



March 2006

HAWAII DEVELOPERS' MONTHLY

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

HAWAII DEVELOPERS' COUNCIL

Meeting Recap: "The Sky's Falling—The Sky's Not Falling— Hamlet Near The Top of the Cycle" by Mike Lum, ML Pacific Inc.

Real estate market researcher Ricky Cassiday was the guest speaker at the Hawaii Developers' Council lunch on March 4th at the Oahu Country Club.

Cassiday remarked that the market is changing with interest rates higher along with recent reports of prices topping out and longer selling periods. Buyers' psychology and their reaction to the changing market will be the key to the direction of the market.

He predicts that national real estate cycles will be more moderate in the future as compared to the typical historic big swings. This will be the result of the world's new inter-connectivity and efficiencies (i.e. ability to disseminate information rapidly, sophisticated forms of online procurement and increasingly transparent markets in all industries).



Ricky Cassiday

Cassiday also suggested that Hawaii's economy and thus real estate market would be better than the rest of the nation because of military spending and because Hawaii is a small scale market. The military will continue spending in Hawaii because of its strategic advanced location. Hawaii's market small by comparison to mainland markets will continue to be supported by offshore demand since "Hawaii is the greatest place to live".

House prices will remain high because Hawaii is a supply constrained environment due to government regulations, density restrictions and subdivision standards. Affordable housing will continue to be a problem if there is over-regulation and government policy to have market buyers subsidizing other buyers.

Cassiday believes all the high-rise condo projects under construction already will be successful because of the mainland buyers who are investing or purchasing homes.

Upcoming Events

Board Room Presentation—Lessons Learned: Third Party Review
Tuesday, April 25, 2006
Speaker: Jim Lyon, P.E., Lyon Associates

HDC Luncheon Meeting
Tuesday, May 9, 2006
Speaker: Mitchell Imanaka, Imanaka Kudo & Fujimoto

Board Room Presentation
Tuesday, June 27, 2006

Mid-Year Review
Date tbd

Tuesday, May 9, 2006
Speaker: Mitchell Imanaka
Imanaka Kudo & Fujimoto
Oahu Country Club
Nuuanu Valley

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

**Reservations &
Cancellations**
Fax 847-6575

No shows will be billed.

Board Room Series

Tuesday, April 25

7:30 to 9:00 AM

First Hawaiian Bank
Tower
30th floor Board Room

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PRESIDENT'S MESSAGE

Peter Cooper Construction Management & Development

Aloha. Welcome to the first Hawaii Developer's Council newsletter for 2006. I am extremely pleased with how this year is shaping up for our organization. Outgoing President, **Cathy Camp**, and the last board of directors have provided us with a solid organization, a strong balance sheet and an organization that is known for its educational and networking strengths. Our mission continues to be educating developers and the public regarding land, construction and development issues through public forums, seminars and publications.

Our current board of directors is primarily active developers, with a passion for improving our industry and the development environment (political, physical, etc.) we all work within. These thirteen people provide a strong representation of not only our industry, but also provide the primary input for the boardroom series, the luncheons (including the Mid-Year review) and the articles for our newsletters. If there is a subject you would like us to address, please contact one of your directors.

Speaking of subjects to be discussed that impact our industry, so far this year we have had two board room series and have five more scheduled. Please take a moment to thank **Howard Bilkiss** and **Joe Mastrantonio** for putting these informational events together. The first two covered Mass Transit Alternate Routes (co-sponsored with LURF) and our most recent meeting was focused on forming LLC's specific to real estate companies based in Hawaii. Both of

these meetings were incredibly informative and served our members well. We also have our first luncheon next week with **Ricky Cassidy** discussing the current residential market and we will have four more luncheons as the year progresses. **Abe Lee** and **Alan Arakawa** are putting the luncheons together for our organization. Please let them know how much you appreciate their work.

In addition **Candace Chase** has taken the lead, along with **Barbie Rosario**, to update our newsletter to better serve you. We've added a "Legal Corner" to keep you informed on the latest changes in the law that impact you. **Mitch Imanaka's** article on the revised condominium law should be passed out to anyone and everyone associated with condominium development in the State of Hawaii.

Also, long-time friend of Hawaii Developer's Council, **Dean Uchida** of LURF has provided a comprehensive update on how proposed legislation will impact our industry. You can read his article in the Legislative Update section. This is followed by our new "Consultant's Corner", where my good friend **Lance Wilhelm** of Kiewit Building Group tries to explain why contractors are charging so much.

And lastly, a quick update on the Kauai Developer's Council is in order. **Graeme D. Merrin**, their President indicated they currently have 50 members and their meeting in February with Mayor Baptista had 67 attendees. Congratulations to our allied group!

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Hawaii's New Condominium Law Yields Important Changes

Mitchell A. Imanaka, Imanaka Kudo & Fujimoto
Gordon Arakaki, Ekimoto & Morris



In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.¹ In 2005, the Legislature completed passage of the long-awaited recodification of Hawaii's condominium property regimes law.² Hawaii's new condominium law goes into effect on July 1, 2006.

Why Recodify?

The 1961 "Horizontal Property Regime" law consisted of 33 sections covering a little more than three pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. Hawaii's existing condominium property regimes law – Chapter 514A, Hawaii Revised Statutes ("HRS") – consists of 119 sections and over one hundred pages (including the supplement). As noted by the 2000 Legislature, "[t]he present law is the result of numerous amendments enacted over the years made in piecemeal fashion and with little regard to the law as a whole."³

The 2000 Legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micromanages condominium associations . . . [t]he law is also overly regulatory, hinders development, and ignores technological changes and the present day development process."⁴ Consequently, the Legislature directed the Real Estate Commission to conduct a review of Hawaii's condominium property regimes law and to submit draft legislation to the Legislature.

The purpose of the recodification is "to update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law."⁵

Why Should People Care?

28% of Hawaii's housing units are held in condominium ownership. For decades, Hawaii has had the highest percentage of condominium housing units in the United States of America.⁶ This alone makes the new condominium law extremely important for Hawaii's people.

The condominium property regimes law is also important for land use, housing, and growth policy reasons. The rapid growth of common interest ownership communities (condominiums, cooperatives, and planned communities) since 1960 goes hand in hand with government policy for much of the past 30-40 years dictating that new development "pay its own way." Condominiums and other common interest ownership communities (with their regimes of privately enforceable use restrictions and financial obligations paying for formerly "public facilities and services" such as roads, trash collection, and recreational areas) have become a critical part of our land use fabric. Indeed, virtually all new development in Hawaii consists of common interest ownership communities.

Given the importance of condominiums to the quality of life of Hawaii's people, the goal of the recodification is to make Hawaii's condominium property regimes law better for people who build, sell, buy, manage, and *live* in condominiums.

What is a "Condominium Property Regimes" Law?

Preliminarily, it is useful to understand exactly what a "condominium property regimes law" is – and what it isn't. A condominium property regimes law is a land *ownership* law, a *consumer protection* law, and a *community governance* law. It is not a land *use* law (*i.e.*, it does not govern what structures may be built on real property; separate state and county land use laws control – or should control – land use matters).

A condominium property regimes law is essentially an *enabling* law, allowing people to:

- Own real estate under the condominium form of property ownership (*i.e.*, a form of real property ownership where each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" with other unit owners in common elements such as the exterior of buildings, structural components, grounds, amenities, and internal roads and infrastructure);
- Protect purchasers through adequate disclosures; and
- Manage the ongoing affairs of the condominium community.

The ability to build, sell, buy, borrow/lend money, insure title, insure property, and more are all part of real property ownership and, therefore, part of condominium law.

What Are Some of the Recodification's Improvements to the Condominium Law's Definitional, Development and Sales Provisions?

- *Clarification that changes in public reports do not necessarily give buyers rescission rights.* The language in the new law clarifies that any "pertinent change" to information contained within the public report does not necessarily constitute a material change that may trigger re-

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scission rights.⁷ This is important, as Hawaii's statutory law was unclear on this issue.⁸

- *Expansion of the definition of an "apartment" or "unit."* The new law expands the reach and scope of Hawaii's condominium laws to permit non-physical or spatial portions of the project to be identified as units.⁹ Currently, the Real Estate Commission requires physical structures to be either planned or erected on the property in order for it to be condominiumized. This clarification will also help with respect to parking stall apartments, which are currently prohibited unless there are physical demarcations for such stalls.
- *Condominium map certification of architect, engineer, or surveyor.* This provision of the condominium law has been changed to require that the certification by the design professional need only state that the map depicts a layout, location, dimensions and numbers of the units "substantially" as built. It was previously difficult to obtain the certification from design professionals who sometimes refuse to certify that the maps represent the buildings exactly as built.¹⁰
- *Approval requirements at 67%.* Amendments to the declaration, bylaws, and other approval requirements have been set at 67% (as opposed to 75% or other percentage) to conform to secondary market requirements, and to make it easier for the users of the statute to remember what percentage requirement applies.¹¹
- *Mechanics liens and liens against units.* This provision has been modified to clarify that if "visible commencement of operations" occurs prior to the creation of the condominium then, upon creation of the condominium, liens arising from such work may only attach to all units in the condominium, but not to the common elements.¹² This helps to clarify that no blanket liens will arise once the condominium is established, but also preserves mechanics liens as to work in the project to the extent that liens will arise against units, as opposed to common elements of the project.
- *One public report required.* The new law streamlines the public report process by requiring just one public report, which may be updated by way of amendment in the event of changes in the project.¹³ If there is any "pertinent change" regarding information contained in the public report, the developer must submit to the Commission an amendment reflecting the change together with supporting information.¹⁴ Developers will not be required to suspend sales pending approval of the amended public report; provided that the developer must advise the real estate brokers for the project of the change prior to the issuance of the amended report.¹⁵ If, however, the amended report is not issued within 30 days after submission to the Commission, the Commission may, at its discretion, order a suspension of sales pending issuance of the effective date for the public report.¹⁶
- *"Evergreen" public report.* Public reports will no longer expire as is the current practice, but will remain in effect until such time as the developer has sold all units in the project.¹⁷
- *Clarifying when a public report will be required.* The new law clarifies when a public report is required by enumerating situations where such a report need not be obtained upon sale of a unit.¹⁸ These include (1) a gratuitous disposition of the unit, (2) a disposition pursuant to court order, (3) a disposition by government or governmental agency, (4) a disposition by foreclosure or deed in lieu of foreclosure, or (5) the sale of the units in bulk, which is defined as being a circumstance where the developer undertakes, develops and sells all or a portion of the developer's entire inventory of units to a purchaser who is a developer.
- *Pre-registration solicitation.* A new concept embedded in the new law permits the developer to solicit prospective purchasers and enter into non-binding pre-registration agreements with such purchasers with respect to units in the project.¹⁹ There are certain limitations that apply, however.²⁰ Prior to registration, developers may not collect monies from buyers, whether or not funds are to be placed in escrow or are refundable to buyers.²¹ Second, the developer may not ask that the buyer execute any document other than a non-binding pre-registration agreement which may not incorporate terms and provisions of the sales contract.²² Thus, the intent here is to require only a simple pre-registration agreement (a form of which will probably be developed by the Commission) for use in such situations.
- *Buyers' rescission rights.* Buyers will still have a 30-day right to rescind a binding sales contract.²³ This rescission right is waivable either by affirmative act on the part of the buyer, or upon closing of the purchase within the 30-day rescission period.²⁴ Counsel to developers should be careful to assure that the exemption requirements of the Interstate Land Sales Full Disclosure Act are complied with. Currently, developers may not enter into binding sales contracts unless either a contingent final report or a final report is delivered to buyers. At this point, assuming that the two-year builder's exemption is being used, the developer has a period of two years within which to deliver a completed unit to the buyer. The requirements for the issuance of the contingent final public report or final report contemplate that the developer is far along in the process of developing the project. For instance, the final report will not be issued unless a building permit, construc-

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tion contract, bond, and a program of financing are in place. The contingent final report is not issued unless it is anticipated that those items will be obtained within a 9-month period after the issuance of an effective date for the contingent final public report. Thus, there will be no touchstones, as there are now, that "flag" for developers the possible impact of the Interstate Land Sales Full Disclosure Act in the event that binding contracts are entered into at a point in the development process where the developer may not be in a position to deliver units within the two-year period.

- *Sales contracts entered into prior to completion of construction.* If a sales contract is entered into prior to completion of construction, it is contemplated that the contract must contain an agreement on the part of the developer that completion must occur before a set deadline, which must be referenced in the public report.²⁵ The deadline may either be a specific date or the expiration of a period of time after the sales contract becomes binding. The deadline may be extended by reason of *force majeure* as defined in the sales contract. If completion does not occur within the prescribed time, buyers may cancel the sale.
- *Use of buyers' deposits to pay project costs.* The new law clarifies that buyers' funds may be used to pay for certain project costs either upon conveyance of the unit to buyers prior to completion, or prior to closing, when buyers' funds are held in escrow.²⁶ Various requirements are set forth, including the submission of items that seek to assure that construction will indeed occur as contemplated by the developer. A notice requirement with regard to the use of buyer deposits must be set forth prominently in the public report for the project, as follows (in the case of disbursements prior to closing):

"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."

What Are Some of the Recodification's Improvements to the Condominium Law's Management Provisions?

The recodification makes many improvements to help condominium communities function fairly and efficiently, while appropriately balancing the rights and responsibilities of individual unit owners and the association of unit owners as a whole. The improvements include:

- *Significantly better organized condominium management provisions.* The condominium management part (Part VI, Chapter 514B, HRS) was reorganized into four Subparts:
 - A. Powers, Duties, and Other General Provisions;
 - B. Governance – Elections and Meetings;
 - C. Operations; and
 - D. Alternative Dispute Resolution.

The clarity of the Condominium Property Act was also enhanced by consolidating provisions on single issues (*e.g.*, proxies), eliminating the artificial approach regarding the contents of bylaws developed in HRS § 514A-82(a) and (b), and minimizing the statutory requirements for condominium governing documents while incorporating certain provisions currently in HRS § 514A-82(a) and (b) in more appropriate statutory sections.

- *Avoiding the "one-size fits all" (i.e., commercial, residential, big, small, attached, detached) requirements of HRS Chapter 514A.* Entirely nonresidential condominiums and small condominiums (*i.e.*, those with no more than 5 units and not subject to continuing development rights) may be exempted from Part VI (Management of Condominiums), except for requirements relating to managing agents.²⁷
- *Encouraging owner participation.* This was done by, among other things:
 - ◊ Expressly allowing e-mail notice of association meetings (at the unit owner's option);²⁸
 - ◊ Expressly allowing mail-in and e-mail voting by directed proxy;²⁹ and
 - ◊ Removing the statutory requirement that, in order to be valid, a proxy must have a "for quorum purposes only" box (which has caused the unnecessary disqualification of proxies and stymied the conduct of association business). Instead, the "for quorum purposes only" box is required only for standard proxy forms issued by associations.³⁰

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- *Improved meeting options.* Boards are allowed to meet by telephone conference call and video-conferencing³¹ (and associations are allowed to do so if provided for in the declaration or bylaws).³²
- *Better executive session provisions.* HRS §514A-83.1(b) currently allows boards to go into executive session for personnel and association litigation matters. The new condominium law better protects association interests by also allowing boards to convene in executive session for attorney-client privileged matters and while negotiating contracts, leases, and other commercial transactions.³³
- *Improved insurance provisions.* Among other things, the new insurance provisions distinguish between attached and detached unit condominiums, allow responsible parties to be billed for deductibles, and allow associations to require unit owners to carry insurance covering their personal liability (helping to make sure that the right people pay for the right things).³⁴
- *Risk management.* The new condominium law permits associations to maintain and repair "high risk components" (e.g., washing machine hoses, water heaters, toilet "O" rings) before they fail (which should help with insurance premiums).³⁵
- *Aging-in-place.* To avoid harm to an elderly resident's self or others and to avoid disruption to the condominium community, Chapter 514B includes a Good Samaritan provision that limits the liability of an association in requesting a functional assessment and recommendations for services.³⁶
- *Tools to deal with obsolete provisions in governing documents.* The new condominium law gives associations the tools to deal with obsolete provisions in their declarations and bylaws by allowing circuit courts to excuse compliance with provisions in governing documents that unreasonably interfere with an association's ability to manage its property.³⁷

Improved alternative dispute resolution provisions. The new condominium law allows any party to request mediation (not just owners or the board).³⁸ It also requires parties to file for *trial de novo* within thirty days of written demand or lose the right to *trial de novo*.³⁹

Condominium dispute resolution pilot project and study. Recognizing the scope, complexity, and importance of improving condominium alternative dispute resolution mechanisms, the Legislature established a two-year condominium dispute resolution pilot project and study.⁴⁰

Where Can I Get More Information on the Recodification?

The Real Estate Commission's final draft of the proposed recodification, along with background information, research reference lists, commentary on the proposed law, and findings and recommendations of the Commission, is included in the Commission's *Final Report to the Legislature*, dated December 31, 2003.⁴¹ This report is available for public viewing on the Commission's website at: http://www.hawaii.gov/dcca/areas/real/condo_ed/condo_recod/condo_workingrecod/recod_final/.

Conclusion

Many people and organizations put a lot of time, interest, and energy into crafting the new Hawaii condominium law. In particular, the volunteers of the Real Estate Commission's Blue Ribbon Recodification Advisory Committee spent hundreds (perhaps thousands!) of hours on the project, and deserve the thanks of everyone in Hawaii.

The new Hawaii condominium property regimes law gives us a solid base from which to live and work as condominium living continues to grow in popularity and evolve over time.

**Mitchell A. Imanaka is the managing principal of Imanaka Kudo & Fujimoto, a Hawaiian law firm. Active in representing developers, lenders and others who participate in the development industry for over 26 years, Mr. Imanaka is a past chair of the Real Property and Financial Services Section, and served as Chair of the Condominium Review Committee of the Real Estate Commission, and of the Blue Ribbon Recodification Advisory Committee.*

**Gordon M. Arakaki was the Real Estate Commission's Recodification Project Attorney, and is currently with the law firm of Ekimoto & Morris. Mr. Arakaki served as the Chief of Staff/Chief Clerk of the Senate Committee on Ways and Means and as Staff Attorney/Committee Clerk for the Senate Committee on Education and Technology and Senate Committee on Commerce, Consumer Protection, and Information Technology. He has also worked in various capacities for the Lt. Governor, Honolulu City Council, Land Use Research Foundation of Hawaii, and Chamber of Commerce of Hawaii.*

¹ Kerr, William; "Condominium – Statutory Implementation," 38 St. John's L. Rev. 1 (1963), at page 5. See also, Act 180, Session Laws of Hawaii ("SLH") 1961, codified as Chapter 170A, Revised Laws of Hawaii ("RLH"). In 1968, RLH Chapter 170A was redesignated Chapter 514, Hawaii Revised Statutes ("HRS") (Act 16, SLH 1968). In 1977, HRS Chapter 514 was re-enacted as a restatement without substantive change and redesignated HRS Chapter 514A (Act 98, SLH 1977).

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² Act 93, SLH 2005, with Act 164, SLH 2004, *codified as* HRS Chapter 514B. Consistent with the purpose of the delayed effective date for the new Hawaii condominium law, the authors anticipate that some fine-tuning amendments will be considered in the 2006 Legislative session.

The drafting, introduction and passage of Hawaii's new condominium law represents the work of many dedicated volunteers over the past 4 years. HSBA Real Property & Financial Services section members Richard T. Asato, Jr., Gail O. Ayabe, Randy Brooks, Andy Bunn, David Callies, Ken Chong, Deb Chun, Lorrin B. Hirano, Ray Iwamoto, Rick Kiefer, Bernice Littman, John A. Morris, Milton Motooka, Joyce Y. Neeley, Hiroshi Sakai, and Jane Sugimura were among those who helped immensely in the effort to recodify Hawaii's 44-year old condominium law. In addition to these HSBA-RPFS section members, the Real Estate Commission's Blue Ribbon Recodification Advisory Committee included Steve Glanstein (representing the Hawaii Chapter of the Community Associations Institute), Len Kacher (representing the Hawaii Association of Realtors), Calvin Kimura and Cynthia Yee (representing the Real Estate Branch of the State Department of Commerce & Consumer Affairs), Richard Port (representing Hawaii Independent Condominium & Cooperative Owners), and Ted Walkey (representing the Hawaii Association of Realtors).

³ Act 213, SLH 2000.

⁴ *Id.*

⁵ *Id.*

⁶ *Community Associations Factbook*, by Clifford J. Treese (1999), at page 18; State of Hawaii Data Book (2004), compare Table 21.10 and Table 21.19.

⁷ See HRS § 514B-3. "Pertinent change" is defined as not necessarily constituting a "material change." Rescission rights are triggered where there are material changes in the project. See § 514B-87.

⁸ HRS § 514A-63(a) specifies that under certain circumstances, rescission rights accrue to the buyer where there is a material change in the project which directly, substantially and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use. Note, however, that if there is a change in information contained within a public report which renders the public report misleading as to purchasers in any material respect, developers are compelled to submit to the Commission a supplementary public report. See HRS § 514A-41(a). If this supplementary public report is given to buyer, a required notice specifying a rescission right must also be delivered to buyer. See HRS § 514A-62(d). Thus, it is unclear as to whether immaterial changes which might trigger the necessity of a supplementary report give buyers rescission rights.

⁹ HRS § 514B-3 contains a definition for "unit" that includes a physical or spatial portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to § 514B-35, with an exit to a public road or to a common element leading to a public road.

¹⁰ See HRS § 514B-34.

¹¹ An exception to the 67% requirement is the withdrawal of a project from a regime, where an 80% requirement must be met. See § 514B-47.

¹² See HRS § 514B-43.

¹³ See HRS § 514B-54.

¹⁴ See HRS § 514B-56.

¹⁵ See HRS § 514B-56(b).

¹⁶ *Id.*

¹⁷ See HRS § 514B-59.

¹⁸ See HRS § 514B-81.

¹⁹ See HRS § 514B-85.

²⁰ See HRS § 514B-85(b).

²¹ See HRS § 514B-85(b)(1).

²² See HRS § 514B-85(b)(2).

²³ See HRS § 514B-86(b).

²⁴ See HRS § 514B-86(c).

²⁵ See HRS § 514B-89.

²⁶ See HRS § 514B-92.

²⁷ See HRS § 514B-101.

²⁸ See HRS § 514B-121(c)(3).

²⁹ See HRS § 514B-123(b).

³⁰ See HRS § 514B-123(c)(3). The Commission recommended that the "for quorum purposes only" box be eliminated entirely. Such proxies often result in "opening meeting doors" but not allowing any business to be done. Associations suffer almost pointless additional mailing and meeting expenses because of this. Contrary to the assertion of some stakeholders, "for quorum purposes only" proxies are not neutral. They count as "no" votes for any business at the association's meeting, making it much more difficult for any business to be done since all "for quorum purposes only" proxies are counted against any proposal (including elections) actually voted on by the association. It should be noted that unit owners would still have been able to execute a proxy stating that their proxy can only be used for quorum purposes; it just wouldn't have been a statutorily required box on the standard proxy form authorized by the association. The 2004 Legislature, however, reinserted the "for quorum purposes only" box requirement, but limited the requirement to standard proxy forms authorized by the association.

³¹ See HRS § 514B-125(c).

³² See HRS § 514B-121(d).

³³ See HRS § 514B-125(b).

³⁴ See HRS § 514B-143.



Legislative Update—Multiple Fronts

Dean Uchida

Land Use Research Foundation

The legislative session is upon us again, and I am reminded of a phrase that sends chills up peoples spin: “Hi, we’re from the government, and we are here to help.” EXCUSE ME!?!?

The hearing notices are full of many recurring bills that have been proposed in the past. These include: repeal of automatic permit approvals; coastal light pollution; rock fall liability; limiting development around military installations and impact fees.

However, for the first time in a number of years, there are a significant number of proposals that will provide new funding sources for initiatives involving construction of affordable housing, and constructing new or renovating existing agricultural infrastructure.

Special purpose revenue bonds seems to be the funding source of choice this session as many bills propose to open up SPRB’s for for-profit affordable housing developers, and agricultural infrastructure.

We continue to battle efforts by the legislature impose draconian inclusionary zoning requirements on affordable housing developers. We continue to encourage the use of incentives to increase the overall supply of housing in general across the state. Two of the initiatives we are supporting are “self certification” for developers of affordable housing projects to reduce the permit processing time at the Counties. The other is an affordable housing investment tax credit, similar to the Federal Low Income Tax Credit program, where developers can raise capital through the sale of tax credits (State Income or General Excise Taxes) for the construction of affordable housing units.

One of the other items we are supporting is the effort to allow for the redevelopment of existing school sites to support DOE’s efforts to construct new schools. The Economic Momentum Commission made a recommendation to create a School Realignment Commission to analyze the student enrollment projections and distributions and make recommendations on school closures. This is the first step in redeveloping underutilized school sites for mixed-use development to provide a revenue source for DOE new school construction, and also offer opportunities for redevelopment of the school site to provide much needed teacher housing.

As if that wasn’t enough, the Counties are also keeping us busy. The City and County of Honolulu is going through the Charter Commission to amend the city Charter . The City Charter is a document outlining the conditions under which the City and County of Honolulu is *organized*. It also defines rights, privileges and the formal *organization* of the City and County of Honolulu (i.e. The City’s Constitution). Some of the land use proposals warrant concern from the business community. Philosophically, land use planning tools such as “Smart Growth” and Urban Growth Boundaries” and “Agricultural Protection Zones,” should not be placed in the Charter.

The City Council is also considering modifications to the real prop-

erty tax system. They are attempting to provide relief for homeowners and stabilize the taxes from the fluctuations in the assessed values as the real estate market goes up and down. We are suggesting alternatives that are reasonable and avoid “capping” taxes similar to Proposition 13 in California a few years ago.

The Maui County Council is developing a proposed Workforce Housing Policy for Maui County. The policy would implement inclusionary zoning that would mandate a developer provide a certain percentage of their development for defined income groups in the County. Currently, these percentages range from 30% to 80% of the project being affordable for certain income groups. The concern is that imposing these types of exactions would probably shut down the housing market on Maui, at a time when there is a drastic need to increase supply. Convincing the policy makers of this has been a struggle.

Finally, the County of Hawaii is working on developing Island-Wide impact fees for roads, solid waste disposal, parks, police, fire and emergency services. Currently, the proposed impact fee would be imposed in two regions: East Hawaii and West Hawaii. We are working with the County and other interested parties on the methodology for how this impact fee will be used. The concern is that the County is viewing this as “another pot of money” as opposed to mitigating impacts caused by the development.

Our approach on all of these issues has been to work with the policy makers and agencies in search of common ground on finding solutions that work for all parties. It is much too early to tell if government is helping or not. Stay tuned.

Hawaii’s New Condominium Law Yields Important Changes

(continued from page 7)

³⁵ See HRS § 514B-138.

³⁶ See HRS § 514B-142. The Commission noted that associations should undertake assessments pursuant to this section only as a last resort after notice to the resident, next of kin, or other responsible party fails to gain the cooperation and behavior necessary to live independently in the condominium community.

³⁷ See HRS § 514B-111. *The Restatement of the Law, Third, Property (Servitudes)* § 6.12, modified, is the source of this section.

³⁸ See HRS § 514B-161.

³⁹ See HRS § 514B-163(b).

⁴⁰ See Section 28 of Act 164, SLH 2004, *as amended by Act 92, SLH 2005*.

⁴¹ Note that, in Section 1 of Act 164, SLH 2004, the Legislature states that the Real Estate Commission’s “Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes), in response to Act 213, Section 4 (SLH 2000)”, dated December 31, 2003, should be used as an aid in understanding and interpreting the Act.



Consultant's Corner

Lance Wilhelm
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Contractors are a worrisome lot. Just a few years ago, a poll of the local contracting community would have revealed rampant anxiety over lack of opportunities, too many workers for too few projects, and concerns over soaring insurance, tax and bond rates. The same poll today would reveal real fear over too many opportunities, too much work for too few workers, and concerns over soaring insurance, tax and bond rates. That we're in a strong "up" cycle in the construction industry is perhaps the understatement of the year. But this cycle is proving to be unique in a number of ways from those Hawaii has enjoyed even as recently as the early 1990's. In the remainder of this article, we'll explore the causes of the current boom period and the underlying economics that distinguish it.

WE ARE NOT ALONE

The construction sector of Hawaii's economy tends to run either slightly ahead or slightly behind major markets on the west coast of the United States as well as those throughout the Pacific Rim. While there are certainly meaningful connections between these markets, they have tended in the past, not to be in the precise cyclical position at any given point in time. Yet it seems that for a number of reasons, not the least of which has been steady and low interest rates, there is currently construction boom cycles playing out throughout the United States. When you factor in the considerable amount of construction underway in the far-east, including China, you begin to appreciate the enormity of the worldwide demand for construction services and products. The implications of these market factors are obvious and have already been felt right here in Hawaii. The demand for raw construction commodities such as cement, steel, lumber and gypsum, have put tremendous upward pressure on prices for building materials from plywood to drywall, and from concrete to rebar.

In addition to the material cost escalation, the expansion in the construction business nationwide has put pressure on the labor and contracting pool as well. During previous up cycle periods, some of the demand for construction services in Hawaii would have been satisfied by mainland based firms who would move in to take on certain contracts. These firms would have tended to focus on the military base contracts where local licensing laws are not a barrier to entry. Currently, most of these firms are already at or near their capacity and other mainland firms that might have otherwise been tempted to give the Hawaii's military construction market a shot, are already finding it hard to keep up with their workloads at home. The good news is that local firms are finding it a bit easier to more of this kind of work. The bad news is that this leaves them with less capacity to take on non-military projects of all kinds.

THE PERFECT STORM

Without overplaying the dramatics too much, it appears that a number of macro-economic factors have aligned in such a way so as to produce our current market conditions. These factors include favorable interest rates, particularly on the long end of the spectrum, thriving housing and tourism markets, an apparent shortage of industrial property, and a ramped up military construction program necessitated by the deployment of new military resources into the Pacific Rim. While some of these factors appear to be showing signs of cooling, such as the increasing pressure on interest rates and the growing affordability gap in the housing market, there is still high demand for construction services from hospitality related developments in Waikiki and the outer-islands, to the continuing improvements required by the privatized housing initiatives on various military installations on Oahu. These demands as well as potential "mega" programs like the proposed light rail mass transit system and the possible stationing of an aircraft carrier group at Pearl Harbor, imply that the construction business could continue to be strong for a number of years to come.

THE CRYSTAL BALL

Yogi Berra once said that forecasts are tricky, especially when the future is involved. There are a large number of factors that could have a tremendous influence over the future of the construction industry in Hawaii. Everything from interest rates to potential terrorist attacks could seriously derail the industry. Nevertheless, both those in the industry and professional economists predict either a continuation of the cycle at current volumes, or only a modest decrease in overall volumes throughout 2006. With unemployment rates at record lows and fuel costs at record highs and continuing pricing pressure from material suppliers and subcontractors, price escalation is nearly inevitable. Methods for managing this risk is perhaps, the topic for another paper, but for now two things appear certain; 2006 will be another busy year, and contractors will continue to worry.



UHERO Annual Hawaii Forecast: Long Expansion to Continue

Carl S. Bonham, Ph.D.

University of Hawaii Economic Research Organization

Hawai'i is coming off an exceptional year, one that will be tough to match. Tourism set new records and the construction industry added jobs at a fast clip. State tax revenues ballooned. Looking ahead, external conditions remain generally favorable, and growth in local jobs and personal income provides a sound foundation for continued spending. Considering limits posed by tight labor markets and high occupancy rates, growth is expected to continue at a more measured pace than we saw in 2004 and 2005.

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- After a weak fourth quarter, we expect the U.S. economy to return to moderate expansion. Near-term prospects look fairly good for a rebound of consumer spending, and investment has remained relatively strong. Federal spending will continue to contribute to growth in the near term, although long-term financing problems are a growing worry. We expect 3% growth in 2006, with some strengthening thereafter.
- Japan's economy finished the year with a flourish, posting growth at a 5.5% annual rate in the fourth quarter. For the year, the economy grew by 2.8% and is on the road to having the longest post-war expansion. We expect overall growth of 2.7% in 2006, before moderation to just under 2% in 2007.
- U.S. visitor arrivals have been very strong over the past year, and generally healthy economic conditions on the mainland will drive some additional growth this year. Because occupancy rates are already very high, we expect U.S. arrivals growth to slow compared with last year, to 3.9% this year and to 1.3% for the next year.
- While economic conditions in Japan have firmed, we have not seen that show up in visitor arrivals. The yen's weakness also limits potential gains. Japanese arrivals will expand by 2.4% this year and slow to 1% growth in 2007. Given the poor performance in this market over the past several years, we no longer expect a significant recovery above the levels we have seen in the post-9/11 period.
- After expanding 6.8% last year, the overall visitor count will slow to 3.4% this year and 1.5% in 2007.
- Employment and job growth were buoyant in 2005, and labor market conditions have continued to tighten as a result. Although there will likely be in-migration in booming areas such as construction, labor market limits will necessitate slower job growth. After 2.8% payroll job growth in 2005, we expect 2.1% growth this year. Further slowing to the 1.4% is expected in 2007.
- At the sectoral level, construction will continue to lead all sectors, but not as dramatically as in 2005. After 10.5% growth in jobs in 2005, we expect about 5% growth this year, bringing employment in the sector to 34,000. Service areas will also see strong growth, including health care and social assistance, and "other services" such as business, administrative, and professional services. Agriculture will start to shed jobs, as the Del Monte layoffs begin. The pattern of income growth will largely mirror that of jobs.
- We expect aggregate Hawai'i real personal income growth for 2005 as a whole to come in at about 3.7%, down nearly a percentage point from the very strong 4.5% growth seen in 2004. Still, this is robust growth. We expect 3.2% real income growth this year, slowing to 2.4% in 2007. One concern is that Hawai'i's income distribution has become more unequal over the past decade.
- The pick up in inflation will only gradually abate. High oil prices have proven stubbornly persistent, and there is still room for more pass-through of home prices to housing costs. We expect inflation to peak at 3.8% this year and remain above 3% through 2007. This return to inflation above the national average is consistent with the performance of Hawai'i prices over past business cycle expansions.

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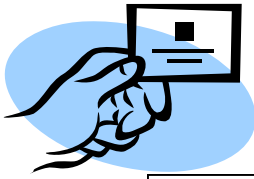
UHERO Annual Hawaii Forecast: Long Expansion to Continue (continued from Page 11)

- the performance of Hawai'i prices over past business cycle expansions.
- The biggest near-term risks to the Hawai'i outlook are probably external to the state. While economic conditions in the U.S. look sound, an end to home price appreciation could undermine spending by consumers, who are already over-extended. Oil prices may have begun to stabilize, but they remain high. The Fed has signaled the likelihood of further increases in short-term interest rates, and there is a risk that long rates may also creep up because of concern about fiscal and trade deficits.

*Hawai'i Economic Indicators (Annual Growth Rates)**

	2003	2004	2005	2006	2007
Visitor Arrivals	-0.1	8.3	6.8	3.4	1.5
U.S. Visitor Arrivals	4.8	7.3	7.0	3.9	1.3
Japan Visitor Arrivals	-9.6	10.6	2.7	2.4	1.0
Payroll Jobs	1.9	2.6	2.8	2.1	1.4
Employment	0.8	1.2	3.7	3.0	1.2
Unemployment Rate (%)	3.9	3.3	2.8	2.6	2.5
Inflation Rate, Honolulu MSA (%)	2.3	3.3	3.7	3.8	3.3
Real Personal Income	2.4	4.5	3.7	3.2	2.4

*Source is UHERO. Figures for 2006-2007 are forecasts. Figures for 2005 inflation rate and income are UHERO estimates. Full macro and industry detail are available to [subscribers and sponsors](#).



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