

## Success Stories of HRS Chapter 205

O`oma: For decades, developers – and County officials – fought to urbanize O`oma, located near Kaloko-Honokōhau National Historic Park on Hawai`i Island. Development in this area jeopardized class AA waters, anchialine ponds, archaeological sites (including a trail and burial sites), and natural beauty. The area is popular with locals who want to surf or just get away from Kailua-Kona. The Land Use Commission, relying on the criteria in HRS chapter 205, repeatedly rejected these efforts. Despite support for reclassification from Hawai`i County and the Office of Planning, the Land Use Commission rejected another reclassification effort three years ago. Just a few months ago, Hawai`i County bought the land to preserve it in open space in perpetuity.

Keopuka: In 1999, when the owners of the Hokulia development sought to build a luxury housing development next to Kealakekua Bay, citizens sought protection from the Land Use Commission. Development on this coastline jeopardized class AA waters (the Hokulia development a few miles north dumped massive amounts of mud into the ocean, smothering corals), numerous burial sites, trails and stunning beauty. Hawai`i County officials supported the development and sought to shield the development from Land Use Commission review. The Land Use Commission concluded that the fake agricultural subdivision was an urban use of agricultural land, bringing the proposed development to a halt. The circuit court upheld the Land Use Commission's decision. The landowner later protected a small portion of the coastal area with a conservation easement. Keopuka remains undeveloped.

Lā`au: In 2008, Moloka`i Ranch proposed to develop isolated Lā`au Point. Development there threatened not only endangered monk seals, but also the aquifer, which is sorely needed by Hawaiian homesteaders. The Land Use Commission demanded better answers to the questions that residents raised. Instead of providing these answers, the ranch shut down the project – saving Lā`au, its seals and water that farmers need.

Pohue: Pohue Bay is like an oasis. It sits at the end of miles of rugged, black lava. This sandy beach offers a nesting site for endangered hawksbill turtles as well as excellent bodysurfing. A few steps away, the lava field is filled with petroglyphs in one direction; in the other, a stunningly well preserved section of the ala loa. When developers proposed to develop this remnant of old Hawai`i, the Land Use Commission gave its approval. Hawaiians in Miloli`i, however, successfully appealed because the commission's decision failed to satisfy legal standards. Pohue Bay has been protected for decades since then.

Waianae: In 1977, developers proposed to build an amusement park, sewage treatment plant, fast food shops and more on 103 acres at Kahe Point on the Waianae coast. The project was intended to attract 1.5 million people annually. Both the City and the Land Use Commission gave their approval. The Hawai`i Supreme Court rejected the project because it failed to meet basic criteria in HRS chapter 205. Can you imagine what that area would like today if the development had gone forward?

These are just some of the stories that demonstrate how HRS chapter 205 has been effective. There are many others -- including countless developments that have not been proposed when landowners understand that reclassification of agricultural and conservation district land is **not** guaranteed.

## **Important Elements of HRS Chapter 205**

HRS Chapter 205, the State Land Use Law, is not perfect. But certain elements are critical to its success. Perhaps most important is the fact that decisions must be made in the context of a contested case hearing. That includes critical legal protections:

First, it is illegal for a developer to give any money to any member of the Land Use Commission. It is, however, perfectly legal for a developer to give campaign contributions to members of the city or county councils. Not only do such contributions unfairly tip the scale in decisionmaking, they create an appearance of impropriety.

Second, a contested case hearing gives members of the public the right to cross examine developers. Too often, developers and their consultants exaggerate, fail to disclose important facts, or mislead. When overworked state officials fail to notice these problems, citizens can highlight them through cross examination. There is no such right before city or county councils.

Third, city and county councils often restrict members of the public to three minute presentations – while developers take extended periods of time to justify their projects. A contested case hearing gives citizens the opportunity to present their own expert witnesses and evidence.

Fourth, in a contested case hearing, all evidence must be presented in public. There can be no private conversations between a developer and Land Use Commission member. Such *ex parte* communications are strictly forbidden. Private negotiations are standard at the city and county councils.

Fifth, contested case hearings result in a decision based on written findings based on the evidence. They can be challenged in court if they fail to meet the standards in the law. It is virtually impossible to overturn a city or county council decision.

Finally, the Land Use Commission review allows for certain issues to be highlighted that county officials tend to overlook: impacts to coastal water quality, archaeological sites, and biological resources. Think about it: how many biologists and archaeologists work for county government? Moreover, unlike county officials, the State Land Use Commission is not motivated to urbanize land in order to increase its funding (through increased tax revenue from higher assessments).

## **Major Flaws in the Implementation of HRS Chapter 205**

Implementation of HRS chapter 205 has suffered from two major flaws.

Thousands of acres in the agricultural district should more appropriately be designated as conservation district land given the natural and cultural resources found on these lands. Much of the controversy that surrounds the implementation of HRS chapter 205 would be solved if these lands were reclassified and placed in the conservation district.

The second flaw is the persistent attempt by developers to use agricultural lands for non-agricultural purposes. Examples of these attempts can be found throughout the State: Crazy Horse development in Kona; the Keopuka development in South Kona; Kealia on Kaua'i; Wailua on O`ahu. When non-agricultural uses are allowed on agricultural land, the value of agricultural land throughout the State increases, threatening the viability of farming. It also requires that tax payers subsidize these developments by providing infrastructure and services at a distance from urban centers.