

## LAND USE, RANCHING AND THE TAX SYSTEM

### BACKGROUND

While the use of the term, "Conservation," may mean to save and preserve, there are several factors which influence and govern the use of lands within the Conservation district. One of these is the law itself.

Chapter 183-41, HRS, enacted in 1957 established forest and water reserve zones in each of the Counties, with these zones to be administered by the Department of Land and Natural Resources (DLNR). All government and private lands were affected by the law. Any lawful uses existing on lands within these zones were protected by a provision under the law which allowed their continuance as non-conforming uses. Any use proposed after the law was enacted is permitted under three conditions:

- 1) the use is in accordance with those DLNR regulations which were adopted to govern the uses which would be permitted within the zones;
- 2) the use is allowed under a temporary variance issued by the department, and
- 3) if DLNR failed to give notice, hold a hearing or render a decision within 180 days of a landowner's application to the Department for a variance. At the applicant's request, the 180-day limitation may be extended for an additional 90 days when a contested case or an EIS is required.

DLNR established regulations which identified uses to be permitted in the forest and water reserves. The forest and water reserves were divided into subzones. The rules at first established on two subzones: general use and restricted watershed. Now the rules identify five subzones: general use, resource, limited, protective and special. The identification of several subzones allows for a broad range of activities which may be carried out in each, with each less restrictive subzone encompassing the uses permitted the more restrictive ones.

In 1961 the State Land Use Commission was established and given the responsibility to preserve, protect and encourage development in areas in the State by directing uses where they are best suited. Towards that end the commission established three land use districts: Agricultural, Urban and Conservation. The Rural district was added later. In establishing the boundaries of the Conservation district, the forest and water reserve zones were included. The Conservation district was further defined to include areas necessary for providing watersheds and water sources; preserving scenic areas; providing park lands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry and the related activities; and other permitted uses not detrimental to a multiple use conservation concept.

The designation of special subzones within the Conservation district is a more recent land use planning tool. The objective of designing special subzones is to provide for areas possessing unique developmental qualities which complement the natural resources of the area. There are two special subzones on the Big Island--the Milolii-Hoopuloa special subzone and the Hale O Hooponopono special subzone. The special subzone designation for the Milolii-Hoopuloa area provides for fishing activities, residential, education, cultural and recreational uses. The special zone for the Hale O Hooponopono provides for educational purposes.

Four additional subzones were identified.

The objective of the general subzones is to designate open space where specific conservation uses may not be defined but where urban use would be premature.

Protective subzone designations are to protect valuable resources in designated areas such as restricted watersheds, marine plant and wildlife sanctuaries, significant historical, archaeological, geological and volcano-logical features and sites.

Limited subzone designations are areas where natural conditions such as floods, soil erosion, tsunami, landslides and volcanic activity place constraints on human activities.

Resource subzone designations allow the development and management of certain areas in a manner which would sustain the natural resources of those areas.

For whatever resources the subzones are established to protect, the resources must compete with uses which are allowed to continue under the law and a permitting process which could expand these uses and/or allow new uses.

### The Permitting Process

In addition to grandfathering existing uses on conservation lands, the regulations allowed a new or greater use through the issuance of a temporary variance or Conservation district use permit approved by the Board of Land and Natural Resources (BLNR). Any landowner or lessee could apply for a variance from the uses permitted in the Conservation district by submitting to the Board an application for Conservation District Use Permit (CDUA).

Chapter 13-2-19 of DLNR's regulations describes procedures for filing applications for obtaining permits for a proposed use or activity within the Conservation district.

Upon receipt of the application, BLNR must within 180 days hold a hearing and render a decision or the landowner may without the Board's approval initiate the proposed use identified in the application. However, the proposed use must comply with all of the conditions listed under 13-2-21 of the rules.

The EIS process is used to assist the board in determining whether the proposed use is compatible with the area and appropriate to the physical conditions and capabilities of the parcel. If an EIS is required, the applicant may ask for an extension to the 180 days. If an EIS is not required the Board ensures the issues of compatibility and appropriations by applying conditions to the permit.

Other factors affect the use of lands within the State aside from the establishing of districts by the Land Use Commission. As stated previously, all landowners of Federal, State, County and private lands within

the State are affected by the establishment of the land use districts. However, not all are affected in the same way. Agricultural uses within the Agriculture districts are permitted as well as any new or greater legal use of that land within the Agricultural district regardless of whether that use may negatively affect rare and/or endangered flora or fauna, or areas with the potential to serve as watersheds. Agricultural uses within the Conservation district are permitted if they were existing before reclassification into the Conservation district. New or greater agricultural uses must be approved by the Board of Land and Natural Resources through the issuance of Conservation District Use Permit. However, according to the DLNR's Office of Conservation and Environmental Affairs (OCEA), it is not the application and permitting process or the fees involved which concern the landowner, but the fact that once their interest in pursuing new or greater uses of their land becomes known to the public, they are confronted with opposition to pursuing these activities from environmental groups.

#### The Hawaii Property Tax System

The property tax system also affects how land will be used. Land use within the State is also influenced by how taxes are assessed and from the landowners/lessees point of view, many inequities are perceived when taxes are assessed on properties in the urban, agricultural and conservation districts.

The property tax system in Hawaii is based on the classification of approximately 4 million acres of land throughout the State, with the largest segments of these lands in the Conservation and Agricultural districts. These two districts make up nearly 96% of the State's total land area, yet represent only 6% of the tax base. This means the 3% of lands which are classified Urban are carrying the tax burden of the State and to some extent subsidizing uses on agricultural and conservations lands. Also, not all lands or landowners are taxed or equally taxed. Whether or not their lands fall within the Urban, Agricultural or Conservation districts, Federal lands, State lands and County lands are exempt from real property taxes even though their owners are permitted to rent or lease these lands and collect fees.

Even different agricultural uses are assessed and taxed differently. Tax rates vary from County to County for eight different types

of property: improved residential; unimproved residential; apartment; hotel and resort; commercial; industrial; agricultural; and conservation. With the exception of rates for improved residential, the Big Island maintains the same property tax rates for the remaining seven categories--\$8.50 for the building and \$10.00 for the land. The property tax system in each County is based on schedules of land use and productivity. Owners or lessees of land in Urban, Agricultural or Conservation districts using their land for agricultural uses, may further lower their tax assessments by qualifying for dedication rates.

Chapter 19, Article 7, Section 19-55, dealing with land dedication, allows a land/lessee owner to dedicate land for a specific ranching or other agricultural use. A lessee may dedicate land with 10 or more years on the lease or at least 20 years remaining for a 20-year dedication. Only lands within the Agricultural district are eligible for a 20-year dedication. Lands dedicated for agricultural use means that the owner or lessee will be charged at a lower tax rate depending on the agricultural use of his property. A 20-year dedication means a 50% tax reduction for twenty years. Two factors come into play: the tax rate which is pretty straight forward and the valuation rate. The tax rate on agricultural land is \$10 per \$1,000 in the County of Hawaii. In determining the value of agricultural land, the value of agricultural land whether dedicated or not, is the value that land has for agricultural use, without regard to the value that land may have for another use, or to neighboring land uses. In determining that value, consideration is given to rent, productivity, nature of agricultural use, the advantages/disadvantages of location, access to transportation facilities, size, shape, topography and soil type, and water availability and cost.

If pasture is identified as the best quality (Pasture type A on the Agricultural Use Tax Schedule), and its use is dedicated for 20 years, it will be valued at \$104 per acre. The amount of real property tax rate per year will be \$1.04 per acre per year. Therefore, assuming a property owner dedicated 2,000 acres for pasture use for 20 years, the assessed taxes would be \$2,080 per year. The use value of agricultural land for sugarcane use is higher (\$230 per acre for a 20-year dedication) and assessed accordingly. Therefore, taxes for 2,000 acres dedicated for sugarcane use amounts to \$4,600 per year.

At the time of dedication, the Tax Office also records the highest and best use assessment value. Zoning is critical (Urban, Agriculture and Conservation) but other factors such as location and adjacent uses are also considered. In assessing lands dedicated for agricultural uses, urban, agricultural and conservation lands along the coast near resorts and other urban areas will have their highest and best use assessment values recorded and these highest and best use assessments will be higher than dedicated urban, agricultural and conservation lands in the mauka areas. This is important because a retroactive assessment or roll back tax is imposed when the owner or lessee violates the items of the dedication and the agricultural land use classification is changed to a higher use--urban, rural or subdivided into parcels of 5 acres or less. The roll back tax is based on the difference between the highest and best use of that land and its agricultural use. In other words and for simplicity's sake, if taxes on a parcel in the agricultural district and in agricultural use for the 10 years are \$30 a year, when that land is reclassified to the urban district, the owner must pay the difference between the higher use and the agricultural use owed for each of the previous ten years. For example, if the tax on the higher use is \$100 a year then the deferred tax will be the difference between the tax for highest and best use minus the tax for the agricultural use ( $\$100 - \$30 = \$70$ ). The landowner, therefore, must pay \$700 in back taxes for the past ten years, and these back taxes are due in 60 days. Thereafter, the landowner is taxed at the highest use (\$100 a year).

When the reclassification is initiated by the landowner or lessee, in addition to the deferred taxes owed, a 10% penalty is added for each year the tax was deferred. When the reclassification to a higher use is initiated by a government agency, the roll back does not apply. However, the landowner or lessee will be responsible for payment of the new tax rate.

In the ranching industry, pasture rates are preferred because they are lower. Even here the rates are valued according to grade of pasture with the best, "A," located in the North Kohala district and more inferior grades D and E located in the kau district where the soil is rocky. These grades are not related to the Land Study Bureau's classifications. An owner will dedicate his land for ten years or more by promising to use it for grazing. Any use within the Conservation district requires a Conservation District Use

Permit from the Department of Land and Natural Resources. Forests whether on agricultural or conservation tax are not included in any category of the property tax laws. The owner, wanting to get the lower rate will cut down more of the forest destroying native flora and fauna (In the Conservation district a CDU permit is needed.). Assessments strongly influenced the use of land. Higher assessments tend to bring on "higher and best uses" in order to keep the land and bring in adequate profit. Lower assessments decrease both the tax burden and incentives to protect forested areas and rare/endangered species. The Hawaii County Tax Assessment Office has tried to convince the County Council to give the ranches an exemption but to date the Council has refused.

### Ranches

There are more than 600 ranches on the Island of Hawaii and more than half of these are located in the Kona and Kohala regions of West Hawaii. Most of these ranches conduct their operations in the State Agricultural district with a few ranching operations in the Conservation district.

Agricultural and conservation lands make up nearly 96% of the total land area in the State. The Island of Hawaii has the largest amount of land set aside for agricultural use--1,186,674 acres in the Agricultural district. These include lands with high and low potential for agricultural use. According to the General Plan of the County of Hawaii only 686,000 acres are in actual agricultural use. Conservation district lands on the Big Island make up the largest category of State land use district lands--1,296,095 acres. Most of the forested lands are in the Conservation district with some forested lands within the Agriculture district. All of the areas set aside as forest reserves are within the conservation district. *Except for new areas designed in 1990 which will be proposed for Conservation reclassification.*

Much of the County's agricultural and conservation lands are privately owned. This amounts to more than 40% of the land on the Big Island with the majority of privately-owned land in West Hawaii. Three of the largest land owners in West Hawaii include, Bishop Estate, Richard Smart (Parker Ranch) and the Samuel M. Damon Estate (Kahuku Ranch). Others include the McCandless Heirs (McCandless Ranch), Yee Hopp, Ltd., Thelma K. Stillman (Huehue Ranch), Dillingham Investment Corporation and the Greenwell Family

(Kealakekua Ranch, Palani Ranch, Horseshoe Ranch), F. Newell Bohnett (Puuwaawaa Ranch), Franklin Botielho (Hualalai Ranch), Allan Wall (Wall Ranch) and Charles Onaka (Onaka Ranch).

Total acreages for Ranches and landowners are difficult to compile, are extremely variable and may not be directly comparable due to many factors. Firstly, while these landowners/ranchers have a good deal of their holdings in fee, many lease sizeable acreages from the State and from other private landowners such as Bishop Estate. Secondly, many of these ranches occupy very rough land and it is very difficult to determine how much of these lands are actually used as pasture. Thirdly, even where lands are identified as pasture and grazed, the figures may not be comparable. For example, Kahuku Ranch includes more than 100,000 acres; however, most of that is lava rock and the cattle are run on only 14,000 acres. The Parker Ranch lists 210,000 acres (165,000 fee) and 11,983 acres are leased from Hawaiian Home Lands.

Finally, confidentially among the Ranchers themselves and the agencies/associations working with them make the task of compiling acreage/landownership data next to impossible. The lease difficult is finding out how much of State-owned lands (Public Lands and Hawaiian Home Lands) are leased.

The Puuwaawaa Ranch in North Kona owned by F. Newell Bohnett, lists the acreage its cattle are using as 40,000 acres (See Honolulu Advertiser, March 29, 1991, Page A-15). However, the State Land Leasing inventory from the Department of Land and Natural Resources lists the total acreage leased to "F. Newell Bohnett" for cattle ranching use as more than 105,536 acres. Add to that another 2,818 acres of State land leased to "Puuwaawaa Ranch" for pasture use, means that the State is leasing more than 46% of its public lands in North Kona (231,414 acres) for ranching operations.

Most of the ranching operations in the four districts inventoried for this study (South Kohala, North Kona, South Kona and Kau) are carried out on State-owned agricultural lands. A few of these ranching activities are operated on Conservation district lands and involve approximately 52,024 acres with most of the acreage <sup>on con.</sup> at Puuwaawaa (Bohnett/Puuwaawaa - 51,284 acres, North Kona; Greenwell/Kealakehe Ranch - 790 acres, North Kona).

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51,284,296 Ranching on Conservation Land

Other uses of State agricultural lands for cattle ranching and pasture use include: Kau Agribusiness and Kawaihae, 12,312 acres; Parker Ranch, 11,983 acres; Kahua Ranch, 8,175 acres; Palekoki Ranch, 8,927 acres; Huehue Ranch, 6,347 acres; Palani Ranch, 2,840 acres; McCandless Ranch, 1,258 acres; William Thompson, 1,067 acres; Spencer K. Schutte, 265 acres; Soloman Thompson, 28 acres.

Large Landowners/Ranches - West Hawaii

Name	Owner	Location	Acres		
			Fee	Lease	Pasture
Parker Rch.	Richard Smart	N. & S. Kohala			
Huehue Rch.	Theima Stillman	N. Kona			
Hualalai Rch.	Frank Boteilho	N. Kona			
Palani Rch.	Frank Greenwell	N. Kona			
	Q. Liliuokalani Tst.	N. Kona			
Greenwell's Rch.	W.H. Greenwell	N. Kona			
Kealakekua Rch.	S. Greenwell	S. Kona?			
Horseshoe Rch.	Dick Greenwell	S. Kona			
	Yee Hop, Ltd.				
	Dillingham				
	Bishop Estate				
McCandless Rch.	McCandless Heirs	S. Kona			
Kahuku Rch.	Samuel Damien Est.	S. Kona			
Kahua Rch.	Atheaton Richards	N. Kohala			
Ponoholo Rch.	Pono von Holt	N. Kohala			
Puuwaawaa Rch.	F. Newell Bohnett	N. Kona			
Wall Rch.	Allan Wall	N. Kona			
Woodhouse Rch.					
Onaka Rch.		S. Kona			
Parrish (Paris?)	Billy Parrish				