

# LAND USE BULLETIN



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## LEGISLATIVE UPDATE, 2005 SESSION

Here is a summary of the status of the major bills which LURF has been tracking, digesting, and testifying on during the 2005 Legislative Session. Bills which made the First Crossover deadline of March 8 have passed final reading in their originating body (House or Senate) after which they were sent to the other body for further consideration. Bills which did not meet this deadline are dead for this Session. Further details on these and other bills are contained in LURF's "Legtrack" Bill Digest and Status which is distributed weekly to interested members.

**1. Affordable Housing.** HB 931 HD2 would create an exemption and certification process from the provisions of the HRS Chapter 516, the Land Reform Act, to encourage development of sustainable affordable leasehold residential developments, and SB 141 SD1 would have done the same, while HB 1523 HD2 would have repealed the fee title acquisition parts of the Act. HB 1303 HD2 would establish a GET exemption for non-profit organizations developing low-income rental housing, and separate the Housing and Community Development Corporation of Hawaii (HCDCH) into a Housing Finance and Development Administration and a Public Housing Administration. HB 1315 would have removed impediments in the Rental Housing Trust Fund and increased conveyance tax revenues into it, and provided a \$4,000 per unit GET exemption for affordable housing; HB 689 and SB 798 SD1 would have done the same while also streamlining land use approvals.

**LURF Position:** Support an exemption and certification process for leasehold housing development, as well as a GET exemption for affordable housing.

**Status:** HB 931 HD2 and HB 1303 HD2 have crossed over; the other bills are dead.

**2. Automatic Permit Approvals.** HB 852 HD2 would provide that lack of a quorum by a permit issuing agency shall not initially trigger an automatic approval under HRS § 91-13.5. SB 1595 SD1 would have repealed HRS § 91-13.5 relating to automatic permit approvals.

**LURF Position:** Support retention of automatic approvals, with amendment regarding quorum; oppose repeal.

**Status:** HB 852 HD2 has crossed over; SB 1595 SD1 is dead.

**3. Education.** SB 972 SD1 would have directed the Legislative Reference Bureau (LRB) to study the transfer of all public school lands and facilities to the Department of Education (DOE) [original bill authorized the transfer and ownership of such property to the DOE]. SB 1671 SD1 and SB 1739 would have created an income tax credit for contributions of money and in-kind services for new school construction.

**LURF Position:** Support transfer of land assets and tax credit for contributions to DOE.

**Status:** All three bills are dead.

**4. Energy.** HB 1017 HD3 would require homeowners in townhouse projects to obtain permission and register any solar devices installed [original bill required solar hot water systems in all new dwellings]. HB 1647 would have adopted a policy favoring underground utilities.

**LURF Position:** Oppose mandatory solar hot water systems.

**Status:** HB 1017 HD3 has crossed over; HB 1647 is dead.

**5. Environmental.** HB 895 HD2 would prohibit artificial light positioned toward or that directly illuminates the ocean, with exceptions for hotels, hotel/condominiums, decorative and aesthetic purposes, and government agencies and their authorized users. SB 1534 would have prohibited the same lighting, except for public safety and ocean navigation. HB 408 HD2 would require Office of Environmental Quality Control (OEQC) to review an agency's significance determination whether an environmental impact statement is required, if the agency is also proposing the action. SB 1894 SD1 would have incorporated the concepts of sustainable development and sustainability into the Hawaii State Plan.

**LURF Position:** Oppose light prohibitions, OEQC significance determinations, and "self-sustainability" concept.

**Status:** HB 895 HD2 and HB 408 HD2 have crossed over; SB 1534 and SB 1894 SD1 are dead.

**6. Impact Fees.** SB 1814 SD2 would authorize the DOE to assess and collect impact fees for construction of public schools, pursuant to needs assessment studies and intergovernmental agreements with the Counties, without provision of a transitional fee. HB 831 and SB 973 would have authorized the same, but with provision for a transitional fee. HB 1140 and SB 1252 would have authorized the DOE to request imposition of conditions on developers for contributions of land or fees for school construction, without a needs assessment study.

**LURF Position:** Support rational impact fees; oppose imposition of entitlement conditions without authority or needs assessment.

**Status:** SB 1814 SD2 has crossed over; the other bills are dead.

**7. Important Agricultural Lands.** HB 1640 HD3 would establish a process for identifying important agricultural lands (IAL), including County mapping, voluntary designation, and adoption by the Land Use Commission (LUC) contingent on provision of agricultural incentives. HB 1553 was essentially the same as HB 1640 HD3. HB 1499 and HB 1501 would have provided for permitted uses of IAL, dedication of IAL for transferable development rights, income tax credit for property taxes and infrastructure investment, restructuring of land use districts into only three, and protection of irrigation water in the Water Code.

**LURF Position:** Support a comprehensive approach to identification of IAL with incentives and County and landowner input.

**Status:** HB 1640 HD3 has crossed over; the other bills are dead.

**8. Invasive Species.** HB 1243 HD1 and SB 1893 would expedite the procedure for allowing landowners to remove "noxious trees" (alien plant species) within a conservation district. HB 407 and SB 1087 SD1 would have authorized user fees for invasive species prevention services.

**LURF Position:** Support expedited procedure for removal of alien species.

**Status:** HB 1243 HD1 and SB 1893 have crossed over; the other two bills are dead.

**9. Land Use.** HB 109 HD1 would establish the rebuttable presumption of no farm dwelling if certain nonagricultural features are present in a subdivision, and prohibit golf courses and other non-accessory uses in the agricultural district. HB 123 would also have established the rebuttable presumption. SB 1593 SD2 would provide for one-time reclassification of agricultural lands to rural district, if subdivided before June 4, 1976, and enable the Counties to convene advisory groups to study and make recommendations for reclassification. HB 124, HB 1367, and SB 1881 would also have provided for the one-time reclassification. HB 1368 and SB 1152 would have

provided for review and study of policies and standards for reclassifying lands into the rural district.

HB 547, HB 1572, SB 656, SB 1219, and SB 1735 would have focused the LUC on land use policy and five-year boundary reviews (with quasi-legislative hearings) and empower the Counties to act on all district boundary amendments in quasi-judicial contested case proceedings, with the LUC as an appellate body. Additionally, HB 1572, SB 1219, and SB 1735 would have broadened rural district uses, with agricultural districts intended for IAL, administered by the Department of Agriculture (DOA). HB 1069 HD1 would have provided that separate applications for reclassification by the same owner be deemed and reviewed as one application [to prevent "parceling"]. HB 1321 would have authorized the Counties to petition for boundary review or conformance of multi-parcel areas to County plans.

**LURF Position:** Support reform of the LUC process, including County contested-case proceedings with LUC appellate review, one-time reclassification of lands to rural, and streamlined boundary reviews. Oppose further restrictions on agricultural subdivisions and on separate reclassification actions by the same owner.

**Status:** HB 109 HD1 and SB 1593 SD2 have crossed over; all the other bills are dead.

**10. Military.** HB 759 HD1 would require notification to the military base commander of any proposed land use district or zoning amendments within a specified distance of the installation.

**LURF Position:** Oppose specific impositions on landowners adjacent to military installations.

**Status:** HB 759 HD1 has crossed over.

**11. Property Rights.** HB 1442 HD2 and SB 1884 SD1 would require a shoreline subdivider or developer to connect existing or proposed beach access points laterally to each other; HB 1442 HD2 further provides that the connection be reasonable and not precluded by topography. HB 798 would have required dedication

of land for parking for access areas, and prohibit gated communities greater than five acres that deny access. HB 1391 and SB 1484 would have required owners of private roads to maintain them pursuant to agreement, or absent agreement, in equal shares. HB 1527 would have provided factors for the Counties to consider in determining the value of property to be condemned.

**LURF Position:** Oppose all impositions which result in an unconstitutional taking of private property for public use without just compensation, or that would require private landowners to assume the duties of public agencies.

**Status:** HB 1442 HD2 and SB 1884 SD1 have crossed over; all the other bills are dead.

**12. Rockfall Liability.** HB 881 would have required each County to identify hazardous areas, adopt standards for the development of such areas, and enact ordinances to implement the standards. HB 882 would have required each County to prohibit the use of potential landslide and rockslide areas for residential or other purposes, with a sufficient buffer zone to protect residents from danger.

**LURF Position:** Provide training in assessment of rockfall hazards before enacting restrictive regulatory measures.

**Status:** Both measures are dead.

**13. Shoreline.** HB 1020 HD3 would define the shoreline by the uppermost reach of the waves, evidenced by the debris line or edge of vegetation not modified by human intervention; would prohibit induced vegetation; and would require public notice of shoreline certification application. SB 1154 would have provided that the edge of vegetation growth not be considered in determining the shoreline, when created or extended by plantings. HB 795 HD1 would have required that shoreline setbacks be established at a distance inland 50 times the annual erosion rate for the area. HB 442 would have created a "State shoreline locator" position to determine and certify shorelines. SB 443 would have established notice requirements for certification applications, and authorize the State surveyor to

rescind certifications.

**LURF Position:** Oppose methods of shoreline definition which depart from established practice and would be unworkable or even harmful.

**Status:** HB 1020 HD3 has crossed over; the other measures are all dead.

**14. Taxes.** HB 483 HD1 would establish an income tax credit for improvements to former plantation systems, capped at \$2 million annually. HB 1033 HD1 would establish an income tax credit for farmers who pay for water at County rates which are higher than State irrigation system rates. HB 1500 would have provided an income tax credit for property taxes paid for, or improvements made to, agricultural lands. HB 1698 would have provided an income tax credit for property taxes paid by taxpayers with land in commercial agricultural use. HB 1757 would have established an income tax credit for landowners who donate conservation land to the State or reclassify residential land to conservation. SB 1671 SD1 and SB 1739 would have created an income tax credit for contributions of money and services for new school construction over a five-year period.

HB 1308 HD1 and SB 1897 SD2 would require 25 percent [HB 1308] or 10 percent [SB 1897], respectively, of conveyance tax revenues to be deposited into the Land Conservation Fund. SB 1181 would have imposed a luxury tax on residential property without a homeowner exemption and not occupied on a permanent basis. SB 1858 would have imposed a short-term capital gains tax on real property sales, based on a graduated scale of length of time the seller held the property. HB 1225 would have used the conveyance tax to provide a stable funding mechanism for the Natural Area Reserves System. HB 1243 and SB 919 SD1 would have increased the conveyance tax rate and funded the Natural Area Reserves System. HB 1256 would have increased the conveyance tax rate up to 50 cents per \$100 valuation on property conveyances over \$1 million, for a five-year period. HB 952 would have dictated how the Counties should assess and tax agricultural lands, contrary to existing constitutional and statutory provisions. SB 1844 SD1 would have required that 25

percent of the general excise tax collected from housing rentals and 50 percent of the conveyance tax be deposited into the Rental Housing Trust Fund.

**LURF Position:** Support the tax credits; oppose the tax increases.

**Status:** For tax credits, HB 483 HD1 and HB 1033 HD1 have crossed over; HB 1500, HB 1698, HB 1757, SB 1671 SD1, and SB 1739 are all dead. For other tax bills, HB 1308 HD1 and SB 1897 SD2 have crossed over; all the other tax bills are dead.

**15. Water.** HB 12 HD1 would have increased the fines for water pollution violations, and authorized citizen suits for "muddy water" violations 60 days after written complaint filed with the Department of Health. HB 1411 would have proposed a constitutional amendment authorizing special purpose revenue bonds for wastewater treatment plants and private drinking water systems.

**LURF Position:** Support the revenue bonds for private systems; oppose citizen suits.

**Status:** Both bills are dead.

## CITY AND COUNTY OF HONOLULU

### Agricultural Development Task Force

The City's Agricultural Development Task Force, convened in response to Resolution 04-288 CD1, met on March 7 to receive briefings from staff of the Land Use Commission (LUC), Department of Planning and Permitting (DPP), and Department of Agriculture (DOA) on matters relating to the City's Bill 74 (2004) [relating to "Agriculture Protection Areas"] and the Land Use Ordinance (LUO) (see the *Land Use Bulletin* for November/December 2004).

The LUC attempts to "partner" with the Counties on land use matters without intervening or interceding. The State Rural District is underutilized statewide, and does not exist at all on Oahu. Permissible uses in the City's country zoning district are not entirely consistent with the intent of the State Urban District. Without a

viable Rural District, proposals for “gentleman farmer” subdivisions wind up in the Agricultural District, where they are incompatible. The LUC Executive Officer therefore believes that reform of the Land Use Law is needed, for example, to allow golf courses in the Rural District, while disallowing the many non-farm uses now permitted by exception in the Agricultural District. Designating important agricultural lands (IAL) alone is not enough to “relieve the stress” on the Agricultural District. There should also be a place for small farms and quasi-residential subdivisions, as well as new forms and scales of the agricultural industry.

There is not always a clear concurrence between State Land Use Districts and the City zoning districts under the LUO. The DPP philosophy is therefore to be more restrictive than the State, so that the LUO allows no golf courses in agricultural zones, and all residences in such zones must be farm dwellings. Similarly, the minimum lot size in country zones is one acre (rather than one-half acre, as in the Rural District), and no commercial livestock or poultry operations are allowed. Bill 74 would further “raise the bar” by requiring six votes in the City Council to rezone land designated in an “Agriculture Protection Area.” Agri-tourism is permitted only by conditional use permit. And for “agribusiness” accessory uses in agricultural zones, the LUO requires dedication of 50 percent of the lot to agriculture. The LUO also now provides for leasehold only, ten-year reversible, five-acre minimum “exclusive agricultural sites” where no dwellings are allowed, but only minimal infrastructure is required.

The DOA has no land use regulatory authority, but provides comments on land use applications. The department’s planner sees the permissible uses in the agricultural zones as basically in accord with those in the State Agricultural District, while the country zone is more like a mini Rural District at the City level. Any State criteria for the use of IAL should not be too strict, so as to allow sufficient flexibility for landowners and the Counties. If no dwellings are allowed in agricultural subdivisions, then the infrastructure standards should be lower.

LURF pointed out its extensive efforts, together with the Hawaii Farm Bureau Federation, to develop

workable solutions to the issues of IAL designation and provision of incentives for agriculture. We therefore recommend the balanced approach provided by House Bill No. 1640 rather than the strictly regulatory approach of Bill 74. Chair Kitagawa indicated that the Task Force would take up these points at its next meeting on April 4.

## COUNTY OF HAWAII

### Affordable Housing Policy

On February 2, the Hawaii County Council gave final approval to Bill 25 (Draft 3), adopting revisions to the County’s Affordable Housing Policy. Bill 25 requires residential developers to include affordable housing in their projects or contribute to affordable housing offsite as a condition of rezoning for any residential, timeshare, resort/hotel and/or industrial uses. The bill incorporates both linkage and inclusionary zoning in an attempt require all developers to provide units to households earning 140 percent and below of median income in the County of Hawaii. The bill sets forth formulas for the number of affordable units which are to be assessed against proposed residential, industrial, or resort projects at the time of rezoning. In the alternative, payment of in-lieu fees, provision of units on property other than the rezoned parcel, provision of developable land or infrastructure/services, and other means are also authorized. Affordable housing “credits” can be earned for development and sale or rental of units affordable to specified income groups. Developers who fulfill the affordable housing requirements will be entitled to a density bonus within the urban district. Finally, the bill provides that the County establish resale restrictions by rule to ensure that units created under the affordable housing policy remain affordable. Such rules may include, but not be limited to, buy-back, shared appreciation, and other restrictions.

LURF testified on January 21 that the shortage of affordable housing is a symptom of a larger problem, the lack of housing in general for all segments of the market. One of the major factors contributing to the

affordable housing crisis in Hawaii today is the land use entitlement system. Providing a greater supply of housing in all segments of the housing market is one way to address the affordable housing crisis. As more product (homes) is made available, existing homeowners may move to larger, more expensive homes and free up existing inventories. Without an adequate supply of housing product for all segments of the market, competition and demand for a limited supply will continue to drive up prices. We suggested that rather than focusing on exactions through linkages and inclusionary zoning, the County of Hawaii should consider developing less costly design standards for affordable or worker housing, and ways to shorten the entitlement process to open up more lands for all segments of the housing market.

### **General Plan Revision Program**

On February 2, the Hawaii County Council also gave final approval to Bill 163 (Draft 6), adopting a Revised General Plan and repealing the plan currently in effect (see the *Land Use Bulletin* for November/December 2004 for description of the Plan's contents).

LURF had testified again on January 21 that the Hawaii County General Plan should remain true to the intent of the Hawaii County Charter, section 3-15 of which provides that the General Plan shall set forth policy for the long-range comprehensive physical development of the County, and shall contain a statement of development objectives, standards, and principles for the most desirable use of land within the County. We said we would be watching to see that the revised General Plan becomes a meaningful guide to public-private investment for growth and development in the County, rather than a regulatory document requiring individual project consistency with the Plan and developer responsibility for concurrency of infrastructure as preconditions to future development approvals.

Our specific and continuing concerns regarding the General Plan Revision Program include its need for (1)

greater evidence of a clear commitment to ensure adequate infrastructure to accommodate projected development; (2) greater use of innovative means of public-private financing of infrastructure; (3) reflection of a truly visionary and conceptual planning process; (4) use of the Land Use Pattern Allocation Guide (LUPAG) map as a signal of government's commitment to fund needed infrastructure, rather than as a rationale to deny development projects; (5) avoiding preemption of the Legislature in identifying important agricultural lands (IAL); and (6) real property tax assessments of agricultural lands which implement the Plan's policies in support of agriculture.

### **LOTMA**

#### **Tips to Reduce Your Time Stuck in Traffic**

No one enjoys being stuck in traffic. Unfortunately, traffic congestion is an all too common reality for many people, especially for those living in Leeward Oahu and working in Honolulu. But even if you are one of the thousands of H-1 commuters, you can reduce the time you sit in traffic by shifting your travel time out of the peak commute hours. For example, recent traffic data on H-1 suggests that the morning traffic flow improves after 7:45 a.m. In the evening, traffic flow starts to improve after 6:15 p.m. For a quicker commute to work, you might consider working a 9:00 a.m.-6:00 p.m. schedule. Or if you're an early bird, you should try to time your travel so you are on the highway before 5:30 a.m. in the morning and returning home before 3:00 p.m. The most congested time on the freeway is generally between 6:00 a.m. and 7:15 a.m. in the morning and 3:15 p.m. and 6:00 p.m. in the evening. Even if you are only able to adjust your work schedule out of the peak travel times one day a week, you can still enjoy significant time savings and help with the traffic congestion problem by missing the daily traffic jam.

For more information about LOTMA's programs and services, visit [www.lotma.org](http://www.lotma.org) or call 677-RIDE.

*The Leeward Oahu Transportation Management Association (LOTMA) is a nonprofit association of landowners and developers that promotes alternative transportation opportunities in Leeward, Central and North Shore Oahu.*  
Mindy Norris, LOTMA Manager.

### LURF WEBSITE

Please visit our website at [www.lurf.org](http://www.lurf.org) for back issues of the *Land Use Bulletin*. We update information on the website periodically to bring you current information regarding LURF's activities.

### CALENDAR OF EVENTS

- March 14, 2005 Noon - 1:30 p.m.  
Alexander & Baldwin  
-Executive Committee Meeting
- March 14-18, 2005 8:00 a.m. - 4:00 p.m.  
Kalanimoku Bldg. Room 322A and in the field  
-Rockfall Hazard Training with U.S.G.S.
- March 21, 2005 Noon - 1:30 p.m.  
The Plaza Club  
-Board of Directors Meeting  
Speaker: Bill McGahan,  
REIT Management & Research LLC
- March 21-24, 2005 8:00 a.m. - 4:00 p.m.  
Kalanimoku Bldg. Room 322A and in the field  
-Rockfall Hazard Training with U.S.G.S.
- April 11, 2005 Noon - 1:30 p.m.  
Alexander & Baldwin  
-Executive Committee Meeting with  
Micah Kane, Dept. of Hawaiian Home Lands
- April 18, 2005 Noon - 1:30 p.m.  
The Plaza Club  
-Board of Directors Meeting  
Speaker: *to be announced*

Although every effort has been made to ensure the accuracy of information presented in the *Land Use Bulletin*, the Land Use Research Foundation of Hawaii assumes no responsibility for any erroneous information, stated or implied.

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