



LAND USE RESEARCH  
FOUNDATION OF HAWAII  
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## ACCOMPLISHMENTS OF THE LAND USE RESEARCH FOUNDATION FOR THE LANDOWNER AND DEVELOPER COMMUNITY 2002 - 2005

### Background on LURF

The Land Use Research Foundation of Hawaii, established in 1979, is a non-profit trade association whose members are landowners and developers in Hawaii. LURF's mission is to advocate reasonable and equitable land use laws and regulations that encourage well-planned economic growth and development, while safe-guarding Hawaii's significant natural and cultural resources and public health and safety.

Over the years, LURF has been a strong voice of reason, working to represent the interests of its membership and at the same time to find common ground for the concerns of government, business, and the community. LURF accomplishes this through a three-pronged program of Research, Information, and Advocacy.

**Research**—LURF sponsors or produces research projects to educate and inform decision-makers, the media, and the public about issues related to land use, development, and the economy.

**Information**—LURF tracks, analyzes, and reports to members on all State and County land use policies and proposals that include planning, zoning, environmental, housing, economic development, infrastructure, and natural resource issues. The main channels of communication are the bimonthly *Land Use Bulletin*® and the weekly *LegTrack*® produced during the legislative session.

**Advocacy**—LURF actively promotes rational and streamlined State and County policies and procedures that will advance balanced economic development through public-private partnerships for the benefit of LURF members and the community at large. The one constant goal remains minimizing the impact of government intervention on the development process.

## Statewide

- **Alliances**

LURF has developed relationships with a wide range of other professional organizations on common advocacy goals. One of our strategies has been to partner with other organizations to broaden our reach on issues. These include, when and as appropriate, the Chamber of Commerce of Hawaii (COCH), the Building Industry Association (BIA), the National Association of Industrial and Office Properties (NAIOP), the Hawaii Developers' Council (HDC), the Hawaii Resort Developers Conference (HRDC), the Hawaii Farm Bureau Federation (HFBF), the Urban Land Institute (ULI), the American Planning Association Hawaii Chapter (APA-H), the Hawaii Economic Association (HEA), and the Hawaii State Bar Association (HSBA).
- **Planning Directors Panel**

With its alliance partners BIA, HDC, and NAIOP, in August 2004 LURF sponsored the first panel discussion for the real estate and land development industry in which the Planning Directors of Hawaii's four Counties addressed the issues of infrastructure, affordable housing, smart growth, and other challenges and opportunities in their jurisdictions. The event was so successful that it is expected to occur annually.
- **Smart Growth**

LURF has expressed concern about "smart growth" initiatives that would (1) prevent or limit growth by failing to invest in needed new infrastructure; (2) use "urban growth boundaries" to encourage increased density within built-up areas where existing infrastructure is inadequate; and (3) implement "smart growth" concepts without public review and legislative adoption.
- **Important Agricultural Lands Designation**

LURF worked to enact legislation that implements the constitutional mandate to conserve and protect important agricultural lands (IAL) and promote diversified agriculture. The measure provides for voluntary designation of IAL by landowners, County mapping of the IAL, and adoption of the IAL maps by the Land Use Commission (LUC), contingent upon provision of incentives for viable agricultural operations.

- **Land Use Reform**  
LURF has proposed to reconstitute the LUC as a quasi-legislative body to conduct periodic land use district boundary reviews, and as an appellate body to review County boundary amendment decisions made in contested case proceedings. The Counties would have full jurisdiction over urban and rural districts, while the State would exercise stewardship over important agricultural and natural resource lands. Meanwhile, LURF continues to work to prevent passage of unconstitutional and strictly regulatory land use legislation.
- **School Fair Share Contributions**  
LURF has proposed a fair and equitable method of impact fee assessments based on rational nexus principles to replace the *ad hoc* exactions imposed on behalf of the Department of Education (DOE), and continues to work to prevent adoption of such land use entitlement conditions by inappropriate legislation or unauthorized administrative rules.
- **Affordable Housing**  
LURF worked with the State Affordable Housing Task Force to define infrastructure needs and problems and to identify funding mechanisms and opportunities for affordable housing.
- **Rock Fall Hazard Mitigation**  
LURF worked with Federal, State, and County agencies and private consultants to conduct training on means to identify and mitigate potential rock fall hazard areas in Hawaii, using a methodology developed by the U. S. Geological Survey.
- **Hawaiian Homes Water Reservations**  
LURF is monitoring the request of the Department of Hawaiian Home Lands (DHHL) for reservations of water in aquifers not designated as water management areas, where the jurisdiction of the Commission on Water Resource Management (CWRM) is unclear and where the amounts of water requested may exceed foreseeable needs.
- **Water Quality Standards**  
LURF prevailed on the Department of Health (DOH), in the last round of water quality standards (WQS) amendments, to adopt only the minimal revisions required by the U.S. Environmental Protection Agency (EPA). LURF continues to participate in the advisory group for the current round of WQS amendments.

- **Nonpoint Source Pollution Control**  
LURF prevailed on the DOH to cancel proposed rule-making for nonpoint source pollution (NPS) control, as unnecessary and not required by the EPA.
- **Stormwater Runoff**  
LURF prevailed on the DOH to delete duplicative requirements of historic preservation, native Hawaiian rights, coastal zone management, and environmental impact reviews for stormwater permits.
- **Historic Preservation Review**  
LURF prevailed on the State Historic Preservation Division of the Department of Land Natural Resources (DLNR/SHPD) to delete requirements for duplicative applicant reviews of historic preservation concerns, that exceeded statutory authority and imposed an unacceptable economic burden on development projects.
- **Critical Habitat Designation**  
LURF and others prevailed on the U.S. Fish and Wildlife Service (FWS) to reduce proposed critical habitat designations that would have had adverse regulatory impacts on private landowners, mandated conservation management for privately owned habitat areas, and resulted in habitat areas larger than necessary.
- **Leasehold Preemption**  
LURF prevented legislation that would have overridden standard commercial lease terms agreed to by the lessor and lessee for the setting of renegotiated rents, in violation of the Contracts Clause of the Constitution.
- ***Kimball v. Raike***  
LURF submitted an *amicus curiae* brief that persuaded the Hawaii Supreme Court to vacate its previous decision voiding a valid lease, which would have set a bad precedent for future cases.

#### City and County of Honolulu

- **Affordable Housing Market Study**  
LURF has engaged an expert consultant to evaluate the effect of buyer income qualifications and buyback restrictions on the affordability of privately developed housing units, with the goal of preventing reimposition of these conditions when the current moratorium under Ordinance 01-33 expires.

- **Real Property Agricultural Tax Dedication**  
LURF worked with City Council to enact solutions to the problems caused by Ordinance 02-39 (assessment based on “fair market value”), which had removed use value assessment as an incentive for active agricultural use.
- **Ewa Smart Growth Design Code**  
LURF funded a detailed expert review of the permitted and conditional uses in the code as proposed by the Department of Planning and Permitting (DPP), that would significantly restrict many development projects, particularly in commercial and business employment districts.
- **Permit Streamlining**  
LURF assisted DPP staff to clarify provisions regarding liability and the distinction between discretionary and ministerial permits in new administrative rules establishing a Third Party Review process.
- **Development Plan (DP) Revisions**  
LURF recommended, in the revision program for the Primary Urban Center DP, that the City (1) commit to remedy deficiencies in existing infrastructure which is not “concurrent” with proposed development; (2) not require “consistency” of zoning where the plan may be more restrictive; and (3) not require environmental assessments for “significant” zone changes, contrary to State law.
- **Agriculture Protection Areas**  
LURF continues to oppose redundant regulatory measures which would restrict the rezoning, subdivision, and use of agricultural land prematurely declared by the City to be “important,” without State action identifying it as such and without provision of incentives to encourage viable use of the existing surplus of prime farmland on Oahu.
- **Development Permit Fee Increases**  
LURF opposed increases in the City’s wastewater system facility charge and in fees for processing and administering land use and zoning actions and building permits. The increases are higher than necessary and constitute an unauthorized tax against developers.
- **Ewa Impact Fee Ordinance**  
LURF was instrumental in the enactment of Ordinance 02-52, Relating to Impact Fees for Traffic and Roadway Improvements in Ewa, and its accompanying needs assessment study, which legitimize and cap developers’ “fair share” payments for highway infrastructure in Ewa.

## County of Hawaii

- **General Plan Revision Program**  
LURF recommended that the revised County General Plan be a meaningful conceptual guide to public-private investment for growth and development, rather than a regulatory document requiring individual project consistency and concurrency of infrastructure with development approvals.
- **Affordable Housing Policy**  
LURF recommended that the County consider developing less costly design standards and ways to shorten the entitlement process for affordable housing, rather than focusing on linkage fee and inclusionary zoning exactions.
- **Real Property Agricultural Tax Dedication**  
LURF recommended that the property tax ordinance for agriculture be amended to (1) set a special rate for unusable and vacant agricultural lands; (2) allow for agricultural improvement exemptions; (3) set the agricultural tax rate equal to or less than the improved residential rate; and (4) allow for multiple uses on a single parcel.
- ***Kelly v. 1250 Oceanside Partners (Hokuli`a)***  
LURF executed a Declaration in Support of Expedited Appeal, on the grounds that the Circuit Court Order (1) adds vague and unanticipated new requirements to the land use law; (2) infringes on the established authority of the Land Use Commission and the Counties to interpret and execute that law; and (3) abrogates commonly understood vested entitlements upon which developers and others rely when expending funds for a project.

## County of Kauai

- **Shoreline and Gated Access**  
LURF is opposing unconstitutional measures which would require private landowners to dedicate easements for lateral access along the shoreline, and prohibit landowners from providing gated or guarded entry to private subdivisions, where the roadways are not dedicated to the County for maintenance and assumption of liability.

## County of Maui

- **General and Community Plan Amendment Process**  
LURF worked with the County Council to remove the most objectionable provisions of Bill 84, which would have mandated downzoning for conformance with Community Plan urban growth boundaries.