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October 7, 2008

The Honorable K. Angel Pilago, Chair
The Honorable Dominic Yagong, Vice Chair, and Members
Committee on Planning
Hawai'i County Council
County of Hawaii
c/o 25 Aupuni Street
Hilo, Hawaii 96720

Subject: Bill 324 ORDINANCE AMENDING THE HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), BY ADDING A NEW CHAPTER RELATING TO IMPACT FEES (establishes a newly created Chapter 36 in the County Code entitled Impact Fees, which implements the provisions and requirements for an impact fee)

Dear Planning Committee Chair Pilago, Vice Chair Yagong, and Committee Members,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii ("LURF"), which is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

We appreciate the opportunity to testify in **opposition** to Bill 324, which would add a new section to the Hawai'i County Code related to Impact Fees. Our opposition is based on, among other things, the following:

- The proposed bill unreasonably shifts the County's responsibility to provide adequate infrastructure and funding to new homeowners and new owners of residential, retail, commercial, office and industrial spaces.
- Hawaii County must examine its roles and responsibilities regarding providing infrastructure.

- The proposed impact fees will substantially increase the cost of new residential homes and new retail, commercial, office and industrial spaces.
- The proposed impact fee bill is premature, because Hawai'i County does not yet have a comprehensive financing program.
- Before passing an impact fee ordinance, the County Council and Administration should review its current CIP projects and CIP budget, and all possible infrastructure financing options.
- Bill 234 ignores the recent IPFNA Study, which determined that "impact fees" are just one alternative among various options to fund infrastructure.
- Instead of solely relying on impact fees, the Hawai'i County should combine the various infrastructure funding alternatives to increase infrastructure funding, including but not limited to: increasing real property taxes and/or dedicating a portion of the real property tax revenues to specific infrastructure; issuing and selling bonds that provide funds for such improvement districts; levy and assess a special tax on properties located in benefited districts; and tax increment financing.
- There is no detailed explanation regarding the County's payment of impact fees for affordable housing projects and other exemptions.
- Bill 324 raises constitutional and rational nexus questions.
- Instead of implementing an island-wide impact fee ordinance, it would be more prudent to first do an impact fee "pilot project" or "model application" for one region of the County.
- The effect of the proposed Impact Fee could be detrimental to small Individual Lot Owners.
- The Proposed version of Bill 324 provides no reduction, adjustment or waiver process.
- The administrative costs and maintenance of infrastructure will be a County Cost

LURF COMMENTS

As you may know, LURF participated on the Hawai'i County Local Resource Team (LRT) to assist in vetting out issues on the Hawaii County Infrastructure and Public Facilities Needs Assessment: Impact Fee (IPFNA) Study. The role of the LRT was to provide a critical, non-bias assessment of the study. It is in this context that we provide the following comments:

- **The proposed bill unreasonably shifts the County's responsibility to provide adequate infrastructure and funding to new homeowners and new owners of residential, retail, commercial, office and industrial spaces.** Bill 324 would just simply shift the burden for securing infrastructure funding and capacity from the County (who is responsible for providing such services and capital improvement funding) to the applicants for new developments.

- **Hawaii County must examine its roles and responsibilities regarding providing infrastructure.** We notice that recent proposals by the Hawai'i County Council are attempting to shift more and more of the infrastructure cost burden on to new developments. In recent years, many developments across the State have paid for infrastructure costs related to their development through the construction and dedication of internal roads, sewer, water, and drainage systems to the counties. Only schools and regional road way improvements were not paid for by the developer, although the State Department of Education does require either an improved (vacant) school site or fair share contribution for the schools required for the project.

  Over the past couple of years, the Hawai'i County Council has proposed "concurrency" requirements for developments. In most cases, concurrency means having all infrastructures in place before a project is built. That means all roads, schools, parks and other facilities that may not be the responsibility of the developer need to be constructed before a project is built.

  If concurrency and impact fees are going to be tools to assist the County of Hawai'i deal with growth, then we would respectfully recommend that a meaningful discussion should occur on the roles and responsibilities relating to the following issues:

  1. The responsibility of County government to plan, budget and implement growth and infrastructure needs;
  2. How real property taxes and fees on residences and commercial, industrial and resort businesses are used to fund government infrastructure; and
  3. New homeowners and businesses on how much of the cost of their new home or office will be going to pay for government infrastructure.

  From a public policy standpoint, it is puzzling that this past year the County has proposed to rebate or reduce real property taxes for property owners in the County of Hawaii, yet there is a recognition of deficiencies in existing infrastructure as well as need for new infrastructure in projected growth areas. How does the County justify its prior proposal to return tax revenues to property owners while forcing new developments to be responsible for all or portion of new infrastructure which will benefit the public as well as the specific project?

- **The proposed impact fees will substantially increase the cost of new residential homes and new retail, commercial, office and industrial spaces.** The proposed impact fees will be passed on to the new-home builders and from the developers/applicants to new-home buyers, as well as to the owners and lessees of new resort, retail, commercial, office and industrial units. The schedule shown in proposed Section 36-12 lists the pre-calculated impact fees by the following land use types:
  - **Single Family Residential Unit**
  - **Duplex or Multi-Family Unit**
  - **Hotel/Motel Unit**
  - **Retail/Commercial Unit**
  - **Office Unit**
  - **Industrial Unit**

- **The proposed impact fee bill is <u>premature</u>, because Hawai'i County <u>does not yet have a comprehensive financing program</u>.** As stated by Mayor Kim, in his letter to Council Chair Pete Hoffman, dated April 30, 2007, "A comprehensive infrastructure financing plan is fundamental for the successful implementation of a County-wide Impact Fee Ordinance "and such <u>a comprehensive infrastructure financing plan should first be in place</u> to ensure that an impact fee program is successfully implemented and that monies collected can e expended or encumbered <u>within the required six years</u> as required by State law. Mayor Kim recognized that "impact fees are not a panacea for our infrastructure problems, and that other sources of funding need to be in place to ensure completion of projects as well as to meet the needs of deficiencies that cannot be covered by impact fees." The council should not adopt an impact fee ordinance until it adopts a comprehensive infrastructure financing program, and resolves the following issues:
    - The County <u>does not</u> have any comprehensive infrastructure financing plan;
    - The County <u>has not</u> identified or analyzed all of the possible infrastructure financing options;
    - The County <u>has not</u> yet clearly identified and distinguished between capacity enhancing projects (qualified to be funded with impact fees) and repairs and maintenance projects (not qualified to be funded by impact fees);
    - The County <u>has not</u> identified how impact fees or other sources of financing can be integrated into its capital improvement projects (CIP);
    - The County <u>does not</u> have any plan or program to spend the impact fees on CIP projects within six years; and
    - The County <u>cannot</u> assure planning and construction of the needed services in a timely manner.

- **Before passing an impact fee ordinance, the County Council and Administration should review its current CIP projects and CIP budget, and all possible infrastructure financing options.** We would respectfully recommend that prior to passing an impact fee ordinance, the County should specifically identify:
    - all capacity-enhancing projects (qualified to be funded with impact fees);
    - all repairs and maintenance projects (not qualified to be funded by impact fees);
    - all possible infrastructure financing alternatives for each project; and
    - the amounts to be funded by impact fees as well as the amounts funded by other sources.

It would appear to be easier to understand the need for impact fees if it were tied into specific projects that were going to increase capacity. In addition, it would allow for the public to understand how much or what percent of the project costs were going to be borne by impact fees. How the remaining project costs will be covered should also be addressed, because if impact fees are being collected for an improvement, yet the other sources of funding have not be identified or committed, the improvement will not be constructed with the money collected by the impact fees.

Prior to enacting an impact fee ordinance which will impose a huge financial burden on new residential homes, as well as commercial, industrial and resort developments, we would respectfully recommend that the County specify the specific projects to be funded by impact fees collected for Roads; Parks; Solid Waste; Police; Fire; and Wastewater in each of the Benefit Districts. If impact fee funds are planned to be used outside of the Benefit Districts, those projects should also be identified.

- **Bill 234 ignores the recent IPFNA Study, which determined that <u>"impact fees" are just one alternative among various options to fund infrastructure</u>**. LURF participated in the LRT and Stakeholder Focus Group meetings related to the County's IPFNA Study. That process has confirmed that funding of infrastructure is primarily done through grants, government bonds, aide packages, various sources of tax revenues (i.e. real property tax, vehicle weight tax, fuel tax, etc.) and other fees, and that impact fees sometimes provide another alternative source of funding for basic infrastructure. Through this process, we have found that impact fees need to be viewed as one element in a range of various municipal financing options to fund basic infrastructure. For example, impact fees are generally used to mitigate impacts from a proposed new developments based on the existing level of service of the infrastructure. Impact fees cannot be used to address deficiencies in existing level of service. Existing deficiencies are more appropriately addressed through an improvement district (ID), or community facilities district (CFD) funded by special assessments or tax increment financing.

- **Instead of solely relying on impact fees, the Hawai'i County should combine the various infrastructure funding alternatives to increase infrastructure funding**. We recognize the need to address the current infrastructure deficiencies in Hawai'i County. Rather than implementing an impact fee ordinance, and in this case, effectively shifting the County's burden of providing the necessary county services to homeowners, and owners of commercial, industrial and resort businesses, the Council should develop realistic alternatives to finance the construction of more infrastructure capacity. We respectfully recommend that the Council find alternative ways to increase public infrastructure capacity and funding for existing and future growth by bundling the following infrastructure funding tools to provide the necessary financing:
  1. **Increase real property taxes and/or dedicate a portion of the real property tax revenues to specific infrastructure.**
  2. The County may **issue and sell bonds** to provide funds for such **improvement districts**. Bonds issued to provide funds for such improvements may be either bonds when the only security therefore is the properties benefited or improved or the assessments thereon or bonds payable from taxes or secured by the taxing power of the county.
  3. The County has the power to levy and assess a special tax on property located in a district to finance the special improvements (**Community Facilities Districts**) and to pay the debt service on any bonds issued to finance the special improvements.
  4. **Tax increment financing (TIF)** is a way for governments (usually municipal authorities) to help finance new capital projects by taking advantage of expected property tax returns. A county, for example, may designate as a TIF district a plot of land that is planned to be redeveloped. Then the county can borrow against expected increased tax revenues to build infrastructure such as sewers, roads and transportation services.

5. **Impact fees** are a municipal assessment against new residential, industrial or commercial development projects to compensate for the added costs of public services generated by new construction.

- **There is no detailed explanation regarding the County's payment of impact fees for affordable housing projects and other exemptions.** The proposed ordinance proposes that the County pay impact fees for affordable housing or otherwise provide "credits" to certain income groups on impact fees. These impact fees and credits will be paid by the County; however, there is no detailed explanation regarding how these additional funds will be generated.

- **Bill 324 raises constitutional and rational nexus questions.** We also have some concern on the methodology of the calculations of the impact fees. It appears that the calculations are based on providing increased capacity to accommodate the proposed project; however, the calculations are not sufficiently tied to specific projects in the impacted area. There may be constitutional legal issues of potentially having a new project on one end of the island paying for improvements on the other end of the island. This tends to raise constitutional and legal questions regarding the rational nexus of the proposed impact fees.

- **Instead of implementing an island-wide impact fee ordinance, it would be more prudent to first do an impact fee "pilot project" or "model application" for one region of the County.** In the IPFNA Stakeholder Focus Group meetings there was some discussion regarding the possible implementation of impact fees on a regional basis as opposed to island wide as is being contemplated by this study. There seemed to be some degree of acceptance of this as a model for Hawaii County similar to the Ewa Regional Road Impact fees on Oahu. We support the notion of proceeding with a model to test the implementation of impacts fees for Hawaii County; however, we firmly believe that the concerns we have raised throughout this process need to be addressed. Planning, project prioritizing, and a rational and disciplined funding mechanism need to be done in conjunction with this pilot project or model application.

- **The effect of the proposed Impact Fee could be detrimental to small Individual Lot Owners**. The effects of Bill 324 will be detrimental not only to multi-lot developers, but to the smaller individual lot owners wanting to make improvements to their existing lots and/or homes. Section 36-9 includes impact fee exemptions, but exemptions only apply to those not adding new dwellings or staying within the existing gross floor area of the original building or structure. Impact fees will indiscriminately affect kama'aina families, where multiple generations are forced to live together because of high housing prices. Families are being forced to add-on to existing dwellings because extended family living situations. The requirement of impact fees may have a backlash on the permitting process whereby, those wanting to renovate or add-on may avoid applying for a permit altogether, because of the additional cost of paying an impact fee.

- **The Proposed version of Bill 324 provides <u>no reduction, adjustment or waiver process</u>**. The Bill's current version does not allow for any reduction, adjustment or waiver of the impact fee and instead has set flat fees that are non-negotiable. This may trigger possible constitutional due process issues if one argues that there is no reasonable relationship or nexus between the impact of the development and the impact fee amounts. The Hawaii County Department of Planning indicates that the impact fees "may have a bigger negative effect on lower cost housing than raising a similar amount from property taxes."

- **The administrative costs and maintenance of infrastructure will be a County Cost**. Costs for implementation of impact fees will ultimately be borne by the County. Maintenance of parks and recreation centers built by impact fees will be required and may ultimately costing more than what was collected through the fees.

CONCLUSION

LURF is **opposed** to Bill 324, which relies solely on impact fees to shift the burden for securing infrastructure capacity and finding from the County to the applicants for new residential, commercial, industrial and resort developments. We respectfully recommend that the Council first implement a comprehensive infrastructure financing plan which includes a combination of other realistic alternatives to provide the necessary infrastructure to accommodate future growth.

In 2005 and 2006, LURF was a member of the Local Resource Team for the County's IPFNA Study and participated in the Stakeholder Focus Group meetings related to the IPFNA Study. LURF continues to be willing to work with Hawaii County, its consultants and other stakeholders to create a comprehensive financing infrastructure financing plan for Hawaii County.

We appreciate the opportunity to provide comments on this matter. Should you have any questions, please feel free to contact us at (808) 521-4717 or via e-mail at darakawa@lurf.org.

cc: Department of the Corporation Counsel, County of Hawaii