

LAND USE BULLETIN



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EXECUTIVE DIRECTOR'S MESSAGE

by Dean Uchida

Due to the legislative session, this issue of the *Land Use Bulletin* will actually contain a summary of the bills from this past session.

We were fortunate to have the Ewa Highway Impact Fee bill passed out of the Legislature this session. This will allow the transportation impact fees currently being collected by the City and County for Ewa regional developments to be transferred to the State Department of Transportation. This should provide the Government agencies some incentive to move forward on some of the much needed highway improvements in Ewa. We are awaiting action from the Governor on this bill.

We did not do so well on two other important measures impacting our members. The first is the DOE Fair Share Contribution and the second is the Important Agricultural Lands legislation. In both cases, the LURF membership invested a large amount of time and effort to move forward on meaningful legislation that would address these two issues. Unfortunately, we were unable to bring all of the parties together on the language of the legislation, and the IAL bill lacked adequate funding to initiate the project. We will be working on both issues during the time between sessions.

While it may seem that the three bills mentioned above are unrelated, they actually are linked. The Administration's position on the Important Agricultural Lands designation was based on a "top-down" approach to land use planning. Government decides where the important agricultural lands are and would designate accordingly. In addition, the Administration proposed that the remaining non-agricultural lands would then be assessed for its appropriate land use classification: Agricultural, Conservation, Rural or Urban. It all sounds neat and orderly; however, the Ewa Highway Impact Fee legislation and the discussion on DOE's Fair Share

Contribution illustrate that while government may be promoting land use planning principles, in reality, the implementation of these plans fall significantly short of their objectives.

Regional transportation infrastructure improvements and new school construction are the only two areas that a developer is not responsible for in a development project. All roads, drainage, sewer, water, electrical, etc., are paid for and developed by the developer. The regional transportation infrastructure and new schools have in the past been the responsibility of government.

We are finding more and more residents and communities speaking out against new development until regional transportation infrastructure and new schools are built to accommodate the new growth.

We will be working to facilitate discussion among the various parties and look to building some type of consensus on what we believe to be the problem: alternatives to funding regional transportation infrastructure and new school construction.

LURF will be co-sponsoring a Panel Discussion of the four County Planning Directors later this summer or early fall. So far, NAIOP, BIA, and HDC have indicated some interest in co-sponsoring the event. It is an opportunity for each of them to share with us their views of what is happening in each of their respective Counties, both opportunities and challenges.

Finally, we are researching the rockfall problems on Oahu and initiating discussions with various agencies on alternatives to consider. There will probably be legislation at the State and County level attempting to address this issue.

As you can see, we have our work cut out for us between now and next session.

LEGISLATIVE UPDATE, 2004 SESSION

Here is a summary of the final status of the major bills which LURF tracked, digested, and testified on during the 2004 Legislative Session, which adjourned *sine die* on May 6. Further details on these and other bills were contained in LURF's "Legtrack" bill digest and status report which was distributed weekly during the Session to interested members. See also the *Land Use Bulletin* for January/March 2004.

1. Agricultural Covenants. SB 2246 SD1 HD1 exempts agricultural land leases, licenses, permits, or other tenancies; utility, drainage, or access easements; or rights of entry from the prohibition against any restriction of private agreements contained in a conveyance of agricultural lands.

LURF Position: Supported.

Status: Passed final reading; transmitted to Governor.

2. Environmental. HB 1294 SD1 CD1 clarifies that the final approving agency for a permit is not required to be the accepting authority for an EIS; also adds additional EIS triggers for certain wastewater and power-generating facilities.

LURF Position: Supported in part.

Status: Enacted as Act 55.

3. Light Pollution. HB 1743 HD2 SD2 prohibits artificial light positioned toward or that directly illuminates the shoreline, with certain exceptions for hotels and hotel/condominiums.

LURF Position: Opposed.

Status: Passed final reading; transmitted to Governor.

4. Impact Fees. HB 2703 HD1 SD2 CD1 clarifies the authority of the City and County of Honolulu to collect, and Department of Transportation authority to receive, impact fees for State highway improvements. SB 2478 SD2 HD1 would have authorized the Department of Education to assess and collect impact fees for construction of public schools, pursuant to needs assessment studies and intergovernmental agreements with the Counties.

LURF Position: Supported (with proposed amendments to SB 2478 SD2 HD1).

Status: HB 2703 HD1 SD2 CD1 passed final reading; transmitted to Governor. SB 2478 SD2 HD1 died in conference committee.

5. Land Use. SB 3051 SD2 HD1 would have established an agricultural land protection program to acquire public easements on important agricultural lands, and appropriate funds for agricultural research and market and product development. SB 3052 SD2 HD2 would have identified important agricultural lands as designated by the Land Use Commission or by voluntary petitions of landowners, contingent upon subsequent enactment of an incentive package for agriculture.

LURF Position: Commented with recommended amendments to both measures.

Status: Both measures died in conference committee.

6. Military. HB 1806 HD2 would have added a requirement of notice and review for adverse effects for all boundary amendment or zoning actions within proximity to a military installation.

LURF Position: Opposed.

Status: Died in final Senate committee.

7. Property Rights. HB 2167 would have required dedication of land for parking for access areas, and prohibited gated communities that deny access. HB 2894 HD1 would have required seller disclosure of any legal or traditional public access across a property.

LURF Position: Opposed.

Status: Both measures died in Senate committee.

8. Rockfall Liability. HB 2529 HD1 would have required each County to identify hazardous areas in the Urban District or in Conservation subject to petition into Urban, and to adopt standards for the development of such areas.

LURF Position: Opposed.

Status: Died in Senate committee.

9. Shoreline. SB 1956 SD2 HD2 would have defined the shoreline by the uppermost seasonal reach of the waves, evidenced by the upper limit of debris or vegetation not influenced by human intervention; and would have required public notice of shoreline certification application.

LURF Position: Opposed.

Status: Died before conference committee.

10. Taxes. HB 2809 HD2 SD1 would have established tax credits for qualified hotel and resort facility projects. SB 2125 SD1 would have raised the conveyance tax.

LURF Position: Supported the tax credits; opposed the conveyance tax increase.

Status: Both measures died after crossover.

11. Transit. HB 2956 HD1 SD2 would have established a mass transit planning account for receipt of fuel tax revenues for initial work on a fixed guideway system.

LURF Position: Commented on need for mass transit.

Status: HB 2956 HD1 SD2 died in conference committee.

STATE OF HAWAII

Commission on Water Resource Management: Pristine Streams

Following consideration of "Pristine Stream Policy Recommendations" at the February 18 meeting of the Commission on Water Resource Management (CWRM) (see the *Land Use Bulletin* for January/February 2004), a working group began quietly meeting on the issue. The CWRM had deferred action on the pristine streams matter for the purpose of "working with the community and other stakeholders by holding public meetings." However, until an April 7 meeting of the working group, the only persons evidently aware of these "public" and "stakeholder" discussions were government staffers and representatives of environmental and native rights organizations.

On April 15, the working group came to a consensus that developing a separate set of policies for a subset of pristine streams to be given "higher scrutiny" was not acceptable. Instead, staff will now recommend a process for developing more comprehensive policies to guide the preparation of stream and area specific instream flow standards (IFS). The IFS are needed as a basis for deciding water use permits for stream diversions and other purposes (starting in East Maui). Staff have been developing data base and information management systems as prerequisites for the IFS, but to date have lacked a clear understanding what policies the IFS should serve. Much of the potential basis for these policies is embedded in the State Water Code and case law such as the *Waiahole* decision, but has not yet been reduced to a format that everyone can follow. As a member of the working group, LURF will now have an opportunity to contribute ideas on policies affecting IFS which will have a scientific rather than anecdotal basis in the best interests of land and water users.

CITY AND COUNTY OF HONOLULU

Bill 35 Relating to Real Property Taxation

The search for solutions to the problems posed for agricultural landowners and lessees by the tax dedication procedures under Ordinance 02-39 (see the *Land Use Bulletin* for January/February 2004) has now shifted to Bill 35 (preceded by Bill 27). Bill 35 would permit owners or lessees of agricultural land to petition for tax adjustment in 2004-2005, such that the resulting liability would equal 10 percent of the unadjusted liability. The taxpayer would be severely penalized for failure to comply with the conditions of approval of such a petition. Bill 27 would provide the same relief only for parcels less than 20 acres in size.

While supporting the intent of these bills to provide a short-term solution, LURF strongly opposes making landowners or farmers undergo scrutiny of a petition and be subject to punitive enforcement to qualify for relief from a problem they did not cause. Accordingly, we have recommended amendments to the bills which would provide that (1) all agricultural and pasture lands not already dedicated for ten years receive a one-time valuation of five or one percent, respectively, for 2004-2005; (2) unusable or waste lands receive a nominal valuation of \$100; and (3) the penalty for misuse or misrepresentation of such lands be limited to the full tax at market value plus a \$5,000 fine.

Bill 74 (2003) CD1 to Adopt the Primary Urban Center Development Plan

LURF testified before the City Council again on April 14 regarding the proposed Primary Urban Center (PUC) Development Plan (DP) (see the *Land Use Bulletin* for January/February 2004). This time, we recommended specific amendments which are minimally necessary for the PUC-DP to be acceptable as a conceptual policy guide rather than a regulatory instrument in land use planning. We again pointed out that under the Plan, (1) its explicit terms and conditions become “*de facto* zoning” when they contain more restrictive provisions than the corresponding zoning ordinance; (2) developers are made to bear the primary burden of providing offsite infrastructure in order to have their projects processed for land use approvals; and (3) the requirement for environmental assessments for certain zone change proposals attempts an unauthorized amendment of State law. Accordingly, we proposed to delete language from the PUC-DP which would require individual project consistency, concurrency of infrastructure, and environmental assessments for zoning; each of these provisions would work against reasonable growth and development in the community. The City Council Planning Committee will take up the PUC-DP [Bill 74 (2003), CD1] next on May 18.

Ewa Development Plan Review

LURF staff met with Department of Planning and Permitting (DPP) staff on April 6 regarding the Ewa Development Plan (DP) five-year review and revision (see the *Land Use Bulletin* for January/February 2004). Following the meeting, we summarized our concerns for DPP as follows. (1) Basic infrastructure is not being developed concurrently with residential development projects, largely because badly needed public funding has lagged conspicuously. (2) The necessary public sector commitment to fund infrastructure should include innovative means of public-private financing, such as impact fees. (3) The Ewa DP should be truly visionary and conceptual, and not include explicit terms and conditions which require zoning changes for consistency. (4) Urban growth boundaries should not be a fixed and arbitrary basis for saying “no” to private development projects. (5) Real property tax policy should reflect the plan and the need to assess agricultural land uses at realistic values and rates that support agricultural production.

COUNTY OF HAWAII

Affordable Housing Policy

Amendments to Hawaii County's “Affordable Housing” ordinance will be the subject of a facilitated workshop discussion on May 18 at the County Council chambers in Hilo. The current adopted affordable housing policy has specific objectives and requirements intended to implement the housing goals and policies of the County General Plan. The housing policy sets forth formulas for the number of affordable units which are to be assessed against proposed residential, resort, or industrial 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, or other means are also authorized.

The proposed amendments to the housing policy restate the current requirements and add some new provisions. The new policy would supersede all previous requirements, and all prior rezoning actions that have unsatisfied conditions would be subject to reassessment under the new requirements. Time share units would now be considered residential units for purposes of imposing an affordable housing requirement. Affordable unit “credits” must be earned for resort, hotel, or industrial jobs created, but this could be satisfied within a 15-mile radius of the development site (25 miles if by payment of an in-lieu fee). Affordable sale prices for completed units and finished lots would be specified in the ordinance, at least for 2004. Developers who fulfill the housing requirements would be entitled to a density bonus. By recorded agreement, the requirements would have to be met before a certificate of occupancy could be issued.

The Hawaii County approach is not framed in terms of impact fee “essential nexus” principles, but neither does it rely on unilateral agreements which are arguably illegal. While the affordable housing requirements implement a legitimate governmental purpose and no *ad hoc* land use bargain is at issue, the housing policy is nevertheless legally vulnerable in that it provides no significant benefits to offset the burden of the assessments on developers, nor a process for reduction, adjustment, or waiver of the exactions upon appeal.

LOTMA

A Summary of LOTMA Programs and Services

LOTMA has been providing programs and services to the Leeward, Central, and North Shore Oahu communities for approximately fourteen years. Our menu of transportation services currently includes the following:

- *Free Carpool Matching*: This program helps commuters find a carpool partner. Commuters simply register their commute information (online, via the phone, or via a postage paid postcard) and are sent contact information on others who are interested in carpooling and have a similar commute. To encourage participation, a prize drawing is held each month for new carpool matchlist applicants.
- *Carpool and Win Program*: This program encourages the formation of new carpools by offering a free trip to the movies (complete with two tickets, popcorn and soda) to commuters who form a new carpool.
- *LOTMA Commuter Express*: This successful "first-class" commuter coach service provides convenient express transportation between Waipio Gentry and Mililani to downtown Honolulu and Waikiki.
- *Emergency Ride Home Program*: This service supports commuters who carpool, vanpool, or ride the LOTMA Commuter Express. The program is like a transportation insurance policy and provides a free taxi or car rental ride home in the event of an unplanned personal emergency.
- *Transportation Resource*: LOTMA provides high quality general and individualized transportation information to help commuters find the best solution for their specific situation and needs. LOTMA also maintains a regularly updated website (www.lotma.org) that includes current transportation information, commuter tips, incentive information, and program enrollment forms. The site is visited by thousands of people a year.
- *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.

CALENDAR OF EVENTS

May 17, 2004 Noon - 1:30 p.m.
Alexander & Baldwin
-Executive Committee Meeting

May 31, 2004 Holiday
Memorial Day

June 11, 2004 Holiday
Kamehameha Day

June 14, 2004 Noon - 1:30 p.m.
Alexander & Baldwin
-Executive Committee Meeting

June 28, 2004 Noon - 1:30 p.m.
The Plaza Club
-Board of Directors Annual Meeting
Speaker: Congressman Ed Case

***Late Summer/Early Fall
Panel Discussion of the County Planning Directors
Location: TBD

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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