

PAYING FOR GROWTH IN HAWAII:

An Analysis of Impact Fees and Housing Exactions Programs

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Land Use Research Foundation of Hawaii

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The Land Use Research Foundation (LURF) of Hawaii is a private, non-profit research organization incorporated in 1979. It is a membership organization comprised of major Hawaii landowners and development companies.

The goal of the Land Use Research Foundation of Hawaii is the fostering of sensible land use planning and responsible development in the State. This is achieved through better understanding and communication among the various sectors that make up Hawaii's community (government, business and general public), and a commitment to improving the processes of land use planning, government regulation and property development. The Foundation believes that quality land development provides an essential service for Hawaii's people and is critical to a healthy economy for our State.

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FOREWORD

Answering the difficult questions of how to pay for the infrastructure required to accommodate growth and how to best provide housing that is affordable to the residents of Hawaii require the concerted and cooperative efforts of both the private and the public sectors. Because of the importance of these issues, the Land Use Research Foundation embarked upon the production of a comprehensive report, Paying for Growth in Hawaii: An Analysis of Impact Fees and Housing Exactions Programs. This report focuses upon the best ways to spread the costs of growth among the private development sector, the business sector, government and the general public, for reasons of fairness and efficiency.

The report is organized as follows. David W. Rae, a developer and planner, presents a planning overview of impact fees and housing exactions programs in Chapter I. He frames the issues and includes a set of definitions to assist the reader.

Chapter 2 presents the views of eight distinguished public officials on how to pay for growth in Hawaii. Those interviewed were: Harold S. Masumoto, Director, Office of State Planning; Joseph K. Conant, Executive Director, State Housing Finance and Development Corporation; Donald A. Clegg, Chief Planning Officer, City & County of Honolulu; John P. Whalen, Director of Land Utilization, City & County of Honolulu; Michael Moon, Director of Housing & Community Development, City & County of Honolulu; Christopher L. Hart, Director of Planning, County of Maui; Albert Lono Lyman, Director of Planning, County of Hawaii and Tom Shigemoto, Director of Planning, County of Kauai.

In Chapter 3, attorney Benjamin A. Kudo presents a legal analysis of impact fees and housing exactions programs. This chapter is also intended to serve as a comprehensive planning guide and drafting manual for writing an impact fee ordinance. Not included in this report, due to length, is a comprehensive collection of impact fee ordinances, State enabling legislation and federal guidelines, assembled by Mr. Kudo. For those interested in these materials, please contact Mr. Kudo or the Land Use Research Foundation.

Chapter 4 is an economic analysis of impact fees and housing exactions by Professor Louis A. Rose of the Economics Department of the University of Hawaii at Manoa. It represents rigorous scholarship and is critical to the conclusions reached in this report.

Chapter 5, by co-editor Dan Davidson, is both a summary of Chapters 1, 3 and 4, and a concluding commentary on the fairness, desirability, effectiveness and legality of impact fees and housing exactions programs.

Chapter 6 is the Policy Statement of the Land Use Research Foundation on the issues presented in this report. This Statement reflects the priorities and concerns of LURF's Board of Directors.

The final section presents biographical information about the contributors to this report, including the public officials interviewed.

The editors wish to acknowledge the following for their special help. First, the contributors, David Rae, Ben Kudo and Lou Rose for their diligence, superior work, and patience with our questions and revisions. Second, the public officials, who made time in their busy schedules to be interviewed for the record in this report. Third, to Maui Councilmember Velma Santos, for providing the Preface to the report, and also for her "trailblazing" efforts in putting together the West Maui transportation impact fee ordinance. Fourth, to Professor David Callies for writing the Introduction to the Report. Fifth, to Stephanie Tanaka for her excellent job in transcribing the interviews. Sixth, to our dedicated secretary, Dayna E. Souza, for her wonderful and tireless work in the preparation and production of this manuscript. And finally to the members of the Land Use Research Foundation who sponsored this research effort. Donna Goth, and R. Brian Tsujimura, the immediate past President and current President of LURF, respectively, were inspirational in their support of this project and deserve credit for their commitment to sound and productive land use and development policies.

Dan Davidson
Executive Director

Ann Usagawa
Senior Researcher

September 1988

PREFACE
by
Velma M. Santos, Chairperson
Planning and Land Use Committee
Maui County Council

The publication of Paying for Growth in Hawaii: An Analysis of Impact Fees and Housing Exactions Programs culminates months of research by the Land Use Research Foundation in evaluating various alternative infrastructure financing mechanisms. The report is of personal significance because it documents issues and perspectives raised during an eighteen month joint venture between the Maui County Council's Planning and Land Use Committee and the Land Use Research Foundation in formulating legislation which would establish impact fees in the County of Maui.

Confronted with an escalating number of proposals from developers for commercial, residential, industrial and hotel activities, and faced with the harsh reality that the County's infrastructure systems as well as its fiscal resources were incapable of accommodating the rapid growth, Maui County, assisted by the Land Use Research Foundation, embarked on an exploration of alternatives to traditional financing sources in early 1987.

During that year, a pair of U.S. Supreme Court decisions in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, and Nollan v. California Coastal Commission aroused the interest of municipal governments because of their far-reaching implications on local land use controls. Proceeding with the understanding that land use regulations created by local government entities should substantially advance public interest, the impact fee approach emerged as a financing methodology which offered benefits to both the developer and the County of Maui in a fair and systematic fashion by shifting the costs of new growth from the general taxpayer to the new resident.

Maui County's decision to focus on one infrastructure system within a specific geographic region resulted in an ordinance providing for an impact fee for traffic and road improvements in West Maui. By limiting our scope of work, we have been able to pursue an impact fee concept that is manageable and adaptable to other infrastructure systems and other geographic areas. I am optimistic that the impact fee will surface as the preferred tool to support governmental financing of public infrastructure and services.

Paying for Growth in Hawaii presents a comprehensive analysis of impact fees and exactions, including affordable housing "linkage" programs. It attempts to provide a unified package of practical approaches and tangible recommendations which cover the salient features of relatively new concepts.

I extend special thanks to the Land Use Research Foundation for sponsoring the production of a valuable resource for both the public and private sectors, and to the authors for their contributions.

September 1988

INTRODUCTION

by

David L. Callies*

Professor of Law

William S. Richardson School of Law

University of Hawaii at Manoa

Whether it is called paying for growth or allocating costs for public facilities, there is probably no more important policy issue in Hawaii than how to finance roads, schools, parks, sewers, waterlines, and solid waste disposal sites. Equally important is the question of how we are going to house the growing segment of our population that lacks adequate shelter. It is therefore with an exquisite sense of timing that the Land Use Research Foundation (LURF) publishes its report, Paying for Growth in Hawaii: An Analysis of Impact Fees and Housing Exactions Programs. It would be useful to have these issues debated by those who would lead us at the County and State level and represent us in Washington. The LURF study raises all the right issues: Why are all four Counties undertaking some sort of impact fee program to fund development-generated public facility needs? Why is the State levying substantial housing exactions at the land reclassification stage? What happened to more traditional sources of funding for these purposes? Who will really foot the bill? Who's coordinating the process? Is it legal? Will the result make for good planning? Can the development community afford it?

The LURF report attempts to formulate some answers by presenting thoughtful analyses from economic, planning and legal perspectives, together with well-focused interviews with key planning and implementation officials at the State and County levels who candidly set out their views on the effectiveness of housing and public facility programs, for which they are in large measure responsible.

Paying For Growth in Hawaii is not without a certain perspective. LURF represents the land development community, and it clearly has an agenda in presenting its report. Ad hoc impact fees and exactions are and have been a fact of land development life in Hawaii for a long time, and it is to the development community's advantage to have such levies for land development permits public, predictable, and proportionate to the land development upon which levied. Housing exactions are growing by leaps and bounds, both in size and extent, and it is to the development community's advantage to keep affordable housing demands within the bounds of what they consider to be affordable costs of development. This developer perspective should not detract from stimulating debate on the principal issues--or on the following, also raised in this study:

1. Developer contributions in exchange for zoning and permit certainty through a development agreement would solve most of the legal problems raised in the Report over the connection or "nexus" between housing and other exactions conditions and land development approvals. We have had a development agreement statute on the books in Hawaii for nearly three years. What's holding up implementation at the County level?
2. If it is true, as the Report states and as other State-sponsored reports suggest, that of the approximately one-half of the land area of the State which is presently classified as agricultural, fully 83% is not in active agricultural use, then is either State or private landowner justified in retaining all of it for agriculture?

3. What are the costs incurred by land developers in going through sophisticated State and County land use permitting processes? Are they the comparatively negligible price for good planning, or a major deterrent to affordable development, whether residential or commercial?

Whether one deals with the costs of public facilities and adequate housing through impact fees, raw linkage, public subsidies, or increased taxes, the questions of propriety, legality, planning and policy all need to be addressed. The Report is accurate in determining that impact fees and housing exactions are currently with us, and this political season is an auspicious time for their assessment.

*Professor Callies is the author of Regulating Paradise: Land Use Controls in Hawaii, among other publications. He is the Chairman-Elect of the American Bar Association's Section on Urban, State, and Local Government Law. Professor Callies did not participate in the writing of Paying for Growth in Hawaii.

CHAPTER 1

Impact Fees and Housing Exactions Programs:

A Planning Overview

by

David W. Rae

I. INTRODUCTION AND PURPOSE

While the term "impact fee" is relatively recent, development dedications or exactions have more than a sixty-year history, nationally. In the last four years, the topic of impact fees and their relationship to other forms of exactions has gained national prominence as a planning field of study and investigation. The evolution of required exactions across the nation parallels the Hawaii experience in most planning respects. Hawaii now stands with an ever growing number of communities implementing various forms of sophisticated development requirements.

The general purpose of this chapter is, therefore, to present a planning overview of development exactions, of which impact fees and housing exactions programs are a part. Specifically, this chapter will:

- (1) Discuss the national history and the evolution of development exactions;
- (2) Describe in general terms, impact fee and housing exactions programs;
- (3) Briefly discuss Hawaii impact fee and housing exactions issues and concerns; and
- (4) Set forth in summary form some conclusions regarding impact fees and housing exactions programs.

II. GENERAL DEFINITIONS

The following are general and simplified definitions of key concepts and terms, from a planning perspective. A more detailed explanation is given in the discussion of specific programs or in other technical sections of this report, such as when legal terms are defined.

Exactions: We are using the new broad definition of this term put forth by the American Planning Association.⁷ Exactions, under this new definition, include all manner of things that are compelled to be given or carried out by a developer as a condition of governmental approvals. This includes impact fees and other cash payments, as well as land dedications and the provision of public facilities. Some exactions are to mitigate direct impacts of a project such as the construction of an additional lane to a roadway or the installation of a water reservoir, while other exactions are required in an attempt to address community-wide needs such as the provision of affordable housing.

Affordable Housing: As defined by the State of Hawaii's Housing, Finance, and Development Corporation, an umbrella term referring to housing that can be purchased or rented by persons of low (less than 80% of median), low-moderate (80% - 120% of median), or moderate (120% - 140% of median) income. The median income for a family of four on Oahu is presently \$36,500. Thus, families earning less than \$29,200 as well as those earning between \$29,200 and \$51,100 are the State's target groups for affordable housing on Oahu. The numbers are lower for the Neighbor Island Counties because the median income is lower, but the same percentages apply.

Dedication: Usually, the transfer of an interest in land to the government for such uses as schools or parks. The dedications may be in fee simple or may be a lesser interest, such as a public access easement. Dedications may be permanent or temporary.

Conditional Zoning: The generally accepted practice of attaching conditions to a zone change for the purpose of mitigating direct impacts of a development project. Courts have held that conditional zoning is acceptable so long as there is a clear connection (nexus) between the project and the mitigating exaction. The legal authority is much less clear for requiring exactions that address community-wide needs, such as affordable housing.

Unilateral Agreements: The document used on Oahu to implement Conditional Zoning. It is "unilateral" because the City and County of Honolulu does not sign the agreement or promise any actions in return. The applicant for the zone change signs the agreement "unilaterally," and promises to carry out all the conditions that have been negotiated between it and the City. Failure to perform per the Agreement, which is recorded at the Bureau of Conveyances, can result in revocation of the zoning approval.

Impact Fees: Single payments required to be made by builders or developers at the time of development approval, and calculated to be the development's proportionate share of the capital cost of providing major facilities. Because they are single payments, as opposed to periodic payments such as taxes, it means that the capital outlay necessary to construct the facility or improvement is available at the time that the facility is needed. Additionally, because the fee is based on a proportionate share, new development will not be required to pay other than its own way.

Linkage Fee: A fee charged to a developer for facilities or services that are not as clearly or, at least, as easily related to the development's impacts; for example, large office buildings in Boston and San Francisco are assessed a fee that these municipalities use to construct affordable housing. The "nexus" is less clear and of considerable legal debate in those jurisdictions employing linkage fees.

Nexus: Some courts discuss a "rational nexus," while others look to an "essential nexus." From a planning perspective, what is important is that there is a clear and documented connection or link between the impacts caused by a development project and the exactions imposed upon the developer to mitigate negative impacts.

Inclusionary Housing: The process of providing affordable housing within the context of a large

market-housing development. Off-site production of affordable units or cash in-lieu of units are other options sometimes offered to the developer under such programs. The inclusionary concept may be voluntary with incentives, involuntary as a condition of approvals in an ad hoc exactions program, or required by statute or ordinance.

III. HISTORY

Prior to the early 1920s, and the inception of development regulations, local government in the United States provided both on- and off-site infrastructure to support development. This was done to induce economic development and was seen as the appropriate role of local government. During this period, some developers would seek subdivision approvals in order to have their land improved by government, regardless of the distance from existing infrastructure. Government services, as well as real estate developments, were stretched over an ever-growing area. Local governments became burdened by the inefficient costs involved, and citizens began to object to "sprawl."²

The Standard Planning and Zoning Enabling Acts of the late 1920s were, in part, a result of government and citizen concerns, and their passage marks what some have called the "first generation" of land use regulations.³ This Federal guideline served as the model for subsequent development regulation and allowed local governments to require, as a condition of approval, the developer's provision and dedication of all streets, water mains, sewer lines, and other utilities internal to the development.

Between 1930 and the early 1940s, local governments found themselves less and less able to finance on-site facilities so that by the beginning of World War II, most developers provided on-site facilities while local government continued to provide services up to the subdivision.

The environmental movement of the late 1960s and early 1970s began to question the desirability of growth, and public support for growth funded through general obligation sources began to wane. From 1965 to 1984, the government-sponsored capital outlays for infrastructure per capita declined from \$161 to less than \$87.⁴ This reflected a lack of desire to tax at the local level, taxpayer revolts, and a reduction of Federal revenue-sharing. Concomitantly, developer exactions for off-site facilities such as community parks, schools, interchanges, and sewage treatment plants, made up for the lack of government spending for new construction, while existing infrastructure went without necessary maintenance and expansion. These exactions were generally arrived at through ad hoc negotiations, with the resulting agreements becoming the conditions of the development approvals.

The early 1970s also marked what has been called the "second generation" of regulation. This phase (of exactatory evolution) was marked by growth control and growth management programs. Perhaps the best known of such programs and one of the first was in Ramapo, New York. This program provided a timetable for developing new infrastructure by the City in various parts of Ramapo. Land use permits for new growth were limited by the development of infrastructure. The Development Plan system of the City and County of Honolulu, which seeks to tie land approvals on a land use map with planned infrastructure on a public facilities map, is based on the Ramapo system.

During the course of the late 1970s and early 1980s, local governments across the country began to search for ways to shift the costs of new facilities to the developers and occupants of new developments. This marked the beginning of the "third generation" of regulations. The nature of developer exactions broadened from off-site infrastructure to community capital needs and social services. Such items as day-care centers, inclusionary housing, and job training programs became common in regions of the country where economies were strong.

These exactions were and are virtually unheard of in areas with slow or deteriorating economies. This

phenomenon may be due to several reasons. First, economically vibrant areas are often also marked by such things as high growth rates, increased housing costs, and increased traffic. Existing citizen disenchantment with development in general may lead them to feel that developers can afford increased exactions. Development, on the other hand, is generally welcomed without such reservations in deteriorating areas. Second, government has not demonstrated an ability to keep pace with development in fast-growing areas. Under such circumstances, in order for the growth to continue, developers have been willing to pay the exactions. In some fast-growing parts of the country, notably Florida and California, developers' willingness to pay ever increasing exactions has begun to wane, as evidenced by increased legal actions and also by development relocating elsewhere. Phoenix, Arizona, for example, represents a growth alternative for many California firms who are paying what they believe to be exorbitant development fees in some areas of California.

As local governments, developers, and communities became more sophisticated, the process of exactions became more sophisticated and complex. Ad hoc negotiations were increasingly seen as unfair in that they "hit" the developers of large projects while allowing smaller projects (the cumulative impact of which could be quite large) to proceed without exactions. Developers disliked the uncertainty inherent in a negotiated process and urban economists began to question its inefficiency. What started as ad hoc and negotiated exactions has begun to evolve into "third generation" and other impact-fee forms of infrastructure cost-shifting. In some jurisdictions, this has also resulted in inclusionary housing programs (of which linkage programs are a sub-category).

It must be noted that there is much overlap within jurisdictions between second and third generation regulatory programs. Several communities, including San Francisco and Los Angeles, have elements of both growth control and cost shifting. It would be reasonable to expect similar conditions to exist in Hawaii.

IV. IMPACT FEE PROGRAMS

The planning basis for impact fee programs is simple. It is to mitigate the direct undesired consequences of growth so that the growth may proceed. As previously mentioned, the proliferation of legal cases in Florida and California have led planners and elected officials to consider the "rational nexus" or connection between the proposed project, any impact fee, and the provision of the needed infrastructure. (See Chapter 3 for a detailed discussion of these cases.)

The concept of rational nexus is the key legal issue for planners to understand. It has two basic points:⁵

1. There must be a reasonable connection between the need for additional facilities and the growth generated by the new development; and
2. There must be a reasonable connection between the expenditure of the fees collected and the benefits received by the development paying the fees.

When planning an impact fee program, the rational nexus test may be interpreted as follows:⁶

- o Is the program grounded in prior planning and capital programming efforts? Have the necessary studies been done?
- o Is the proposed infrastructure required by the new development?
- o Are fees apportioned according to a "fair share" formula?

- o Are fees earmarked for specific projects?
- o Will the fees be used in ways that provide substantive benefit for the development being charged the fee?
- o Will the funds be spent in a timely way?

An impact fee program is not a growth control mechanism but rather, a method of guaranteeing that facilities will be available when needed, so that growth can go forward. This is not to say that it cannot or has not been used to control or stop growth. Some communities, seeing impact fees as a new and limitless revenue source, have become very creative in the facilities funded by them. These have included: potable water, solid waste, sewers, drainage, roads (including freeways) and traffic improvements, schools, parks, libraries, fire protection, police protection, emergency medical services, public buildings, and cemeteries.⁷ Thus, the number of facility costs that could be shifted to new developments could exceed the development's ability to pay, and thereby stop development.

Impact fees are single payments required to be made by builders or developers at the time of development approval and calculated to be the development's proportionate share of the capital cost of providing major facilities. Because they are single payments, as opposed to periodic payments such as taxes, it means that the capital outlay necessary to construct the facility or improvement is available at the time that the facility is needed. Additionally, because the fee is based on a proportionate share, new development will not be required to pay other than its own way. This also implies that the full cost of the facilities will be apportioned over the development.

Where in-fill developments are involved and the impact fee is used to increase capacity or where there is only one developer, the system appears to have few planning or administrative problems. However, when large facilities are required for new urbanization, more than one development may share in the use of the facility. In such a case, if all developments are not prepared to proceed at the same time, the initial project may have to temporarily bear the cost for other projects.

One way to resolve this inequity is to establish a system of credits so that the first development will be reimbursed by future developments for facilities they share. Such a system can become complicated, however, and repayment to early developers may depend on forces beyond their control. On Maui, for example, a residential developer was required to drill a water well to serve its project. The capacity of the well was greater than the project required, but was necessary for the future development of the area. The developer will recoup part of the cost of the well only if and when other projects in the area proceed. Depending on the cost and method of financing, the carrying cost for such facilities on developments may be prohibitive. Perhaps a better approach in such circumstances would be for the County to issue bonds in order to raise the needed revenue, and then to use impact fees to pay back and ultimately retire the bonds.

An important aspect of impact fees is that they require detailed land use and public facilities planning. Largely, this is because of the requirements of the rational nexus test (discussed previously and covered in detail in Chapter 3). In this respect, impact fee programs have been called "pro-planning." Areas of benefit (i.e., impact) must be established, as well as service standards for each type of facility within the area. The benefit area is fundamental to assure that fees collected from developments within it are spent on facilities that will benefit the development paying them. Again, this requirement flows from the rational nexus test. The area may be different for each facility or the same, as long as the determination is based on stated, reasonable criteria. In other words, a transportation impact fee system for Oahu would need to differentiate between a growth area such as Ewā, and relatively stable areas such as Kailua or Hawaii Kai.

Facility standards are also needed in order to determine the quality of facility that the new development will require. Facility standards may be: (1) the existing level of service; (2) a service level taken from a recognized source; or (3) a new level derived from studies and reports. If the chosen standard for which new development is to be responsible is higher (i.e., better) than the existing level of service, a plan must exist for remedying existing deficiencies from sources other than the new development. Such a change of existing level of service would also require a sound planning rationale. Fees from new developments cannot be used to remedy existing deficiencies. They may only be used to keep an existing level of service from deteriorating due to the new development.

A general formula can be shown for calculating an impact fee for a given facility. An example of a park impact fee from Broward County, Florida is provided, which is designed to incorporate planning, legal, and economic considerations. The formula has three basic components, as shown below:⁸

1. Total cost of park development per dwelling unit. The first step is to determine what the county's standards are for parks. In this example, there is a standard of 7.5 acres of park for every 1,000 people. Second, the average household size in Broward is 2.5 persons per unit. Third, it costs Broward County \$38,140 for acquisition and development of each acre of park. Given these facts, the total cost per unit of new development can then be calculated as follows:

$$\begin{aligned} \$38,140 \times 7.5 &= \$286,050 \text{ per } 1,000 \text{ residents.} \\ \$286,050 / 1,000 &= \$286.05 \text{ per person} \\ 2.5 \times \$286.05 &= \$715.13 \\ \text{The cost of park development per residential unit} &= \$715.13 \end{aligned}$$

2. Determine other revenue sources that contribute to park development. The function of this step is to acknowledge that there are other sources of revenue for the park development than the impact fee. These must be taken into account so that the impact fee reflects real costs to government. Such revenues typically come from State and Federal grants, previously collected property taxes on undeveloped land, and future payments of new residents to existing obligation bonds. In Broward County, it was found that State and Federal grants paid for 25% of park costs. There was also an outstanding obligation bond for parks. It was calculated that undeveloped land was paying 10% of the bond debt service through property taxes. Thus the land will have already paid 10% of its park cost. It was further found that a new home will pay \$25 per year for the next 20 years toward park bond issues. Revenues can then be calculated as follows:

- o 25% of \$715.13 = \$178.78 (Federal and State grants)
- o 10% of \$715.13 = \$71.51 (portion paid by undeveloped land)
- o Present value of \$25 per year for 20 year = \$264.75
(future bond payments by a new house)
- o Contribution of other sources to park development = \$515.04.

3. Amount of impact fee. The impact fee per new dwelling can then be calculated by subtracting other revenue sources from the cost of providing the service. In the park example, this is:

Park cost per dwelling	\$715.13
Less other revenues	<u>515.04</u>
Impact fee per dwelling =	\$199.99

V. HOUSING EXACTIONS PROGRAMS

In general, housing exactions programs are attempts by government to require or provide incentives to developers to sell or rent a certain portion of a residential project at "affordable" levels. Because of their original thrust on affordable housing, linkage programs (which impose a fee or affordable housing requirement on non-residential developments) are included under housing exactions programs in the national literature. Housing exactions programs are often called inclusionary housing programs or inclusionary zoning. These terms are used interchangeably and only an investigation of program specifics will reveal what is being discussed.

Inclusionary Zoning

Unlike impact fee programs, the original planning basis for inclusionary zoning is not impact mitigation but rather, community integration. This concept has its origin in the New Jersey exclusionary zoning cases, which established the government's ability to assure that a mix of housing types will be provided throughout the community.

The New Jersey cases dealt with a community, Mount Laurel, that had zoning provisions that only allowed large lots. The courts found that such zoning practices by government excluded lower priced homes. The courts held that the zoning codes must include smaller lots so as to provide more affordable housing.

Since then, we have come a long way from that original Mt. Laurel notion to the current notion that housing must be priced at certain levels for persons making certain incomes. Inclusionary zoning now refers to those programs that are established by statute and are linked to residential rezonings. As illustrated in the model inclusionary zoning ordinance written by the California Department of Housing and Community Development, their broad objective was to provide a permanent affordable housing stock that was acceptable to surrounding residents, through requirements that were fair to developers.

Inclusionary zoning ordinances proliferated, especially in California, in the 1970s. All of these ordinances were mandatory in nature. Many of them have since been replaced by voluntary programs based on incentives and expedited regulatory reviews. This shift away from legislated housing exactions probably reflects several things, among them: (1) increased legal scrutiny concerning the nexus of housing exactions; (2) little documentation concerning the effectiveness of the programs and increasing literature indicating that they do not work; and (3) changes in the political structure that have seen the removal of pro-inclusionary officials in such places as Orange County, California.

Both mandatory and incentive based programs tend to contain the following elements:⁹

- o Inclusionary requirements: This spells out the amount or percentage of housing to be provided in the affordable range. Nationally, the range appears to be between 10% and 25%.
- o Income-eligibility criteria for defining affordability: This defines the maximum annual household income a family can have to be eligible to purchase one of the inclusionary units. Usually this is expressed as a percentage of the area's median income, adjusted for household size.

- o Provisions for in-lieu fees: Many programs permit developers to pay a fee to a housing fund under certain conditions instead of building units.
- o Pricing criteria for affordable units: Most programs establish a maximum price on the affordable units. The price is often very close to what the maximum income range can afford, assuming little other debt.
- o Restrictions on the resale of affordable units: Most programs limit the ability of purchasers to sell the units within a specified time so as not to create a windfall for the buyer. Other programs maintain a buy-back provision so as to maintain an affordable stock.
- o Miscellaneous provisions regarding on-site versus off-site construction requirements: Some programs specify whether or not affordable units must be on-site or off-site.

Linkage Programs

Linkage programs are relatively new to the planning scene, beginning with San Francisco's Guidelines in 1980. The two best known programs are those of San Francisco and Boston. Both are mandatory programs that require the developers of large-scale real estate projects to provide affordable housing, job training, day-care center, or other community services or in-lieu fees as a condition of approval. Six of the eight programs in existence (including San Francisco and Boston) pertain only to non-residential developments.¹⁰

The planning rationale for linkage programs is that of impact mitigation, although the connection between the development and the impact is less clear. Proponents contend that in many cases, downtown developments replace affordable housing for other uses. Others contend that large-scale projects drive up the prices of existing housing because they create a housing demand by new workers. Still other proponents maintain that a certain amount of affordable housing and other community services exist as benefits to developers and that since their project will use these benefits, they should be responsible for replacing them.

Linkage programs may be mandatory or voluntary, and they may be linked solely to housing or to a wide range of exactions. Both the Boston and San Francisco programs started as mandatory housing programs; both have evolved into mandatory in-lieu fee programs for non-housing facilities and services. In these programs, a square-foot fee is charged which is then used in various funds to provide services. The fee is preferred in these jurisdictions because it allows the pooling of funds necessary for large projects, such as urban redevelopment in Boston and mass transit in San Francisco.

Some critics of the linkage system believe that they are political responses to issues more properly addressed through general taxes. They argue that local governments provide the bulk of infrastructure to downtown developments at large cost to the taxpayer and that by simply requiring the developments to provide their own infrastructure, government could free enough tax resources to construct affordable housing and provide community services without linkage fees.¹¹ Whether or not citizens would permit their tax dollars to be spent on affordable housing, however, remains to be seen.

VI. HAWAII ISSUES AND CONCERNS

Developer exactions have existed in Hawaii for many years. They have included park dedications, water hook-up charges, and inclusionary housing requirements. Some, such as the water charge, are established so that there is no negotiation and all parties know in advance the cost and the availability of the service. In this respect, the water charge resembles contemporary impact fee programs. Other exactions, notably affordable housing, have been ad hoc and negotiated.

The Hawaii experience is similar to that of the mainland in terms of its transition from second generation to third generation regulation. The growth control and management programs of the 1970s (second generation) have begun to evolve into infrastructure cost-shifting (third generation). The State as well as the four Counties currently seek to shift both project-specific infrastructure costs as well as community-wide social costs to new community developers and residents. More specifically, the State is very concerned with providing infrastructure and housing in the areas of West Hawaii on the Big Island and in the Ewa-Central area of Oahu. Impact fees are one method under consideration. In addition, the State is greatly expanding its ad hoc negotiated inclusionary housing requirement at the Land Use Commission stage of review, from a 10-15% housing set-aside to as much as a 50% "affordable" requirement (albeit at higher income ranges).

Hawaii County has a draft comprehensive impact fee ordinance before its Council. The program would apply to thirteen different types of infrastructure from roads to affordable housing. This ordinance is unique in that it combines a housing linkage fee in the infrastructure fee proposal. Maui County also has a draft ordinance before its Council but unlike the Big Island, the proposal relates to only one impact, transportation, and to one region, West Maui. The concept may also be extended to the Kihei and Makena areas of Maui.

The City & County of Honolulu has a proposed Community Benefit Assessment ordinance, which resembles a broad-based impact fee and linkage system before the council. There are indications, however, that Honolulu may begin considering a more traditional impact fee system, rather than adopt the Community Benefit Assessment. While Kauai County does not yet have a proposed impact fee ordinance, the County was the first to introduce an environmental impact fee, and is currently interested in exploring a broader-based infrastructure-related system. (See Chapter 3 for additional information about the various proposals.)

In order to make the current research as relevant as possible to decision-makers, interviews were conducted with State and County planners and housing officials to obtain their views regarding the provision of infrastructure and affordable housing. The next Chapter contains transcripts of these interviews. Those interviewed are all beginning to look at the distinction between project-specific facilities and community-wide needs, as well as methods for financing both. In this respect, Hawaii can learn from the mistakes and successes of other jurisdictions with respect to the two issues discussed in this report, impact fees and housing exaction programs.

VII. CONCLUSIONS

Impact Fees

As previously indicated, impact fees can be constructed so that they are both pro-planning and pro-growth. The land use plan is essentially tied to a public facilities plan. If properly implemented, facilities are thus constructed in a timely manner to accommodate planned growth. Impact fees are not, however,

a panacea for the problems of who will pay for facilities. They can be misused to control essential growth. They also are subject to overuse by municipalities, in that growth can dictate the fiscal plan of a community that becomes too dependent on impact fees. If overused, the cost per unit of housing can also become prohibitive, defeating the growth-facilitating benefit of such fees.

Impact fees are a tool to provide funds for infrastructure. But they are only one of many tools. Special districts and tax increment financing are other tools that are being increasingly used used in conjunction with impact fees. The exact combination of tools must be fitted to a community before it embarks on one solution to the exclusion of others.

Housing Exactions

The only planning criteria by which housing exactions can be judged is their efficacy. Certainly these programs do produce affordable housing visibly made available to groups having difficulty in purchasing homes. This alone, however, does not make them effective. A growing body of literature suggests that these programs, while producing some housing, actually decrease the total amount of housing produced and in fact, increase prices to both consumers of for-purchase homes, as well as renters.¹² If they are not the best way of providing affordable housing or if they actually work against housing affordability, then housing exactions should not be part of our housing and land use policies.

Footnotes to Text

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3. Stegman, Michael A. & Snyder, Thomas P., Paying for Growth: Using Development Fees to Finance Infrastructure, Washington, D.C., Urban Land Institute, 1986.

Urban Land Institute, "Development Fee Workshop," unpublished lecture by Michael A. Stegman, Los Angeles, CA, April, 1988.
4. Id. #2.
5. American Planning Association, "Impact Fees: Paying for Growth" unpublished lecture by James C. Nicholas, Los Angeles, CA, January, 1988.
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7. Id.
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12. Sternlieb, George & Hughes, James W. America's Housing - Prospects and Problems, New Brunswick, N.J., Rutgers University, Center for Urban Policy Research, 1980.

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CHAPTER 2

Impact Fees and Housing Exactions Programs: Viewpoints of Eight Hawaii Public Officials

During the months of February, March and April, 1988, the following public officials were interviewed by David W. Rae in connection with this project:

Harold S. Masumoto, Director, Office of State Planning

Joseph K. Conant, Executive Director, State Housing Finance and Development Corporation

Donald A. Clegg, Chief Planning Officer, City & County of Honolulu

John P. Whalen, Director of Land Utilization, City & County of Honolulu

Michael Moon, Director of Housing & Community Development, City & County of Honolulu

Christopher L. Hart, Director of Planning, County of Maui

Albert Lono Lyman, Director of Planning, County of Hawaii

Tom Shigemoto, Director of Planning, County of Kauai

A common set of questions dealing with infrastructure and housing needs formed the basis of the interviews, although the follow-up questions varied depending upon the responses. With the exception of Michael Moon, who provided written answers, the interviews were taped and then transcribed. Those interviewed were then given the opportunity to edit their transcripts. Upon receipt of the revised transcripts, the editors of this report made only minor stylistic changes.

The transcripts are presented in their entirety so that the individual concerns and proposals of the public officials may be fully appreciated. The quotations given special emphasis in the following transcripts were selected by the editors of the report.

HAROLD S. MASUMOTO

This interview with Harold S. Masumoto, Director of the Office of State Planning was conducted on Monday, February 29, 1988.

HOW WOULD YOU DEFINE THE AREA OF RESPONSIBILITY FOR YOURSELF IN THE OFFICE OF STATE PLANNING WITH REGARD TO DEVELOPMENT IMPACT FEES AND EXACTIONS PROGRAMS?

Masumoto: One of our assignments is to raise questions. We need to raise the public's awareness and to anticipate issues that may arise. We said that housing on Oahu is going to be a major issue and the question is, are we doing enough and who is doing what? That's the role that we played. We went one step further and said to developers: "Maybe you guys gotta come out with your share." But I think on that issue the answer on Oahu is quite clear: we cannot rely only on the private sector.

IN PROVIDING FOR HOUSING?

Masumoto: Not under present conditions, and government has to do something. Act 111 of 1971 [regarding Ch. 359G, now Ch. 201E, HRS] is inadequate for present conditions. So this is why we got involved. But then if you look at what causes housing to become available, which is availability of land, infrastructure, interest rates etc.--we have an interest rate program, the Hula Mae program, but people weren't provided houses at that time to qualify for, and we had a problem. The Governor's position [for the 1987 Legislative Session] was to create an entity that would step in if necessary, and that's the Housing Finance and Development Corporation. But then we discovered on Oahu that even if the HFDC wanted to become active, they really couldn't because we didn't own land.

SO HAVE THE LAND ACQUISITION PROGRAMS . . .

Masumoto: To be effective. I'm hopeful that the private sector will carry the major load. I think they can because if you look at it, the market is in the \$125,000 to \$150,000 range right now.

YOU'RE TALKING ABOUT THE EWA AND CENTRAL OAHU AREAS?

Masumoto: Right.

DO YOU SEE YOUR OFFICE BEING ACTIVELY INVOLVED IN HOUSING OR IMPACT FEES OUTSIDE OF EWA?

Masumoto: Not really.

WHAT ABOUT THE NEIGHBOR ISLANDS?

Masumoto: Right now, we're involved in West Hawaii planning, and have begun to raise questions. If all of those developments happen, who is going to meet the infrastructure costs? Who is going to meet the housing requirements? Who is going to do all the other things that are required? Hopefully, something will happen. The role we have to play is to anticipate issues that will arise in the future. On the Neighbor Islands, I hope the Counties will play a major role, and I would say Hawaii County is well prepared to do just that.

YOU'VE SINGLED OUT THREE GEOGRAPHIC AREAS OF INTEREST: CENTRAL OAHU/EWA, WATERFRONT ON OAHU [IN PREVIOUS SPEECHES], AND WEST HAWAII'S RESORT DEVELOPMENT AREAS. DO YOU SEE YOURSELF BEING INVOLVED IN IMPACT FEES AS THEY RELATE TO INFRASTRUCTURE IN THESE GEOGRAPHIC AREAS?

Onexactions: *"Frankly, if I had my choice I would rather have a more logical way of doing it, if we had an impact fee system or whatever it may be."*

Masumoto: I see it in Central Oahu. The Waterfront I think is a unique project. The reason for the Waterfront emphasis is our feeling that we were underutilizing the area. The Waterfront area is basically State land. Unless you bring in some pressure from somewhere else, if you leave it up to Harbors, [division of the State Department of Transportation], the highest and best use is still harbor use, and not other uses. Again, our role is raising questions, bringing it to the attention of other people, and saying some things others may not like, such as: "Why don't you think about this kind of approach instead of letting the Legislature decide that?--which is what has been happening up to now. The Legislature decided Aloha Tower should be more highly utilized, so they created the Aloha Tower Development Corporation.

Whereas, for Ewa and Central Oahu, we're using our land use powers to try and exact housing and all these other things. Frankly, if I had my choice I would rather have a more logical way of doing it, if we had an impact fee system or whatever it may be. I think that would make sense.

WHAT DO YOU SEE AS THE CURRENT CAPITAL INFRASTRUCTURE NEEDS IN EWA/CENTRAL OAHU?

Masumoto: Highways are going to be one hell of a mess. We're really creating more of a transportation problem until the job centers become a reality. When the job centers become reality, then we will be creating traffic mostly in and out. I think it's going to become so bad that people will finally agree to subsidize a mass transit system, although we haven't reached that stage yet.

DO YOU SEE YOUR OFFICE BEING INVOLVED IN MAJOR INFRASTRUCTURE FOR TRANSPORTATION SYSTEMS?

Masumoto: Probably in the future, but not in the beginning.

REGARDING HOUSING, WHAT DO YOU SEE AS THE CURRENT NEED AND FUTURE NEED ON OAHU?

Masumoto: I think we have a tremendous housing need: single-family or multi-family, but not high-rise, because of what people want. [State Representative] Mike Crozier says he knows of at least two families on each street where you have three generations living together. I think he's right. I think we have that kind of built-up demand for housing. There's no question about it. But what worries me is that all this emphasis on housing developments in Mililani, Waiawa, Kapolei, etc. assumes that this is the lifestyle that everybody wants, and that everybody wants a single-family home, and that everybody can reach that level. I think 30% of our population is just not going to reach that level. I'm not sure of the percentage, but I know it's high.

COULD YOU ELABORATE ON YOUR COMMENT THAT THERE ARE SOME PEOPLE WHO ARE NOT GOING TO BE ABLE TO AFFORD HOUSING FOR PURCHASE?

Masumoto: We need to figure out a way to subsidize housing in the inner city or primary urban core on Oahu. I think the City is doing the right thing in trying to build up areas like Chinatown, to subsidize housing, building towers, etc. I think that's the right idea, but it costs money. They are going to have to figure out a way to subsidize it. We used to have a lot of Federal money, but it's now drying up.

THE OLD "SECTION 8" NEW CONSTRUCTION PROGRAM?

Masumoto: Yes, it's all drying up now and someone's going to have to step in. I have a feeling that it's going to be the State. The State and the private sectors are going to have to step in.

HOW DO YOU SEE THE STATE TAKING CARE OF THE LOWER-INCOME SUBSIDIZED SEGMENTS?

Masumoto: I don't know. The one scenario that I saw--and we put it on the table--was the possibility of letting developers of large suburban tracts of land buy their way out of affordable housing--in lieu fees--and put it into a central fund and create our own community block development programs.

THE STATE WOULD ACTUALLY DEVELOP THE HOUSING?

Masumoto: State or County. I have no problem with the County taking over the primary urban core.

on the housing market: "The problem is that private developers will not develop the homes if the margin isn't there. . . At some point the profit margin is going to be so small that everybody's going to step out of the market. . . I anticipate that governmental intervention is necessary."

THERE IS AN ECONOMIC THEORY OF FILTERING IN THE HOUSING MARKET, SOMETIMES CALLED "TRICKLE-DOWN." DO YOU SEE THIS WORKING AT ALL IF NEW HOUSING IS CREATED IN THE FORE-PURCHASE AREA? DO YOU THINK NEW UNITS WILL BECOME AVAILABLE FOR THE LOW END?

Masumoto: I'm not enough of an economist to have a strong opinion of that, but I would think that it would be true. The problem is that private developers will not develop the homes if the margin isn't there. If you make the assumption that there will be a trickle-down, it will do so only if there is enough of a profit margin. At some point the profit margin is going to be so small that everybody's going to step out of the market, and then there won't be any new production. That's a problem we will have to face. I anticipate that governmental intervention is necessary. How we're going to do it, I really don't know. We haven't been able to pick up enough suggestions, or enough haven't come in yet.

HOW DO YOU SEE CURRENT INFRASTRUCTURE NEEDS BEING MET?

Masumoto: Haphazardly. It's a mess. Senator Lehua Fernandes Salling has a bill [in the 1988 Legislative Session] in which she said that the Land Use Commission in their decisions and orders shall accept the recommendation of any State intervenor and if they don't accept them, to state in their findings why they cannot, and what provisions of the law prevent them from accepting them. I think she was trying to make sure that when the Transportation Department asks the housing or resort developer to put in this road or this interchange, the LUC would require them to do so. That's the way I interpreted the bill and therefore I testified against it. I said I really couldn't understand the bill because right now, the State intervenor is the Office of State Planning--DBED [the Department of Business & Economic Development], or the Land Use Division of DBED by law--and all the other State agencies go through this one agency. So I testified

that this was ambiguity number 1. Ambiguity number 2 is that if the purpose of the bill is broader than that, then it really is an impact fee bill. I don't think we studied the issue well enough. I don't know what the answer is. We really need to determine that. I don't know where we're going to end up on this particular issue.

on West Hawaii resorts: "They are going to create jobs, and when you create jobs you are going to need housing. Because there is going to be a tremendous in-migration."

WHAT KINDS OF IMPACTS REGARDING EITHER HOUSING AND/OR CAPITAL DO YOU SEE ASSOCIATED WITH RESORT DEVELOPMENT? SPECIFICALLY, WITH RESPECT TO YOUR AREA OF EXPERTISE IN WEST HAWAII?

Masumoto: They are going to create jobs, and when you create jobs you are going to need housing. Because there is going to be a tremendous in-migration.

SO HOUSING IS KEY THEN TO THE IN-MIGRATION?

Masumoto: In West Hawaii there is no question about it. There is going to have to be in-migration of employees and I think any job creation on the Big Island, the West Hawaii area, will have a housing component. Yesterday's newspaper talked about the Cal Tech telescope on Mauna Kea and their biggest problem, which is housing in Waimea for employees. They're creating a market for housing. It's just that the housing isn't out there, which is no different from what it was fifty, one hundred years ago. That's why we had plantation camp housing.

HAS THAT BEEN THE CASE OVER THE DEVELOPMENT HISTORY OF WEST HAWAII: RESORTS BEING BUILT, FOLLOWED BY A HOUSING NEED?

Masumoto: I don't think that's quite true. When Mauna Kea Beach resort came in, for instance, there was enough unemployment that they could use the labor pool there to fill a lot of the jobs, but now we have reached the stage where the unemployment is so low.

SO YOU SEE THE HOUSING ISSUE AS BEING RELATED TO THE AVAILABILITY OF LOCAL LABOR?

Masumoto: Yes.

DO YOU THINK THAT THOSE IMPACTS ARE BEING ADDRESSED NOW BY THE PRIVATE SECTOR?

Masumoto: They're being forced to. One story I've heard is that the Mayor [Dante Carpenter] told Hyatt Waikoloa, "You're not going to get your Certificate of Occupancy until some commitment of housing is made." So that's what they are talking about--the County receiving over 300 acres of land in Waikoloa [for housing].

WOULD YOU SAY THAT THE NATURAL MARKET FORCE IS NOT ABLE TO RESPOND TO CREATE THE HOUSING NECESSARY AT THIS POINT?

Masumoto: I've seen proposals, but again, they all seem to require government assistance. For instance, Mauna Lani--the one that just opened up on the hill--has a large government subsidy [for its employee housing project]. On the other hand, I've seen one developer come in and say, "Give me the rezoning and I'll put up support communities for you." So my question to the developer is: "Okay, what kind of level, what prices are you going to be charging for your homes?" Well, I haven't seen the figures yet. I just don't

think he can meet it. I don't think the jobs and salary levels can match the mortgage payments.

DO YOU THINK ALL THE NEW HOUSING SHOULD OR NEEDS TO BE FOR -PURCHASE WHEN YOU SAY "MORTGAGE PAYMENTS"?

Masumoto: Or even for rental. Look at it this way. The average wage in West Hawaii, I understand, is about \$26,000 for a family of four. Let's say they don't report all of their income. So let's say we give them thirty or thirty-three percent more income. About \$35,000 - \$36,000 times three, or about \$100,000, \$105,000. We've got to get a single-family detached home for \$105,000; if not, we have a problem.

WHAT KINDS OF IMPACTS DO YOU SEE ASSOCIATED BOTH WITH HOUSING AND CAPITAL INFRASTRUCTURE AND WITH COMMERCIAL OR INDUSTRIAL DEVELOPMENTS?

Masumoto: I see the same thing, but less. For instance, Maui County was telling C. Brewer that they ought to make a study of their industrial park. Industrial parks, I look at differently from resorts. A resort comes up--they have to have a critical mass of four hundred hotel rooms or four hundred rooms plus fifty condo units. All of a sudden you bring in a lot of people. Whereas in an industrial park, you assume that the growth is going to be a little slower, so it's not going to happen that way, or the tenants are going to relocate from elsewhere. Now, if you're telling me that General Motors is bringing a plant here, then you will have an impact.

SO AGAIN, YOU ARE TALKING ABOUT THE SCALE OF DEVELOPMENTS AS IT RELATES LARGELY TO NEW AND

Masumoto: Scale and in-migration of labor are the key issues.

WOULD YOU SAY THAT THAT'S TRUE FOR BOTH CAPITAL KINDS OF INFRASTRUCTURE, SUCH AS ROADS, AS WELL AS FOR THINGS LIKE HOUSING?

Masumoto: Schools, and all others. So many more hotel rooms require so many more employees, so many employees require so many household units, etc. Everyone has their own formula. I don't know why we seem to be using this certain analyst's figures for West Hawaii, but that's what we're using as of now and no one has challenged us on it yet so far.

SO IS THE MULTIPLIER PER HOUSING UNIT...

Masumoto: For housing units and people, etc. The Department of Education then takes the household and says that if you're in a resort-type area, the distribution of the school-age student shall be such and such.

on whether residential communities cause a need for affordable housing: "No. They're just not meeting the need for affordable housing. I think that's the difference."

IN TERMS OF RESIDENTIAL DEVELOPMENTS, WHAT KINDS OF IMPACTS DO YOU SEE ASSOCIATED WITH THOSE, BOTH FOR CAPITAL AND HOUSING DEVELOPMENTS?

Masumoto: I think transportation needs, parks, governmental services. They use governmental services, but on this island, [Oahu], I think traffic is going to be the worst.

DO YOU SEE THE CREATION OF NEW RESIDENTIAL COMMUNITIES AS CAUSING A NEED FOR AFFORDABLE HOUSING?

Masumoto: No. They're just not meeting the need for affordable housing. I think that's the difference.

THEN WHAT WOULD BE THE LINK, IF THERE IS ONE OR IF THERE IS A NECESSARY ONE, BETWEEN THE CONVERSION OF LAND FOR RESIDENTIAL DEVELOPMENTS, SAY IN CENTRAL OAHU, EWA, AND A REQUIREMENT TO PROVIDE AFFORDABLE HOUSING?

Masumoto: I've said this in October when I started looking at all of this. The developers and landowners have given us an opportunity. We have about 6,000 acres being proposed for urbanization, and we really don't need 6,000 acres urbanized. We would probably need 2,000 or 3,000 - 4,000 in the next ten years. So the question is which 2,000 or 3,000 - 4,000 acres should we urbanize and I think the answer is that parcel or that proposal which meets the public need, which is housing. Affordable housing.

What we're really threatening developers and landowners with right now, is if you guys won't do it, then we'll do our own, as in Kapolei.

SO THEN YOU SEE THE STATE'S ROLE AS . . .

Masumoto: As a catalyst. Getting something done. I think the State shouldn't get involved if the private developers can meet it, but I don't think the private developers can or want to. Like I said, the profit margin may just not be enough. When you ask a developer how do you set your home prices--I was so naive at the beginning, I thought they would say, "We look for a ten percent profit margin" or "This is what I price my home to." Instead, the answer was basically, "What the market would bear." Of course, they have a bottom line. If they can't make the fifteen percent, they won't take the risk. But if they can make forty percent, they'll take the forty percent.

WHAT DO YOU SEE AS THE DEVELOPER'S FAIR SHARE IN TERMS OF PROVIDING FOR, SAY, TRAFFIC SOLUTIONS TO CENTRAL OAHU OR WEST HAWAII?

Masumoto: I haven't thought about it. I really don't know what the answer is. I'm really begging off on this impact fee issue. I haven't even thought through what the developers' responsibilities are, and what the general taxpayers' responsibilities are. I haven't thought that through enough yet, myself. On the other hand, just as I have said before, I do think the impact fee system is or can be fairer. I think more equity in the system, rather than the ad hoc system we have now, is desirable.

"...tax increment financing might be a way of reducing impact fees. And a fairer way. . . That's one way of getting infrastructure in fast."

WILL YOU BE LOOKING AT AN IMPACT FEE SYSTEM FOR THE WEST HAWAII AREA AND THE CENTRAL/EWA AREA?

Masumoto: We were trying to accomplish that through the Governor's authority bill [SB 3425/HB 3592 joint State/City community development agency]. I thought that we could say that this is a development area like Kaka'ako, make assessments and maybe even more towards tax increment financing which might be a fair way of going in the long run. I thought it made sense, but the [Honolulu City] Council didn't like it so we just dropped it. But it seems to me that tax increment financing might be a way of reducing impact fees. And a fairer way, but they didn't go for it. That's one way of getting infrastructure in fast. Now, on our West Hawaii plan, I guess you must have heard of the proposal for subregional planning. We're suggesting that the area between Kailua and Ke-ahole Airport be considered the subregion and that Hawaii County take the leadership position for its planning. Our position from the land use side, and the State's interest side, is that we are assuming that the whole area is going to be urbanized. On where the

industrial parks are going to be located and where the housing is going to be located, etc., I think the County should be more than equal, and in fact should take the primary role. But they don't have the money, so it seems to me that the development authority will make sense. I think that's what we're going to do; otherwise we can't afford the infrastructure cost.

WHAT ABOUT FUTURE PLANS FOR HOUSING CREATION? HOW DO YOU SEE THAT WORKING IN TERMS OF AUTHORITIES?

Masumoto: I don't think we need to worry about it. For major State projects, HFDC has enough authority. They've got enough legal status to do what they need to do. I think it's a coordination problem.

YOU MENTIONED ONE POSSIBILITY THAT DEVELOPERS MAY BE ABLE TO BUY THEIR WAY OUT OF HOUSING EXACTIONS. HOW WOULD YOU SEE THIS WORKING?

Masumoto: I don't know. On Oahu, for the development proposal pending before the Land Use Commission [Mililani Mauka project], I suggested that after they provide the first increment, the 60% [affordable housing requirement] that we're looking for, that in the second increment we still apply the 60% criteria, but that they be allowed to relocate their affordable housing requirements on other parcels of land or more preferably, buy their way out. We would let the City Council decide that.

WOULD THAT BE AN IN-LIEU FEE? AND THE CITY COUNCIL WOULD THEN ESTABLISH WHAT THAT FEE WAS?

Masumoto: And let the City Council or Housing Finance and Development Corporation decide where the money goes. My prediction is that we're going to reach the point where we're going to need that type of funding. We're going to reach the point where we're going to need money to put up more high-rises or heavier density units within the primary urban core, and I don't see any financing for that. Right now all projects such as those are being developed with community block grants from the Federal government.

WHICH IS SLOWLY DRYING OUT.

Masumoto: Yes, which is slowly drying out. I see that as being the next area of concern. I don't know whether the City is worried, but the City's not in a position to do anything about it. That's the sad part about it, unless they are willing to put the exaction on Waiawa. There are some funds available in Kaka'ako. My understanding is that two apartment buildings have just come up. So there's a couple of million dollars sitting in some fund that's available for a project in that area.

FOR AFFORDABLE HOUSING?

Masumoto: For affordable housing units in some project.

ARE YOU CONCERNED THAT THE COST OF EITHER IMPACT FEES OR HOUSING EXACTIONS WILL BE PASSED ON TO CONSUMERS?

Masumoto: I don't think there is any question.

YOU THINK IT WOULD?

Masumoto: The developers and landowners are in there for profit, so they're going to pass on whatever they can pass on. It's a concern, but what can we do about it?

SO THE QUESTION IS

Masumoto: The question is who are the consumers? On housing, the consumers are the local people. On resort development, who are the consumers? I don't think it bothers me one bit if the Westin Kauai raises hotel rates by \$2.00 [to cover the passed-on costs].

"Theoretically, impact fees make a lot of sense and everybody can buy it. It's when you get down to the fine points, what percent for transportation, what percent for this and how much--that's where you get into a problem."

YOU SAID JUST NOW THAT THE HOUSING CONSUMER IS GOING TO BEAR THE COST OF EITHER AN IMPACT FEE SYSTEM OR A HOUSING EXACTION PROGRAM, YET IN SPITE OF THIS, DO YOU SEE THAT THESE ARE GOOD PROGRAMS TO CONTINUE?

Masumoto: I don't think we have a choice. What other alternative do we have? Even government is doing that, for example, Kapolei. Well, let's take the City's West Loch project. Their argument is that they have to go with forty percent [of the housing units] at market. Why? They're raising the market prices so they can subsidize the affordables. The City's doing it. At Kapolei, it's the same thing. They're making a \$15,000 or \$20,000 profit on the market units, and then subsidizing the affordables. In a private development, instead of a \$15,000 mark-up, it will be \$70,000 because they want to make a profit out of it.

WHO WOULD YOU LIKE TO SEE BEAR THESE COSTS, ASSUMING THE PROGRAM COULD BE STRUCTURED DIFFERENTLY?

Masumoto: If we could figure out a way where everyone pays for their own cost, that would be the logical play obviously, but we know economically it's not feasible at this stage.

IN TERMS OF . . .

Masumoto: In terms of building and putting a home on the market: a person can't afford to pay 100% for that unit.

DO YOU THINK THAT AN IMPACT FEE OR HOUSING EXACTIONS PROGRAM SHOULD APPLY TO ALL SIZES OF DEVELOPMENTS, LARGE AS WELL AS SMALL?

Masumoto: I don't know what the answer is. That's why we're not testifying on some bills. There was a bill placing an exaction on anything over sixty units, I believe. I don't know what the answer is. I haven't thought about it enough.

WHAT ABOUT AN IMPACT FEE SYSTEM FOR AN ITEM SUCH AS TRANSPORTATION?

Masumoto: I think it would be fair to charge everyone if there is an increase of density or change of use.

WHAT ABOUT THE TYPE OF DEVELOPMENT?

Masumoto: I think you have to take that into consideration too. That's why the impact fee is so difficult to establish. All of these separate formulas for different things and different uses. Theoretically, impact fees make a lot of sense and everybody can buy it. It's when you get down to the fine points, what percent for transportation, what percent for this and how much--that's where you get into a problem. Defining the relationship. What "nexus," as they put it. That's where the problem is going to arise.

That's why I like the development authority idea. It's in a certain geographical area; it gives you an option other than impact fees. It might give you the option of tax increment financing or whatever it may be, a combination. Otherwise you will have to rely on impact fees.

" . . . I predict that from the developer's and landowner's point of view, they want a State-wide system, a State-wide statute setting the limits. . . Otherwise. . . you might get tapped twice for the same issue."

WHAT CONFLICTS DO YOU SEE BETWEEN STATE AND LOCAL GOVERNMENTS REGARDING THE ESTABLISHMENT OF THE IMPACT FEE SYSTEMS?

Masumoto: I see tremendous conflicts, but I think we ought to face it. I think your study and Hawaii County's--if Hawaii County ever finally takes out their study and takes it to third reading of the ordinance--will force us to look at it, or the State will have to assess its own impact fee.

For instance, they have a transportation impact fee in the Hawaii County impact fee proposal. The question is what's the nexus between the County's transportation requirements and a development, versus the nexus between the State's transportation requirements and the development? It seems to me a new development in West Hawaii creates more impact on the State highway system than the County's because the developer puts in their own subdivision roads, or resort area roads. It's the connection and use of the State's Queen Kaahumanu Highway that is going to be impacted, but yet the County has proposed an impact fee for transportation in their ordinance. We need to clean it up. I don't know what the answer is. I have a feeling that next Session, if you people finish your study by June or so, we are going to have an interesting time on this issue because I predict that from the developer's and landowner's point of view, they want a State-wide system, a State-wide statute setting the limits.

WHY WOULD YOU THINK THAT?

Masumoto: Otherwise, you're going to have a free-for-all among the Counties, and between the Counties and the State, and you might get tapped twice for the same issue. In other words, the landowners or developers would still be at the mercy of the State and the County. The County would have a transportation impact fee, but the State would come in and say "Yes, but you still have to pay for widening this road, or put in this interchange here, etc."

SO THERE MAY BE SOME OPPORTUNITIES FOR COOPERATION IN STREAMLINING BETWEEN THE STATE AND COUNTIES?

Masumoto: Yes definitely.

MAYBE THERE WILL BE SOME OF THAT NEXT SESSION IN A STATE BILL?

Masumoto: I would imagine, that as a result of your study someone is going to propose it [next Session].

WHAT ABOUT HOUSING PROVISION? DO YOU SEE THE SAME KINDS OF ISSUES THERE OR DIFFERENT ISSUES WITH REGARD TO STATE AND COUNTY ROLES AND POSSIBLE CONFLICTS OR STREAMLINING?

Masumoto: I can see the possibility of streamlining it. I can see, like in Hawaii County, I don't think the developers are going to have any problem between the State and the County because we are working together. Scott Leithead [Hawaii County housing administrator] is in here three times a week telling us, "This is what we're going to require and what are you guys going to do?" They have been showing me on the land use maps the things they are planning. If we have any problems, then we talk. [County Councilman] Takashi Domingo meets with us often too.

"Housing exactions are a tradition with the State Land Use Commission. It's been there a long time. The difference is in scope and number..."

IN TERMS OF THE EXACTIONS PROCESS, WHERE THE COUNTY HAS IMPOSED SOME SORT OF CONDITIONAL HOUSING EXACTION AT REZONING, AND NOW THE STATE IS . . .

Masumoto: That's a wrong assumption. That's where you guys are wrong. Everybody thought housing exactions were primarily a County issue. What I started doing is going through the Land Use Commission decisions and orders. Housing exactions are a tradition with the State Land Use Commission. It's been there a long time. The difference is in scope and number--amount of units, percentages. For instance, in the West Beach case, the Land Use Commission's decision and order stated: "Petitioner shall provide housing opportunities for low-and moderate-income Hawaii residents prior to assigning or transferring fee simple interest to be acquired of the property by offer for sale, etc. A number of residential units equal to ten percent of the residential units, plus ten percent of the resort residential condominium units not operated as full-service hotels, to be developed on the property, or in the alternative, allow the land to be acquired by the petitioner. Preferential residential units shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain State assisted financing, e.g., bona fide Hula Mae."

They have had the practice. If you look at West Beach, the State's ten percent affordable housing requirement is either on-site or somewhere else. They want housing units. The City, when they went through zoning, said "You can pay \$9 million; you can put the housing on-site or pay \$9 million dollars." The stricter requirement of the Land Use Commission is going to apply. They have to come up with ten percent housing units either on-site or off-site.

SO YOU THINK THE LAND USE COMMISSION RULING ON THAT CASE WOULD APPLY, AS OPPOSED TO WHAT THE CITY DID?

Masumoto: Well, they can't buy their way out.

WHO DO YOU SEE IMPLEMENTING THESE KINDS OF PROVISIONS?

Masumoto: If it's a land use provision, then the Land Use Commission should do it. They're the ones who placed the requirements.

WOULD YOUR OFFICE BE REVIEWING COMPLIANCE WITH THE LAND USE COMMISSION?

Masumoto: Yes.

WOULD THAT BE HISTORICAL ONES SUCH AS WEST BEACH, AS WELL AS FUTURE ONES?

Masumoto: I've gone back four or five years and I've reached the conclusion that the Land Use Commission has a lot of affordable housing unit requirements.

WHEN THE LAND USE COMMISSION HAS IMPOSED REQUIREMENTS, THE COUNTIES HAVE USUALLY TRIED TO ADMINISTER THEM THROUGH THEIR HOUSING OR OTHER DEPARTMENTS IN PUTTING IT IN REZONING UNILATERAL LANGUAGE. DO YOU SEE A POTENTIAL CONFLICT BETWEEN YOURSELF AND THE COUNTIES IF YOU'RE GOING TO BEGIN TO ADMINISTER THESE REQUIREMENTS?

Masumoto: I think the stricter of the requirements will apply and there is going to be conflict. So this needs to be resolved on an island-by-island basis. We all have to sit down together and reach a solution. I think in the final analysis, there will be a State-wide statute. I predict this because politics being what it is, we won't be able to reach consensus or concurrence in all Counties.

WHAT ROLE DO YOU SEE THE PRIVATE SECTOR PLAYING DURING THIS PERIOD OF POTENTIAL CONFLICT BETWEEN THE STATE AND COUNTIES?

Masumoto: I feel sorry for the private sector. They get bounced around. At least they know where the State's coming from right now, so nothing should be a surprise anymore.

DO YOU THINK THAT IF A DEVELOPER AGREED TO, SAY, HOUSING EXACTIONS AT THE STATE LEVEL, THAT THIS SHOULD SUFFICE AND THAT THEY WOULD NOT BE SUBJECT TO FURTHER EXACTIONS AT THE COUNTY LEVEL?

Masumoto: I personally don't have a problem with the County putting refinements on them. I don't think it's fair for the County to exact 70%, for instance. On the other hand, if within the 60% they want to state "10% shall be so and so, and 10% shall be so and so," I have no problem.

SO YOU SEE THEM BEING ABLE TO DO THE SPECIFICATIONS?

Masumoto: Right. If you look at what the State did, it said, "We have a big problem; private sector you have to do your share. Here are the broad parameters under which you should do your share."

If you'll review our submission to the Land Use Commission on Mililani Mauka, you'll note that we didn't even put the preferential basis in it. We just said provide houses at this price level.

YOU'RE NOT SAYING THAT SO MUCH SHOULD BE AT A CERTAIN LEVEL?

Masumoto: No, we're saying that 30% of the units should be priced for families earning 120% of the median income or below, and 30% of the units should be priced for those between 120% and 140%. We're not saying it has to be offered for thirty days on preferential basis for families of such and such income. This is where we're making the assumption that if enough homes were put on the market there will be some trickle-down. In other words, people with 135% of the median income can buy a home that's priced for persons below 120%. Whether there'll be enough homes to put on the market and they'll have some spillover. And then when developers will discover that they can make money off those things.

IN PUBLIC STATEMENTS, YOU HAVE SAID THAT SUPPLY IS A CRUCIAL ISSUE IN GETTING ENOUGH HOMES ON THE MARKET. WHAT ROLE DO YOU SEE THE STATE TAKING IN ENCOURAGING ADDITIONAL SUPPLY?

Masumoto: Making land available and putting infrastructure in. That's the State's role, I think, and financing.

YOU SAID "MAKING LANDS AVAILABLE." IS THAT THROUGH THE ZONING PROCESS OR THROUGH STATE CONDEMNATION AND THEN RESALE?

Masumoto: Resale, like at Kapolei. I would imagine the homes are going to be put up by the Gentrys and the Hirano Brothers and the Mililani Towns or the Amfacs. What will happen, hopefully, is that we will acquire the land, master plan 890 acres, put in Phase I of 200 acres or so, then ask who wants to do it.

WOULD YOU SEE BEYOND THAT AS BEING FAIRLY WELL DETERMINED OR WOULD THERE BE THINGS LIKE BUY-BACK PROVISIONS?

Masumoto: I think for HFDC projects, there will be ten-year buy-back provisions.

WILL THAT BE TRUE OF ALL OF THE LANDS THAT YOU ACQUIRE AND THEN TURN OVER TO THE PRIVATE SECTOR?

Masumoto: I don't think we've talked about it. But HFDC has certain statutory obligations, and I think the

buy-back is one of them.

ARE YOU CONCERNED AT ALL THAT THE STATE'S INTERVENTION OR MOVEMENT INTO MARKET HOUSING CREATES A CONFLICT BETWEEN ITS ABILITY TO ZONE AND ITS ROLE AS A DEVELOPER?

Masumoto: I see a conflict. I think it's a conflict. The question is, if the State doesn't do it, who is going to do it?

Someone is going to be looking at impact fees because it is going to be an issue. I think it's fair. I've been watching what's been happening and the equity issue bothers me quite a bit.

YOU SEE THE PRIMARY ISSUE AS BEING TRANSPORTATION?

Masumoto: Definitely. Transportation is going to be a big, big issue on Oahu and on the Neighbor Islands. Transportation is one of those that crosses jurisdictional lines, State and County. I think schools will not be an issue: it's primarily the State's responsibility.

JOSEPH K. CONANT

This interview with Joseph K. Conant, Executive Director of the State Housing Finance and Development Corporation was held on March 15, 1988.

IN YOUR RECENT PRESENTATIONS, YOU HAVE HAD SOME VERY GOOD DATA AND I'M CURIOUS AS TO WHERE SOME OF THE NUMBERS CAME FROM. PERHAPS WE COULD BEGIN WITH THE ESTIMATED CURRENT SHORTFALL OF 20,000 HOUSING UNITS AND THE PROJECTED DEMAND DATA.

Conant: We worked with DBED's [State Department of Business and Economic Development] statistical branch and looked at the new households from 1980 to 1986. We estimated that the [State] population in '86 from DBED sources was approximately 1,062,345 and we deducted group quarters from that, the reason being that if we look at the demand and if units were being placed on the market today where we have overcrowding, how many of those families in an overcrowded situation would be moving out to buy or rent? We felt that very few of them would because take, for example, people living in the Waipahu area and much of the Kalihi area where you have extended families, in some cases, two or three families occupying a unit. They are living in that lifestyle because they like living in that lifestyle. So we don't think that they would impact that much by moving out of that household arrangement into new housing arrangements. So we deducted group crowding to purify the population estimates that we were using. Then we looked at the estimated households in 1986 and deducted that, plus the households from the 1980 census, and came up with new households from 1980 and 1986. Then, we looked at the new housing units from 1980 to 1986 and from that we had a starting point of the residential units that existed, based on DBED's data. Housing units estimated at 348,004, and less resident units in 1980 gave us new resident unit numbers from 1980 to 1986, and then the production shortfall. We looked at new households from '80 to '86 which was established at about 45,628, less the new units from 1980 to 1986 which was 25,400, to come up with a production shortfall between '80 and '86 of 20,202.

WHERE DO THEY ESTIMATE THAT THOSE 20,000 HOUSEHOLDS ARE CURRENTLY? IN OTHER WORDS, HOW ARE THEY CURRENTLY SOLVING THEIR HOUSING PROBLEM?

Conant: In some cases there is doubling up; in some cases they're occupying substandard units and in other cases they are paying more than 30% of their adjusted gross income for rent.

WOULD THAT APPLY TO ALL INCOME SEGMENTS WHEN YOU SAY MORE THAN 30%?

Conant: This would apply to income groups that are 140% of the median income and below. About seventy percent of the 20,000 would fall in that category, so it would be roughly 14,000 or so, and the other 6,000 would be market units.

HOW MANY OF THOSE PROJECTED UNITS ARE BASICALLY BECAUSE PEOPLE ARE CURRENTLY SPENDING TOO MUCH ON HOUSING?

Conant: We probably have that breakdown. I don't have that figure right now, but that group was considered and we also looked at the number of units that would be demolished over that period of time. There are some dilapidated units that would not be repairable.

HOW DID YOU DO THE FUTURE PROJECTION?

Conant: We did the future projection by looking at the estimated households in the year 2000, using DBED's M-F series population projection, which comes out to 1,267,900. Again, we subtracted 4% for group quarters, which then came out to 1,217,184. We divided that by three to look at an average of three persons per household, and we came up with 405,728. Then we looked at the housing production requirements. From this estimated household number for the

"...the total estimated housing need by the year 2000 would then be about 85,000 [units]. Affordable units would be about 75% of that figure."

year 2000, we deducted the 1986 residential housing stock and came up with new housing units to be about 57,724. Then we added in demolition replacement equal to the 1980-1986 average, which was about 7,800, resulting in production needs by the year 2000 of approximately 65,240. Therefore, the total estimated housing need by the year 2000 would then be about 85,000.

We estimated the production shortfall from '80 to '86 at about 20,000. When coupled with housing production requirements by the year 2000 of 65,000, about 85,000 in round figures would be our total estimated needs. This includes market, as well as affordable units. Affordable units would be about 75% of that figure. Seventy-five percent would be about 60,000 units for income groups 140% of the median and below. One hundred forty percent right now is a family of four that makes about \$47,000 a year. It's recently been changed, but I'm giving you the most recent median income, which was \$34,100 for a family of four in the City and County of Honolulu. [Editors' Note: HUD's most recent median income figure for a family of 4 on Oahu is \$36,500.]

YOU'RE SAYING BASICALLY THAT THERE IS A NEED FOR NEW HOUSING IN THOSE PRICE RANGES?

Conant: That's right. We are talking about new housing.

on the implementation of unilateral agreements: "...it appears as though there isn't a lot of effort being made in these areas and that some of the developers, to put it bluntly, are still dragging their feet in satisfying some of these requirements."

IN TERMS OF THE UNILATERAL AGREEMENTS, THE 10% SET-ASIDES THAT YOU MENTIONED ARE CURRENTLY STANDARD FOR DEVELOPERS--WHAT ROLE IS YOUR AGENCY TAKING IN THE NEW 50% "AFFORDABLES" REQUIREMENTS FOR NEW HOUSING PROJECTS?

Conant: As you know, unilateral agreement requirements are placed on a developer at the County level, and the County usually has responsibility for overseeing the implementation and satisfaction of those requirements unless it's done at the Land Use Commission level. There have been some cases where the Land Use Commission requires that the developer coordinate with HHA [Hawaii Housing Authority], or now HFDC. We have not been very much involved in overseeing the implementation of these aspects of the

unilateral agreement. From all indications, it appears as though there isn't a lot of effort being made in these areas and that some of the developers, to put it bluntly, are still dragging their feet in satisfying some of these requirements.

WHAT ROLE, IF ANY, DO YOU SEE YOUR AGENCY TAKING IN IMPLEMENTING THESE REQUIREMENTS?

Conant: We don't see ourselves enforcing that aspect unless the developers seek some assistance from HFDC in carrying out those responsibilities. We are certainly open and are prepared to work with developers who have some of these requirements.

THE LAND USE COMMISSION AT THE STATE LEVEL AND THE COUNTIES AT THE REZONING OR DEVELOPMENT PLAN LEVEL, HAVE OFTEN IMPOSED RESIDENTIAL "SET-ASIDE" REQUIREMENTS ON RESIDENTIAL DEVELOPMENTS. YOU MENTIONED ELSEWHERE THAT THERE IS AN IMPACT ON AFFORDABLE HOUSING OF RESORTS AND COMMERCIAL PROJECTS, BUT WHAT DO YOU THINK THE RATIONALE IS FOR IMPOSING SUCH A CONDITION ON RESIDENTIAL PROJECTS?

Conant: I think for resort developments they see an influx of workers coming into the vicinity of the resort development at least within reasonable commuting distance, and as a result, there is a need to provide shelter for employees.

WHAT ABOUT THE FACT THAT THE LUC AND COUNTIES HAVE NOT TRADITIONALLY IMPOSED HOUSING REQUIREMENTS ON THESE KINDS OF PROJECTS? INSTEAD, IT'S BEEN ON RESIDENTIAL PROJECTS.

Conant: I think more so now than in the past because of the numbers and size of these resort developments that are coming on line, some of the Counties are taking a harder look at what impact these resorts are having on their communities, and are beginning to move in a direction to try to get these resort developers to satisfy some of the needs of the community.

A good example of that, although Maui County has not formally adopted a policy, is their informal policy that would require a resort developer to produce one dwelling unit for every six rooms built in the resort area. According to officials from Maui County, they have found that the developers have been somewhat receptive to it because they recognize that if they are going to have the kind of employment that they are looking for, they will have to provide some needs for the employees to reside within a reasonable distance.

"We've found that the private sector has generally been developing housing to some extent from the 120% range on up, with more of that towards the higher end. . . the private sector is going to have to do a little bit more than what they've done in the past in trying to meet our greatest housing needs."

YOU MENTIONED THAT YOU THINK THAT A REASONABLE AMOUNT OF AFFORDABLE UNITS FOR PRIVATELY-SPONSORED RESIDENTIAL DEVELOPMENTS WOULD BE IN THE 50% RANGE.

Conant: You know that developers traditionally have not built housing that's affordable to what we consider to be the gap group and below. Let's say from 120% of median income and below. If housing were to be built for that particular income group, the government has been in the forefront providing some means of developing that kind of housing. We've found that the private sector has generally been

developing housing to some extent from the 120% range on up, with more of that towards the higher end of that range--130%, 140%--as opposed to the lower end of that spectrum. So we suddenly find ourselves in a tremendous housing crunch because our vacancy rate is less than 2%, which is really no vacancy rate to speak of, at all. It gives people very few choices out there who are looking for units. So, there is this feeling that if we are going to get out of this housing crunch, the private sector is going to have to do a little bit more than what they've done in the past in trying to meet our greatest housing needs.

IF DEVELOPERS HAVE BEEN BUILDING TO 130% OR 140% OF MEDIAN INCOME, HOW DO YOU SEE THEM BEING ABLE TO BUILD TO A LOWER SEGMENT?

Conant: I think they are going to have to be very innovative. Certainly, they are not going to be operating at the level of profits that they have experienced in building for 140% of the median and above. I think that they are going to be looking at smaller lot sizes if they are talking about single-family units; they are going to be looking at some very innovative multi-family type of complexes, and still will not sacrifice quality just to get the price down. You might be looking at the overall size of the units and looking to see where they can sharpen the pencil so that it is indeed a profitable operation because the market is there.

The market is there, and it's just a matter of building units to try to reach and satisfy that market. I don't think we ought to be competing that much with each other, building for that particular group because the market is there. I think we are going to find each particular income group receiving some form of education as to how best can they prepare to tap that resource because we have known for a number of years that when we deal with families in the lower income range of about 80% and below, just those in the upper spectrum of that group would be eligible to participate in owning a single-family home unless we have Farmer's Home financing in that particular development. Farmer's Home financing would provide take-out financing with interest rates as low as 1% and we found that some families making 50% of the median income could qualify.

YOU MENTIONED THAT THERE IS A PROPOSAL FOR A \$120 MILLION REVOLVING FUND FOR INFRASTRUCTURE. HOW WOULD THAT WORK?

Conant: That fund will be called the Homes Revolving Fund. Once the appropriation is made, those monies will go into the Homes Revolving Fund, then those monies can be used, in this case, for the comprehensive State housing program announced by the Governor, which includes four major planned communities located at Kapolei [Oahu], Kealahou [Hawaii], Maui and Kauai. The funds are going to be used to take care of the off-site and on-site infrastructure, as well as on-site improvements, so it will be used for financing the construction of dwelling units as well. Once those dwelling units are constructed, we will sell them; then the take-out financing that we get from the sale of these units will be settled through escrow, and escrow will pay back to us those resources we had tied up, which would go right back into the revolving fund. So we start out with \$120 million, but over the next ten to twelve years we see this fund being leveraged out to at least \$1.7 billion and that's with the four major comprehensive planned communities plus the infill projects. We will also be using resources from the Dwelling Unit Revolving Fund. Approximately \$30 million from the fund will be used to support the four major projects where there are financing shortfalls, as well as for other infill projects.

WILL THE DEVELOPERS BORROW THE INFRASTRUCTURE FUNDS FROM THE STATE?

Conant: We will provide the infrastructure monies and will take care of putting the infrastructure in. The developers will not borrow these resources. These resources will be available at no carrying cost for the construction of the infrastructure and also the dwelling units. Land cost is not included in the \$120 million appropriation that is being requested. Three of these projects are on State-owned land. The only project where we are going to acquire land will be here on Oahu for Kapolei Village. We are acquiring 830 acres there for about \$60 million.

WHAT PERCENTAGE OF THE SALES PRICE OF THE HOME WILL GO BACK INTO YOUR HOME FUND? AND HOW WILL YOU DETERMINE THE AMOUNT THAT GOES BACK INTO THE FUND?

Conant: Actually, 100% of that sales price will go back into the Homes Revolving Fund. We will sort it out at the end of the project. Resources that we will gain here in terms of some of the market units will be used to reduce the price of some of the affordable units. The savings that we will realize as a result of not having to borrow these monies will likewise be used to cut right off the top of the price of an affordable unit. For example, if we are building an affordable unit for about \$90,000, it means that we can list that unit then at \$80,000 and have that unit available for more qualified families than we would have if we were pricing it at \$90,000. So we are going to pass those savings right on to the affordable housing buyer.

on private developers' participation in HFDC projects: "... we've reduced the developer's risk here considerably and we think that it is going to be a greater incentive to the developer to want to work in partnership with HFDC... the profits would not be as great as if the developer had those risks, but we still see reasonable profits for a developer."

IN OTHER WORDS, THE DEVELOPER'S ROLE WOULD BE ALMOST AS AN EMPLOYEE OF YOURS FOR WHICH HE WILL BE RECEIVING FEES?

Conant: Not necessarily an employee of HFDC. He would be working in partnership with HFDC. As you can see, we've reduced the developer's risk here considerably and we think that it is going to be a greater incentive to the developer to want to work in partnership with HFDC. As a result of the reduced risk, the profits would not be as great as if the developer had those risks, but we still see reasonable profits for a developer.

THE BILL TO INCREASE THE REAL PROPERTY CONVEYANCE TAX [WHICH WOULD HAVE EARMARKED A PORTION OF THE TAX FOR STATE HOUSING RENTAL ASSISTANCE] HAS RECEIVED A LOT OF COMMENT. WHAT EFFECT DO YOU THINK THIS WOULD HAVE ON THE GENERAL REAL ESTATE MARKET?

Conant: I don't really know what impact it's going to have on the general real estate market. We see that houses continue to be sold. It would probably take a few years to determine what kind of impact it's going to have, comparing it with the previous few years. We see the conveyance tax as a possible source of revenue on a recurring basis for the rental assistance housing program. As you know, the Federal government has cut back substantially on providing resources for the construction of homes for low-moderate income families and even to a large extent on subsidies, to the point where today there's basically one subsidy program so that exists, the Voucher Program, which is really less than the subsidies provided in the Section 8 existing housing program. So we see a need to establish a rental subsidy program so that the State has a means to fill that gap created by the Federal government. We're talking about families that are at 80% of median income and below. Not just any family will qualify for subsidies; however, those that are on the lower end of the spectrum we see as having an even greater need for subsidies, but the State rental subsidy program would amount to \$175.00 per qualified family per month. We would place the resources that we are asking the legislators to appropriate on an annual recurring basis into a revolving fund. We will have short-term investments with the principal amount, and once a rental project is identified, we will convert these short-term investments into long-term investments. These revenues will be used to subsidize a qualified family's rent. So the principal amount stays intact.

WHAT WAS THE BASIS FOR FORMULATING THE CONVEYANCE TAX INCREASE?

Conant: To provide [rental assistance] resources to the tune of \$10 million/\$15 million a year on a recurring basis, that was the objective.

"The Governor said the State has to do something about the critical affordable housing shortage. We have got to do something about it now. Enough talk has been put forth on the subject; we now need to act..."

SO IT WAS NOT FOR [REAL ESTATE] ANTI-SPECULATION?

Conant: No. Definitely not. It is sort of labeled as such, but that certainly was not in the thinking that went into structuring that formula.

THE BILL WOULD APPLY TO ALL REAL ESTATE SALES, NOT JUST HOMES?

Conant: Yes, with the exception of transactions less than \$150,000. We felt that those homes are in the range of the target groups that we are working with, so it was said that those transactions should be exempt from the increase.

BUT IT WOULD APPLY TO ANY COMMERCIAL TRANSACTION, AS WELL, AND WOULD APPLY EVEN IF THE SELLER WERE TAKING A LOSS, AS OPPOSED TO MAKING A PROFIT, FROM THE SALE?

Conant: Well yes, it would still apply. There is no way one can tell if he's taking a loss. [Editors' Note: The conveyance tax bill did not pass the 1988 Legislative Session.]

IN THE QUESTION OF WHAT HAPPENS TO THE COST FOR HOUSING EXACTIONS AND IMPACT FEES, YOU COMMENTED THAT EVERYBODY SHOULD PAY. WHO DO YOU THINK CURRENTLY BEARS THE COST OF HOUSING EXACTIONS?

Conant: To some extent, some of that is passed on to the consumer. The developers probably assume some of it. So I think it is being spread now, but I don't know exactly how much is being spread, but there is no one particular group that's, say, taking it all. And the government is also sharing in that. Because when government is the developer we have some of the same requirements that we must satisfy in terms of park dedication requirements and so forth.

We have seen Governor Waihee make a really bold commitment and what caused him to make that commitment was the urgent need he sees that exists for affordable housing in our community, and I think he realized that the only way we were going to make any dent in this effort was to make a substantial commitment to the program. When I say substantial commitment, I mean the \$120 million plus the \$15 million and the other things that we talked about; we are also looking for another \$50 million in bond authority for our rental housing program. We have bonding authority for \$25 million right now, so we are looking to increase that to a total of \$75 million. The tax exempt Mortgage Bond Program is going to sunset at the end of this year. We have an unused authority for about \$175 million that we will be trying to issue between now and the end of the year, so as to preserve that \$175 million for some of the big projects that we are trying to bring on line. The Governor said the State has to do something about the critical affordable housing shortage. We have got to do something about it now. Enough talk has been

put forth on the subject; we now need to act to really produce affordable housing for the people of the State of Hawaii.

on the development permitting process: "...there still needs to be a lot of work in that area to sort of streamline the system. Not just for government, but for all to have some of these kinds of restrictions removed, and we too are trying to get some of those restrictions removed."

YOU MENTIONED THAT THE STATE IS GOING TO BE ACTIVELY TAKING ON THE ROLE OF THE LAND DEVELOPER. THE CITY HAS ALSO TAKEN ON THE ROLE OF A DEVELOPER. DO YOU SEE ANY PROBLEM WITH THE TWO PERMITTING AGENCIES, THE STATE AND COUNTIES, BEING DEVELOPERS, WHILE ALSO CONTROLLING TO SOME EXTENT THROUGH THEIR PERMITTING PROCESS, THE PRODUCTION OF PRIVATE MARKET HOUSING?

Conant: I don't really see problems of competing because as I mentioned earlier, I think there is sufficient demand for affordable housing for the people that we are targeting, and everyone who wants to build housing in that income range is going to find a market for the people. There are people there ready to buy. In terms of some of the bureaucratic regulations that one has to comply with and has to go through that process in order to get all the "pukas" on the card punched before you can move out, there still needs to be a lot of work in that area to sort of streamline the system. Not just for government, but for all to have some of these kinds of restrictions removed, and we too are trying to get some of those restrictions removed. Despite the fact that HFDC is a governmental entity, it is not completely removed from exemptions from all of those processes.

DO YOU HAVE TO GO TO THE COUNTIES FOR YOUR PROJECTS, OR CAN THE LUC GIVE YOU EVERYTHING YOU NEED?

Conant: We will still have to go to the Counties for subdivision approvals and [State land use] boundary changes if it's over 15 acres, so we still have to go through the process as it is presently established by law, and where we deviate from County standards we must then go to the Counties to get those exemptions. As prescribed by law, the County would then have 45 days in which to act or to disapprove, and you know the kinds of intensive staff effort that must be put forth in tracking each one of those requests, and HFDC feels that this staff time could be devoted to doing other things. Consequently, the Administration is supporting a bill before the Legislature [SB 3287], seeking to exempt HFDC from that process, but when we get exempted from that process, we must establish standards through the rules process, which means we still have to have public hearings, we still have to go through the OEQC [Office of Environmental Quality Control] requirements. So the public and governmental agencies will still have input on what we are doing. It's not as if we're going to run wild and do our own thing, because I think there are going to be checks and balances through the public hearing process and through the OEQC process. Thus, you can see that it would certainly streamline the system for us.

DONALD A. CLEGG

This interview with Donald Clegg, Chief Planning Officer for the City & County of Honolulu was conducted on March 2, 1988.

WE ARE LOOKING TO DISCOVER WHAT THE CONCERNS ARE OF THE PLANNING AND HOUSING DIRECTORS AT THE STATE AND COUNTY LEVELS REGARDING THE PROVISION OF INFRASTRUCTURE, AS WELL AS AFFORDABLE HOUSING. AT THE SAME TIME, WE'RE CONDUCTING RESEARCH INTO IMPACT FEES AND HOUSING EXACTIONS FROM THE PLANNING, LEGAL AND ECONOMIC PERSPECTIVES. SO WITHIN THIS FRAMEWORK, WHAT DO YOU SEE AS THE CURRENT AND LIKELY FUTURE OF INFRASTRUCTURE NEEDS IN TERMS OF PLANNING?

Clegg: Well, I think what we're seeing here and what we see in many Mainland cities as they get older is that the infrastructure serving the central or older portion of the city is deteriorating and needs replacement, and the capital resources of the community have to go there. Newer areas are being developed. In earlier times, the CIP monies would be spent on the common infrastructure that is required but now, monies have to be spent on the replacement infrastructure in the high density population areas, where the infrastructure is 50, 70, 100 years old. Our monies are going there. This means that for the newer areas like Ewa, Central and Mililani, the developer has to pay the infrastructure fee not only for what's within his subdivision, but the major collectors and connectors, as well. When it comes to water and sewer, that's manageable. It's when you get to freeways and highways that you are suddenly confronted with costs that would destroy any economic attempt at housing subdivision.

HOW IS THE COST CURRENTLY BEING ALLOCATED?

Clegg: Well, for the water, sewer and other City functions, cost is being allocated to the subdivisions in the newer areas. Developers are being asked to provide front-end money for the major sewer and water trunk lines, and as other developers come on-line, they are charged a hook-up fee which we are gradually amortizing to pay off. As for more stationary features like sewage treatment plants and water reservoirs, the City is front-ending these items and then charging the cost back. Honouliuli STP is a good example of that. We will add the next increment--13, 15 million gallons--and then charge that off as users come on-line.

SO IN A WAY, YOU'VE ALREADY DEVELOPED AN IMPACT FEE SYSTEM FOR SEWAGE TREATMENT?

Clegg: That's true. We already have. Highways provide an interesting item because where you can identify a project that completely and uniquely impacts on a major transportation link, then we can start charging off the interchanges and the access to that development. In the proposals for Mililani Mauka, for example, there are intersections included as part of Development Plan items that would be charged off to develop the units.

WHAT ABOUT DEVELOPERS WHO SUBSEQUENTLY COME IN AND USE THAT INTERCHANGE PUT IN BY MILILANI?

Clegg: I think they are getting a free ride. You can charge water and sewer off on individual home hook-ups and on usage, but a freeway interchange is open to everybody. It's difficult unless you want toll roads.

TO CHANGE THE SUBJECT A BIT, WHAT DO YOU SEE AS THE CURRENT AND FUTURE HOUSING NEEDS OF THE ISLAND?

Clegg: The number 40,000 has been bandied around as representing the need for housing. Not all of this is necessarily in the gap group or low income, and I'm not sure this number has a great deal of substance behind it, but it does serve as a target. So 25,000 or 30,000--that's still a lot of houses. We know there is enough of a need that is not being met. We're building on the average about 4,000 units a year, mostly by the private sector, including condominiums, which is approximately even with our population growth. But there is nothing additional--we have smaller families, fewer people per household, and we have the existing housing that is getting older and just like our infrastructure, needs replacement, so in that sense we are falling behind.

IN TERMS OF DIFFERENT CATEGORIES OF NEW DEVELOPMENT, WHAT KINDS OF INFRASTRUCTURE IMPACTS AND AFFORDABLE HOUSING IMPACTS DO YOU SEE WITH RESORT DEVELOPMENTS ON OAHU?

Clegg: The new resorts are putting in their own infrastructure.

On rental housing requirements being imposed on resorts: "I guess I don't believe in these free rides. If hotel workers are not being paid enough to live, to rent a house, then obviously that needs to be changed, but it's not up to our links of the government to subsidize that."

OFF-SITE, AS WELL AS ON-SITE?

Clegg: They are being charged for their off-sites--Ko'Olina and Turtle Bay [resorts] are basically putting in everything that their impact would require, except for the highways. For example, Turtle Bay has been charged with widening Kamehameha Highway in front of there, putting in turn lanes, slow-down lanes and acceleration lanes. That's fine, but they are not being charged for a portion of the cost of the [proposed] Haleiwa Bypass Road or for widening the road from there to Haleiwa and Waimea Bay, so that again is a State government function.

The same is true with Ko'Olina. They are not being charged for any increase that they might cause on the H-1 Freeway and so forth, so where we are having difficulty is in charging off the facilities that are being directly used.

As far as housing is concerned, our putting housing requirements onto the development and whether those requirements are realistic in terms of what the development actually produces in terms of need for housing, I really don't know. We are just putting something on.

I have a similar problem with this, if I can call it, plantation philosophy that it is up to the employer to supply all the housing for the workers. In plantation context that was pretty much what was done. That was when the workers were of a different era and they were more, say, "captive," in a sense. Their lifestyles were centered almost totally around the plantation. They were physically isolated because of the lack of roads and transportation at that time.

Today, I think you have a whole different situation with the resort-type of development to create a worker town or worker neighborhood. It seems a little out of context with our environment and our culture right now, and yet we are laying this requirement on and saying, "Well, okay, if you want to put a hotel up, some statute says that for every so many hotel rooms you have to build a house," and I'm not sure what "build a house" means. I mean, if you're a developer you build a house and give it to the employee, which is not

realistic. If you rent it to them at a low cost, that's not realistic. I guess I don't believe in these free rides. If hotel workers are not being paid enough to live, to rent a house, then obviously that has to be changed, but it's not up to our links of the government to subsidize that.

WHAT ABOUT THE HOUSING IMPACTS OF, SAY, COMMERCIAL OR INDUSTRIAL DEVELOPMENT?

Clegg: Well, the hotel and tourist industry is a commercial development and again, we are not living in an era of paternalism where the big corporation would come in and take over the whole town and own the company store, and everybody would go into debt to the company. We are just not into that kind of era so I don't think that corporations or businesses have a direct responsibility in this area. I think the responsibility, somehow, is to pay a competitive wage that would allow people to seek what they need on the open market.

IN TERMS OF HOUSING, BOTH OUTLYING AREAS AND INCREASED DENSITY IN THE URBAN CENTER, WHAT KINDS OF INFRASTRUCTURE IMPACTS DO YOU SEE THERE AND HOUSING EFFECTS?

Clegg: What we see in the urban center is a much more fluid situation and I think again, when a high-rise building goes up, they are really not charged for all of the impacts that they have on the existing infrastructure. Again, there are some hook-up fees, but I don't think these fees are directly related to the usage that they have.

EARLIER YOU MENTIONED THE CAPITAL IMPROVEMENT PROGRAM IS NOW GOING TO BUILDING BACK THE INNER CITY INFRASTRUCTURE, WHICH HAS DETERIORATED OVER TIME. IN YOUR PLANS TO BUILD THIS BACK, ARE YOU INCREASING CAPACITY ALSO IN NEW DEVELOPMENTS?

Clegg: We are increasing capacity. It turns out we are very fortunate in that when the original engineers and planners built the sewer system, they built in monstrous amounts of excess capacity, and we are using sewers in the Makiki area, main sewers that were built fifty years ago and are basically able to handle the capacity, but has just deteriorated structurally, but we always build and go with excess capacity because the cost to put it in is so small compared to the cost of going back and redoing it.

WOULD YOU SEE RECAPTURING ANY OF THAT [COST] FROM NEW, INCREASED- DENSITY DEVELOPMENT?

Clegg: Yes. I think there has to be a more reasoned, more equitable and more formal way of capturing from new development their share of the increased load they place upon the government infrastructure. That's where we come into the impact fee area. I think that it's a fairer proposition to have impact fees and to have the new development pay their own way, and that's kind of tough on the new developments that are coming in now when the older developments didn't have to pay their own way, but I don't think we have an alternative anymore. The new developments have to pay their own way and now the question is how do you make that fair, and this is where a more formalized impact fee structure does this.

There is this horrible term being used: "extraction." I always think of teeth coming out. You go in and take some of the developer's molars away as we extract the infrastructure cost and extract our school and police station and so on.

AND I BET THEY FEEL LIKE THAT SOMETIMES.

Clegg: I'm sure it feels that way to the developer.

"I think it is socially, very irritating when a speculator may get land, hold it, get it changed to a higher use and then sell it at a higher price without ever adding any value to the land."

SINCE THERE IS AN EXTRACTION OR EXACTION OF HOUSING SOMETIMES AT THE STATE LEVEL AND SOMETIMES AT THE COUNTY LEVEL FOR NEW RESIDENTIAL DEVELOPMENT, WHAT CONNECTION DO YOU SEE BETWEEN BUILDING A NEW HOUSING DEVELOPMENT AND CAUSING A NEED FOR AFFORDABLE HOUSING?

Clegg: That's a pretty tortured relationship under the concept of "rational nexus." I love those words. Lawyers treasure those things, but I think it's pretty hard to show that a subdivision being developed creates a need for low-income housing, unless we are in Beverly Hills and we all have maids and some of the maids don't get paid enough to buy a moderate-income house. So I don't think the housing development per se could do that.

I think there is an extraction that needs to be considered and is something that we have not done, and I think needs to be done. That is, when we do something like change the zoning of land to allow a higher, more intensive use, what happens is because of an act of government, the landowner or developer is now able now to go in and get more money from the land whether he just sells it to someone the way it is or whether he develops it to that higher use, and basically this costs the owner very little. The owner or developer has holding costs, cost of processing, and other costs which are not really large when one considers the total increase of value that is given when one goes from Agriculture to Apartment or to Residential or Commercial [designation], and I think the government needs to participate in that increase in value, and this is again where there is not necessarily an impact fee in the direct sense, but rather a participation in value added.

...when we plan a rapid transit system: wherever we put a station, . . . we increase the value of the property around. I think the government has a right to participate in that increased value. . . ."

IS THIS THE RATIONALE BEHIND THE ADMINISTRATION'S DRAFT COMMUNITY BENEFIT ORDINANCE?

Clegg: I think that's one element of the Community Benefit Assessment ordinance. I think it also has an extraction as an impact fee scale. I can't recall all the details, but I know it does have this value-added concept. What is a prime concern to us is the use of land as a commodity without any value added. I think this is socially, very irritating when a speculator may get land, hold it, get it changed to a higher use and then sell it at a higher price without ever adding any value to the land. Then typically when the land finally gets developed for the use that is permitted, and it is turned over two or three times and again you have

an increase in value without any value added by the people who are doing it, I think it is in that area of speculation that we need some government controls and regulations.

For the government to participate in the increased value because of a government act then, I think, is justified and to participate heavily, first of all, to get increased funds and, second of all, to discourage that kind of speculation. We may want to participate in the value added up to fifty percent, which is pretty heavy. Those funds, of course, may be used for infrastructure or things the government does not now have the funds to do. But I feel strongly about this--it's like when we plan a rapid transit system: wherever we put a station, which means we utilize government money, we increase the value of the property around. I think the government has a right to participate in that increased value in some sense almost as an equity partner because they have spent government funds to create a function such as a transit stop, and the property owner there gets an increased value without spending anything--we need to participate in that.

WHAT DO YOU THINK HAPPENS TO THESE COSTS, WHETHER AN IMPACT FEE COST OR VALUE-ADDED COST OR HOUSING EXTRACTION COST? WHO DO YOU THINK ACTUALLY PAYS FOR THAT?

Clegg: Well, I guess in the long run, it's the eventual user who pays for it. So in the long run, the guy who finally has the mortgage on the house is going to pay for all of the things that have been extracted along the line. For the transit stop situation, it's whoever eventually goes into business and pays rent and mortgages on that property who is going to pay it. And, of course, in that case the business will charge it off to the person who's buying. But those people are in a competitive situation with other businesses who are not around a transit stop, and it may be that because of the transit stop, a service now becomes competitive. For example, you could probably get a higher rent for an apartment that is next to a transit than you could from an apartment several miles away just because of providing that particular service.

On who ultimately pays for exactions: ". . . the consumer is going to pay it at the end, and the issue that we have to decide upon as the City is whether the property owner who lives in a condominium in Central Oahu, or lives in a house in Kahala or Makiki or Manoa is going to pay a part of the cost of having a house in Ewa. That's the case if we subsidize and pay for infrastructure under the general fund and that's what they are doing. On the other hand, if all of the infrastructure cost is charged off to the particular development, then the people who buy the homes there end up paying for it."

WHAT ABOUT HOUSING DEVELOPMENT IN THE EWA OR CENTRAL AREA WHERE AN IMPACT FEE OR A VALUE-ADDED FEE WOULD ACCOMPANY IT? WOULD THE END CONSUMER PAY THAT COST OR WOULD THE LANDOWNER PAY THAT COST?

Clegg: Well, the consumer is going to pay it at the end, and the issue that we have to decide upon as the City is whether the property owner who lives in a condominium in Central Oahu, or lives in a house in Kahala or Makiki or Manoa is going to pay a part of the cost of having a house in Ewa. That's the case if we subsidize and pay for infrastructure under the general fund and that's what they are doing. On the other

hand, if all of the infrastructure cost is charged off to the particular development, then the people who buy the homes there end up paying for it. There is also an issue that comes back that says "Well, whenever we add value, we also add more taxes." Well, I certainly think that is a part of it but I think that associated with continuing to have value for a particular property, you pay taxes for that purpose versus the creation of that value through zonings and increased infrastructure cost.

DO YOU THINK THAT AN IMPACT FEE SYSTEM, IF ONE WERE IMPLEMENTED, SHOULD APPLY TO ALL DEVELOPMENTS REGARDLESS OF SIZE OR TYPES, OR JUST THE LARGE ONES OR JUST ONES IN CERTAIN AREAS?

Clegg: Well, to be ultimately fair it should apply to all development no matter what size, and I think what we have done is pretty much done. Say our park dedication fees, I think that we exempt projects somewhere around less than four or five units, or so. Anything above that is charged a fee for park dedication. When it comes to a larger subdivision, they donate land for a park in some formula, which is negotiated at the time. Whereas, in the central city we can't. We buy land for a park, they donate money and collectively, a number of projects will pay for a park somewhere.

PRESUMABLY WITH TRANSPORTATION, IT MAY WORK A LITTLE DIFFERENTLY. EARLIER WE TALKED ABOUT THE FACT THAT TRANSPORTATION MAY JUST BE TARGETED TO ONE THING RIGHT NOW. AN INTERCHANGE, FOR INSTANCE.

Clegg: Yes, it's hard to extract a direct fee for that. You could create a formula that says for every house you generate 1.5 cars, and that means we will charge you a tax on the cars to build an interchange. However, we get into a lot of overlapping jurisdiction that would create some problems for the State and County.

ACTUALLY, THAT WAS ONE OF MY QUESTIONS. GIVEN THAT THE STATE AND COUNTIES ARE INVOLVED IN INFRASTRUCTURE, AS WELL AS AFFORDABLE HOUSING NOW MORE AND MORE, WHAT CONFLICTS OR POSSIBILITIES OF DUPLICATION DO YOU SEE BETWEEN THESE TWO ROLES?

Clegg: Well, there needn't be any conflict, but there is a great deal of conflict at the present. The Counties have the expertise in land use management of a general class and they have expertise in infrastructure, and I see a lot of movement on the part of the State Legislature to transfer many of these functions to State agencies that don't have the expertise.

We are faced with a situation like in Kaka'ako where the State has a Development Authority and says well, all of the zoning laws and land use controls that were in the County's hands shall now be under the jurisdiction of the Authority. The unfortunate part or unfair part with regard to infrastructure is that the State goes in and builds it, but it has to connect up to the City's portion. You can't have a sewer line that just ends at Kapiolani Boulevard, and the City does not have the option of saying "I will not hook our sewer treatment plant to your sewer line." Yet we have no say-so on whether that sewer line is built, how large it will be, or how many people will be hooked up to it. But somehow we are expected to supply the other remaining portion of that infrastructure, whether it be sewer, water or roads, and I think this is not only unfair, it's got to be "the pits" of planning.

The other unfortunate and unfair thing is that the State now says "Oh, by the way, this is now yours. This is your water system, this is your sewer system, your road system that we have just developed and you will have the chance of maintaining it," and hopefully, it is generally built to County standards, but it need not be. So we don't have any of the controls over what is built or how it's built, yet we are given the responsibility of maintaining it and transporting what it produces through our infrastructure system for which we receive no assistance, and the frequency of this kind of process seems to be accelerating.

This was once proposed for the Ewa area to have another Authority to take over and develop the Ewa town and the Ewa housing. However, all of that development would have used the Honouliuli sewage treatment

plant, which somehow the City is supposed to cover. I see this mentality also occurring on the Kohala Coast on the Big Island. The same kind of thing. So yes, there are a great deal of conflicts in this area that are getting worse.

FROM AN INDIVIDUAL DEVELOPER'S POINT OF VIEW, WOULD IT NOT BE BETTER TO DEAL WITH, SAY, ONE JOINT AUTHORITY RATHER THAN TWO DISCRETE ENTITIES, IN TERMS OF PERMITTING AND IMPACT FEES?

Clegg: Well, there is one authority that the Counties are allowed and the Counties do best. The only area where it is different for some other agency is when we come to major highways. And I think that is something the Authority concept will not solve because at that point we start to get the Federal government into the act because they supply 80% or 90% of the money for the highways that the State is financially and structurally involved in, and to the extent that the developer needs that kind of thing, they have to start dealing with the State DOT [Department of Transportation]. The Authority must do the same thing because you [still have to] summon up the Federal government into the act, and now there are three layers of government involved.

On State housing exactions: "So I find it a very cavalier type of attitude on the part of the State which comes out and says 'Well, why don't we just take 60% and make that into a gap group and why don't we create that 30% of the 60% shall be from 80% to 120% of median income?' Where do these numbers come from? Do you know whether a project in that area can be economically viable with those kinds of restrictions on it?"

THE STATE HAS BECOME MORE INVOLVED IN AFFORDABLE HOUSING EXACTIONS AT THE LAND USE CONVERSION STAGE. DO YOU SEE THAT AS PRESENTING A POTENTIAL CONFLICT OF DUPLICATION?

Clegg: Very much so because there is just so much that can be extracted and still have a project that is viable. If the State is to extract all of the potential, then there is really nothing left for those functions that are still mandated by the Legislature that the Counties perform, and primarily these fall under police functions and health and safety functions, and still requires us to have police departments and fire departments and water and sewer connections. Yet, the monies in a project are taken by the State, and there is really not much left for the Counties. So I find it a very cavalier type of attitude on the part of the State which comes out and says "Well, why don't we just take 60% and make that into a gap group and why don't we create that 30% of the 60% shall be from 80% to 120% of median income?"

Where do these numbers come from? Do you know whether a project in that area can be economically viable with those kinds of restrictions on it? Nobody has given thought to that. The attitude seems to be "Well, let's just take it because we all know that they make lots of money anyway and we're just participating in that. So we're just really taking what's ours anyway." And I think that's kind of cavalier and superficial, and that's typical of what I see as the State planning and the State operational function. There's not much depth in that kind of planning.

GIVEN THAT YOU HAVE FAIRLY WELL SUMMARIZED THE POTENTIAL CONFLICTS AND DUPLICATIONS, DO YOU SEE ANY OPPORTUNITIES FOR COOPERATION OR STREAMLINING IN THE AREA OF IMPACT FEES OR AFFORDABLE HOUSING PROVISIONS BETWEEN THE STATE AND COUNTIES?

Clegg: I really don't think the State should be in the impact fee business. I don't think the State Land Use Commission should be in the housing extraction business. The State Land Use Commission, which is the State land classification process, should be determining whether land should be urban or ag, and once they have made that decision, they should then get out of the act. You know, we talk about all the urban functions being housing--there are a lot of other urban uses, like industrial and commercial uses. But they seem to be dropped by the wayside, and the whole emphasis and direction and spotlight is on housing, like all we're doing is converting land to housing, so I see that the legislation nibbles away and keeps adding to the State Land Use Commission's functions, and that's why you have an appointed body who is not responsible to the elector, only responsible to the Governor, making these major land use decisions and taking away the prerogatives and flexibility of the elected officials at the County level for doing those things.

What this does is distance the government from the elector, and the elector--I don't think they have woken up to that yet. One of these days they're going to wake up and find out that they really have a big brother up there and they didn't elect him. With the Council members, they're on the hot seat every day of the week, every day of the year. Whereas your elected officials of the State [Legislature] go home after sixty days and then leave everything to a lot of appointed officials, appointed by the Governor, and many of them, like the commissions, once appointed, the Governor has great difficulty in replacing them. That's the danger that I see.

"It is still, to me, the Counties' responsibility to determine the pattern of land use. . . And that should be the leading issue. That should be the leading determiner of where the State would spend its infrastructure dollars."

IN TERMS OF THE PROVISION OF INFRASTRUCTURE AND AFFORDABLE HOUSING, WHAT DO YOU SEE AS THE APPROPRIATE ROLES FOR THE STATE, THE COUNTY AND THE PRIVATE SECTOR?

Clegg: The State has constitutionally [the responsibility for] infrastructure, that's really public facilities. They have education and schools. The State and Federal government, the major arteries of highway and freeways. It is still, to me, the Counties' responsibility to determine the pattern of land use within the Counties and what development shall go where. And that should be the leading issue. That should be the leading determiner of where the State would spend its infrastructure dollars.

This does not mean the State must spend, but the State must have the horse before the cart, not the cart before the horse to put in a highway and totally plan as to location by the Highway Department, which bears no relationship to the other elements of land use because highways greatly influence land use. The rest of the infrastructure, supplied by government, are basically County functions, not to mention the police and fire services, and for an appointed body to come in and basically force the requirement for the Counties to supply these services without the Counties having a say-so or a deciding role is totally a misuse of the government functions and misuse of response of government.