Kahului, Maui | Hilo, Hawaii | Kealakekua, Hawaii | Lihue, Kauai

Kahului, Maui
May 15, 2003

Q: Do the values shown for easements in your presentation reflect agricultural use and agricultural zoning?
A: The values are only illustrative. But they do not represent exclusive ag use. They generally reflect ag/residential use.

Q: Who owns the remaining open space of cluster developments?
A: This depends on how you set it up. It can be a homeowners association. Or, you can use an easement to protect the land, the protected land could then be sold, and some entity, like a local land trust, holds and monitors the easement.

Q: How are the sale of development rights (DR) or agricultural conservation easements (ACE) treated under the tax laws?
A: Under federal tax laws, they are now treated as capital gains. However, there are various entities looking at ways to limit the tax burden of the sale of development rights. Some states don’t tax the sale of DR.

Q: Can the sale of DR be used in a 1031 exchange?
A: This is an excellent way to sell DR. The IRS has issued letter rulings to individuals to apply the sale of DR in a 1031 exchange. The exchange of properties doesn’t have to be another farm property, for example they can be commercial or industrial.

Q: What is your definition of an easement?
A: Typically, an easement is a positive easement telling you what you can do with the land. An agricultural conservation easement is a negative easement, telling you what you cannot do with the land. The conservation easement runs with the land, and is entered into the land records with the deed.

Q: Do you know what kind of ag is going on in Hawaii? Sugar and pineapple are no longer dominant. We’re losing that base of agricultural cash flow. I’m concerned that we can’t make mainland techniques fit Hawaii's conditions.
A: I’m not here to tell you how to do this, but Hawaii has soils and climate and opportunities that you wouldn’t want to lose.
Both Vermont and Massachusetts once were dairy states, but now their ag is very diversified, in ways that wouldn’t have been considered 20 years ago. Hawaii can destroy the opportunity to transform its agriculture if you don’t think about agriculture and resource needs soon enough.
Q: How do we as a community take care of the housing needs of citizens without also helping landowners and developers provide housing? How do you find balance so that we neither penalize or overburden farmers or developers? ...So that my children and their children can afford to buy a home here?
A: The issue is not a no-growth option, but a matter of where you want growth to take place. You may need to give up some good agricultural land to protect your most strategic agricultural lands. This needs to be done in a measured and managed way.

Q: Given that there are many ideas and limited time here, what do you think might be the best options for Maui?
A: PDR is a possibility, but the cost might be prohibitive for Maui. Leveraging will be necessary. It might be that taking less than full value as a tax writeoff might be part of that leveraging mix. A variant of TDR where you pay into a preservation fund might be an option here. PDR needs to be viewed as an economic investment.

Q: You can’t restrict growth. You need smart balanced growth.

Q: Santa Cruz, CA has put in place open space buffers and their general plan pays attention to agriculture.
A: Local governments have to be aware of how their land use decisions, plans, and policies impact agriculture. Just like in the area of tax policies, you can see how local taxes can force out farmers: when land values go up, taxes go up, and at some point, crop revenues can’t offset the tax burden.

Q: Can you give examples of how they’re protecting ag lands where resources like water or water scarcity are tied in?
A: AFT is starting to work with others in California to protect water allocations for agricultural users, since water is a major issue for growers there. But, this is a relatively new pursuit. You’ll need to look at your limiting resource/s and apply them in a way that provide incentives for continued agriculture.

Q: Are there organizations here in Hawaii or on Maui that will continue these conversations on agricultural land protection?

Q: How do you deal with situations where there are just a few large landowners?
A: Hawaii is unique in this sense. However, Collier County, South Florida, which is an area with a few large landowners, has a program. They have a TDR program. One answer might be to allow TDR within one ownership, concentrating development density in areas where you want density, and preserving agricultural lands.

Q: Large landowners are not interested in leasing fallow land to farmers. How do you provide incentives to lease land when they are looking to sell property?
A: You have to work with the system of private property rights. Find opportunities to create incentives or inducements for them to lease or inducements to have them lease.

Q: The State Constitution has a provision to protect agricultural land, but nothing happens. It’s got us stymied.
Q: Control of water is as much a problem as control of the land. There are lots of stream diversions for agricultural use. Is there any other state that’s looking at how you deal with getting water rights for people who want to use it for agriculture?
A: Discusses the work being started in California, see comments above.

Q: Councilmember JoAnn Johnson’s committee will be looking at how to make ag viable and various tools and ideas that we can use/tap to make agriculture viable.

Hilo, Hawaii
May 19, 2003

Q: What if the landowner doesn’t want the easement?
A: The conservation easement is voluntary. Also, if the landowner does elect to sell or donate an easement on their land, another party, like a public agency or a non-profit organization holds the easement and monitors it.

Q: How do you assess the development potential when in an ag zone you can’t do any development?
A: There are two basic ways to value the development potential: through market appraisals or a point system that is established to determine the value to the community of a particular property. The point system may rate the productivity of the land, its proximity to urban development, general plan or community plan land use designations, etc.

Q: What is the federal participation in PDR programs?
A: There are federal programs that will match local funding for PDR. The primary program is the Farm and Ranchland Protection Program, but there are other cost-share programs that may also work. On Kauai, a conservation easement is using federal funding to protect wetlands on former agricultural lands.

Q: What size farm qualifies for PDR?
A: That really varies based on local concerns, and how the state or local programs are set up.

Q: So priority is placed on location?
A: The priority for any PDR program should be protecting your most strategic resources, and these will vary based on how you determine what is most important to protect.

Q: Could you have different criteria for applying PDR based on regional conditions or differences?
A: There is no end to the ways you can structure a program to handle the specific needs of different areas.
Q: Can individuals do their own conservation easement without the county being involved?
A: A landowner can create and donate a conservation easement on their own through a local land trust or some other qualified nonprofit entity. There are federal tax advantages associated with donating that value. In states or counties that don’t have PDR program and the USDA’s NRCS has done a farmland protection program plan for the state, individual landowners working with local land trusts are eligible for and are obtaining federal funds for PDRs.

Q: The issue in the county of Hawaii is that lots zoned for ag, A-20 (20 acres) through A-100 (100 acres) can only build one dwelling unit per lot of record. So you’d need to subdivide to get development potential for all acres.

Q: There are two million acres of ag lands. There’s been consideration of taking 1.4 million acres out of ag to turn over to the county. It has been kicked around, but not adopted or implemented.

Q: Does AFT buy easements?
A: Generally AFT does not buy and hold easements, although it has assisted in purchasing easements as an intermediary when the final purchaser needed time to assemble the funding.

Q: So is the next step to go to the legislature to establish funding for PDR?
A: You’d need to examine whether existing laws would allow this to happen here. Your attorney general can look into this.

Q: Can you use tax credits for PDR for the sale or donation of an easement?
A: If you take less than the value, then you can take a charitable deduction for it. In three states, you can get a tax credit for that donated value. These have a cap and limits on what can be taken each year. You can sell tax credits on the open market to those who have tax liabilities.

Q: What are some sources of funding for PDR?
A: General obligation bonds, annual appropriations, dedicated tax or fee. Colorado utilizes a percentage of state lottery money for farmland protection.

Q: If the state has a lot of land zoned ag and there’s speculative activity that increases the value of ag lands, how do you deal with balancing that or making PDR work?
A: PDR is designed to compensate farmers/landowners with some or all of that speculative value in their land.

Q: The County has assessed the value of land and that determines what the value of ag land is.
A: You can get a sense of the development value of ag lands by looking at what people are paying for ag lots. The difference between that value and the use value in agriculture will give you the value of an agricultural conservation easement.
Q: People buy land with the expectation that land will be valuable in future. They’ll purchase and hold the land in hopes of developing or reselling later.
A: You’ve got to make the argument that you’re better off selling an ag easement in day one and investing that money over 20 years, versus holding the land for 20 years and investing in 20 years. AFT has put together what we call a “Development lottery” in an Excel spreadsheet that actually shows you what your return would be now versus twenty years from now. It’s a really useful tool to demonstrate this concept.

Q: In a TDR, you really need to push their use in the receiving area, right?
A: With TDR, a major problem with the receiving district is if it’s easy to get entitlements, then there’s not much incentive to do a transfer. Is it smart to give 20 units without protection of extra acres? TDR needs to be done with an overall plan for growth—and this requires discipline.

Q: Is there any way that a conservation easement can require ag use of the land? So much land is not in use. Is there some mechanism to force putting the land to ag use?
A: In Massachusetts, if protected agricultural lands are not farmed, then the state can step in and help to lease the land for agriculture.

Q: The scenario here is that there are large houses with very little ag on it. Is there a solution to this somewhere?
A: One approach might be to require the clustering of houses on a smaller area, with the rest of the land left as one unit under a conservation easement for agriculture.

Kealakekua, Hawaii
May 20, 2003

A: In Iowa, they have a farm links program that offers apprenticeships for starting and young farmers.

Q: Where you use TDR within the same landowning entity, what is to keep the state or local government from selling the development rights to another person?
A: These TDR programs are designed to retire development rights. They are set in legislation and ordinances. In New Jersey where they have set up a TDR system to protect the Pinelands region, if there are no takers for TDR, the state will purchase the credits and bank them.

Q: In the islands, aquifer recharge is an important issue. More development decreases recharge. Do you know of programs that are selling water rights or dealing with this kind of issue?
A: You might want to consider the guarantee of water as part of a PACE program. There are discussions going on now in California about the issue of a water for easement guarantee, particularly with public water systems.
Q: Many people are subdividing property to give to their kids. PDRs are a one-time payment. New purchasers then have no incentive to buy because they have no development rights to use.
A: Presumably you could still get ag purchasers, since the value would be at its agricultural use value. Keep in mind that future options for the family if they sell the land outright are foreclosed with the sale of the land anyway. PDR also retains the asset. What they’re finding in areas where PDR is used, there is increasing demand among farmers for ag land protected by PDR.

Q: Ag tourism is a big issue for the Big Island. What has AFT done in this area?
A: You clearly need to balance between which activity, ag vs. non-ag, is the predominant activity. It’s a matter of degree and scale of the non-ag activity that concerns people most.

Q: What has been the experience with county governments not enforcing zoning ordinances?
A: Part of the solution to this is creating a market for the purchase of DRs or TDR that prompts the landowner to look for credits to develop elsewhere instead of putting in houses and a subdivision on agricultural land.

Q: Where do you see Hawaii standing in terms of implementing these tools? Far away or...?
A: There is no lack of commitment on the part of people working on this issue. Collier County in South Florida has begun a program where they are working with large landowners on these issues. You’re also dealing with land values that are unlike most of the country, although places like Marin County, CA, have similar land prices and they have an agricultural land protection program in place.

Q: What is your experience with farm cooperatives? Are they valuable?
A: Cooperatives can build an economy of scale, but they are only as good as their community of farmer members and their management. They provide farmers more access to larger markets. They’re definitely an opportunity.

Q: With respect to PDR programs, are there restrictions on the types of farmers they go to? Family farms vs. corporate farms?
A: Typically, the state or county targets the areas and resources that are most strategic, not so much the type of ownership. Ohio is starting to address this issue since they have a large corporate farm presence. North Carolina has lots of contract chicken farmers. There’s a desire not to penalize those farmers when they choose to go there.

Q: How do you protect the land you have when the population grows as in Contra Costa County, CA?
A: You need to look to people here to come up with a win/win between landowners and farmers—come up with your particular combination of tools and solutions that can balance growth and agriculture.
Q: The counties look for high tax revenue returns, like golf courses and high end residential properties. How do you work with this when they don’t subtract out the infrastructure costs?

Q: Does AFT have a program to educate local communities on legislation to protect farmland?
A: AFT’s core programs are education and helping state and local governments develop programs.

Q: Is the issue of ag subdivision an issue elsewhere in US?
A: There is no shortage of this type of activity where non-ag uses are occurring on farmland and displacing agricultural activity.

Q: Do counties do or fund these cost of community service studies?
A: Yes.

Q: You had a slide of “It’s not farmland without farmers”. In the situation of ag subdivisions where there’s no ag going on, are we doing ourselves a disservice by calling it ag land?
A: You might need to do a more strategic analysis of what are the best areas for agriculture by looking at soils, location, slope, climate, infrastructure, etc. You can’t define ag for the future by its past. Just as where you make decisions about where you want development to take place, you need to make decisions about where you want ag to take place, and target resources and incentives to these areas. Where are you going to have ag expand into? Conservation areas? Certainly not urban...It is better to define where ag should be, and be stronger about having ag happen there.

Q: In Napa Valley, they have non-ag up on the hillsides to protect ag lands, but they also have lower density. But don’t call this an ag zone.

Q: On the state level, there’s an effort to better define ag lands and come up with system beyond “A” and “B” rated lands.

Q: Is there any weight given to ALISH? There are great tools like geographic information systems that NRCS is developing to look at crop suitability of certain lands. We need to use these tools more to help on these issues.
Q: For the cluster housing examples, do they have their own wastewater and water systems on site? In Montana, we saw leapfrog development from cluster development. I like the concept, but how do you get around wastewater and water development?
A: Many cluster developments use on-site packages for water and wastewater. Cluster development can create rural cluster sprawl, pockmarking landscapes, increasing the need to extend services. When you are dealing with community development on this scale, you have to do it in a comprehensive fashion.

Q: What is AFT’s position on GMOs?
A: We have no position. We focus on farmland protection and ag viability.

Q: Is there any input for the county of Kauai on how to that dwellings in the agricultural district must be farm dwellings, that is, better enforcement of agricultural zoning ordinances?
A: In Maryland and New Jersey, they dropped the provision for additional house lots since it is too difficult to monitor, and they also dropped the dwelling unit allowance for PDR properties.

Q: From what you’ve seen in Hawaii, what can you extrapolate from the tools and techniques used on the mainland? Are there examples that are comparable to the value of “highest and best use” here?
A: Sonoma and Marin County, CA, and several others around the country have land values that are comparable, and farmland protection programs are in place there.

Q: Have you heard of a program in Quebec where you have to show that you can farm or will farm when you buy farmland?
A: The private property rights in the system of the United States limits our ability to impose such requirements.

Q: What is the process that other communities use to adopt such programs?
A: Many study what other communities have done and learn from the growing body of experience elsewhere in the U.S. Most go through a process to get public input and get community consensus around an agricultural protection plan—picking and choosing what tools they want to use to put their plan and these programs in place.

A: Typically, there is a lot of leveraging in these kinds of programs. In New Jersey, where one farmer was paid $150,000 per acre for his development rights, there were township dollars, county, State, and probably federal dollars as well. Where a landowner takes less than full market value, they can also qualify for tax advantages—or a landowner can look into 1031 like-kind exchanges. There have been several farmers in Lancaster County, PA, that have used like-kind exchanges in conjunction with the sale of agricultural conservation easements.

Q: Are there organizations like yours that ran into problems with the IRS related to some of these transactions?
A: Recently, The Nature Conservancy did run into problems with this.
Q: What kind of farmers are taking advantage of these programs? Are they truly building farm communities?
A. In western Massachusetts, 185 farmers in a two-county area have participated in PDR. Farmers in this area who sold PDR have children now farming the land. They are building a community that supports agriculture and are providing security. There is demand for land that has been protected. In Suffolk County, New York, where PDR first got started, most of the farmers have converted from duck farming to more diversified agriculture. Many of these PDR programs have backlogs, with more farmers wanting to sell PDR than money to purchase them.

Q: It sounds like most programs enable existing farmers to hold on to and continue farming that land. What examples are there for building new agricultural community like that in Hawaii?
A: The Agriculture Working Group needs to look at how these tools are applied. Where you are trying to get farmers favorable leases or on land held by large landowners, Collier County, FLA—where there are agricultural landowners that are not farmers—may offer some ideas for how to accomplish this.

Q: Are there any experiences elsewhere with farming on federal property with short-term leases?
A: Point Reyes has farmers farming on federal property. They have managed to work out long-term leases for farmers there. That might be a place to start.

Q: What are some of the lengths of Point Reyes leases?
A: I don’t have that information, but will try to get a contact for that information to you.

Q: Are there cases where any ag protection zoning has been been reversed on takings challenges or have there been any other legal challenges to these tools?
A: There were legal challenges in Montgomery County, Maryland that were turned aside.

Q: A community trust could be created to purchase blocks of agricultural land. Then, it could offer long-term leases to farmers and create a mechanism to deal with improvements to the land.
A: One model for this is the housing trust. If it elects to sell a house, than the trust gets to share in the value of the sale of the house and keeps the house affordable. Long-term leases and incentives have been discussed all during the last week. The issue is somewhat unique to Hawaii, but will need to be addressed somehow.

Q: When you give tax breaks to people for agriculture, how do you determine what is truly agriculture? How have other places done this?
A: Usually there is an income from agriculture requirement and when farmers and/or the farmland in the program drop below this, they lose eligibility. There is a wide range of income requirements in the various programs around the country. The Williamson Act of California provides tax benefits in exchange for a rolling ten-year term easement, with additional deductions available for longer-term easements.
Q: How important is it for the State and the county to identify important agricultural lands to protect? And how have they done this in other areas?
A: Usually, they start with soils, but do not rely solely on soil quality. They also have based the identification on the needs of the agricultural community and what they think is needed strategically to protect. For example, in Adams County, PA farms adjacent to Gettysburg National Battlefield get a high priority for protection. You need a consensus-building process to help determine what is most strategic.

Q: We have just gone through a county general plan update. How many of these issues were addressed in that process?
A: I don’t have the answer to that question. But, generally, there is a lot more work that needs to be done to implement the broad goals and directions of the plan and to put in place a working program.

Q: Has there been any work done on ocean-based aquaculture or aquaculture? Is it possible to apply some of these tools to this kind of “agriculture”?
A: The closest thing to this kind of program that comes to mind is work that’s being done with cranberry bogs (wetlands) in Massachusetts. One component of the state’s ag viability program offers business planning, technical assistance, and other grants tailored to the needs of cranberry farmers.