

(Continued from page 7)

and the requirement of administrative exhaustion that places the security of existing home loans at risk.

Developers, investors, and those seeking homes will need to carefully consider whether it is prudent to invest or undertake projects in circumstances where zoning approvals and entitlements remain open to judicial challenge for many years, even despite valid development agreements.

The legislature finds that this is an unacceptable situation. One of the key factors in adjusting to the changing socio-economic conditions is the restructuring of our land use system to distinguish between the best agricultural land (with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B) and more marginal agricultural land (with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E).

Accordingly, the purpose of this Act is to remove the uncertainty over past entitlement of certain subdivisions by reclassifying certain marginal agricultural lands in the agricultural district into the rural district, subject to certain terms and conditions.

SECTION 2. (a) For purposes of this Act, the term "project" shall mean any development: Approved by a county; and Where plats of subdivision have been approved on or before the effective date of this Act, Creating two hundred or more lots, averaging less than three acres in size; and on land located in the agricultural district.

(b) Lands within any project that satisfy the following criteria shall be classified as lands in the rural district as described in section 205-2, upon receipt by the land use commission of a voluntary request for such reclassification from the developer of the lands identified in such request, without need for any proceedings before the land use commission: (1) The lands have soil predominantly classified by the land study bureau's detailed land classification as overall (master) productivity rating of D or E; and(2) The lands are not in zone 1 or zone 2 on the lava flow hazard zone maps prepared by the United States Geological Survey.

(c) Upon reclassification, challenges to the creation and development within the reclassified area of lots and associated infrastructure, and of single-family residences on such lots, as contemplated by county project approvals granted prior to the effective date of this Act, shall be barred.

(d) On lands moved into the rural district pursuant to this provision, the county shall not authorize, and no private landowner shall create, any lots smaller in size than the lots provided for in the project approvals granted by the county prior to the effective date of this Act.

Eric Crispin, the former Director of Planning and Permitting for the City & County of Honolulu was the keynote speaker at the annual Membership Meeting held on October 15 at the Oahu Country Club.



HAWAII DEVELOPERS' COUNCIL

February, 2005

Volume XV Number 1

HAWAII DEVELOPERS' QUARTERLY

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

2004 - A Year in Review

Director of Planning and Permitting Attends Annual Membership Meeting

Eric Crispin, the former Director of Planning and Permitting for the City & County of Honolulu was the keynote speaker at the annual Membership Meeting held on October 15 at the Oahu Country Club.



Speaking just a few weeks before the election of a new mayor of Honolulu, Crispin

acknowledged that he might be looking for a new job come the first of January.

Eric spoke on the challenges that he has faced in recent months as hiring freezes, an upswing in construction activity and a much more litigious society has put a damper on the department's ability to serve the public.

Crispin helped culminate a year of educational workshops and networking events for the members of Hawaii Developers' Council.

Luncheons

HDC members gathered three times during the first half of 2004 for luncheons to network and hear presentations from community leaders.

The first luncheon meeting of the year had local developer Duncan

MacNaughton as our keynote speaker. He described the projects that the MacNaughton group was building and shared his assessment of the current development climate in Hawaii.

On April 13, the President of Bank of Hawaii,

Mike O'Neill was

the featured speaker. He shared some economic forecasts from the bank and spoke on the bank's current efforts to help spur development.



In June, HDC members that attended the luncheon on June 8th heard about the goals and accomplishments of the Department of Hawaiian Home Lands. Director **Micah Kane** spoke on their efforts to provide home ownership opportunities for the beneficiaries of the Department.



Kane spoke on the department's willingness and abilities to partner with private developers to build more housing.

Board Room Series

There were three Board Room Series during 2004 and each one was attended by close to 50 members.

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UPCOMING EVENTS

Kauai Developers' Council

Formation Meeting

Thursday February 10

5:00 PM to 7:00 PM

Hale Kauai in Lihue

Free

Board Room Series XIII

Speaker:
Dean Uchida
Land Use Research
Foundation of Hawaii

Thursday, March 3

First Hawaiian Bank Tower
30th Floor

7:30 AM to 9:00 AM

Free
For Members Only

Hawaii Developers' Council

P.O. Box 2537
Honolulu, Hawaii 96804

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Catherine
Camp

Presidents Message

**KUNG HEE FAT
CHOY!**

I am honored to be your elected President of the Hawaii Developers' Council. First off I would like to thank last year's President, Howard Bilkiss, for his undivided commitment and leadership to HDC. Thank you Howard for making my job that much easier this year!

I also want to take this opportunity to thank you, our membership, for your continued support of our organization. It is due to the active participation and support of our members that HDC has developed into a widely respected and influential voice for real estate development issues in Honolulu.

This year your Board of Directors is focusing their efforts in three key areas: Member Education Legislative Representation and Networking.

The first of these is education via our Boardroom Series and Luncheon Programs. Each year HDC puts on a series of outstanding educational breakfasts on topics of interest to our members. Our Mid-Year Forecast event has become a "can't miss" event. Thank you Pete Cooper & Abe Lee for agreeing to co-chair our Mid-Year forecast! Watch for information on upcoming events in future newsletters.

The second focus area is Legislative Representation. Our legislative liaisons keep a watchful eye on dozens of bills during every legislative session. This is a complicated, time consuming, detail oriented, and often-costly mission. HDC has been successful in establishing itself as a voice of reason who will help Legislators understand the potential implications, both good and bad, of a piece of proposed legislation. We have

been and continue to be very well positioned to influence the process. Due to the consistent and reasonable approach our members and friends have taken, our opinions are sought out, incorporated into the debate and reflected in the results.

Earlier this month the Board met with Henry Eng and David Tanoue, Director and Deputy Director of the City and County Department of Planning and Permitting to congratulate them on their appointments and to initiate a relationship with HDC. Mr. Eng indicated that the department will be streamlining and simplifying the permitting process and reducing the backlog and wait times for permits. In the first month, the team has hired six new personnel and plan on hiring 19 more in various positions.

Mr. Tanoue indicated other areas of improvement are to remove redundancies and delegate authority, create a payment and permit pickup only line, hiring a part time permit information person and filing an online preapplication to eliminate 15 to 20 minutes of data entry during the initial session at DPP.

We believe this initial meeting was the first step in developing a long-term relationship!

The third focus area is Networking. By being an active member you get to connect with a diverse network of real estate related service providers. Over the years, I am sure many beneficial business relationships have been established as a result of the networking opportunities available as a member of the Hawaii Developers' Council.

If there are any issues you would like to bring to my attention or that of the Board of Directors, please feel free to contact me or any member of our Board. Thank you for your commitment to Hawaii Developers Council and I look forward to seeing you at our next event!

Solution to Hokuleia Challenge?

Developers and related entities were shocked 18 months ago when a Circuit Court judge on the Big Island shut down the Hokuleia project. The supporters of that project are trying to obtain relief through the State Legislature in the form of an exception. The following text is from HB 1418 which received a hearing in the State House in Early February.

While Hawaii is a state committed to conserving and protecting agricultural lands, not all of the lands classified as agricultural are fit for agricultural purposes. In particular, lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D and E are considered marginal and may be better suited for non-agricultural purposes.

The amount of land designated in the agricultural district far exceeds the amount of land classified for urban and rural uses combined. In 2003, an estimated 1,932,429 acres of land were in the agricultural district (forty-seven per cent), whereas, there were only 196,215 acres of urban land (five per cent) and 10,108 acres of rural land (two-tenths of one per cent). The vast amounts of land classified as agricultural stems from the State's practice of designating the agricultural classification a "catch-all" district for lands neither urban, rural, or conservation.

Of the 1,932,429 acres of designated agricultural, it is estimated that less than half of the land can actually be used for agriculture. In 1997, there were 292,107 acres used for crops. In 2002, only 211,120 acres were used for crops. This 80,987 acres decrease in the amount of land used for crops likely reflects Hawaii's decreasing dependence on agriculture as an industry.

There is a long established practice of permitting residential

communities on land classified for agricultural use. Agricultural land has been and will continue to be used for residential purposes because it is relatively inexpensive, available and not suited for agricultural uses. There are many subdivisions throughout the State comprised of marginal lands, but in the agricultural district and zoned to include residential uses by the respective counties. This has led to agricultural land values rising beyond their value for agricultural purposes. The counties have historically allowed such developments to occur on agricultural lands, with problems developing only recently.

In exchange for zoning and other entitlements, counties have imposed on developers of projects exactions such as highways or other transportation improvements, shoreline or other parks, beach access, and affordable housing. Within the recent past, developers of residential projects on agricultural lands have expended millions of dollars in construction and development costs and have sold thousands of residential lots.

In the case of the Hokulia project in South Kona, despite arguments by the developer that it had vested rights to proceed with the development based upon its reliance on the county's actions, including the requisite zoning, subdivision permits, and executed development agreements, and its substantial expenditures in reliance thereon, the circuit court of the third circuit ruled that the dwellings being constructed and planned for the project were not farm dwellings and not a permitted use in the state agricultural district. The court prevented any further construction activities and directed a reclassification of the project lands from the agricultural to the urban district.

The counties, people in business, finance, development, and the community at large are concerned that such decisions cause tremendous damage and a debilitating uncertainty to the entire State.

This decision sets a precedent for litigation between and among developers, lenders, residential lot owners, construction companies, realtors, title insurers, counties, and the State; creates a chilling effect on investment within the State; and clouds the viability and legality of past permitted agricultural residential subdivisions throughout the State.

The State has suffered and will continue to suffer adverse economic effects because the uncertainties caused by such decisions have threatened jobs, will likely result in higher costs, and will discourage investment in Hawaii. Hawaii is highly dependent on outside investment and capital to ensure that its economic engine operates smoothly. Besides tourism, investment in real estate is a highly important component to a healthy state economy. Uncertainty in the real estate market will deter investment and drive up the cost of capital. With the uncertainty of development projects in Hawaii, secondary employment associated with such projects is affected, and there is less demand for materials and supplies from local businesses. Counties will be deprived of much needed property tax revenue that would help provide infrastructure and services necessary for a healthy community. The longer such uncertainty festers, the more likely and pronounced its negative effects on the State's economy.

Financial institutions believe that such decisions increases the risk associated with development in Hawaii. Mortgage lending makes home ownership possible. Lenders have made significant loans on land with residences in agricultural districts throughout the State. Decisions like the Hokulia decision invalidate lenders' longstanding interpretation of chapter 205, Hawaii Revised Statutes, and throws into doubt the legality of other dwellings. Additionally, there is great uncertainty about the reliability of permits

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Welcome New Members! (From July 2004 through December 2004)

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Welcome New Board Member



The members of Hawaii Developers Council elected a new Board member in October. Frederic Berg graduated from Boston University in 1989 with a Master's in Business Administration emphasizing international finance. Prior to completing the Masters program, Mr. Berg received Bachelors degrees in Mechanical Engineering and Economics from the University of Hawaii.

After completing the Master's program, Mr. Berg moved to Bruxelles, Belgium as a multi-lingual marketing engineer and later returned to Hawaii to participate in the development of the Aloha Tower project, which included maritime, office, residential, retail and resort components.

After wrapping up the Aloha Tower Market Place, Mr. Berg's joined MW Group, Ltd. where he was responsible for leasing, acquisitions, and development of projects. In 1997, he also became Managing Partner for Kalepa Kona Partners, a Light Industrial Condominium Warehouse developer.

In 1999, Mr. Berg accepted an assignment with the Department of Hawaiian Home Lands to develop Village 6 at the Villages of Kapolei, a 226 home single family subdivision and is currently providing consulting services to the Hawaiian Community Development Board in its efforts to provide affordable homes for DHHL lessees.

Frederic is married to Pascale Hunault-Berg, a French national. Frederic was born in the Belgium Congo and speaks English, French and German.



Ken Chong-Pacific Realty Consultants

More to Come on Condo Recodification Law

Get Your Comments In Now

By Kenneth Chong

There is a mistaken notion that the Condo Recodification bill became law in 2004. The truth is, only a portion of it passed, and, even at that, those portions are subject to the remainder of the bill passing in 2005. Otherwise, everything "goes down" and the process must start all over again.

In a previous column, I discussed most of the major changes that were proposed by the Recodification Committee and Real Estate Commission. A few ideas were rejected by the legislature, such as deletion of the owner occupancy section. Other sections will be up for further consideration in early 2005. The only sections "passed" were the general provisions and those on governance. The portions of most interest to us, on developers and consumer protection, were "reserved" for action in the upcoming legislative session.

This gives those in the development community further opportunity to voice their concerns or support on certain measures. But time is short! You can either send your comments in to us for forwarding to the appropriate committee or send them in directly to your legislators. For the most part, the recodification is an improvement over the present law and is deserving of your attention and support.

The only part of the recodification law that is certain is the portion that was added to the bill by the legislature – the so-called "Condo Court" provision. This section, entitled "Condominium Dispute Resolution Pilot Program," is a simplified hearings procedure to resolve minor condo disputes. The program took effect in July 1, 2004 and will be tested for two years. The topic was covered in a recent Boardroom Series for our members.

Kauai Developers Council Formation Meeting

Hawaii Developers Council members interested in becoming part of the new Kauai Developers Council, the first outer island branch, please contact Pete Cooper. Our first meeting will provide you with additional information and answer any questions you may have, and will be held on February 10, 2005 in Lihue at Old Hale-Kauai (5:00 p.m. – 7:00 p.m.).

Developers and their consultants are invited to this introductory meeting. Drinks and pupus will be provided. If would like to attend or know someone who might be interested in attending this meeting. Details on this first meeting will be shared in the next newsletter.

HDC Member Appointed Head of Planning and Permitting!



Newly elected Honolulu mayor Mufi Hannemann announced in late December the appointment of **Henry Eng** as the Director of Planning and Permitting for the City & County of

Honolulu.

With a 40 year career in both private industry and governmental agencies, it appears that the new Mayor has made a wise choice.

Since 1988, Mr Eng has been working for the Estate of James Campbell, most recently as the Community Development Manager, where he promoted the Estate's interest in meetings with government officials, industry and community groups and worked with community and environmental groups to assure the perpetuation of good land stewardship policies.

His public career was with the department that he will be now heading. From 1969 to 1984, he started out as a planner / architect for the City and then worked up the ranks to become an Assistant Director for the Zoning Division.

He also served for four years as a legislative analyst for the Honolulu City Council where he advised the Planning and Zoning Committee on planning, zoning, housing and other matters.

Eng attended Columbia University in New York City from 1958 to 1960, but received his Bachelor of Architecture from Pratt Institute, Brooklyn, N.Y., He also holds a Master of Science, City and Regional Planning degree from the same Institute.

Shoring & Curtain Wall Maintenance: The Forgotten Elements of Major Project Design

By Phillip J. Camp, Principal, NGA Hawaii LLP



The design of any large project involves seemingly millions of decisions by many individuals. Often lost in the process are two key elements that can become the subject of intense discussion and concern later in the design process, or sometimes years after occupancy.

Considerations for site shoring and rigging for maintenance are often overlooked early in the design process because the design team is more involved in what a project looks like, governmental approval, community consensus, and other concerns. Too little time is spent thinking about how the project will be built (in the case of shoring), and how the project will be maintained (in the case of rigging).

Having a unique perspective on these matters, by being involved both as a design professional and as a shoring contractor with my family's firm here in Hawaii, I have noticed that in the design of larger projects, these issues were often not addressed until the project goes out to bid. Understanding the need for early input from experts has proven to minimize problems later in the design and construction phases. An organized team approach has demonstrated that issues flushed out early can be resolved systematically, resulting in an efficient flow of information and consequently, a more effective design process.

SITE SHORING

The first critical phase of construction for any major project incorporating subterranean construction is shoring and it is often assumed that a site can be shored without major problems. But problems lurk beneath the surface, with water, hydrostatic pressure, methane gas, adjacent buildings and utility lines, and other factors. Simply put, a well thought-out shoring scheme will allow for efficient and cohesive waterproofing, while a poorly thought out scheme will result in a waterproofing system that is complex, labor intensive, and much more susceptible to failure.

RIGGING FOR MAINTENANCE

Considerations for rigging should be considered essential, because a building even as low as four-stories, without a well thought-out scheme, will cause the owner eventually to spend large amounts of money to temporarily rig swing stages for any exterior maintenance.

This is a costly prospect especially considering that temporary rigging often damages roofing. It is very labor intensive, with crews rigging a temporary outrigger assembly with scaffolding, counterweights, and tiebacks, as opposed to simply hooking outriggers into pre-designed davits. Owners who simply 'value-engineered' the davit assemblies out, are left only to wonder why after occupancy.

SOLUTION IDEAS

Stepping back from the design process and allowing trade professionals to participate and share their knowledge can prevent much of the heartache associated with these issues.

(Continued on page 5)

(Continued from page 4)

In our firm, Nestor+Gaffney Architecture LLP, we cannot stress enough the importance of assembling a qualified team early in the design process, urging our clients to involve contractors and subcontractors in initial phases of the design when possible. This allows the entire design and development team to hear the concerns of people who will actually build our projects, as well as the added benefit of letting the owner understand what value will be added to the finished product with money that is being spent up front.

Phillip Camp, an alumni of Iolani High School and graduate of USC School of Architecture, has recently established the Hawaii branch of Nestor + Gaffney Architecture LLP, headquartered in Orange County, California. Over the last decade, he has worked on a multitude of high density residential, mixed use retail and commercial office projects throughout Southern California and Asia. Phillip can be reached at NGA Hawaii at PH: 808 845 0700 FX: 808 845 8030, and via email at : pcamp@ngarch.com. Their current office is located at 348 Puuhale Rd., Honolulu Hawaii 96819.

DO YOU HAVE A PROJECT THAT YOU'D LIKE TO FEATURE IN THIS NEWSLETTER?

SEND YOUR TEXT AND PHOTOS TO:

GARY@ABCHAWAII.ORG

(Continued from page 1)

On February 25, the first Boardroom Series of 2004 was held in the spectacular Bankers Club on the top floor of the First Hawaiian Bank Tower. Discussed in the tenth Boardroom was the subject of insurance. Our guest speakers were **Sue Savio**, Insurance Associates **Brian Moore**, Honsador Lumber and **Ralph Mesick** with the Bank of Hawaii. The three panelists discussed their experience representing developers and the common difficulties of obtaining insurance and how insurance affects bonding and lending.

Lumber versus Steel was the subject of the June 23 Board room series. This educational workshop was led by **Jim Pappas**, who extolled the virtues of wood products, from its structural soundness to its environmental sensitivity. Building in steel was promoted by **Wayne Lincoln** of Honsador. Wayne described some experiments being conducted on the Windward side that will determine the long range

The third Boardroom Series had two topics of discussion. The first topic was led by **Kenneth Chong** who described the recent establishment of the "Condo Court". Attendees learned that this is a true court, but a dispute resolution process before a Dept of Commerce hearings officer. The goal is to provide inexpensive and speedy relief to consumers on select condominium issues.

The second topic was led by Dan Bent, who spoke on dispute resolution through mediation, arbitration and litigation.

Mid Year Review

The most well attended HDC event of the year was the Mid-Year Real Estate Review & Forecast. Held on Thursday, July 15 at the Hawaii Prince Hotel, the workshop featured a discussion led by six industry leaders. **Harvey**



l to r, Shapiro, Uchida, Howard Bilkiss, Ambard, Kehoe and Brewbaker

Shapiro from the Honolulu Board of Realtors started off the morning by highlighting the escalating prices for residential property. **James Kehoe**, from San Francisco based Belrad Group described the investments that his company has made in Hawaii. The effect of governmental policies on the development industry was **Dean Uchida** with the Land Use Research Foundation of Hawaii

As usual, **Mark Ambard**, Ambard & Company, entertained the audience with his unique blend of satire and humor as he predicted that low occupancy rates translates into rental rates that should encourage industrial property owners to build more space. **Roger Lyons** of CB Richard Ellis shared his assessment of the current climate for Retail establishments. The workshop ended with an economic overview from **Paul Brewbaker**, Bank of Hawaii.

Planning Directors - HDC was a co sponsor for a workshop held on August 18th at the Ilikai Hotel that featured a panel discussion of the planning directors from the four counties. They included Chris Yuen from the County of Hawaii, Eric Crispin from Honolulu, Ian Costa from Kauai and Michael Foley from Maui. The panelists discussed infrastructure needs, affordable housing, smart growth principles and other challenges and opportunities they see in their respective counties.

2004 was another banner year for Hawaii Developers Council members.