

# LAND USE BULLETIN



Vol. 17, No. 06

A publication of the Land Use Research Foundation of Hawaii November/December 2003

## EXECUTIVE DIRECTOR'S MESSAGE

by Dean Uchida  
"Bits and Pieces"

LURF has been busy in the months leading up to the next legislative session. We are actively reaching out to partner with other groups and organizations who are supporters of economic development and development in Hawaii. We are already working with the Building Industry Association of Hawaii, Hawaii Developers' Council, Hawaii Association of Realtors, Hawaii Farm Bureau Federation, Construction Industry Council of Hawaii, Hawaii Building and Construction Trades Council, and Hawaii Resort Development Conference. We are looking for other groups and organizations to expand our networking and coordinate our efforts.

There is a recurring theme throughout the State to institute more land use regulations to prevent sprawl, increase density in existing urban areas, and protect agricultural lands. While on the surface these all appear to be very noble and worthwhile goals, one needs to examine how these goals are implemented through regulations and what some of the "unintended costs" are from these regulations. Preventing sprawl and increasing density work in cities where people live close to where they work and/or have extensive rapid transit. Increasing density without transit is New York City without subways. Protection of agricultural lands by "mapping" does not provide for a healthy agricultural industry. Assisting agribusiness transition from plantation to other forms of agriculture will take more than the "Field of Dreams" approach—{if we save the land, the businesses will come}.

We would not raise this concern if the new land use regulations added value or provided some improvement to the government land use entitlement process. The question we consistently pose to policy

makers in our testimony is how is this new law or regulation going to improve the decision-making process? With the overlapping jurisdictions and redundancy in the entitlement process today, it does not appear, from the legislation we have seen to date, that the decision-making process is being improved. More importantly, how do these new regulations impact the opportunities for future home buyers or future businesses to locate in Hawaii?

In this issue of the *Bulletin*, we present some new "concepts" that we have been considering based on our involvement and discussions on land use issues in Hawaii today. We are hopeful that some of the concepts being developed will stimulate discussion and open communications among the various interest groups and policy makers at both the State and County levels.

**This will be our last *Land Use Bulletin* in its print edition format.** Henceforth, we will be distributing the *Bulletin* by e-mail attachment and by posting on our new LURF website, which is expected to be operational later in January 2004. These changes are anticipated to save over \$1,000 annually in printing and postage costs, and will free up much-needed operating funds for other purposes. If you are not already receiving e-mails from LURF, **please contact our office at [duchida@lurf.org](mailto:duchida@lurf.org) to make sure that we add you to the *Bulletin* distribution list.**

## 2004 LEGISLATIVE SESSION

As reported in the *Land Use Bulletin* for September/October 2003, staff have been working on several legislative areas which may require LURF involvement and testimony. In addition, in keeping with LURF's mission to educate and inform interested parties on land use and development issues, LURF staff are working on the following concepts for the purpose of discussion. While we are

not yet prepared to advocate these proposals, we do offer their concepts for further consideration.

**Relating to Land Use.** We are suggesting that a new chapter be added to the Hawaii Revised Statutes requiring the Department of Agriculture (DOA) to ensure appropriate use of important agricultural lands (IAL) by management and regulation of zoning, lot sizes, and permissible uses within the Agricultural District. This would be similar to how DLNR manages all of the uses in the Conservation District. The DOA would also establish a uniform appraisal method for real property in agricultural use, which the Counties would be authorized to use in assessing property taxes on agricultural lands. A special fund would be established in DOA to receive rents from State "non-agricultural park" leases for expenditure on infrastructure, incentives, appraisal fees, and other purposes deemed necessary in the Agricultural District. The DOA would convene a task force to further determine what these incentives will be.

A new part would be added to HRS Chapter 205 to provide standards and criteria for the identification, periodic review, and reclassification or rezoning of important agricultural lands (IAL). Eligible lands would be designated by the Counties within one year of the effective date of this Act, and identified as IAL by the Land Use Commission (LUC) within one year of County designation, but *only* upon the voluntary petition of the affected landowners.

The concept would enlarge the permissible uses in the Rural District, *e.g.* to allow open area recreation (including golf courses). The Counties would have full zoning power over the Rural District, offsetting the transfer to the DOA of their power over the Agricultural District. A one-time reclassification of lands from the Agricultural to the Rural District would be required in accordance with the bill. All zoning powers would be subject at the time of subdivision to enforcement of a right-to-farm notice on lands adjacent to IAL.

The concept would also provide incentives in the form of a 100 percent income tax credit for renovation of agricultural infrastructure necessary for the viability of an agricultural enterprise located on important agricultural land; and an excise tax

exemption for renovated agricultural infrastructure placed in service.

**Relating to Impact Fees.** This bill would authorize the Department of Education (DOE) to assess and collect impact fees by agreement with a County, and to deposit those fees in the state educational facilities improvement special fund and expend them for school planning, design, and construction. The bill would establish a new part in HRS Chapter 302A entitled "Fair Share Contributions," authorizing the DOE to impose impact fees based on a needs assessment study and proportionate share cost factors. Reference to the assessment, collection, transfer, expenditure, and refund of DOE impact fees would be incorporated into the regulatory system under which the LUC imposes conditions on district boundary amendments and the Counties assess and collect impact fees at the time of building permit applications. Expenditure of impact fees collected by a County would be specifically authorized for costs incurred by a State agency.

In conjunction with impact fees, another concept we are exploring is to allow the DOE to secure a dedicated source of funding for their capital improvement program by allowing them to lease out former school sites. Appropriate sites could be redeveloped into income property. The ground leases generated from these sites could then be used to pay off the debt service on a bond used to pay for the construction of new facilities for the DOE.

### AGRICULTURE WORKING GROUP

The Agriculture Working Group (AWG) (see the *Land Use Bulletin* for September/October 2003) met again on November 24 and December 9 to continue to seek some consensus on the content of a legislative package relating to important agricultural lands. The broad outline generally agreed to is that (1) the Legislature will establish standards and criteria to identify important agricultural lands (IAL); (2) the Counties will establish a process to designate and map the IAL; (3) the Land Use Commission will review and approve or disapprove the identification of IAL; (4) the IAL maps will be overlays rather than a new land use district or merely policy guidance; and (5) there needs to be further discussion at a later

date to address how the land use regulatory system will administer non-IAL lands in the Agricultural and Rural Districts.

The criteria for designating IAL will include land: (1) currently in agricultural production; (2) with soil qualities and growing conditions that support agricultural production; (3) identified under previous productivity rating systems; (4) associated with unique, traditional, and non-traditional agricultural uses; (5) with sufficient quantities of water to support viable agricultural production; (6) whose designation as IAL is consistent with County plans; (7) which contributes to maintaining a critical land mass important to agricultural operating productivity; (8) with, or close to, support infrastructure conducive to agricultural productivity; and (9) that will provide a margin for future agricultural needs and opportunities.

On January 6, the AWG debated whether the process for designating and mapping IAL at the County level [for ratification by the LUC] should consist of informal task forces, voluntary petitions by landowners [the LURF proposal], formal IAL commissions with specific membership requirements, or planning department recommendations adopted by council resolution after an "inclusive public process." The group accepted the last option with the understanding that it be further refined.

Despite the existence of numerous fragments of a legislative package, the group still has not discussed, let alone agreed to, standards and criteria for the reclassification and rezoning of IAL. One option for these standards and criteria is that proposed by LURF: lands may be taken out of IAL when (1) they are no longer in agriculture; or there is (2) no decrease in the supply of agricultural land below the acreage needed for agriculture, (3) no harm to agricultural viability, or (4) no fragmentation of agricultural parcel sizes below a viable scale; or (5) the need for reclassification or rezoning cannot be met by the available capacity of other lands. The group has also not addressed how specific incentive concepts may be translated into statutory language and linked to the regulatory measures already agreed to. Proposals have been circulated but not discussed regarding a right-to-farm notice requirement, an

agricultural investment tax credit, agricultural enterprise zones, agricultural easements, and an "agricultural investment and land protection fund" in support of an agricultural viability and investment grant program. A final AWG meeting is scheduled for January 14.

## STATE OF HAWAII

### Department of Education: School Fair Share Contributions

LURF continues to work with the Department of Education (DOE) to find a solution to the "fair share contribution" issue (see the *Land Use Bulletin* for September/October 2003). On December 4, LURF participated in a panel discussion before the Land Use Commission at a workshop on the DOE's Educational Contribution Agreements.

At the LUC workshop, Superintendent Patricia Hamamoto provided some background on the DOE's need for additional funds, in particular for school construction. The DOE should receive \$90 million each year for existing and new schools in Hawaii. The Legislature has cut that to \$45 million each year. As a result, the DOE has amended its fair share contribution requirement to include a portion of the construction cost of new schools. In the past, the fair share contribution was limited to dedication of land or cash in lieu. The most significant statement made by DOE at the workshop was that the department plans to seek legislation to allow the State to assess and collect impact fees. They will be asking for support from LURF and its members on this matter.

In response to prepared questions submitted by LURF in advance, DOE staff explained the following. The formula used by the department provides that the general taxpayers contribute half of the cost of new schools, with the balance divided between developer contributions and legislative appropriations. The DOE seeks a "fair share" contribution only for 50 or more new residential units because 50 units generate approximately 20 students, or one classroom. Given the nature of the legislative appropriations process, the department is not able to assure that needed new schools can be built concurrently with the completion of new development

projects, or that funds collected from a particular project will benefit the school(s) servicing that project. The DOE would be very supportive of a developer design/build approach with subsequent reimbursement by the State, in order to get the needed schools built in a more timely manner.

LURF staff have had follow-up meetings with the DOE in which we have agreed to assist with three areas of legislation: (1) authorization of impact fees for school construction; (2) legislative commitment to State reimbursement of developers' expenses to design and build schools; and (3) development of alternative means of financing such as issuance of Mello-Roos bonds for school complex districts. We have consistently made the point that developers accept the necessity for impact fees, but want to make sure that the fees are fairly applied. For its part, the DOE is willing to consider smaller elementary schools and modified design requirements to reduce to costs of construction. We have shared draft legislative proposals with DOE staff and, at press time, we are awaiting a response.

## CITY AND COUNTY OF HONOLULU

### **Resolution 03-319 CD1 Urging Compromises on Agricultural Tax Dedication**

LURF is continuing to look for solutions to the problems posed for landowners and agricultural lessees by the new agricultural tax dedication procedures under Ordinance 02-39 (assessment based on "fair market value" rather than agricultural use, and requests for confidential financial information and other documentation) (see the *Land Use Bulletin* for September/October 2003). On December 3, LURF testified before the City Council regarding Resolution 03-319 CD1, which would urge the City Administration to negotiate compromises with farmers who did not timely file a petition for dedication for the 2004-2005 tax year. We testified that rather than fixing the problems caused by Ordinance 02-39, the Resolution would further confuse and exacerbate those problems. We recommended instead that the Council consider a four-step process to: (1) delay implementation of and eventually repeal or revise Ordinance 02-39; (2) use last year's assessment values for agricultural

taxpayers; (3) develop a new ordinance providing for an agricultural flat rate assessment; and (4) develop a separate ordinance with a higher rate for non-agricultural taxpayers in agricultural districts. Nevertheless, Council adopted the Resolution and has taken no further action to address the problems posed by the Ordinance.

LURF has also contacted the City's Real Property Tax Administrator in this matter. We cited a "real world" example in which the tax for 800 acres of pasture and agricultural land would jump from \$1,200-1,400 under the old system to \$3,826 with a ten-year dedication at one percent of market value, or \$382,680 with no dedication. We pointed out that the onerous new system results in less than one percent of the City's total real property tax revenues; is punitive to legitimate agribusinesses rather than "gentlemen estates"; and creates a disincentive for landowners to agree to dedication, in that they become liable for the rollback tax in case their lessees default. At press time, we are awaiting a response from the City.

## **Permit Streamlining Task Force**

As reported in the *Land Use Bulletin* for September/October 2003, the Department of Planning and Permitting (DPP) updated its permit streamlining task force on November 5 regarding its proposed Third Party Review process for ministerial building permits. On December 12, the Department held a public hearing on draft administrative rule amendments to authorize the third party review process. LURF testified that we have no objections to the proposed rule amendments, which may offer an optional process to expedite permit processing. We did, however, raise several questions, primarily regarding the liability for accuracy of plans which the third party reviewer would be expected to assume, and whether the process would result in a meaningful saving of time and cost to applicants. Under the proposed rules, third party review could not be used for building permit review in areas where the City's infrastructure capacity is inadequate. Also, we questioned how the DPP plans to distinguish between "discretionary" and "non-discretionary" building permits, since court rulings have held that building permit approvals are ministerial actions.

### **Resolution 03-242 Relating to Parking**

Resolution 03-242 would direct the Department of Planning and Permitting (DPP) to process an amendment to the Land Use Ordinance (LUO) increasing the minimum size of standard parking spaces. The amended provision would apparently apply to all properties with more than four off-street parking spaces, without "grandfathering" existing facilities which conform to current requirements. LURF testified in opposition to this Resolution that the proposed LUO amendment would cause property owners and managers to incur substantial expense and inconvenience to reconfigure parking stalls, causing a loss of valuable spaces or even a requirement for additional land to maintain the minimum number of spaces. Faced with overwhelming negative testimony, the Zoning Committee deferred this Resolution on November 18.

### **Resolution 03-289 Supporting Fixed-Rail Transit System**

Resolution 03-289 supports the development of a work plan, including an economic and financial analysis, to define a grade-separated fixed-rail transit system, integrated with complementary feeder buses and other modes, for urban Honolulu and the future growth areas of Oahu. In support of this resolution, LURF testified that its members support needed improvements to Oahu's mass transit system as part of the State's transportation infrastructure. Accordingly, the City's Bus Rapid Transit (BRT) project has a high priority for our members in Ewa and Central Oahu as an alternative for improving mobility. However, it is also desirable and important for the City to join with the Governor's City/State Transportation Task Force in examining the feasibility and impacts of a grade-separated system as one of the long-term solutions to Oahu's traffic problems, in addition to a BRT system. The City Council adopted Resolution 03-289 on November 5.

### **Bill 65 Relating to Permits (Engineering Geology Report)**

Bill 65 was introduced to require an "engineering geology report" in part to address "geologic hazard to downslope properties," at the time of a grading or

building permit application. However, the DPP already requires a geotechnical engineering report for grading plans, as well as a "boulder study" on a case-by-case basis. It is unclear what additional information would be supplied pursuant to this bill, or what licensed professional would be qualified to assume the liability of preparing the required report. What is clear is that Bill 65, if applied to all projects, would further increase developers' front-end costs for planning and engineering fees. LURF testified in opposition to Bill 65 at a City Council hearing on October 15, at which time the measure was referred back to the Public Works Committee.

## **COUNTY OF MAUI**

### **Proposed Bill Transfer of Development Rights**

On November 7, a proposed bill was introduced at the Maui County Council, for referral to the Planning Commissions, to establish a transfer of development rights program for Maui County. The proposed program, authorized pursuant to enabling legislation in HRS Chapter 46, Part IX, would have among its purposes the conservation of prime and important agricultural lands, and the promotion of higher-density cluster development. Development rights of a property in a sending district could be sold, donated, or otherwise transferred to a property in a receiving district. Development potential would be reduced accordingly in the sending district, and increased in the receiving district beyond otherwise permissible limits. Transferable development rights have received much discussion in the deliberations of the Agriculture Working Group. The proposed bill was reported out by the Parks and Agriculture Committee on November 20, and was on the Council's December 15 agenda for approval of a resolution to refer the measure to the County Planning Commissions.

## **LOTMA**

As we reflect back on the past year, there is no doubt that 2003 was a busy and successful year for LOTMA! Primarily as a result of TheBus strike, the LOTMA program experienced some impressive increases during the past twelve months. For

example, 258 people requested carpool matching assistance. That's more than the total requests received in the last three years combined. More than 8,200 people visited the LOTMA website, a 95 percent increase over 2002 figures. The LOTMA Commuter Express provided more than 25,000 individual rides, a 65 percent increase from last year and, in vehicle miles eliminated, is nearly equal to a trip to the moon and back!

2004 promises to bring more exciting opportunities to LOTMA. The "Carpool & Win!" promotion, which was started last year, will continue. Additionally, two new programs will be launched in the next few months. The Emergency Ride Home (ERH) program will provide a free ride home to eligible commuters in the event of a personal emergency. The ERH program is designed to address the concerns some commuters have about being stranded at work in an emergency if they use alternative transportation. We will also be partnering with Vanpool Hawaii to provide a start-up subsidy to encourage drive alone commuters to try vanpooling. We expect that once people try vanpooling and experience all of the benefits, they'll be hooked and continue with the program even after the LOTMA subsidy expires.

We look forward to the next twelve months as we continue to develop and implement programs that support and encourage alternative transportation use in the Leeward, Central, and North Shore areas of Oahu.

### CALENDAR OF EVENTS

- December 8, 2003 Noon - 1:30 p.m.  
The Plaza Club  
-Board of Directors Meeting  
Speaker: John DeFries, 1250 Oceanside Partners
- December 25, 2003 - Christmas Day
- January 1, 2004 - New Year's Day
- January 12, 2004 Noon - 1:30 p.m.  
Alexander & Baldwin  
-Executive Committee Meeting
- January 19, 2004 - Martin Luther King Day

January 21, 2004

-Start of the 2004 Legislative Session

January 26, 2004 Noon - 1:30 p.m.

The Plaza Club

-Board of Directors Meeting

Speaker: Jeff Mikulina, Sierra Club Hawaii Chapter

January 29, 2004 7:30 to 9:30 a.m.

The Pacific Club-Breakfast

-NAIOP Panel Discussion:

*Land Use Planning in Hawaii-Is it Working?*

January 29, 2004 9:00 a.m. - 4:30 p.m.

Lorman® Seminar:

*Advanced Zoning and Land Use in Hawaii*

February 9, 2004 Noon - 1:30 p.m.

Alexander & Baldwin

-Executive Committee Meeting

February 16, 2004 - Presidents' Day

February 23, 2004 Noon - 1:30 p.m.

The Plaza Club

-Board of Directors Meeting

Speaker: tba

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.

The *Land Use Bulletin* is a membership newsletter produced by the Land Use Research Foundation of Hawaii. All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system without written permission of the Land Use Research Foundation of Hawaii.

The offices of the Land Use Research Foundation are located in the Topa Financial Center, Bishop Street Tower, 700 Bishop Street, Suite 1928, Honolulu, Hawaii 96813. Telephone: (808) 521-4717. FAX (808) 536-0132.

Editorial Staff:

Dean Uchida, Paul Schwind, and Mindy Norris.