



April 2009

# HAWAII DEVELOPERS' MONTHLY

Dedicated to the promotion, protection and improvement of real estate development in Hawaii.

## HAWAII DEVELOPERS' COUNCIL



### President's Message

## A Challenging Year

**Shane Peters**  
**Communications Pacific**

This undoubtedly will be one of the most challenging years on record for Hawaii's residential and commercial real estate market. Yet, despite the challenges posed by the global economic downturn, there are bright spots and our market fundamentals remain strong.

Although Hawaii's real estate market has and will continue to see a slight decline in values, that trend is not likely to lead to a "bottoming out" as seen in other Mainland markets such as California and Florida. In fact, values here in the Islands should be viewed in context. Remember, Hawaii's real estate has outperformed the US stock market over the past year and a half. This price stability is due, in part, to the fact that the supply of real estate products in the Islands is constrained by a lack of inventory. Simply put, our islands are small and no one's building more land.

Another factor helping to buoy the market during this recession is our unique location. As a bridge between Asia and the United States, Hawaii is well positioned to receive investment dollars from the Far East. Historically, during global economic downturns, international investors seek out US assets, not just currency, but also real estate. This bodes well for Hawaii, which has always been seen as an attractive real estate investment market for Asia. The good news is that this time around it's not just the Japanese, but also the Chinese and Koreans who have amassed significant wealth during the past decade or more of global growth. They'll need to invest that money somewhere, why not in Hawaii real estate?

In addition, our local financial institutions have weathered the economic crisis well and most are on stable financial footing, some even reporting small profits in recent quarters. Hopefully, this means that we can rely on our local banks for commercial financing as the mainland banks have retreated. Finally, Hawaii's infrastructure is another bright spot. We are on the cusp of getting billions of dollars from federal, state and county agencies to improve roads, highways, sewer and water systems across the Islands. This is great news because development project opponents have often relied on lack of infrastructure as a reason for their opposition (traffic, lack of water, lack of sewage capacity, etc.). In addition, this badly needed infrastructure will infuse money back into our economy and finally help to relieve the burden on developers who have had to pay for many of these improvements as conditions of approval for their projects.

Take heart members, while it may seem like these are dark days, there is light ahead.

### HDC Membership Dues Renewal Reminder

There's still time to renew your membership for 2009. If you need a copy of your renewal invoice, please email: [Barbie@hawaiideveloperscouncil.org](mailto:Barbie@hawaiideveloperscouncil.org). Thank you!

[www.hawaiideveloperscouncil.org](http://www.hawaiideveloperscouncil.org)

### Board Room Series

Tuesday, April 28, 2009  
7:30 to 9:00 AM  
First Hawaiian Bank Tower  
30th floor Board Room

Speaker:  
Carl W. Reigers, Jr.  
Managing Director  
Eastdil Secured

Reservations &  
Cancellations  
Fax 847-6575

No shows will be billed.

### Save the Date!

Wednesday, May 13, 2009  
Speaker tbd  
Plaza Club

11:30 a.m.  
Registration & Lunch  
12 noon—1:00 p.m.  
Program

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**Meeting Recap****Riding the Cycle:****Finding New Opportunities in the Current Economic Crisis****Mike Lum****ML Development**

Steve Chamberlin of Chamberlin Associates and Rouse/Chamberlin Homes spoke to the Hawaii Developers' Council on March 25<sup>th</sup>.

Chamberlin, who graduated from Roosevelt High School and the University of Hawaii is a commercial developer in the Bay Area as well as a merchant home builder in Philadelphia. With over 25 years of development experience, Chamberlin shared his insights and perspectives on finding opportunities in the current economic cycle.

Chamberlin noted that housing has help lead the economy out of every recession since World War II. But the "recovery" will go back to 1996 levels, not 2006. Further, the recovery won't start until 2011. With private and public debt at or approaching all-time highs, Chamberlin predicted that inflation is inevitable.

According to Chamberlin, all of the really great deals in real estate are done in down markets. There are opportunities in acquiring projects that are burdened with substantial inventory or high leverage. Land prices will become attractive too. To be successful, you'll need strong execution, great marketing, local knowledge, no baggage and a great reputation and/or capital.

In the commercial arena, the land opportunities will be disguised as obsolete buildings in great locations or owned by corporations looking to improve their balance sheet. Another opportunity will be foreclosed properties requiring substantial repositioning.

*About the Speaker*

*Steve is the owner of Chamberlin Associates, a commercial real estate development firm based in Pleasanton, CA ([www.chamb.com](http://www.chamb.com)). Steve is also Co-Founder and present chairman of Rouse/Chamberlin Homes, a home building company based in Philadelphia, PA ([www.rcltd.com](http://www.rcltd.com)).*

*Steve was an Adjunct professor at the University of California Berkeley Haas School of Business for 15 years and taught The Use and Development of Land; he is a Policy Advisor Board Member of the Fisher Center for Real Estate and Urban Economics at UC Berkeley.*

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## Act 234 and Climate Change Law in Hawaii

by Douglas A. Codiga, Esq.

Schlack Ito Lockwood Piper & Elkind, LLLC

Climate change is emerging as one of the most significant environmental and economic issues of our time. Widespread scientific agreement that human activities contribute to climate change and increased public awareness about its impacts – from the plight of polar bears on melting Arctic ice to tropical atolls submerged by rising sea levels – have spurred the adoption of international treaties, regional agreements, and federal, state, county and municipal laws. These laws typically seek to regulate the greenhouse gas emissions which contribute to climate change. Because greenhouse gas emissions result from a wide variety of economic activities, the laws that regulate them are often correspondingly broad and inclusive. Such laws necessarily affect all major sectors of the economy – including real estate development and land use.

In 2007, declaring that “climate change poses a serious threat to the economic well-being, public health, natural resources, and the environment of Hawaii,” the Hawaii Legislature passed major climate change legislation known as Act 234. The potential adverse environmental effects of climate change, as identified by the Legislature, may include rising sea levels resulting in the displacement of businesses and residences and inundation of freshwater aquifers, damage to marine ecosystems and the natural environment, extended drought and loss of soil moisture, an increase in the spread of infectious diseases, and an increase in the severity of storms and extreme weather events. The economic impacts may be equally serious. Climate change is expected to have detrimental effects on some of Hawaii’s largest industries, including tourism, agriculture, recreation, commercial fishing, and forestry. It is also expected to increase the strain on electricity supplies necessary to meet the demand for air conditioning during the hottest times of the year.

To address these challenges, the Hawaii climate change law is among the first in the nation to require statewide reduction of greenhouse gas (“GHG”) emissions to 1990 levels by the year 2020. Although Act 234 establishes this basic GHG emissions limit, it does not specify enforceable limits on particular emitters of greenhouse gases. The Act instead grants a broad mandate to the State of Hawaii Department of Health to adopt administrative rules to achieve the emissions limit.

Like other sectors of the economy that may be regulated by Act 234, Hawaii’s development community should be aware of this important law, understand its basic requirements and the timeline for adoption of regulations, and consider the potential impact of Act 234 and related climate change law on future real estate development projects in Hawaii.

### Basic Requirements and Timeline

Act 234 became effective July 1, 2007, making Hawaii among the first states in the nation to pass a law with an emissions reduction limit consistent with the limit established by the Kyoto Protocol, as

well as climate change laws adopted by California, Washington, New Jersey and Florida. The Act amends Hawaii’s air pollution control law, Chapter 342B, Hawaii Revised Statutes, to include the basic emissions limit and establishes the following deadlines:

- ◆ December 31, 2008: Updated Emissions Inventory to establish 1990 baseline
- ◆ December 1, 2009: Completion of Work Plan, to be prepared by Task Force
- ◆ December 31, 2011: Adoption of Act 234 regulations by Department of Health
- ◆ January 1, 2012: Act 234 regulations take effect

### Task Force

The Act’s potentially far-reaching administrative rules are to be based on the recommendations of a “greenhouse gas emissions reduction task force” with ten members from government, business, and environmental organizations. The Task Force, which meets monthly, is co-chaired by the Laurence K. Lau (Department of Health) and Theodore E. Liu (DBEDT). Appointees from “affected business sectors,” defined by the Act as “electrical utilities, refinery operations, ground transportation industry, or maritime industry,” are Robbie Alm (HECO), Gary North (Matson), Frank Clouse (Tesoro), and Gareth K. Sakakida (Hawaii Transportation Association). The environmental organization representatives are Jeff Mikulina (Sierra Club) and Mark Fox (Nature Conservancy). Task Force members from the University of Hawaii at Manoa Climate Change Commission are Prof. Maxine Burkett (Law School/Sea Grant Program) and Prof. Makena Coffman (Urban and Regional Planning).

### Emissions Inventory and Work Plan

Establishing 1990 emissions levels was a critical first step in achieving the Act’s goal. In December 2008, DBEDT and the Department of Health completed an updated inventory of emission sources or categories of sources based on a prior July 1997 inventory. The updating process involved developing new data as well as reviewing existing data, identifying discrepancies, and evaluating calculation methods. Less than one year later, by December 1, 2009, the Task Force shall prepare a “work plan” and “regulatory scheme” to guide draft regulations.

### Enforcement

Key provisions of Act 234 have been codified in Chapter 342B, Hawaii’s air pollution control law. These climate change-related amendments to Chapter 342B are subject to its existing citizen suit provision, which authorizes suits by citizens against “any person,” including the Department of Health, alleged to be in violation of Chapter 342B or any emission standard or limit established under the law. Citizen plaintiffs may be awarded their attorney’s fees in such lawsuits. Violators of Act 234 are also subject to civil and administrative penalties of not more than \$25,000 for each separate

*Continued on page 4*



## Act 234 and Climate Change Law in Hawaii (continued from page 3)

by Douglas A. Codiga, Esq.  
Schlack Ito Lockwood Piper & Elkind, LLLC

offense, and criminal penalties for knowing violations not to exceed \$25,000 for each day of each violation, imprisonment not to exceed five years, or both.

### Act 234 and Commercial and Residential Development

The built environment, including commercial and residential development, is widely considered to be a significant source of GHG emissions contributing to climate change. For example, according to the non-profit organization Architecture 2030, data from the U.S. Energy Information Administration suggests that the "Building Sector," broadly defined to include all residential and commercial buildings, operations, construction and materials, is responsible for almost half (48%) of all GHG emissions annually and the consumption of 76% of all electricity generated by U.S. power plants.

Although Act 234 specifically identifies electrical utilities, refinery operations, ground transportation industry, and the maritime industry as "affected business sectors," Act 234 may also directly and indirectly impact real estate development and land use. For example, Act 234 regulations may require developers to quantify GHG emissions resulting from a development project. Authorities often require emissions to be quantified as a preliminary step toward mitigation and reduction. At this stage, future Act 234 regulations directly affecting development remain unknown. As a major statute, however, Act 234 contributes to an emerging body of climate change law and policy which includes efforts in related areas such as environmental impact assessment and green building requirements.

### Environmental Impact Assessment

In August 2008, in response to a lawsuit filed by environmental organizations, a California court rejected a proposal to build a controversial 1,776-acre luxury resort development in Southern California because the project's environmental study failed to analyze the project's greenhouse gas emissions. The court held that the California Environmental Quality Act (CEQA) required a more complete accounting of the climate change effects of the proposed land use project.

Similarly, in Hawaii a bill was introduced in the 2008 legislative session to require environmental impact statements to address climate change. House Bill 2103 cited to a recent decision by the United States Court of Appeals for the Ninth Circuit, which held for the first time that federal agencies must assess carbon dioxide emissions and other climate change impacts in environmental review documents prepared under the National Environmental Policy Act. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9<sup>th</sup> Cir. 2007). The bill sought to amend Hawaii's impact assessment law, Chapter 343, Hawaii Revised Statutes, to require disclosure in an environmental impact statement of the "effects of a proposed action as a contributor to climate change" and to amend the definition of "significant

effect" to include consideration of actions that "impact climate change."

County and local governments have also begun to regulate greenhouse gas emissions. For example, in August 2007 King County, Washington became the first in the nation to order county agencies to consider climate change impacts as part of their project review under Washington's State Environmental Policy Act ("SEPA"). In support of its order, King County cited the 2007 United States Supreme Court decision in *Massachusetts v. EPA*, in which the Court determined that greenhouse gases are an "air pollutant." Similarly, on December 3, 2007, the City of Seattle adopted an ordinance which requires developers to quantify greenhouse gas emissions for all projects subject to the City's environmental review and permitting process under SEPA.

### Green Building Requirements

In addition to environmental impact assessment, local governments are increasingly requiring "green building," which utilizes design and construction strategies that seek to reduce a building's environmental impact, to compel private developers and businesses to reduce emissions from commercial and residential buildings. The U.S. Green Building Council has developed a green rating system called LEED (Leadership in Energy and Environmental Design) that many cities have integrated into their building ordinances or green building programs. More than twenty-five U.S. cities have initiated green building programs which require new public buildings to meet LEED standards. For example, in 2006, Mayor Mufi Hannemann signed into law a bill requiring all new City and County of Honolulu facilities larger than 5,000 square feet to meet a minimum LEED standard of environmentally sensitive design when feasible or appropriate, beginning in fiscal year 2008.

Although Act 234 is intended to address the challenges of global warming, it may also create economic opportunities in real estate development and other sectors of the economy by stimulating demand for a broad range of products and services that increase energy efficiency, reduce GHG emissions, and promote environmental sustainability in Hawaii. Informed participation in future rulemaking and legislative action, by all interested and affected parties, will be necessary to implement the Act and help achieve its mandate of reducing Hawaii's emissions to 1990 levels by the year 2020.

*Douglas A. Codiga practices environmental and land use law with the law firm of Schlack Ito Lockwood Piper & Elkind, LLLC, and is a member of the firm's Climate and Sustainability Practice Group. He can be reached at [dcodiga@sil-law.com](mailto:dcodiga@sil-law.com). This article is adapted from "Act 234: Hawaii's Climate Change Law" © Douglas A. Codiga, Esq. which first appeared in the May 2008 edition of the Hawaii Bar Journal.*



## Environmental Issues Affecting Commercial Real Estate

by Randy Herold  
ENPRO Environmental

The range of environmental issues that arise when commercial real estate is developed, re-developed, operated, sold or financed is fairly limited. Here are a few of the most common.

### Radon

Huh? Yes the colorless, odorless gas produced by the degradation of uranium in soil, the second leading cause of lung cancer according to the World Health Organization. That radon, the one that plagues all those mainland properties. Fortunately it is not a problem locally because the geologic composition of the islands does not generate radon gas above the recommended EPA action limit. No wonder we don't hear much about it. *Lucky You Live Hawaii.*

### Asbestos

Contrary to popular myth, not all asbestos containing building materials have been banned. In the 1970s certain surfacing materials, like popcorn acoustical ceiling and fireproofing, were indeed banned. Yet other popular applications such as floor tile, transite, plaster and roofing felt have not been banned and can be used in new construction. In other words, the construction date of a building does not indicate if a building is "asbestos-free". The date of a building is important, however, to OSHA. The OSHA asbestos rule requires owners and managers of all pre-1981 constructed commercial buildings to, among other things, notify tenants about the presence and location of asbestos-containing materials (ACMs) and presumed asbestos-containing materials (PACMs) that the tenant's employees or contractors could come in contact with while performing certain work. All presumed asbestos-containing materials are considered asbestos-containing until proven otherwise by sampling and testing. That means a property is regulated whether an asbestos survey has been completed or not.

### Lead Paint

Although new regulations for lead paint workers will be with us as soon as 2009, for the time being lead in paint is primarily an issue during demolition or remodeling in terms of worker protection and testing to allow for local disposal of debris. Lead in soil can be a problem when buildings with lead paint are demolished.

### Hazardous Chemicals

Hazardous chemicals can be intrinsic to hydraulic lifts, transformers, light ballasts, mercury lamps, pesticides and an array of discarded or unused products. Hazardous chemicals when no longer wanted or useful become hazardous wastes and become subject to somewhat complex regulations. When you need to dispose of hazardous wastes, it is best to check with an expert.

### Canec

The former Hawaiian Cane Products plant in Hilo manufactured canec from bagasse -- the fiber that's left after sugar cane stalks are crushed for their juices -- from 1932 to 1963. Canec was commonly manufactured as pressboard for ceilings and walls. OSHA regulations apply for worker protection. Fiber products with arsenic are exempt from hazardous waste disposal regulations according to federal and state statutes. Therefore, disposal in a local, municipal landfill is acceptable.

### Soil and Groundwater Contamination

Soil and groundwater contamination can be caused by leaking underground storage tanks, hydraulic lifts, and chemical or petroleum spills to the surface. Soil contamination is usually much less expensive to remedy than groundwater contamination. Prior to selecting a remediation technology, the contaminants of concern are identified and the vertical and horizontal extent of contamination is determined. These two factors, the extent of contamination and the chemicals present heavily dictate remediation costs.

*Randy Herold is president of ENPRO Environmental, a national environmental consulting firm with over 30 years in the islands. A recognized lecturer and expert consultant, he can be reached at [rherold@enproenvironmental.com](mailto:rherold@enproenvironmental.com).*



## Hawaii Clean Energy Initiative (HCEI)

By Robbie Alm, Executive Vice President  
Hawaiian Electric Company

On October 20, 2008, in the chambers of Governor Linda Lingle, an historic agreement was signed between the State of Hawaii and the Hawaiian Electric companies.

This energy agreement is part of the Hawaii Clean Energy Initiative, which puts Hawaii on a path to supply 40 percent of electricity needs and 70 percent of overall energy needs (including transportation) using clean sources by 2030, a far-reaching change for a state now over 90 percent dependent on imported fossil fuels.

This sweeping agreement contains numerous provisions. Some of special interest to developers include:

- ◆ To reach the 70 percent clean energy goal, we must add as much renewable energy to our island grids as possible and we must take advantage of all the energy efficiency options available.
- ◆ For over a decade, Hawaiian Electric has offered the very popular "Energy Solutions for Business" programs to encourage energy efficiency through technical advice and cash rebates for energy saving technologies. Responsibility for these demand-side management programs will be assumed by a third-party administrator later this year. But the effort is as important as ever to our goals. It is likely that the Legislature will play a key role in promoting energy efficiency through changes in building codes. How much will be done by incentive and how much by mandate remains to be seen.
- ◆ To increase solar water heating, now on one in four homes in the state, Hawaiian Electric proposes to expand an existing "pay-as-you-save" program to make it more affordable to install more systems. In particular, the program can encourage solar water heating on rental units. Currently, since tenants pay electric bills, landlords have little incentive for energy efficiency in their units and tenants have no incentive to add equipment they must leave behind when they move.
- ◆ To increase photovoltaic use, Hawaiian Electric is developing a program that will contract with property owners (mostly companies, government and institutions at first) to rent their roofs and competitively select develop-

ers to build, own and operate photovoltaic arrays on the sites. The electricity will be sold to the utility and the site owners will get lease payments for their roofs plus attractive fixed, long-term electric rates.

- ◆ Customer choice and control are essential to the partnership between the utility and its customers, so the agreement includes support for the utility to install new advanced meters in every home and build a "smart grid" for better customer service and to permit time-of-use rates for all customers.

As a state, we have strong motivation to achieve the goals of the Hawaii Clean Energy Initiative.

The oil-based energy system that has powered Hawaii for 90 years worked well when oil was plentiful and cheap. Today, oil is increasingly scarce and supplied from foreign countries not friendly to the United States. Oil prices are low today but most experts predict they will not remain this low, as the world economy picks up and the cost of controlling carbon emissions is added through a tax or cap-and-trade system.

Our dependence on imported fossil fuel has adverse security and economic impacts. To these we now add our new understanding of greenhouse gas emissions and global climate change. It is now clear the current energy system can not be sustained.

Hawaii's total production of greenhouse gas may be small, even on a per capita basis, but as an island state in a tropical hurricane path, we are among the most vulnerable places on earth to rising sea levels, more intense storms and even drought.

We can not afford inaction and, we believe, the Hawaii Clean Energy Initiative puts Hawaii on the right path.



## LEED: Follow, or Get Out of the Way...

By Phil Camp  
Hawaii Architecture LLP

LEED; or the Leadership in Energy and Environmental Design process has been at the tip of everyone's tongue these days. The LEED accreditation system is a way to certify and accredit building projects that have gone the extra step in meeting certain goals related to environmental stewardship. As such, the LEED certification process has become an internationally recognized label for partners in environmental stewardship. The greening of society is in full swing, and it is no longer appropriate for leaders of industry to sit back and wait for the changes to be mandated. Rather, the savvy organizations are taking the "LEED"; in branding their moniker as a leader in environmental stewardship, and setting the example for others as opposed to becoming an example of what not to do.

While all of the recent excitement about saving the environment and "doing the right thing for the earth" is great, many businesses still need to answer a financial bottom line. I am sure everyone would love to do the right thing, but if it means losing income or jeopardizing the future of their operations, the position is much more difficult to rationalize. Perhaps this is one of the areas that the movement has been weakest in connecting with the market. LEED certification is not only the right thing to do...but it can be a huge boost to the bottom line in many cases....

With the rising costs of fuel and energy in general, especially in Hawaii where all of the fossil fuels are shipped to the islands; residential and commercial clients alike are feeling the hit to their bottom line with electrical bills. One of the most visible and recognized greening strategies available to building owners are photovoltaic panels and solar water heater installations. Currently, the Federal and State tax credits can allow owners to re-capture their upfront costs very quickly, and in some cases, (depending on the individual's tax appetite) large installations can be completely paid for within 4 years. With this realization, commercial property owners can literally install P.V. arrays at no cost after rebates that can effectively zero out their electrical bills. While this is a fantastic way to help the environment due to the fact that the user is no longer consuming the dirty energy supplied by utilities that have generators burning fossil fuels, it doesn't take long to realize that a net zero electrical bill every month for most consumers equates to a huge boost to their financial bottom line. In addition to solar technology, there are litany of other greening technologies that may be employed, dependent upon the facility's operation and location. Residential owners could utilize water catchment systems and passive cooling technologies that would again dramatically decrease utility bills, while restaurant users could employ new alternatives to the conventional grease trap that would dramatically decrease pumping fees per location, again, all technologies that simultaneously help the environment while improving the client's bottom line.

A secondary benefit to many greening improvements are a little less connected to hard line cost savings, but never the less can be credited for increasing revenue for the client. These greening strategies are related to the efforts that once again not only benefit the environment, but improve the "experience" of the space. The USGBC (United States Green Building Council) has a collection of studies that attest to the secondary and tertiary benefits of buildings that improve the experience of the space. Office buildings that employ greening strategies often reflect a reduction in employee sick days and an increase in occupant efficiency. Residential clients also see similar benefits with projects that maximize natural ventilation and incorporate natural lighting throughout the space. One of the better known comparisons that illustrate the benefits of improving the experience compares the "experience" of coffee consumers that patronize Starbucks vs. Dunkin Donuts. While the typical patron of the Dunkin Donut store is not likely to stick around after their purchase, the same patron at a Starbuck's outlet could find themselves sticking around to check email or chat with a friend, which usually leads to additional retail sales and warrant's higher price points for a very similar product. While it is hard to quantify the monetary gain of such efforts in the same way that an owner can quantify savings in their electrical bill from active solar strategies, it is clear that the end result will again benefit profits and simultaneously assist in environmental stewardship.

While all of this technology sounds great, the obvious next question might be...How can we help? The answer quite simply is...By doing our job. As a member of the USGBC, Hawaii Architecture LLP is also a firm led by Phillip J. Camp AIA, who is a LEED accredited professional licensed to practice architecture in Hawaii, California, and Nevada. Aside from being well versed in many greening strategies, the firm coordinates multidisciplinary consultants on every job they design. As such, we would be glad to work with owners of existing facilities, as well as clients hoping to move forward with new construction to develop a list of greening strategies that could start with elementary energy saving steps, and provide various steps culminating with possible solutions resulting in a LEED accredited structure. As a full service architecture firm, we would be glad to help you become a steward of the environment while simultaneously improving your physical environment as well as your fiscal outlook.

*Phillip Camp; an alumnus of Iolani High school and the University of Southern California School of Architecture is a current member of the AIA and is licensed in Hawaii, California, and Nevada. Mr. Camp is also a LEED accredited professional. Over the last decade he has completed a multitude of high density residential, mixed use retail and commercial office projects throughout the West Coast and Hawaii. Phillip can be reached at Hawaii Architecture LLP @ 808 721 3411 and via email @ pcamp@hawaii-architecture.net.*

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