Comparison of Planning Director Remarks by County
Second Annual Panel Discussion, September 15, 2005

	Honolulu Henry Eng	**Hawaii** Christopher Yuen	**Maui** Michael Foley	**Kauai**
Hokuli`a	Agricultural subdivisions are not a major problem on Oahu. Refinements have been made over the years to requirements [in the City's Land Use Ordinance (LUO)] to ensure that farming will occur. For example, the City asks for Department of Agriculture (DOA) review of proposed subdivisions, and sometimes asks for more information regarding what constitutes farming (the *owner* must do it). The delay in getting the *Hokuli`a* case resolved in the Hawaii Supreme Court extends the limbo. It is difficult to administer land use laws under uncertainty – the consequences could bankrupt the County. Land use policies should not be decided by the courts – in particular, the courts cannot legislate "viability". Mr. Eng is disinclined to review past decisions [of his Department]; he presumes that the rules followed were valid.	Mr. Yuen would really rather not talk about this issue – he and Mayor Harry Kim came into office after the lawsuit had been filed in 2000 – "the bed was already on fire when he lay down in it." However, the court decision by Judge Ibarra is fundamentally unfair. Hawaii County follows minimum lot size zoning to guide the subdivision process. The Hokuli`a project sought a change from Ag-5 (five acre minimum) to Ag-1 (one acre minimum), after the developer had reduced the original scale of the project. The zoning change was complete in 1997, allowing one-acre lots around a golf course. The subdivision applications were approved in 1999 and 2000, at which point the developer began construction of infrastructure. The litigation began in 2000 on other issues, and was later amended to include the alleged violations of the Land Use Law [HRS Chapter 205]. The judge enjoined the defendant parties in 2003. The unfairness arises in that the suit could have been filed anytime from 1997 on, but instead the plaintiffs waited until 190 employees were working, $40 million had been spent, and over 100 lots were sold. Is the Hokuli`a project a legal land use? The Land Use Law says that the Counties set agricultural lot size, with a one-acre minimum. Golf courses are a permitted use of marginal lands [class C, D and E soils]. So	Maui County hasn't changed its procedure for agricultural subdivisions. With 1,500 agricultural lots, this is a very popular land use. Maui has had a "sliding scale" ordinance since 1998: for a 500-acre original parcel, the number of lots allowed is reduced from 250 to 14, severely controlling the *number* of lots while maintaining the two-acre minimum lot size. A subdivision agreement is required with a written guarantee of farming activity. The County checks CC&R's so that they don't prohibit farming. A farm plan is required with 51 percent of the area dedicated to farming or conservation, which has to be implemented *before* a building permit is issued for a second dwelling. This has generated a new business opportunity for farmers who take care of five to ten different properties. Identification of important agricultural lands (IAL) will now be required under House Bill No. 1640 from the 2005 Session, as well as under the pending General Plan revision. Of Maui's total land mass, 52 percent is in the Agricultural District, but much of that is unsuitable for agriculture.	**No show.**

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		why not one-acre lots along a golf course? The bulk of Judge Ibarra's decision rests on his interpretation of "farm dwelling." Act 199 in 1976 – the last major revision of Chapter 205 – set land use restrictions on class A and B lands, and required farm dwellings henceforth on such lands (previous residential lots were grandfathered). Farm dwellings are defined as located on and used in connection with a farm, *or* where agricultural activity provides income to the family [there is no requirement of how *much* income]. By rule of the Land Use Commission (LUC), farm dwellings are also a permitted use on class C, D and E lands. In Hawaii County, there are some 80,000 pre-1976 residential lots grandfathered in the Agricultural District, although another 3,000 such lots were created *after* 1976, when all homes were supposed to be farm dwellings. The Hokuli`a developer was prepared to require that 20 percent of the project area be dedicated to agricultural use as a coffee farm touching each lot. Hundreds of similarly situated lots around the State have *no* farming. Single family residences were listed as a permitted use of agricultural lots in the Hawaii County Zoning Code until 1996. The 3,000 such lots are owned and occupied by ordinary citizens, most on marginal land with no viable agricultural use. Why should a		

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		court order force people into uneconomic ventures, or deprive their land of practically all economic value? What are the solutions to the *Hokuli`a* case? Briefing of the case on appeal in the Hawaii Supreme Court was completed several weeks ago. Hopefully the decision will be rendered sooner than in the *Save Sunset Beach Coalition* case [which took five years]. Attempts to mediate have been and are ongoing. 1250 Oceanside Partners has made extraordinary offers to settle. If the plaintiffs game plan is just to stop the project, it is doubtful that will be the ultimate outcome. As far as a legislative remedy, Hawaii County wound up playing defense with House Bill No. 109 in the 2005 Session, to try to make sure it didn't make the whole situation worse. Laws have to be clear and enforceable. The previous LUC Executive Officer, Esther Ueda, didn't think *Hokuli`a* needed to go to the LUC. Courts need to respect how administrative agencies interpret the laws. But where the law is not clear, a question such as whether a disguised antenna needed a special permit led to a three/two split decision. *Hokuli`a* is not going to the LUC for now – the hearing process would be long and acrimonious. Hawaii County is now doing things		

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		differently in zoning, but not because of the *Hokuli`a* decision. In the last four and a half years, only 80 more small agricultural lots have been allowed by rezoning, and mostly in urban expansion areas. The Planning Department would support rezoning of areas in Kona that are urban in the General Plan and zoned A-5a. For new subdivisions in the State Land Use Agricultural District, they issue a "cover your ass" letter to applicants suggesting they seek their own counsel. The County is already likely to be sued by the Hokuli`a lot buyers. Big Island Country Club and Kamehameha Investment are going to the LUC for their projects. The new General Plan now has a policy not to rezone IAL in lots too small for viable agriculture.		
Gated Communities	Shoreline access is required through the Special Management Area (SMA) provisions of the State's Coastal Zone Management (CZM) Act. Mauka access is imposed on an *ad hoc* basis through unilateral agreement conditions on zoning amendments. Is a gated community different from a gated lot? If not, it is difficult to administer – what is "public" access for pedestrian/ bicycle/ utility purposes? It requires balancing the public right of access with the landowner's right to exclude. It also requires parking lots – but the government is reluctant to accept liability and responsibility for maintenance.	Mayor Kim wants to discourage gated communities, even where he lives, because they send a message of "we don't want you." But he is not supporting legislation to regulate them, and a bill to do so died in Council. Constitutional issues were raised [by LURF] regarding the forced opening of private roads to the public. The County will, however, continue to require mauka and makai access.	Planning staff and the Planning Commission generally discourage gated communities, which prevent people from traveling freely. The main concern is public access; they want gates on individual lots, not on the roads. As a compromise, however, they will allow entry gates that are set back from the highway frontage.	**No show.**

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Shoreline Certifications	The Department of Planning and Permitting (DPP) lacks expertise to certify shorelines, which current law specifies shall be at the upper reaches of the wash of the waves [as marked by the vegetation or debris line; HRS § 205A-1]. What is "natural" vegetation? Is it okay for a bird to spread seed and fertilize natural vegetation, but not for humans to do the same? How does one track the debris line? A *fixed* shoreline would provide a uniform setback line; a *variable* shoreline based on erosion would be harder to measure, but more scientific. Chip Fletcher is under contract to the City to update coastal erosion hazards. With erosion, the landowner loses land; with accretion, the State claims it – is this equitable? Should private owners be liable for public access?	The Big Island has subsidence in some areas rather than erosion. Artificially rooted planting should not be allowed to define the vegetation line for shoreline boundary purposes. The County should have administrative discretion to establish the time that the setback line would be valid without recertification. One idea is to use detailed aerial photographs for shoreline certification purposes. The County will waive the certification requirement where there is a high cliff.	This is done by the State, which is fine with Mr. Foley. Maui County has led in defining setbacks by erosion rates, thanks to Chip Fletcher. This seems to work well so far, based on historic air photos, and seems to be pretty well accepted. One challenge is with strangely shaped lots. Another is with lots on a cliff.	**No show.**
Affordable Housing	In this area, the needs are substantial, and require public-private partnerships, City programs, and regulatory measures such as HRS § 201G-118 and unilateral agreement conditions. Available programs and measures include planned unit developments, conditional use permits, housing assistance, block grant (CDBG) funding, the HOME program, rehabilitation loans, elderly referrals, Section 8 multifamily tax exempt bonds, real property tax exemptions, and VISTA projects with tax credits and CDBG funds. Section 201G-118 allows for zoning	Both cost and location are issues in affordable housing. What is affordable is far from jobs, so people commute long distances, which is becoming more a time issue with increasing congestion. Continued automobile dependency is not sustainable. The County is starting "kokua zones" for its bus system, to take the cost element out. Resorts without nearby housing are having trouble recruiting employees. The affordable housing ordinance was changed in 2005 to increase the number of	This is the real crisis on Maui. The median sale price of single-family homes is around $700,000. However, numerous projects are under construction with affordable units, some voluntary. The policy is to mix in affordable housing with larger master-planned projects, such as by Alexander & Baldwin, Maui Land & Pineapple, Stanford Carr. Other smaller projects include condominiums and senior high-rise housing. The frustration level among the public and on the County Council is very high. The Council is grappling with a new housing	**No show.**

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	exemptions, for which nonprofit corporations are eligible as long as they do not jeopardize public health, safety and welfare. Unilateral agreements can also provide affordable housing that varies project by project. The City Council is considering what is "affordable," and to whom such housing should be targeted – households with no more than 100 percent of median income? or up to140 percent (the State threshold)? or between 80 and 120 percent (as specified in many unilateral agreements)? The Mayor has an Affordable Housing Working Group looking at establishing a new City housing policy. Is the purpose to provide shelter to a targeted group, or to assist the "gap group" into the mainstream?	units required from 10 to 20 percent, and to plug a loophole in the fee in lieu provision. A ten percent density bonus was added for affordable units, and trading credits will be allowed. The County is trying its own affordable project at Waikoloa on donated land. The General Plan was also revised in 2005 to add an IAL provision, and remove some areas designated for coastal development. They are working to keep the island's unique character – small towns, open space. They want development to encourage housing for first-time buyers, as well as housing that is more functional for the aged and infirm.	policy, to raise the affordable housing percentage and look at employee housing for visitor industry workers, who make low wages. Part of the housing problem is inadequate incomes, which is why they are trying to diversify the economy with higher paying jobs. It is difficult to recruit new employees because of the housing costs. Also, the County can only hire State residents unless exempted. The "learning curve" for new residents is pretty lengthy. Maui has had mixed experience with the 201G process. The most recent project was extremely controversial. The process allows applicants to completely ignore County plans and regulations, and propose substandard projects using agricultural lands. The abbreviated hearing process allows little public input and bypasses the Planning Commission, and allows only one up/down vote at the Council. One recent project was denied because of traffic impacts, since the Housing and Community Development Corporation of Hawaii (HCDCH) [which certifies eligible 201G projects] is not interested in kuleana lots. The Sterling Kim project had many Hawaiian issues. The Council doesn't want any more 201G projects until the process is improved with longer review times.	

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			The present General Plan contains only general policy statements, and no map. The County relies on its Community Plans, although many are becoming out of date. The General Plan update will be long and arduous under the new process adopted by the Council in 2004. The Planning Department is now doing population and employment projections and land use forecasts. They will try to ensure consistency of the Community Plans in the future; currently, some of them prohibit water transfers, and don't agree on where the roads are. The new General Plan will have urban growth boundaries – also controversial. The Council has well supported the Department's planning efforts, and new staff have a lot of enthusiasm. But there are vacancies among the permit processors, where the work is stressful and poorly paid. He would like to eliminate reviews of minutiae. The Department is also developing a geographic information system (GIS) to allow spatial forecasting of infrastructure. This assumes that money will be available if they can show where the infrastructure (such as schools) is needed. Mr. Foley would rather the County take over the schools, or at least control where and when they get built. The problem is even worse with highways –	

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			the Department of Transportation (DOT) is proposing traffic signals where they already exist and are not needed, by engineers who infrequently visit the island. The County can make better decisions, but will require creative financing for all new infrastructure. In short, it is frustrating dealing with the DOT and the Department of Education (DOE).	