central	Ewa	$847	$4,236	$332	$1,662
Central	Wahiawa	$913	$4,565	$358	$1,790
Central	Waialua	$979	$4,894	$383	$1,917
Windward	Koolaupoko	$847	$4,236	$332	$1,662
Windward	Koolauloa	$979	$4,894	$383	$1,917
Leeward	Ewa	$847	$4,236	$332	$1,662
Leeward	Waianae	$979	$4,894	$383	$1,917
Hawaii	Hilo	$1,045	$5,223	$409	$2,045
Hawaii	Puna	$1,111	$5,553	$434	$2,172
Hawaii	Kona	$1,111	$5,553	$434	$2,172
Hawaii	Hamakua	$1,111	$5,553	$434	$2,172
Hawaii	South Kohala	$1,111	$5,553	$434	$2,172
Hawaii	North Kohala	$1,176	$5,882	$460	$2,300
Hawaii	Pohakuloa	$1,176	$5,882	$460	$2,300
Hawaii	Kau	$1,242	$6,211	$486	$2,428
Maui	Wailuku	$1,045	$5,223	$409	$2,045
Maui	Makawao	$1,176	$5,882	$460	$2,300
Maui	Lahaina	$1,242	$6,211	$486	$2,428
Maui	Hana	$1,308	$6,540	$511	$2,555
Molokai	Molokai	$1,242	$6,211	$486	$2,428
Lanai	Lanai	$1,308	$6,540	$511	$2,555
Kauai	Lihue	$1,045	$5,223	$409	$2,045
Kauai	Koloa	$1,111	$5,553	$434	$2,172
Kauai	Kawaihau	$1,111	$5,553	$434	$2,172
Kauai	Waimea	$1,176	$5,882	$460	$2,300
Kauai	Hanalei	$1,176	$5,882	$460	$2,300

Source: Initial fees are 10 percent of net costs from Table 19; fees after two years are 50 percent of net costs from Table 19.

If school impact fees were enacted at the ultimate 50 percent levels recommended above, they could generate as much as $12 million annually, based on DOE's enrollment projections, as shown in Table 21. This would help fill the $41 million annual capital funding gap identified earlier.

Table 21
POTENTIAL SCHOOL IMPACT FEE REVENUES

Benefit District	Net New Students 1997-2003	Students/ Single-Family Unit	New Single-Family Equivalents	Fee per Single-Family Unit	Potential Impact Fee Revenues
Honolulu District	0	0.576	0	$4,236	$0
Central	656	0.576	1,139	$4,565	$5,199,000
Leeward District	5,327	0.576	9,248	$4,894	$45,260,000
Windward District	0	0.576	0	$4,894	$0
Hawaii	554	0.576	962	$5,553	$5,342,000
Maui	1,640	0.576	2,847	$5,882	$16,745,000
Molokai	93	0.576	161	$6,540	$1,053,000
Lanai	75	0.576	130	$6,540	$850,000
Kauai	9	0.576	16	$5,553	$89,000
Total, 1997-2003	8,354		14,503		$74,538,000
Potential Annual Revenues					$12,423,000

Source: Net new students estimated by assuming zero for districts with projected enrollment declines and reducing projections in all districts with positive growth to equal total net growth from Table 5; students per single-family unit from Table 7; fee per single-family unit based on "ultimate" fee from Table 20.

APPENDIX A: SCHOOL INVENTORY

Table A-1
PUBLIC SCHOOL INVENTORY

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
HONOLULU DISTRICT							
Fern	K-6	578	491	(87)	0	33	0%
Kaewai	K-5	432	372	(60)	0	30	0%
Kalihi	K-5	304	254	(50)	0	29	0%
Kalihi-Kai	K-5	802	783	(19)	0	45	0%
Kalihi-Uka	K-5	353	308	(45)	0	23	0%
Kalihi-Waena	K-5	629	583	(46)	0	32	0%
Kapalama	K-6	776	735	(41)	0	36	0%
Linapuni	K-2	262	206	(56)	0	13	0%
Puuhale	K-6	401	382	(19)	0	27	0%
Dole Middle	6-8	813	854	41	2	51	4%
Kalakaua Middle	6-8	929	916	(13)	6	56	11%
Farrington High	9-12	2,431	2,338	(93)	3	126	2%
Total Farrington Complex		8,710	8,222	(488)	11	501	2%
Ala Wai	K-5	594	597	3	3	35	9%
Aliiolani	K-5	380	334	(46)	0	30	0%
Hokulani	K-6	418	377	(41)	0	20	0%
Jefferson	K-6	538	596	58	0	39	0%
Kuhio	K-5	377	351	(26)	0	23	0%
Lunalilo	K-5	658	645	(13)	0	37	0%
Palolo	K-5	312	227	(85)	0	37	0%
Jarrett Middle	6-8	410	329	(81)	0	40	0%
Kaimuki High	9-12	1,559	1,599	40	3	83	4%
Total Kaimuki Complex		5,246	5,055	(191)	6	344	2%
Hahaione	K-6	574	566	(8)	0	38	0%
Kamiloiki	K-6	583	589	6	0	31	0%
Koko Head	K-6	351	351	0	0	37	0%
Niu Valley Middle	6-8	568	559	(9)	0	40	0%
Kaiser High	9-12	1,168	1,193	25	0	58	0%
Total Kaiser Complex		3,244	3,258	14	0	204	0%
Aina Haina	K-6	442	398	(44)	0	35	0%
Kahala	K-6	607	606	(1)	0	31	0%
Liholiho	K-6	405	387	(18)	0	25	0%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Liliuokalani	K-6	169	158	(11)	0	22	0%
Waialae	K-6	488	511	23	0	29	0%
Waikiki	K-6	334	339	5	0	22	0%
Wailupe Valley	K-6	222	268	46	0	14	0%
Wilson	K-6	543	512	(31)	0	27	0%
Kaimuki Middle	6-8	742	761	19	0	69	0%
Kalani High	9-12	1,245	1,295	50	0	69	0%
Total Kalani Complex		5,197	5,235	38	0	343	0%
Kaahumanu	K-5	730	683	(47)	3	36	8%
Kaiulani	K-5	486	415	(71)	0	29	0%
Kauluwela	K-5	544	596	52	0	28	0%
Lanakila	K-5	436	438	2	0	31	0%
Likelike	K-5	437	423	(14)	0	28	0%
Royal	K-5	455	430	(25)	0	21	0%
Central Middle	6-8	482	478	(4)	0	40	0%
Washington Middle	6-8	943	966	23	0	52	0%
McKinley High	9-12	1,981	1,823	(158)	9	111	8%
Total McKinley Complex		6,494	6,252	(242)	12	376	3%
Anuenue	K-12	264	321	57	0	19	0%
Lincoln	K-6	588	614	26	0	35	0%
Maemae	K-6	772	757	(15)	0	36	0%
Manoa	K-6	611	584	(27)	0	42	0%
Noelani	K-6	469	455	(14)	2	21	10%
Nuuanu	K-6	407	381	(26)	1	16	6%
Pauoa	K-6	474	408	(66)	0	27	0%
Kawananakoa Middle	6-8	807	754	(53)	0	48	0%
Stevenson Middle	6-8	538	579	41	2	45	4%
Roosevelt High	9-12	1,533	1,481	(52)	1	76	1%
Total Roosevelt Complex		6,463	6,334	(129)	6	365	2%
Elementary		19,205	18,431	(774)	9	1,169	1%
Middle		6,232	6,196	(36)	10	441	2%
High Schools		9,917	9,729	(188)	16	523	3%
TOTAL HONOLULU DISTRICT		35,354	34,356	(998)	35	2,133	2%
CENTRAL DISTRICT							
Aiea	K-6	340	360	20	0	32	0%
Pearl Ridge	K-6	634	625	(9)	6	27	22%
Alvah Scott	K-6	717	693	(24)	2	42	5%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Waimalu	K-6	774	668	(106)	14	43	33%
Webling	K-6	549	542	(7)	0	25	0%
Aiea Intermed	7-8	719	722	3	0	42	0%
Aiea High	9-12	1,500	1,471	(29)	0	73	0%
Total Aiea Complex		5,233	5,081	(152)	22	284	8%
Hale Kula	K-5	885	774	(111)	14	54	26%
Helemano	K-5	825	736	(89)	14	36	39%
Iliahi	K-5	577	557	(20)	0	30	0%
Kaala	K-5	573	435	(138)	0	29	0%
Solomon	K-5	890	813	(77)	19	60	32%
Wahiawa	K-5	544	436	(108)	2	41	5%
Wheeler	K-5	1,028	982	(46)	0	51	0%
Wahiawa Intermed	6-8	1,001	929	(72)	8	54	15%
Wheller Intermed	6-8	1,008	852	(156)	7	48	15%
Lieilehua High	9-12	1,890	1,879	(11)	11	85	13%
Total Lieilehua Complex		9,221	8,393	(828)	75	488	15%
Kipapa	K-5	909	758	(151)	15	47	32%
Mililani-Mauku	K-5	920	962	42	4	47	9%
Mililani-Uka	K-5	1,255	1,173	(82)	12	52	23%
Mililani-Waena	K-5	1,016	886	(130)	12	44	27%
Mililani Middle	6-8	0	1,867	1,867	0	23	0%
Mililani High	9-12	2,105	2,449	344	24	100	24%
Total Mililani Complex		6,205	8,095	1,890	67	313	21%
Aliamanu	K-6	903	879	(24)	6	46	13%
Hickam	K-6	800	844	44	9	38	24%
Makalapa	K-6	716	695	(21)	7	33	21%
Mokulele	K-6	639	628	(11)	4	34	12%
Nimitz	K-6	813	848	35	0	39	0%
Pearl Harbor	K-6	639	621	(18)	2	42	5%
Peral Harbor Kai	K-6	676	668	(8)	0	38	0%
Aliamanu Intermed	7-8	1,017	976	(41)	5	48	10%
Radford High	9-12	1,404	1,494	90	9	79	11%
Total Radford Complex		7,607	7,653	46	42	397	11%
Moanulua	K-6	725	682	(43)	8	36	22%
Red Hill	K-6	623	583	(40)	3	33	9%
Salt Lake	K-6	850	884	34	4	43	9%
Shafter	K-6	340	354	14	0	19	0%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Moanalua Intermed	7-8	868	856	(12)	5	40	13%
Moanalua High	9-12	1,939	1,847	(92)	12	82	15%
Total Moanalua Complex		5,345	5,206	(139)	32	253	13%
Haleiwa	K-6	412	426	14	0	30	0%
Waialua	K-6	564	561	(3)	9	32	28%
Waialua Inter/High	7-12	951	889	(62)	9	57	16%
Total Waialua Complex		1,927	1,876	(51)	18	119	15%
Elementary		21,135	20,072	(1,063)	165	1,122	15%
Middle		5,089	6,647	1,558	30	284	11%
High Schools		9,314	9,585	271	61	448	14%
TTL CENTRAL DISTRICT		35,538	36,304	766	256	1,854	14%
LEEWARD DISTRICT							
August Ahrens	K-6	1,628	1,396	(232)	27	81	33%
Honowai	K-6	831	895	64	6	42	14%
Kaleiopuu	K-6	1,017	699	(318)	10	48	21%
Royal Kunia (new)	K-6	0	657	657	0	30	0%
Waikele (new)	K-6	0	748	748	0	17	0%
Waipahu	K-6	1,028	1,061	33	9	49	18%
Waipahu Intermed	7-8	1,229	1,429	200	3	64	5%
Waipahu High	9-12	2,357	2,597	240	22	109	20%
Total Waipahu Complex		8,090	9,482	1,392	77	440	18%
Kamaile	K-6	796	853	57	9	40	23%
Leihoku	K-6	779	822	43	13	39	33%
Maili	K-6	967	997	30	16	49	33%
Makaha	K-6	697	689	(8)	14	44	32%
Waianae	K-6	736	771	35	10	52	19%
Waianae Inter	7-8	1,166	1,271	105	7	60	12%
Waianae High	9-12	2,164	2,263	99	19	99	19%
Total Waianae Complex		7,305	7,666	361	88	383	23%
Kanoelani	K-6	905	898	(7)	14	40	35%
Lehau	K-6	502	504	2	0	29	0%
Manana	K-6	492	528	36	0	22	0%
Momilani	K-6	407	421	14	0	16	0%
Palisades	K-6	432	447	15	0	32	0%
Pearl City El	K-6	654	656	2	0	37	0%
P.C. Highlands	K-6	434	438	4	0	29	0%
Waiau	K-6	615	657	42	12	33	36%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Highlands Inter	7-8	1,108	1,176	68	7	53	13%
Pearl City High	9-12	2,177	2,209	32	0	95	0%
Total Pearl City Complex		7,726	7,934	208	33	386	9%
Nanaikapono	K-5	1,041	1,052	11	20	58	34%
Nanakuli Elem	K-5	650	768	118	9	33	27%
Nanakuli High/Intermed	6-12	1,360	1,484	124	4	70	6%
Total Nanakuli Complex		3,051	3,304	253	33	161	20%
Barbers Point	K-5	565	545	(20)	0	39	0%
Ewa Elem	K-6	612	740	128	0	34	0%
Ewa Beach	K-6	519	719	200	0	30	0%
Holomua	K-6	674	1,287	613	0	40	0%
Iroquois Point	K-6	1,257	1,270	13	19	55	35%
Kaimiloa	K-6	783	866	83	11	39	28%
Kapolei Elem	K-6	937	1,339	402	12	49	24%
Makakilo	K-6	669	739	70	0	30	0%
Mauka Lani	K-6	709	808	99	17	33	52%
Pohakea	K-6	552	626	74	6	35	17%
Kapolei Middle	7-8	0	1,449	1,449	6	35	17%
Kapolei High	9-12	0	1,249	1,249	6	35	17%
Ilima Intermed	7-8	1,412	1,298	(114)	4	62	6%
Campbell High	9-12	2,210	1,969	(241)	12	111	11%
Total Campbell Complex		10,899	14,904	4,005	93	627	15%
Elementary		21,888	24,896	3,008	234	1,204	19%
Middle		5,595	7,365	1,770	29	309	9%
High Schools		9,588	11,029	1,441	61	484	13%
TOTAL LEEWARD DISTRICT		37,071	43,290	6,219	324	1,997	16%
WINDWARD DISTRICT							
Ahuimanu	K-6	580	562	(18)	5	27	19%
Heeia	K-6	762	737	(25)	2	38	5%
Kahaluu	K-6	307	299	(8)	0	22	0%
Kaneohe	K-6	615	589	(26)	0	33	0%
Kapunahala	K-6	612	578	(34)	0	30	0%
Parker	K-6	605	632	27	0	41	0%
Puohala	K-6	470	418	(52)	0	29	0%
Waiahole	K-6	143	139	(4)	0	14	0%
King Inter	7-8	1,037	1,094	57	0	56	0%
Castle High	9-12	2,032	2,025	(7)	21	90	23%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Total Castle Complex		7,163	7,073	(90)	28	380	7%
Hauula	K-6	355	354	(1)	4	26	15%
Kaaawa	K-6	182	177	(5)	9	9	100%
Kahuku	K-6	544	532	(12)	0	27	0%
Laie	K-6	821	729	(92)	14	45	31%
Sunset Beach	K-6	296	287	(9)	18	24	75%
Kahuku Hi/Int	7-12	1,977	1,872	(105)	24	97	25%
Total Kahuku Complex		4,175	3,951	(224)	69	228	30%
Enchanted Lake	K-6	467	446	(21)	0	33	0%
Kaelepulu	K-6	166	153	(13)	1	14	7%
Keolu	K-6	316	298	(18)	0	24	0%
Maunawili	K-6	402	407	5	0	29	0%
Olomana	ALC 9-12	149	149	0	7	7	100%
Pope	K-6	288	248	(40)	0	25	0%
Waimanalo Int/El	K-8	673	698	25	0	42	0%
Kailua High	9-12	1,090	1,048	(42)	0	75	0%
Total Kailua Complex		3,551	3,447	(104)	8	249	3%
Aikahi	K-6	628	620	(8)	2	32	6%
Kailua High	K-6	582	588	6	0	30	0%
Kainalu	K-6	560	482	(78)	1	44	2%
Lanikai	K-6	320	314	(6)	4	18	22%
Mokapu	K-6	816	883	67	9	49	18%
Kailua Inter	7-8	965	947	(18)	0	61	0%
Kalaheo High	9-12	1,220	1,277	57	0	58	0%
Total Kalaheo Complex		5,091	5,111	20	16	292	5%
Elementary		10,985	10,621	(364)	76	669	11%
Middle		3,664	3,675	11	12	208	6%
High Schools		5,331	5,286	(45)	33	272	12%
TOTAL WINDWARD DISTRICT		19,980	19,582	(398)	121	1,149	11%
HAWAII DISTRICT							
DeSilva	K-5	408	392	(16)	1	19	5%
Haaheo	K-5	199	185	(14)	5	10	50%
Hilo Union	K-5	677	634	(43)	2	35	6%
Kapiolani	K-5	591	623	32	0	30	0%
Kaumana	K-5	336	315	(21)	5	16	31%
Keaukaha	K-5	532	578	46	8	25	32%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Kalanianaole	K-8	518	497	(21)	0	39	0%
Hilo Inter	6-8	694	707	13	0	53	0%
Hilo High	9-12	1,793	1,794	1	5	80	6%
Total Hilo Complex		5,748	5,725	(23)	26	307	8%
Honokaa Elem	K-6	434	391	(43)	4	23	17%
Paauilo El-Int	K-8	246	234	(12)	2	16	13%
Waikoloa	K-5	517	632	115	0	23	0%
Waimea Elem-Int	K-8	1,272	1,294	22	10	66	15%
Honokaa High/Int	7-12	961	1,021	60	8	53	15%
Total Hamakua Complex		3,430	3,572	142	24	181	13%
Naalehu	K-8	449	458	9	7	24	29%
Ka'u High-Pahala El	K-12	573	538	(35)	0	36	0%
Total S Hilo Complex		1,022	996	(26)	7	60	12%
Kohala Elem	K-5	467	488	21	5	22	23%
Kohala High-Int	6-12	612	611	(1)	3	34	9%
Total Hamakua Complex		1,079	1,099	20	8	56	14%
Holualoa	K-5	405	394	(11)	13	19	68%
Kahakai	K-5	729	708	(21)	7	39	18%
Kealakehe Elem	K-5	963	1,088	125	17	50	34%
Kealakehe Inter	6-8	992	1,087	95	8	51	16%
Kealakehe High	9-12	402	1,496	1,094	1	37	3%
Total North Kona Complex		3,491	4,773	1,282	46	196	23%
Honaunau	K-5	407	245	(162)	11	21	52%
Hookena	K-5	330	179	(151)	12	16	75%
Konawaena Elem	K-5	738	576	(162)	2	33	6%
Konawaena Mid	6-8	227	621	394	8	8	100%
Konawaena High	9-12	1,895	986	(909)	19	73	26%
Total South Kona Complex		3,597	2,607	(990)	52	151	34%
Laupahoehoe	K-12	305	263	(42)	0	25	0%
Total North Hilo Complex		305	263	(42)	0	25	0%
Keonepoko	K-6	750	704	(46)	11	35	31%
Pahoa Elem	K-6	598	632	34	20	34	59%
Pahoa High/Int	7-12	1,069	1,108	39	11	56	20%
Total South Hilo Complex		2,417	2,444	27	42	125	34%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Keaau II Elem	K-5	0	925	925	0	16	0%
Keaau Elem/Int	K-8	1,432	715	(717)	14	61	23%
Keaau High	9-12	0	1,198	1,198	14	61	23%
Mt. View	K-5	819	722	(97)	11	46	24%
Waiakea Elem	K-5	863	835	(28)	6	45	13%
Waiakeawaena	K-5	881	849	(32)	4	40	10%
Waiakea Inter	6-8	1,030	987	(43)	8	51	16%
Waiakea High	9-12	2,392	1,442	(950)	34	107	32%
Total Central Hilo Complex		7,417	7,673	256	91	427	21%
Elementary		15,253	14,944	(309)	171	790	22%
Middle		5,230	5,722	492	41	293	14%
High Schools		8,023	8,486	463	84	445	19%
TOTAL HAWAII DISTRICT		28,506	29,152	646	296	1,528	19%
MAUI DISTRICT							
Kahului	K-5	911	937	26	13	50	26%
Kihei Elem	K-5	775	842	67	12	49	24%
Kamalii Elem	K-5	754	889	135	0	39	0%
Lihikai	K-5	1,035	1,079	44	23	54	43%
Lokelani Inter	6-8	692	846	154	12	33	36%
Maui-Waena Inter	6-8	948	1,058	110	6	47	13%
Maui High	9-12	1,734	1,789	55	28	85	33%
Total Maui Complex		6,849	7,440	591	94	357	26%
Lanai High/Elem	K-12	661	748	87	3	33	9%
Kamehameha III	K-5	665	697	32	9	35	26%
Nahienaena	K-5	698	778	80	7	34	21%
Lahaina Inter	6-8	604	687	83	8	29	28%
Lahainaluna High	9-12	876	978	102	9	45	20%
Total Lahainaluna Complex		2,843	3,140	297	33	143	23%
Waihee	K-5	858	944	86	10	38	26%
Wailuku	K-5	837	993	156	9	58	16%
Iao Inter	6-8	823	878	55	2	33	6%
Baldwin High	9-12	1,850	1,839	(11)	24	80	30%
Total Baldwin Complex		4,368	4,654	286	45	209	22%
Keanae	K-5	7	12	5	0	4	0%
Hana High/Elem	K-12	440	464	24	6	26	23%
Total Hana Complex		447	476	29	6	30	20%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Haiku	K-5	465	506	41	13	24	54%
Kula	K-5	522	587	65	12	26	46%
Makawao	K-5	636	632	(4)	11	37	30%
Paia	K-5	246	296	50	0	23	0%
Pukalani	K-5	558	578	20	10	29	34%
Kalama Inter	6-8	1,298	1,289	(9)	9	57	16%
King Kekaulike Hi	9-12	1,030	1,578	548	0	64	0%
Total King Kekaulike Complex		4,755	5,466	711	55	260	21%
Kaunakakai	K-6	336	337	1	1	26	4%
Kilohana	K-6	148	150	2	1	12	8%
Kualapuu	K-6	407	436	29	9	23	39%
Maunaloa	K-6	90	115	25	1	6	17%
Molokai High/Int	7-12	808	859	51	13	40	33%
Total Molokai Complex		1,789	1,897	108	25	107	23%
Elementary		981	1,038	57	12	67	18%
Middle		404	430	26	7	20	35%
High Schools		404	429	25	6	20	30%
MOLOKAI		1,789	1,897	108	25	107	23%
Elementary		331	374	43	1	17	6%
Middle		165	187	22	1	8	13%
High Schools		165	187	22	1	8	13%
LANAI		661	748	87	3	33	9%
Elementary		9,021	9,814	793	131	504	26%
Middle		4,475	4,874	399	38	206	18%
High Schools		5,766	6,488	722	64	289	22%
MAUI		19,262	21,176	1,914	233	999	23%
Elementary		10,333	11,226	893	144	588	24%
Middle		5,044	5,491	447	46	234	20%
High Schools		6,335	7,104	769	71	317	22%
TOTAL MAUI DISTRICT		21,712	23,821	2,109	261	1,139	23%
KAUAI DISTRICT							
Hanalei	K-5	289	323	34	6	14	43%
Kapaa	K-5	1,110	1,236	126	21	71	30%
Kilauea	K-5	319	324	5	7	21	33%

School/Complex/District	Grades	Enrollment 1997	Enrollment 2003	Increase (Decrease)	Existing Classrooms Portables	Existing Classrooms Total	Percent Portables
Kapaa Middle	6-8	960	965	5	0	51	0%
Kapaa High	9-12	1,233	1,356	123	14	64	22%
Total East Complex		3,911	4,204	293	48	221	22%
Kalaheo High	K-5	626	573	(53)	5	30	17%
Kaumualii	K-5	834	442	(392)	4	42	10%
Koloa	K-5	390	313	(77)	9	23	39%
Wilcox	K-5	983	905	(78)	10	55	18%
Kauai Inter	6-8	0	986	986	0	65	0%
Kauai High/Int	9-12	1,886	1,234	(652)	28	92	30%
Total Central Complex		4,719	4,453	(266)	56	307	18%
Eleele	K-6	534	567	33	4	28	14%
Kekaha	K-6	354	286	(68)	1	21	5%
Niihau	K-12	13	41	28	0	3	0%
Waimea Canyon	K-8	680	627	(53)	3	37	8%
Waimea High	9-12	828	871	43	2	48	4%
Total Waimea Complex		2,409	2,392	(17)	10	137	7%
Elementary		5,899	5,408	(491)	69	331	21%
Middle		1,190	2,170	980	1	129	1%
High Schools		3,950	3,471	(479)	44	205	21%
TOTAL KAUAI DISTRICT		11,039	11,049	10	114	665	17%
Elementary		104,698	105,598	900	868	5,873	15%
Middle		32,044	37,266	5,222	169	1,898	9%
High Schools		52,458	54,690	2,232	370	2,694	14%
TOTAL, ALL DISTRICTS		189,200	197,554	8,354	1,407	10,465	13%

Source: Department of Education, Facilities and Support Branch, "Complex Development Plans," revised 4/98 and "1997-2003 Actual and Projected Enrollment," 4/24/98.

APPENDIX B: MODEL SCHOOL LAND DEDICATION ACT

[§XX-xx] SCHOOL LAND DEDICATION REQUIREMENT

(a) Findings

(1) New residential subdivisions create additional demand for public school facilities and a need for more land on which to construct school facilities.

(2) New residential subdivisions should provide land or a pay a fee in-lieu of land dedication proportionate to their impact.

(3) A study commissioned by the Department of Education and the Department of Accounting and General Services has identified the land dedication requirement that is consistent with proportionate fair-share principles.

(4) The State of Hawaii hereby determines that new residential subdivisions shall provide land for schools or pay a fee in-lieu of land proportionate to their impact.

(b) Applicability and Exemptions

(1) Applicability. Except as provided below, any person or person(s) who seeks to develop residential land by applying to a county for the issuance of a subdivision approval shall be required to dedicate land for school facilities or pay a fee in-lieu of dedicating that land.

(2) Exemptions. The following shall be exempt from the provisions of this section:

(A) Any form of housing permanently dedicated exclusively for senior citizens, defined as 55 years of age or over, with the necessary covenants or declarations of restrictions recorded on the property.

(B) All nonresidential development.

(C) Any residential subdivision within the Honolulu, Windward and Kauai benefit districts as hereinafter defined, until an analysis has been prepared by the Department of Education that demonstrates there will be a need to build or expand school facilities over the next six-year period in order to accommodate projected enrollment growth within the benefit district.

(c) Definitions

The following words and terms, when used in this section, shall have the meaning ascribed to them, except when the context clearly indicates a different meaning.

(1) "County" or "counties" means the City and County of Honolulu, the County of Hawaii, the County of Kauai, and the County of Maui.

(2) "Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any development activity.

(3) "Dwelling Unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family containing a single kitchen.

(4) "Owner" means the owner of record of real property or the owner's authorized agent.

(5) "Plat" means the map or drawing on which the subdivider's plan of subdivision is presented and which he submits for approval.

(6) "School facilities" means the facilities owned or operated by the Department of Education, or the facilities included in the Department of Education capital budget and/or capital facilities plan.

(e) School Land or Fee In-lieu Required

The procedure for determining whether the dedication of land is required or a payment of a fee in-lieu is required for new schooling facilities is as follows:

(1) Proposal of Owner. At the time of filing an application for any residential subdivision containing fifty or more acres of land, the owner or developer of the property, as a part of the filing, shall designate the area proposed to be dedicated for a school on the plat submitted.

(2) Land Shall be Usable. When land is proposed to be dedicated for the purpose of providing a school site, it shall be land that is usable to the Department of Education for such purpose. The Department of Education shall have the final determination as to whether a particular piece of land is usable.

(3) Action by the Department of Education. Within sixty days of the completion of an application for a residential subdivision containing fifty or more acres, the Department of Education, as a part of such approval, shall determine whether to require a dedication of land, the payment of a fee in-lieu thereof, or a combination of both. Only payment of a fee in-lieu shall be required in subdivisions containing less than fifty acres.

(4) Dedication Procedure. When dedication is required, the land shall be conveyed to the State of Hawaii prior to final subdivision approval.

(5) Fee In-lieu Procedure. When the payment of a fee in-lieu is required, the fee in-lieu shall be paid prior to final subdivision approval.

(6) Criteria for Determination. Whether the Department of Education determines to require land dedication or the payment of a fee in-lieu, or a combination of both, shall be guided by the following criteria:

(A) The topography, geology, access, and location of the land in the development available for dedication.

(B) The size and shape of the development and the land available for dedication.

(C) The location of existing or proposed schooling facilities.

(7) Determination Final. The determination of the Department of Education as to whether land shall be dedicated, or whether a fee in-lieu shall be paid, or a combination of both, shall be final and exclusive.

(f) Determination of the Amount of Land or the Fee In-lieu

(1) Determination of the Amount of Land to be Dedicated. The size of the tract of land to be dedicated by the developer shall be determined using the following formula:

(A) The dedication requirement for single-family detached, single-family attached, and/or duplex units is as follows:

0.00899 acres x number of dwelling units provided for on the subdivision plat.

(B) The dedication requirement for apartments and/or condominiums is as follows:

0.00356 acres x number of dwelling units provided for on the subdivision plat.

(2) Determination of the Amount of the Fee In-lieu. The dollar amount of the fee in-lieu shall be determined using the following formulas:

(A) The formula used to determine the fee in-lieu of land dedication for single-family detached, single-family attached, and/or duplex units is as follows:

0.00899 x number of units provided for on the subdivision plat x average cost per acre of land of the subdivision subject to the provisions of Section XX-xx(f)(3).

(B) The formula used to determine the fee in-lieu of land dedication for apartments and/or condominiums units is as follows:

0.00356 x number of units provided for on the subdivision plat x average cost per acre of land of the subdivision subject to the provisions of Section XX-xx(f)(3).

(3) Residential Subdivisions with Less Than Fifty Acres. Subdivisions of less than fifty acres shall pay a standard fee in-lieu based on an average land value of $100,000 per acre. The standard fee in-lieu of land dedication per single-family detached, single-family attached, and/or duplex unit is $899. The standard fee in-lieu of land dedication per apartment and/or condominium unit is $356. At least every three years, the Department of Education shall prepare an analysis to update the appropriate average land value, and shall submit same to the Legislature with a recommendation to update the standard fee in-lieu established in this subsection.

(4) Appraisal of Land Values. The fee in-lieu of land dedication shall be based on the value of the improved land, after typical subdivision improvements such as roads, drainage and utilities. A M.A.I. appraiser who is selected and paid for by the developer shall determine the value of the land. If the Department of Education does not agree with the developers appraisal the Department of Education may engage another M.A.I. appraiser at its own expense, and the value shall be an amount equal to the average of the two appraisals. If either party does not accept the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the Department of Education and the developer. The first two appraisers shall select the third appraiser, and the third appraisal shall be binding on both parties.

(g) Refund of the Fee In-lieu

If the fee in-lieu is not expended within six years of the date of collection, the Department of Education shall refund to the developer or the developer's successor in title the amount of fees in-lieu paid and any interest accrued. Application for a refund shall be submitted to the Department of Education within one year of the date on which the right to claim arises.

(h) Collection and Expenditure of Fees In-lieu

(1) Benefit Districts Established. The state will be divided into the following nine benefit districts, which are based on the state's island geography, school districts and high school attendance boundaries. The location of the benefit districts is illustrated in Exhibit A. The fee in-lieu collected in a benefit district will only be expended in that benefit district.

Benefit District	Island	School District	High School Complex
Honolulu	Oahu	Honolulu	All Complexes
Central	Oahu	Central	All Complexes
Windward	Oahu	Windward	All Complexes
Leeward	Oahu	Leeward	All Complexes
Hawaii	Hawaii	Hawaii	All Complexes
Maui	Maui	Maui	All except Molokai and Lanai
Molokai	Molokai	Maui	Molokai
Lanai	Lanai	Maui	Lanai
Kauai	Kauai	Kauai	All Complexes

(2) Use of Dedicated Land. Land dedicated by the developer shall be used only as a site for the construction of a new school or for the expansion of existing school facilities. If the land is sold the proceeds shall be used to reacquire land for school facilities in the same benefit district.

(3) Use of the Fee In-lieu. Fee in-lieu funds shall only be used for the acquisition of land for school purposes. Funds may be used for expenses related to acquiring a piece of land, including but not limited to, surveying, appraisals, and associated legal fees. Fee in-lieu funds shall not be used for the maintenance or operation of existing schools in the district, construction costs, including architectural, permitting or financing costs, or administrative expenses.

(i) Credits

(1) Any person subject to the land dedication or fee in-lieu requirements pursuant to this section may apply for credit for any similar dedication or payment accepted and received by the Department of Education for the same subdivision subject to this section.

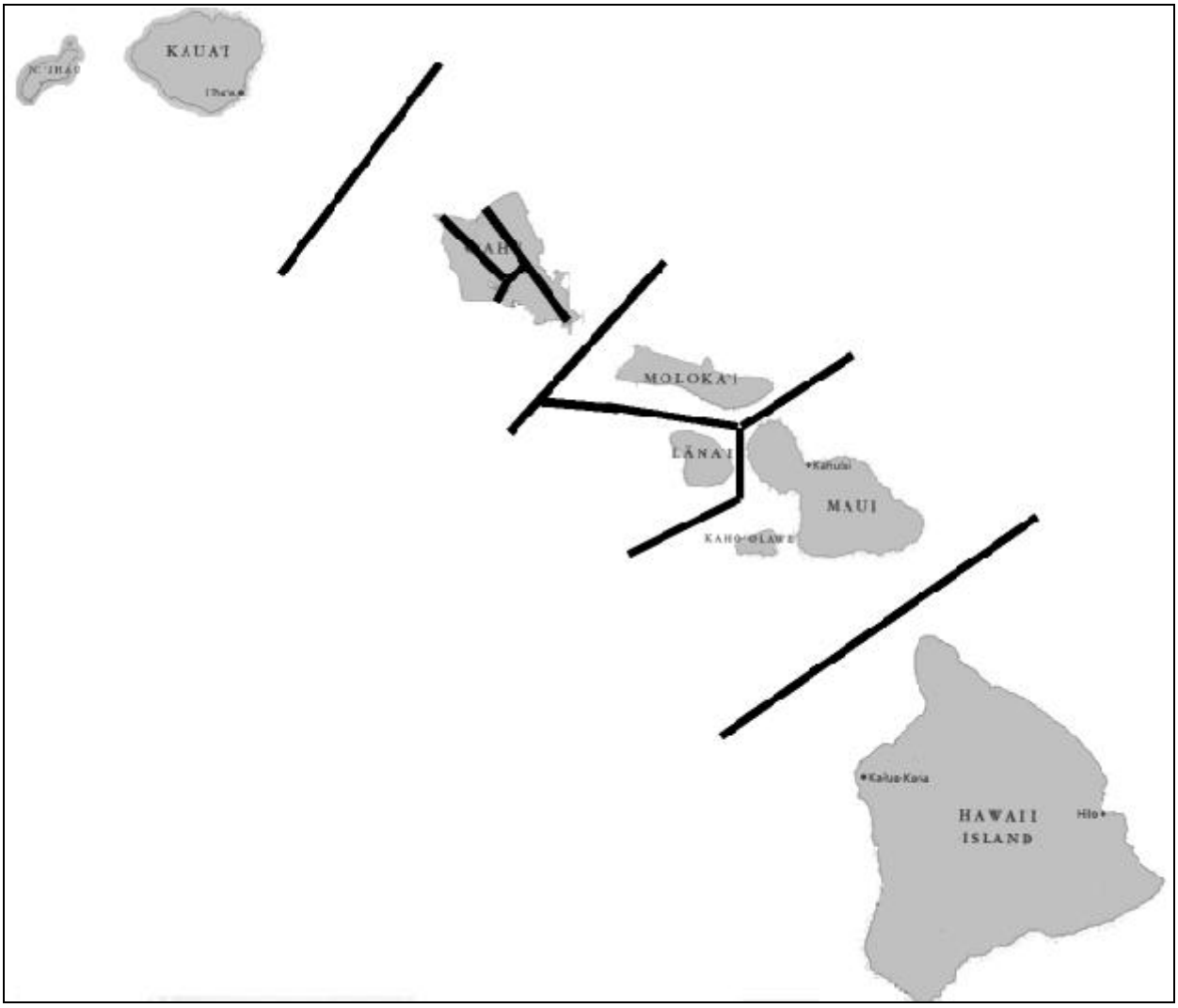
(2) Any credit provided for under this subsection shall be based on the present value of the dedication or payment.

(3) Credits for contributions prior to the effective date of this section shall be based on the present value, however, the credited amount shall not exceed that value of the dedication or fee in-lieu required under this section.

(4) If a dedication is proposed by a developer after the effective date of this section, and is acceptable to the Department of Education, and it exceeds the dedication requirements for the subdivision, the Department of Education shall execute with the developer an

agreement to provide reimbursement for the excess land dedication from the fees in-lieu collected from other developers within the same benefit district.

Exhibit A
BENEFIT DISTRICTS



APPENDIX C: MODEL SCHOOL IMPACT FEE ACT

[§XX-xxx] SCHOOL IMPACT FEES

(a) Findings

(1) New residential developments creates additional demand for public school facilities.

(2) New residential developments should pay a school impact fee proportionate to their impact on the need to construct additional facilities.

(3) A study commissioned by the Department of Education and the Department of Accounting and General Services has identified the net capital cost of school facilities, excluding land costs, that is consistent with proportionate fair-share principles.

(4) The State of Hawaii hereby determines that new residential developments shall pay school impact fees proportionate to their impacts.

(b) Applicability and Exemptions

(1) Applicability. Except as provided below, any person or person(s) who seeks to develop residential land by applying to any county for a building permit shall be required to pay a school impact fee. Assessment of impact fees shall be a condition precedent to the issuance of a building permit and shall be paid in full to the Department of Education before issuance of the permit.

(2) The following shall be exempt from the provisions of this section:

(A) Any form of housing permanently dedicated exclusively for senior citizens, defined as fifty-five (55) years of age or over, with the necessary covenants or declarations of restrictions recorded on the property.

(B) Alteration, expansion, enlargement, remodeling, rehabilitation, or conversion of an existing dwelling unit where no additional dwelling units are created.

(C) All nonresidential development.

(D) Any residential development within the Honolulu, Windward and Kauai benefit districts as hereinafter defined, until an analysis has been prepared by the Department of Education that demonstrates there will be a need to build or expand school facilities over the next six-year period in order to accommodate projected enrollment growth within the benefit district.

(c) Definitions

The following words and terms, when used in this section, shall have the meaning ascribed to them, except when the context clearly indicates a different meaning.

(1) "Building Permit" shall mean the official document or certificate issued by the county, authorizing the commencement of construction of any building, or parts thereof.

(2) "County" means the City and County of Honolulu, the County of Hawaii, the County of Kauai, and the County of Maui.

(3) "Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any development activity

(4) "Dwelling Unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family containing a single kitchen.

(5) "Person" means an individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, including any trustee, receiver, assignee, or other similar representative thereof.

(6) "School facilities" means the facilities owned or operated by the Department of Education, or the facilities included in the Department of Education capital budget and/or capital facilities plan.

(d) Impact Fee Calculation Based on Fee Schedule

(1) The state shall be divided into the following twenty-six (26) geographically limited assessment districts. The location of the assessment districts is illustrated in Exhibit A.

Assessment District	Benefit District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.10
Ewa	Leeward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

(2) All residential developments, except as provided in subsection (b) of this section, which require the issuance of a building permit, shall pay an impact fee for each dwelling unit constructed. Impact fees shall be phased in over a twenty-four (24) month period. The fee levels after the 24-month phase-in period represent one-half of the full net cost identified in the consultant study.

(A) Single-family detached, single-family attached (townhouse) and duplexes shall pay the following impact fees per dwelling unit constructed, based on the time that has elapsed from the effective date of this section to the time of building permit application:

Benefit District	Assessment District	Initially	After 6 months	After 12 months	After 18 months	After 24 months
Honolulu	Honolulu	$847	$1,694	$2,541	$3,388	$4,236
Central	Ewa	$847	$1,694	$2,541	$3,388	$4,236
Central	Wahiawa	$913	$1,826	$2,739	$3,652	$4,565
Central	Waialua	$979	$1,958	$2,936	$3,915	$4,894
Windward	Koolaupoko	$847	$1,694	$2,541	$3,388	$4,236
Windward	Koolauloa	$979	$1,958	$2,936	$3,915	$4,894
Leeward	Ewa	$847	$1,694	$2,541	$3,388	$4,236
Leeward	Waianae	$979	$1,958	$2,936	$3,915	$4,894
Hawaii	Hilo	$1,045	$2,089	$3,134	$4,178	$5,223
Hawaii	Puna	$1,111	$2,221	$3,332	$4,442	$5,553
Hawaii	Kona	$1,111	$2,221	$3,332	$4,442	$5,553
Hawaii	Hamakua	$1,111	$2,221	$3,332	$4,442	$5,553
Hawaii	South Kohala	$1,111	$2,221	$3,332	$4,442	$5,553
Hawaii	North Kohala	$1,176	$2,353	$3,529	$4,705	$5,882
Hawaii	Pohakuloa	$1,176	$2,353	$3,529	$4,705	$5,882
Hawaii	Kau	$1,242	$2,484	$3,727	$4,969	$6,211
Maui	Wailuku	$1,045	$2,089	$3,134	$4,178	$5,223
Maui	Makawao	$1,176	$2,353	$3,529	$4,705	$5,882
Maui	Lahaina	$1,242	$2,484	$3,727	$4,969	$6,211
Maui	Hana	$1,308	$2,616	$3,924	$5,232	$6,540
Molokai	Molokai	$1,242	$2,484	$3,727	$4,969	$6,211
Lanai	Lanai	$1,308	$2,616	$3,924	$5,232	$6,540
Kauai	Lihue	$1,045	$2,089	$3,134	$4,178	$5,223
Kauai	Koloa	$1,111	$2,221	$3,332	$4,442	$5,553
Kauai	Kawaihau	$1,111	$2,221	$3,332	$4,442	$5,553
Kauai	Waimea	$1,176	$2,353	$3,529	$4,705	$5,882
Kauai	Hanalei	$1,176	$2,353	$3,529	$4,705	$5,882

(B) Apartments and residential condominiums, consisting of more than two dwellings, shall pay the following impact fees per dwelling unit constructed, based on the time that has elapsed from the effective date of this section to the time of building permit application:

Benefit District	Assessment District	Initially	After 6 months	After 12 months	After 18 months	After 24 months
Honolulu	Honolulu	$332	$665	$997	$1,330	$1,662
Central	Ewa	$332	$665	$997	$1,330	$1,662
Central	Wahiawa	$358	$716	$1,074	$1,432	$1,790
Central	Waialua	$383	$767	$1,150	$1,534	$1,917
Windward	Koolaupoko	$332	$665	$997	$1,330	$1,662
Windward	Koolauloa	$383	$767	$1,150	$1,534	$1,917
Leeward	Ewa	$332	$665	$997	$1,330	$1,662
Leeward	Waianae	$383	$767	$1,150	$1,534	$1,917
Hawaii	Hilo	$409	$818	$1,227	$1,636	$2,045
Hawaii	Puna	$434	$869	$1,303	$1,738	$2,172
Hawaii	Kona	$434	$869	$1,303	$1,738	$2,172
Hawaii	Hamakua	$434	$869	$1,303	$1,738	$2,172
Hawaii	South Kohala	$434	$869	$1,303	$1,738	$2,172
Hawaii	North Kohala	$460	$920	$1,380	$1,840	$2,300
Hawaii	Pohakuloa	$460	$920	$1,380	$1,840	$2,300
Hawaii	Kau	$486	$971	$1,457	$1,942	$2,428
Maui	Wailuku	$409	$818	$1,227	$1,636	$2,045
Maui	Makawao	$460	$920	$1,380	$1,840	$2,300
Maui	Lahaina	$486	$971	$1,457	$1,942	$2,428
Maui	Hana	$511	$1,022	$1,533	$2,044	$2,555
Molokai	Molokai	$486	$971	$1,457	$1,942	$2,428
Lanai	Lanai	$511	$1,022	$1,533	$2,044	$2,555
Kauai	Lihue	$409	$818	$1,227	$1,636	$2,045
Kauai	Koloa	$434	$869	$1,303	$1,738	$2,172
Kauai	Kawaihau	$434	$869	$1,303	$1,738	$2,172
Kauai	Waimea	$460	$920	$1,380	$1,840	$2,300
Kauai	Hanalei	$460	$920	$1,380	$1,840	$2,300

(e) Accounting and Expenditure of Impact Fees

(1) Upon collection, the fees shall be deposited into a special trust fund or interest-bearing account.

(2) The state shall be divided into the following nine (9) benefit districts, which are based on the state's island geography, existing school districts and existing high school attendance boundaries. Impact fees collected in a benefit district shall only be expended in that benefit district. The location of the benefit districts are illustrated in Exhibit B.

Benefit District	Island	School District	High School Complex
Honolulu	Oahu	Honolulu	All Complexes
Central	Oahu	Central	All Complexes
Windward	Oahu	Windward	All Complexes
Leeward	Oahu	Leeward	All Complexes
Hawaii	Hawaii	Hawaii	All Complexes
Maui	Maui	Maui	All except Molokai and Lanai
Molokai	Molokai	Maui	Molokai
Lanai	Lanai	Maui	Lanai
Kauai	Kauai	Kauai	All Complexes

(3) Impact fees shall be used for the costs of school construction, which includes, but is not limited to, planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.

(4) Impact fee funds shall not be expended for any costs related to the acquisition of land. Impact fee funds shall not be expended for the maintenance or operation of existing schools in the district.

(5) The impact fee shall be expended or encumbered within six (6) years of the date of collection.

(f) Refund of Impact Fees

If impact fees are not expended or encumbered within six (6) years, the Department of Education shall refund to the developer or the developer's successor in title, the amount of fees paid and any interest accrued. Fees paid shall be considered expended on a first-in, first-out basis. Application for a refund shall be submitted to the Department of Education within one (1) year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the

special trust fund or interest-bearing account and expended as laid out in subsection (e) of this section.

(g) Independent Fee Calculation

(1) In the event an applicant believes that the impact to the school system necessitated by his or her residential construction is less than the fee established in subsection (d) of this section, the applicant may, prior to issuance of a building permit, submit a calculation of an alternative school impact fee.

(2) The documentation submitted shall show the basis upon which the independent fee calculation was made.

(3) The proposed alternative impact fee shall be submitted to the Department of Education, which shall review the calculations and mail a written determination to the applicant within sixty (60) calender days.

(4) If the Department of Education determines that the calculation of the alternative impact fee was done by an acceptable methodology, then the alternative school impact fee shall be paid in-lieu of the fee set forth in subsection (d) of this section.

(5) If the Department of Education determines that the calculation of the alternative impact fee was not done by an acceptable methodology, then the alternative school impact fee calculation shall be rejected.

(h) Credits

(1) Any applicant subject to the school impact fee requirements pursuant to this section may apply for credit for any similar contribution, payment or construction of public school facilities accepted and received by the Department of Education for the same subdivision subject to this section. No credit shall be authorized against the impact fees for dedication of land or payment of a fee in-lieu of land dedication.

(2) Credits for contributions, payments or construction made prior to the effective date of this section shall be provided if the subdivision for which the contribution, payment or construction was made has not been completed. The current owner of the property for which such contribution, payment or construction was made as a condition of development approval shall file an application for credit within one year of the effective date of this section. If the application is not made within one year following the effective date of this section, no credit shall be provided. The application for credit shall be submitted and reviewed as provided in this section. The amount of the credit for a contribution, payment or construction made prior to the effective date of this section shall be the current value

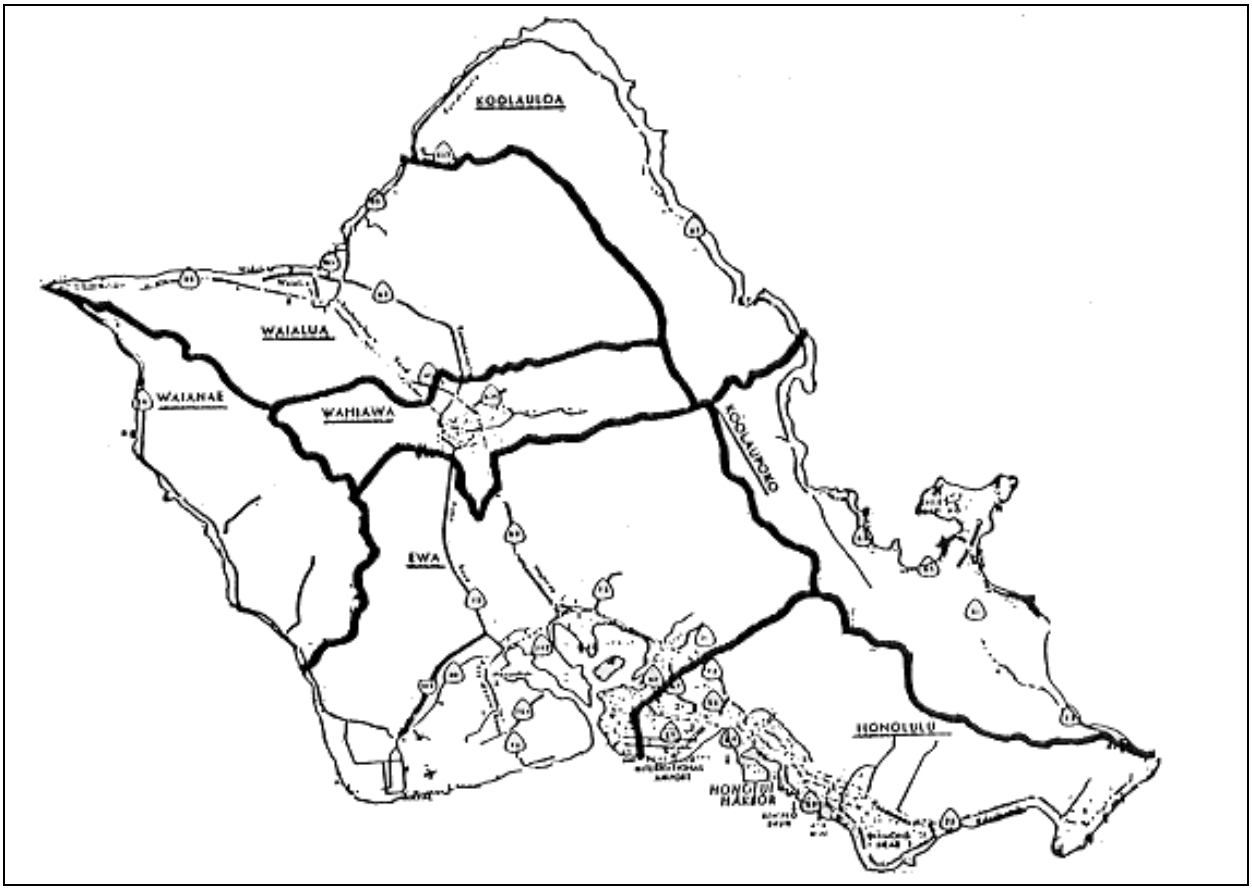
of the contribution, payment or construction, less the total amount of school impact fees that would have been owed for the building permits already issued for the project had those permits been subject to the fees specified in subsection (d) that are to be in effect after twenty-four months following the effective date of this section. The current value shall be determined using the Engineering News-Record Construction Cost Index, or an equivalent index if such index is discontinued. Credits for payments or contributions prior to the effective date of this section shall not exceed that value of the impact fee required under this section.

(3) A construction credit may be applied only against school impact fees that would otherwise be due for building permits issued within the subdivision for which the or contribution was required as a condition of development approval. The Department of Education shall maintain an accounting of the amount of the credit applicable to the subdivision, and shall reduce the amount of the credit by the amount by which the school impact fees that would otherwise be due are reduced for each building permit issued for the subdivision. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the subdivision.

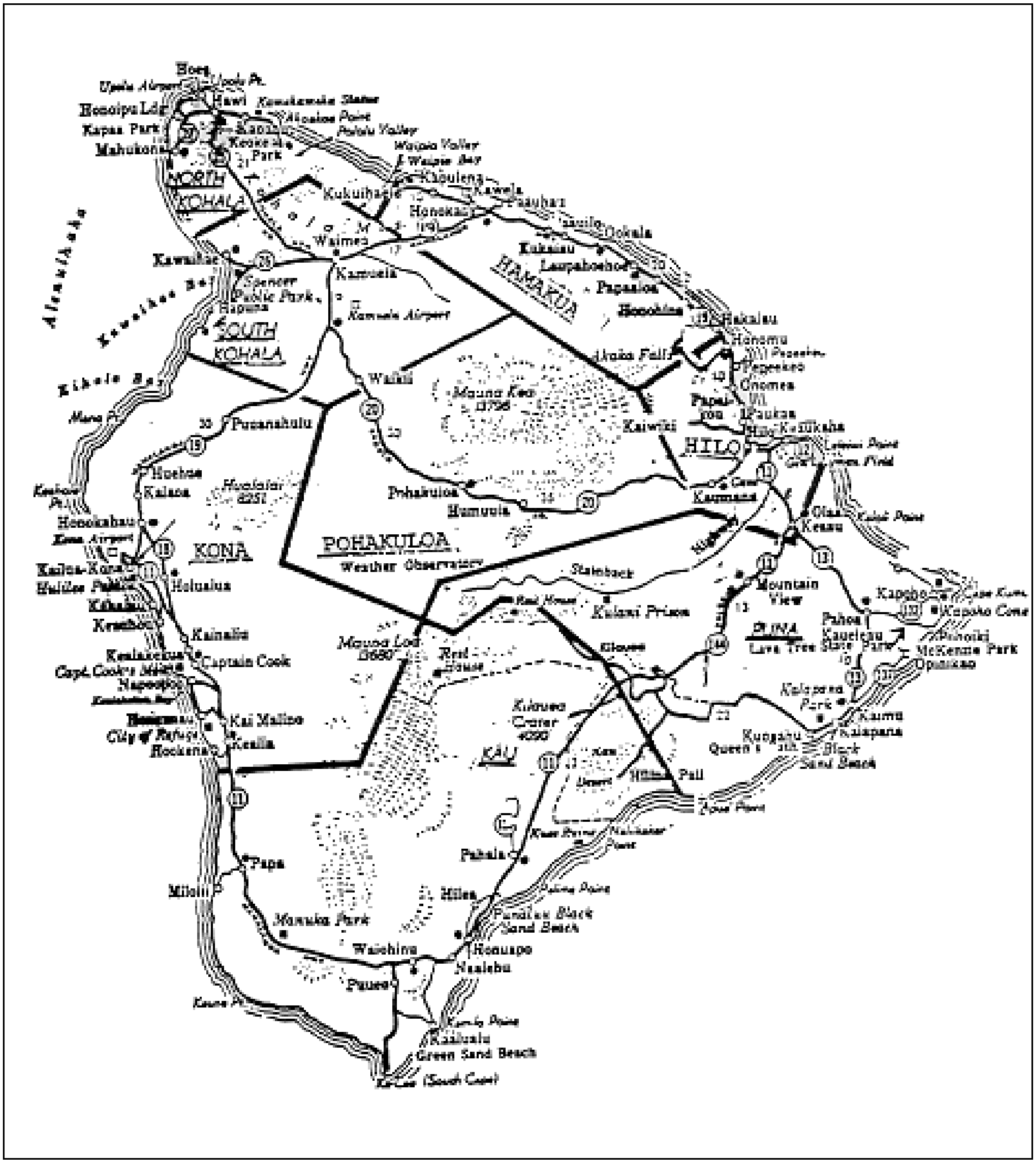
(4) If private construction of school facilities is proposed by a developer after the effective date of this section, and is acceptable to the Department of Education, and the value of the proposed construction exceeds the total impact fees that would be due from the development, the Department of Education shall execute with the developer an agreement to provide reimbursement for the excess credit from the impact fees collected from other developers within the same benefit district.

Exhibit A:
ASSESSMENT DISTRICTS

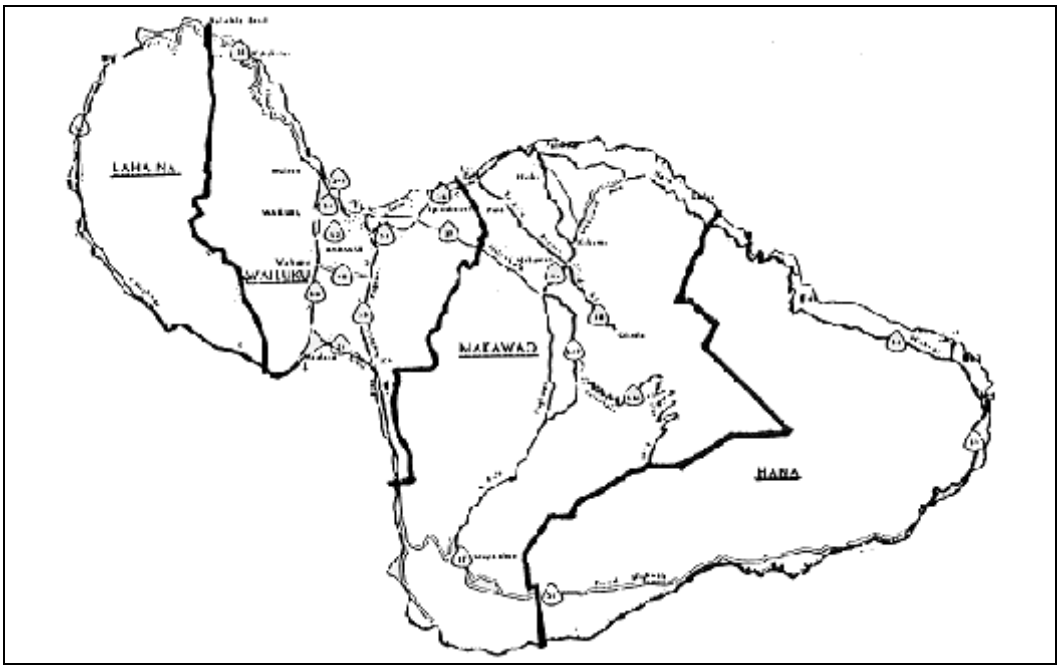
OAHU ASSESSMENT DISTRICTS



HAWAII ASSESSMENT DISTRICTS



MAUI ASSESSMENT DISTRICTS



KAUAI ASSESSMENT DISTRICTS

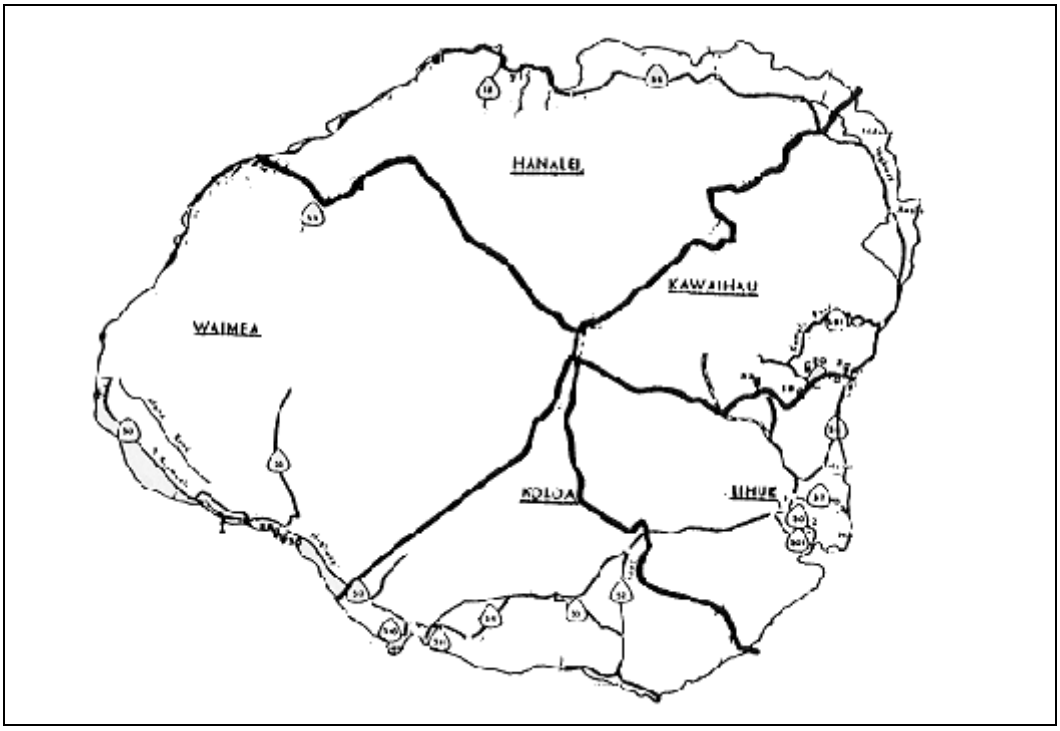


Exhibit B
BENEFIT DISTRICTS