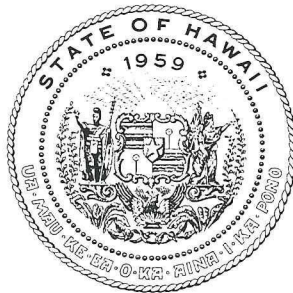


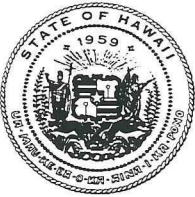
# ***STATE LAND USE REGULATION AND MANAGEMENT STUDY***

## ***Findings and Recommendations to the State Legislature***



*Office of the Governor*  
**OFFICE OF STATE PLANNING**

**JUNE 1994**



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## PREFACE

The history and future of Hawai'i's people are linked to how resources in our island environment are managed. The enactment of the State Land Use Law recognized this vital link. Since its passage in 1961, there have been significant changes in our population, economic base, land use patterns, and development. Our land use system, however, has not kept up with these changes.

This report to the Legislature provides key recommendations for transforming our existing land use system into an integrated statewide growth management system that involves the community in determining the quality and direction of growth. The proposed changes are founded on the concerns and recommendations of community members across the State as well as local and national planning experts, who identified problems with Hawai'i's land use system and opportunities for improving the system.

Implementation of these recommendations will move us toward more effective ways to guide and manage growth and development, and protect our unique resources for present and future generations.

Harold S. Masumoto  
Director

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# Executive Summary

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## Background

It has been thirty years since the enactment of Hawai'i's ground-breaking State Land Use Law—thirty years of change. The resident population has nearly doubled. The state is increasingly urban. The economy is no longer based on agriculture. Growth in resident and visitor populations intensifies competing demands for finite land and natural resources and amenities. County planning capabilities have grown considerably. Fiscal conditions at all levels of government constrain the public sector's capacity to service growth.

Despite these changes, Hawai'i's land use management system remains much as it was when it was established in 1961. Recurring concerns over inefficiencies in the way the existing system deals with contemporary land use issues is the impetus for this study of Hawai'i's land use management system. The study is authorized by a budget proviso in Act 300, Session Laws of Hawai'i (SLH) 1992. Its purpose is to study and evaluate land use regulation and management at the state and county levels, and report findings and recommendations to the 1994 State Legislature.

## Study Approach

The study used a public consultation approach. Representatives from numerous state and county agencies, environmental organizations, land use and development interests, and the general public participated in discussions

throughout the study process. Several hundred participants statewide and a number of national planning experts contributed to this assessment of Hawai'i's existing system and the formulation of recommendations for system improvements.

Statewide focus groups, mini-roundtables, planning seminars, public workshops, and informational meetings were used to set the scope and direction of the study, determine broad requirements for improvements, and formulate the recommendations found in this report.

## Overview of Findings

Study participants and national observers concur that the existing system is not working well. However, there is broad consensus that some form of comprehensive land use management system is needed and desired for the state.

Hawai'i's land use management system does not foster a common direction or coherent approach for land use planning among state and county agencies. Broad-based consensus on future growth and change is hindered by unclear and redundant state and county responsibilities, few coordinating links between state and county planning, sparse compliance measures, and limited public involvement in many aspects of the decision-making process.

From study participants' comments and a review of other state growth management initiatives, a set of broad goals and requirements were developed for what an improved system should do and how it should perform. An improved land use and growth management system should provide for:

- Balance between economic growth and development and the well-being of communities and natural systems
- Effective preservation and enhancement of natural resources (which include physical, scenic, and cultural dimensions) and the protection of prime agricultural lands



- A continuum of landscape forms within each island from built-up, developed settlements to untouched natural landscapes
- Compactness in growth patterns and settlement form
- Clear assignment of roles and responsibilities for state and county governments
- Broad-based participation in land use decision-making, with extensive public involvement early in the growth management process
- Coherent growth guidance through a set of integrated and coordinated policies and plans between and within state and county governments
- A standard planning classification system that provides policy guidance for resource management and the spatial allocation of development in local plans and zoning
- Timely and affordable provision of infrastructure, facilities, and services to address existing deficiencies or to service new development as it occurs
- Efficient and effective use of public and private resources through greater coordination of planning and management activities
- Continuous process of improvements to the statewide growth management system and land use decision-making environment.

This set of goals and requirements led to the development of the recommendations which follow. The proposals do not resolve all the problems and issues expressed by the diverse interest groups involved in the study. They provide a starting point for a statewide framework and a menu of improvements to establish components of that framework.

## Overview of Recommendations

The study recommendations, highlighted in **Table 1** and presented in the accompanying report, are a strategy for establishing a statewide system for coordinated state and county growth management. Together, the recommendations provide for consensus building in county plan formulation and better integration of county and state plans and planning activities.

With this strategy, public attention and resources would be shifted from regulating land use activities to preparing plans that present a common vision for our communities' future. Greater emphasis would be placed on plan implementation: the active use of county comprehensive plans as a decision-making tool for land use management and capital budgets at both the state and county levels.

The most prominent change would be ending the State Land Use Commission's role in regulating land use district boundary amendments. The recommendations elevate the role of county-level land use regulatory and growth management responsibilities. The counties would be more accountable to performance standards set by the state. To this end, the state would assume new functions in providing growth management planning guidelines, and systematic planning assistance and support to the counties to carry out their growth management responsibilities.

The proposals are not a radical departure from what the counties are currently doing or are capable of doing with their existing plans, land use regulations, public facility programs, capital budgets, or real property taxation. But they depart from current land use management practice in several ways.

County comprehensive plans would be required to demonstrate programmed links and relationships between the plan, land use regulations, and capital improvement programs. An assessment of the impacts of regional growth and settlement patterns with respect to infrastructure and fiscal capacity and environmental quality would be an integral part of county plan formulation.

Table 1

## Major Proposals for Change

- 1— Transform the existing system into an **integrated and coordinated statewide growth management system**.
- 2— Shift **land use regulatory responsibility to counties**, and adopt **mechanisms to maintain state oversight and increase county accountability** for growth management.
- 3— **Ensure public involvement** at the state- and county-levels throughout state and county planning and management processes.
- 4— **Clarify and strengthen the state policy framework** for land use and growth management.
- 5— **Establish state-level growth management guidelines and requirements**, including the preparation and periodic update of state planning guidelines and state resource management plans.
- 6— Reformulate and **strengthen the minimum statutory requirements for county comprehensive planning**.
- 7— **Redefine the state land use classification system**.
- 8— **Establish a state planning and implementation assistance program** to strengthen county growth management capacity.
- 9— **Encourage collaborative planning and problem-solving processes** to coordinate and integrate state and county planning and management activities.
- 10— **Require state and county monitoring programs** for plan and policy implementation.



State oversight of county plan development and implementation would be clarified, strengthened, and coordinated. Compliance with the statewide growth management framework would be enforced, as needed, to ensure that state land use policies and growth management priorities are being addressed. Finally, the proposals would place accountability for decisions on growth and land use matters in the communities impacted through public involvement in the land use decision-making process.

In broad terms, the proposals are straightforward:

1. **Update the ground rules—mandate and enable county comprehensive planning as the primary growth management tool**, not zoning maps or permitting.
2. **Give the counties planning guidance**—state policies, planning requirements, periodic planning guidelines.
3. **Assist the counties in the planning process**—through planning assistance, concurrent or joint planning, conflict resolution.
4. **Assist the counties in implementing and managing growth according to their plans**—coordinate state infrastructure and facility investments, and resource management.
5. **Establish accountability**—through state oversight, plan certification, appeals, and public involvement.

In practice, implementing such a system will present many challenges. Foremost, the state would need to invest in county planning capacity, so that the counties can take on roles as active managers of the comprehensive plan and growth management process.

This is an opportunity for change. There is long-standing and deep-felt dissatisfaction with the two-tiered regulatory system. The building blocks for a statewide growth management system are in place. Such a transformation requires only vision and determination.



# Introduction

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This report is the first part of a comprehensive report covering the findings and recommendations of the Office of State Planning's Land Use Regulation and Management Study.

This report summarizes the study findings and presents a set of key recommendations for legislative consideration. These recommendations propose improvements in the way Hawai'i manages the use and development of its finite land and natural resources.

The report explores how the proposals might work as a statewide growth management system, highlights how the proposed system compares with the current, and outlines the potential benefits that may be derived from the proposed system.

This report is supported by a reference document containing: study meeting materials; consultant comments; discussion papers covering aspects of Hawai'i's land use system and other states' growth management initiatives; and an assessment of critical issues and approaches for land use management in Hawai'i.

# Study Recommendations: A Proposal for Change

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## State Land Use Planning and Management at a Crossroads, Again

Land use management involves the interaction of diverse decision-makers—public and private, institutions and individuals—each with different and discrete land use interests and responsibilities. With the enactment of the State Land Use Law in 1961, Hawai'i became the first state to establish a system of statewide control over this complex decision-making environment.

Nationally, the impacts of unplanned growth—loss of farmlands and natural areas, costly infrastructure, congestion and neglect of existing communities' facilities and services, environmental degradation—have spurred a number of other states to enact or update legislation enabling greater state oversight of planning and growth management. These state growth management systems institute systemic approaches to enable coordination of private and public land development with state planning and environmental goals.

As Hawai'i has grown, its land use system has been tested by increasingly complex land use issues. A number of state-sponsored studies have been conducted over the years examining how the state's land use planning and management systems could be refined to address problems encountered. Yet, the structure and responsibilities of the statewide land use regulatory and management system remain largely unchanged from when the Land Use Law was enacted.

The recommendations presented attempt to address two central questions posed by this study:

- Do we need to change the existing system?
- If change is necessary, what kind of change is needed—ad hoc or comprehensive?

### Is Change Needed?

Since statehood, Hawai'i has struggled with encouraging economic growth while managing environmental and community impacts associated with that growth. The accommodation of growth manifests in a number of problems and issues that have been raised by this and earlier studies. These issues are summarized as follows:

- State and county roles and regulatory responsibilities for land use management are unclear and overlap. Many feel this results in protracted land use development and permit approvals.
- State and county land use policies and policy implementation are not adequately coordinated at the regional level. One outcome has been physical development occurring without adequate or available infrastructure capacity or public services.
- The state land use classification system, as currently defined and applied, blurs distinctions among the land use districts and their functions.
- There are concerns that the system is not protecting important conservation and agricultural lands from encroachment or rising land values.
- Many community members feel that they do not have adequate opportunities to participate in land use decision-making processes.

As Hawai'i approaches the 21st century, the urgency and difficulty of land use management is likely to intensify. Questions of why and how the state should protect



agricultural land from development pressure are increasingly troublesome with the decline of sugarcane cultivation, and the uncertain future of agriculture in Hawai'i. Other economic and geopolitical forces from abroad, and in the Hawaiian sovereignty movement, are already having a dramatic effect on local land use issues. The most immediate is base restructuring due to military force reductions nationwide.

Concerns for clean air and water, protection of watersheds, the loss of open space, and the maintenance of Hawai'i's biodiversity will demand state and county attention and resources. Mounting urban problems of aging infrastructure, high cost of living, affordable housing, and quality of life for residents will compete for the same public resources.

Fiscal scarcity, public cries for accountability and improvement of services, and the accelerating nature of change complicate solutions to the development problems that state and county agencies will have to solve.

These challenges are indicative of the forces that Hawai'i's land use system faces—forces which require coordinated state and county action.

The existing system, however, does not respond in a coordinated way to these pressing land use, growth, and public administration issues. The land use decision-making environment is fragmented and slow to address development problems or needs. Without compliance mechanisms, it relies on individual discretion or regulation to condition public and private development actions, rather than plan agreements on the type, scale, timing, and location of development. Public dissatisfaction over congestion, infrastructure shortfalls, or perceived loss in their quality of life or communities is not being channeled constructively to effect a change in land use decision-making.

It is clear that change is needed. Comprehensive and system-wide change will be necessary to tackle future land use issues effectively, since the current system manages

growth in an ad hoc and reactive manner. However, the diversity of planning conditions among the counties would necessitate that comprehensive change be phased in over time.

### Recommendations for a Growth Management System

From study participants' comments and a review of other state growth management systems, a set of broad goals and requirements were developed for what an improved system should do and how it should perform. An improved land use and growth management system should provide for:

- Balance between economic growth and development and the well-being of communities and natural systems
- Effective preservation and enhancement of natural resources (which include physical, scenic, and cultural dimensions) and the protection of prime agricultural lands
- A continuum of landscape forms within each island from built-up, developed settlements to untouched natural landscapes
- Compactness in growth patterns and settlement form
- Clear assignment of roles and responsibilities for state and county governments
- Broad-based participation in land use decision-making, with public involvement throughout the growth management process
- Coherent growth guidance through a set of integrated and coordinated policies and plans between and within state and county governments
- A standard planning classification system that provides policy guidance for resource management and the spatial allocation of development in local plans and zoning

- Timely and affordable provision of infrastructure, facilities, and services to address existing deficiencies or to service new development as it occurs
- Efficient and effective use of public and private resources through greater coordination of planning and management activities
- Continuous process of improvements to the statewide growth management system and land use decision-making environment.

This set of system goals and requirements led to the development of the recommendations which follow. As a whole, the recommendations provide a growth management focus currently lacking in the existing land use system. The proposals do not resolve all the problems and issues expressed by the diverse interest groups involved in the study. Rather, they provide a starting point for a statewide framework and a menu of improvements to establish components of that framework.

## Major Proposals

**Table 1** highlights the key recommendations for improvements to the current system to make it more effective as a statewide growth management system. The recommendations are a proposal for systemic change, but they are discussed separately for ease of discussion. Each appears in bold-faced text followed by a brief description or rationale.

The first three recommendations (1-3) propose fundamental shifts in roles and responsibilities in a shared growth management system. The next four recommendations (4-7) propose changes in the policy framework to strengthen guidance for planning and public decision-making. The last three (8-10) outline a set of procedural and resource supports which are critical for effectively integrating state and county efforts in a statewide growth management system.



### ► RECOMMENDATION 1

#### **Transform the existing system into an integrated and coordinated statewide growth management system.**

The existing system of responsibilities and related statutes does not foster a common direction or coherent approach among state and county agencies for land use management. The study recommendations propose to integrate existing system components into a shared framework of county- and state-level growth management responsibilities, with increased roles for the community and private sector. The aim is to shift from regulation to using county comprehensive planning as a consensus-building and problem-solving process for achieving state growth management objectives.

This transformation would entail: (1) reassigning roles and responsibilities for land use decision-making; (2) providing a common policy foundation for state- and county-level growth management programs; and (3) establishing shared decision-making processes and compliance measures to link public- and private-sector activities throughout the growth management process.

The recommendations outline elements needed to put this shared growth management system in place. They provide a blueprint for a mutually-supporting network of policies, plans, processes, and other supports not present in the existing system:

- **Stronger policy framework**—state land use and growth management policies, strengthened statutory planning requirements for both counties and the state, and a reformed state land use classification system
- **More effective accountability system**—plan certification, incentives and sanctions, mandatory plan review and monitoring
- **Broad-based collaboration and coordination** through ongoing programs and processes—public participation programs, concurrent state and county planning processes, conflict



Table 1

### **Major Proposals for Change**

- 1— Transform the existing system into an integrated and coordinated statewide growth management system.**
- 2— Shift land use regulatory responsibility to counties, and adopt mechanisms to maintain state oversight and increase county accountability for growth management.**
- 3— Ensure public involvement at the state- and county-levels throughout state and county planning and management processes.**
- 4— Clarify and strengthen the state policy framework for land use and growth management.**
- 5— Establish state-level growth management guidelines and requirements, including the preparation and periodic update of state planning guidelines and state resource management plans.**
- 6— Reformulate and strengthen the minimum statutory requirements for county comprehensive planning.**
- 7— Redefine the state land use classification system.**
- 8— Establish a state planning and implementation assistance program to strengthen county growth management capacity.**
- 9— Encourage collaborative planning and problem-solving processes to coordinate and integrate state and county planning and management activities.**
- 10— Require state and county monitoring programs for plan and policy implementation.**

resolution and appeals, contingency planning for areas of critical concern, common permitting, and a state planning assistance program.

### 2 ► RECOMMENDATION 2

**Shift land use regulatory responsibilities to the counties, and adopt mechanisms to maintain state oversight and increase county accountability for growth management.**

Petition-driven boundary amendments by the state make it difficult for the counties to plan and manage growth. The study found strong support for changing the Land Use Commission's (LUC) role in regulating boundary amendments and clarifying the land use planning and management roles of the state and county.

#### **Redefined Growth Management Responsibilities**

In the proposed framework, the state would shift primary responsibility for implementing land use policies to the counties. The state would no longer regulate parcel-specific land use boundary amendments, but would strengthen its oversight of county growth management through statewide planning guidelines and the review and certification of county plans. The state would increase planning support and assistance to the counties and focus its efforts on statewide economic development and natural resource management. The counties would comprehensively plan for, regulate development, and manage the growth of their jurisdictions—subject to state policy and planning requirements.

State and county responsibilities in this shared growth management framework are outlined in Table 2. The state would be responsible for:

- Providing leadership and direction by formulating a statewide growth management program and updating it periodically
- Establishing state policy guidance

Table 2

### Proposed Roles & Responsibilities in the Statewide Growth Management System

		STATE	COUNTIES
PLANNING	Plan Requirements & Guidelines	<ul style="list-style-type: none"> <li>• Sets forth growth management framework, standards &amp; rules for system</li> <li>• Sets state land use and growth management policies</li> <li>• Prepares planning guidelines for plan formulation</li> <li>• Develops population &amp; economic projections</li> <li>• Provides technical assistance &amp; planning grants to counties</li> <li>• Assists with conflict resolution</li> <li>• Prepares state resource management plans</li> <li>• Reviews &amp; certifies county plans</li> </ul>	<ul style="list-style-type: none"> <li>• Prepare or revise comprehensive plans</li> <li>• Provide for public participation in plan formulation and review</li> </ul>
	Land Use Planning Classification	<ul style="list-style-type: none"> <li>• Classifies land in county plan upon certification</li> <li>• Maintains state land use planning boundary maps</li> </ul>	<ul style="list-style-type: none"> <li>• Receive &amp; initiate requests for reclassification through plan</li> <li>• Designate lands in plan for classification in planning districts &amp; subdistricts</li> </ul>
	Contingency Planning	<ul style="list-style-type: none"> <li>• Can initiate joint planning for Areas of Critical Concern</li> </ul>	<ul style="list-style-type: none"> <li>• Can initiate joint planning for Areas of Critical Concern</li> </ul>
IMPLEMENTATION & GROWTH MANAGEMENT	Development Programming & Permitting	<ul style="list-style-type: none"> <li>• Coordinates &amp; implements state resource management programs</li> <li>• Coordinates &amp; provides state CIP &amp; other program supports</li> <li>• Agencies review permits as needed</li> </ul>	<ul style="list-style-type: none"> <li>• Revise land use regulations as needed to comply with county plan</li> <li>• Provide capital improvements</li> <li>• Manage fiscal aspects of plan's development program</li> <li>• Administer development permits</li> </ul>
	Monitoring & 5-Yr Plan Reviews	<ul style="list-style-type: none"> <li>• Monitors county plan and state program implementation</li> <li>• Monitors population, economic, environmental change</li> <li>• Applies sanctions as needed</li> <li>• Investigates new planning/growth management techniques</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor plan implementation</li> <li>• Review &amp; revise plan &amp; regulations</li> </ul>



- Providing technical and financial assistance for county planning and plan implementation
- Ensuring public participation in the growth management process
- Coordinating county and state agency planning and growth management activities
- Resolving policy conflicts
- **Reviewing and certifying county plans for compliance**
- Monitoring systemwide growth management performance
- Preparing and implementing resource management programs to augment county growth management activities.

State planning efforts and resources would be directed to ensuring the quality of county comprehensive plans and planning processes, coordinating timely state facility and infrastructure development for the counties, and implementing statewide growth and economic development strategies and resource management programs.

The counties would be responsible for:

- Instituting an ongoing process for comprehensive planning, plan implementation, and plan review
- Preparing a comprehensive plan with future land use patterns, levels of service, and development standards to support these patterns for their jurisdiction
- Ensuring that land use regulations implement and are consistent with the comprehensive plan
- Administering all requests for land reclassification and development permitting within their jurisdiction
- Ensuring that land use decisions and agency programs support community agreements in

their comprehensive plan about where, when, and how growth should be directed.

### **State Oversight: Compliance Mechanisms and Administrative Options**

Contemporary state growth management systems rely on a number of tools to ensure that local policies and plans are consistent and coordinated with state policies. Prominent is the use of interactive decision-making procedures, such as reviews of local plans, plan certification, and mandatory periodic plan reviews. A set of strong incentives to encourage local compliance is another crucial element. Strong sanctions for non-compliance are another safeguard built into many of these systems.

**Certification of County Plans.** State review and certification of county comprehensive plans would be the primary compliance mechanism for the proposed growth management system. Certification serves as a check that the county plan is internally consistent, is consistent with state policy, and that the plan and planning process have met minimal statutory requirements and address regional growth management issues identified in the state planning guidelines.

Certification criteria would need to be established to show that county planning processes and resultant plans are consistent with the objectives of the growth management framework. For instance, certification might require that comprehensive plans meet certain conditions:

- They contain the required plan elements
- They are consistent with state planning guidelines, state policies for compactness and concurrency, and state land use classification criteria
- They involved broad-based public participation throughout the plan formulation or revision process

- They used all reasonable means to resolve conflicts raised during the plan formulation or revision process.

The state would not be authorized to modify the county plan, but may return a plan to the county to address identified deficiencies. Certification would constitute official classification of state planning district boundaries.

**Incentives and Sanctions.** Statutory provisions would need to be established for both incentives for compliance and sanctions for non-compliance with the growth management framework. Incentives might include eligibility for state planning and implementation assistance and grants, priority for state CIP funds for projects in certified plans, and requirements for state agency programs to be consistent with certified comprehensive plans.

Sanctions might include the withholding of state planning assistance, federally-funded state grants (like CZM funding), other state grants or revenue transfers, and state authority to take legal action against non-complying counties. The state could be authorized to prepare a comprehensive plan for a non-complying county, which the county would be required to implement. A few states have legislation allowing the suspension of local authority for land use regulations and/or imposition of impact fees and exactions, and the invalidation of non-complying land use regulations.

**Administrative options.** The new growth management system would require a new administrative arrangement to replace the state land use commission. The statewide system would be managed by an administrative body—either a state agency or an appointed body administratively attached to a state agency—and a separate appointed board to hear appeals of plan decisions. The administering agency's primary responsibility would be facilitating and monitoring county planning and growth management consistency with state policy and growth management guidelines.

The administrative body would not zone or regulate land use, and its decision-making procedures would be quasi-legislative, not quasi-judicial. Its most important



function, other than rule-making for state-level growth management decision-making, would be reviewing and certifying county comprehensive plans, and subsequently, classifying lands in planning districts and subdistricts according to the plans.

It would also assume new functions of educating the public on statewide planning and growth management issues and processes, and investigating and advocating the adoption of innovative planning and growth management approaches and resource management practices.

Other state and county responsibilities are described in recommendations for state and county growth management programs that follow.

### ► RECOMMENDATION 3

#### **Require public involvement at the state and county-levels throughout the growth management process.**

If communities are not brought into the land use planning and decision-making environment in a meaningful way, a host of problems could emerge. Public confidence in the land use management system could erode. Siting of locally unwanted land uses (LULUs) could grow increasingly contentious. Community conflict may be forestalled by making planning and growth management more participatory and broad-based at both the state- and county-levels.

The county plan formulation and revision process offers a vehicle for involving the community in an ongoing process of planning for a common future, getting agreement on how to achieve it, and helping to make it happen.

Both the private sector and community are important participants in such a system. The private sector, as a primary driver and beneficiary of land use development, must be involved in the growth management process if the needs of private and public interests are to be balanced. The private sector also provides resources to help implement shared development goals.



A broadened community role would ensure that community values, expectations, and resource commitments are incorporated in county plans and land use decisions. Early and continuous community involvement is important, although the vehicles for involvement may vary for different phases. In plan formulation, communities help interpret county and state growth management policies at the community or neighborhood level. In plan implementation, the community and private sector monitor and ensure that county and state land use decisions are consistent with policy, adopted plans, and development programs.

► **RECOMMENDATION 4**  
**Clarify and strengthen the state policy framework for land use and growth management.**

Neither the policies in the State Plan nor the land use law provide sufficient guidance for land use decision-making. Existing consistency requirements for compliance with state policy are weak. It is strongly recommended that existing policy be updated or very focused policies for state land use and growth management be developed. Key outcome measures or benchmarks for these policies would also be developed to monitor progress in achieving state and county growth management objectives. In particular, growth management principles like compactness, consistency, and concurrency need to be developed and spelled out in statute and in rules.

A second recommendation is to strengthen statutory requirements for consistency among state and county policies and plans, and between policies and actions, and to establish compliance mechanisms in statute that would foster consistency with state policy. Consistency refers to general agreement of policies, regulations, and implementing actions. Two dimensions common in other state growth management systems would be in order:

- Vertical consistency—agreement of local policies and plans with state goals and policies

- Consistency in implementation—consistency between the required local plan and local development regulations and capital improvement programs that implement the plan.<sup>1</sup> This dimension includes concepts like concurrency, which aims at the timely linkage of development actions with infrastructure investments.

#### ► RECOMMENDATION 5

**Establish state-level growth management guidelines and requirements, including the preparation and periodic update of state planning guidelines and state resource management plans.**

The state growth management program, as shown in Table 3, would be an ongoing program of policy tools and processes, which the state would use to articulate its priorities and strategies for growth management, and assist the counties with their planning efforts. The program would include state planning guidelines and state resource development and management plans for agricultural and conservation resources. The state growth management components would be reviewed periodically, concurrent to county plan reviews.

The state **planning guidelines** would be prepared and issued on a periodic basis, based on a five-year review cycle. The planning guidelines would outline a coordinated planning agenda for county and state agencies for the county comprehensive plan revision. These guidelines would consist of:

- An assessment of economic and demographic changes and population and economic projections for each county for a twenty-year planning horizon
- A status report on the statewide growth management system, highlighting major issues to be addressed during the planning period

- A statement of state priorities for regional growth, including infrastructure programming, agricultural resource development, and natural resources management priorities for each county for the planning period
- A statement of overall direction for statewide growth management, including goals and objectives, priority regional issues, and specific approaches and techniques (where possible) for managing growth and development statewide over a five- to ten-year period.

**State resource management program plans.**

Preservation of conservation areas, agricultural lands, and rural and open landscapes is not solely a regulatory issue. It is also a function of promoting agricultural enterprise, and having active resource management programs in place restraining encroaching uses or development in areas where agriculture or preservation is most desired for each island.

The state resource management program plans being proposed would comprise a five-year program of objectives, strategies, and actions for the development and management of agricultural and conservation resources. Similarly, state-regulated or -funded infrastructure and facility supports such as water, wastewater, major roads, airports, schools, or other public utilities, could be integrated in a state facility development plan. Key state agencies for preparing and implementing these program plans include the departments of Land and Natural Resources (DLNR), Agriculture (DOA), Business, Economic Development and Tourism (DBEDT), Transportation (DOT), Education (DOE), and Health (DOH).

These resource management plans would be developed in coordination with the counties' comprehensive planning process so as to be integrated or related at the island level. This enables the development of complementary county and state growth management strategies and coordinated county and state development programs. The resource management plans would link state management and development



Table 3

**State Growth Management Program Elements****Outcomes**

- **Vehicle to communicate issues of state concern** to county and state agencies
- **Coordinated policy guide** for growth and development statewide, incorporating state resource management programs and county comprehensive plan policies
- **Action plan for coordination** of state services and infrastructure development with county development activities.

**Components**

- **State Planning Guidelines**  
for county plan and state resource management plan revision
  - Status report on growth management and major system issues
  - County and state population and economic projections
  - State growth and conservation priorities and concerns for each county
  - Overall statewide growth management direction and regional and statewide growth guidance for 5- to 10-year planning period
- **State Resource Management Plans**  
for state programs and facility development, by island, e.g.—
  - *Agricultural resources management*
  - *Conservation resources management*
  - *Facility development, e.g., schools, roads, affordable housing*

programs with county land use policies and growth management activities for the respective planning districts.

The state growth management components would provide direction for the allocation of state funds to projects and programs for infrastructure, public facilities, agricultural development and related rural infrastructure, and natural resources management in state budgets and capital improvement programs (CIP).

► **RECOMMENDATION 6**  
**Reformulate and strengthen the minimum statutory requirements for county comprehensive planning.**

With county plans as the focal point for a statewide growth management system, the concept and practice of local comprehensive planning needs to be strengthened and redefined. Comprehensive planning would be given a much stronger implementation and growth management emphasis. Comprehensive planning would be redefined as a community-based, consensus-building process. Other states have accomplished this by updating existing statutes or enacting new planning and growth management legislation with stronger mandates for local plans and planning requirements.

This proposal would lay the statutory foundation for county-level growth management programs with the minimum components of:

- Land use and growth management goals, objectives, and policies
- Comprehensive plan with impact analysis and development program elements
- Implementation tools, inclusive of land use regulations, capital improvement program, optional functional plans
- Processes for: mandatory periodic plan review; public participation; monitoring; linking the comprehensive plan to public works, budget, and permitting processes; and appeals of plan or implementation decisions.

County growth management would center on the active use of the comprehensive plan as a basis for mid-range land use development and management decisions. This would establish the primacy of policy as the driver of plan implementation, land use regulations, development decisions, and capital investment programming.

### **Growth Management: County Comprehensive Plan**

Each county would be mandated to prepare a comprehensive plan with a twenty-year planning horizon for its jurisdiction. The required elements for the comprehensive plan would be set in statute; minimum elements might be as listed in Table 4.

The comprehensive plan as outlined provides a common standard to facilitate state review and oversight of county compliance and consistency with the statewide growth management framework. The counties could incorporate additional elements, studies, or community plans in their comprehensive plan, provided they are consistent with these elements.

The comprehensive plan would be a consensual document. It would embody community-wide agreements over the location of growth, redevelopment, and conservation areas; how communities will evolve over time; and the management tools, land use regulations, and resources to be used to achieve the desired form, location, and timing of development. It would provide the land use element to link county development programs and state resource management and economic development programs.

Two features of the comprehensive plan are important to note. First, the comprehensive plan requires an impact analysis of proposed settlement patterns. Consideration of existing and planned physical development would be integrated with conservation concerns, community preferences, and fiscal constraints. Regional cumulative effects of proposed development and mitigation measures would be investigated. The impact analysis would also determine capacity requirements for existing and planned



infrastructure and facility systems to support planned regional growth.

**Second**, the comprehensive plan includes the preparation of a **development program element**. The development program—with its five- to ten-year timeframe—provides a schedule of infrastructure and public service improvements for the 20-year growth patterns in the comprehensive plan, identifying what, how, and when infrastructure, services, and facilities are to be provided to priority growth areas. It would relate planning districts, service areas, development sequencing, fiscal capacity, and infrastructure investments to community settings and long-range development patterns. As such, it would guide mid-range decision-making regarding the timing and approval of development and improvement permits, and capital and CIP expenditures for public facilities and services.

The development program element of the comprehensive plan may take form as **community plans**. It may also require that **county functional plans** be developed to coordinate major infrastructure services and facility systems to support future land use activities.<sup>2</sup>

**County regional land use policies** and **settlement patterns** would be delineated by **state planning districts**. These land use patterns, the character of development in terms of service area and service standards, and the sequencing and financing of development would be left largely to county and community discussion and deliberation. **State agencies would provide input to the county planning process, and indicate state interests and priorities for conservation areas, agricultural development, educational facilities, and other state-funded infrastructure.** Consideration would need to be given to how to integrate shoreline management area procedures, environmental impact disclosure requirements, and water management issues into the plan formulation and implementation process.

### **Growth Management: Plan Implementation**

The key county growth management implementation tools would be the plan's development program,



Table 4

### **County Comprehensive Plan: Proposed Required Elements**

- **Growth management goals, objectives, and policies**  
for 20-year planning period
- **Comprehensive land use element**
  - regional settlement patterns for 20-year planning period, delineated by state planning districts/subdistricts
  - discussion of compactness with respect to state planning district designations
  - identification of important agricultural lands and agricultural issues for the county
  - identification of significant natural, cultural, or historic resources or areas susceptible to natural hazards
- **Civic or community design element**  
physical design characteristics for urban and rural communities, use of open space buffers, green belts, etc.
- **Impact analysis** of planned growth and development
  - probable growth for island regions and assumptions
  - probable effects of regional growth and change on important environmental resources
  - probable impact of regional growth and change on existing and planned infrastructure, facilities, services, and fiscal capacity
  - proposed impact mitigation measures
  - key issues for regional growth and change
- **Development program element**  
infrastructure systems and public facilities for 5- to 10-year period
  - service and facility needs to support settlement patterns and planned development—
    - principles, standards, levels of service, and service areas
    - improvement schedule and sequencing by service area
    - financial program for improvement schedule

development regulations, and the development permitting and monitoring processes (the monitoring processes are the subject of Recommendation 10 to follow). A mandatory requirement for consistency in implementation would require that county land use regulations and development standards, and permitting processes are consistent with, and support and implement state policies and county policies in the **certified** comprehensive plan.

**Development Program Implementation.** Land use decisions would be required to follow the **certified plan's** development program schedule, as would agency programs and capital expenditures. Requiring implementation of the plan's development program would lead to development of procedures or working relationships and decision-making criteria for the complex task of linking permitting and budgetary decisions to the sequencing of development approvals and infrastructure development. This would enable a stronger tie between planning and development management functions and activities.

The development program element could be a vehicle for incorporating implementation and fiscal mechanisms, like community facilities areas, redevelopment areas, or impact fees, in scheduling and financing the development and redevelopment of growth areas in the plan.

**Development Permitting.** The counties would be responsible for issuing building or improvement permits and enforcing development standards and codes—with **oversight as necessary from state resource and environmental managers**, e.g., water resource management, state coastal zone management (CZM). Development permits accompanying a DLNR-approved use permit in the conservation area would be handled at the county-level, since the counties offer capacity at the local level for permit and code review, inspection, and enforcement. **A combination of fees and state transfers would be needed to offset the costs of expanded county permitting and enforcement responsibilities.**

Adoption of a county planning-based system may resolve some of the permitting bottlenecks in the current two-tiered system. More work could be done to consolidate or integrate development permits and environmental reviews in a one-stop shop at the county level. Some of the required reviews may be more effective if integrated into the county plan formulation process itself.

Generally, permit decisions related to the use, location, and timing of development should be consistent with adopted development program schedules for providing infrastructure systems and services. Development would need to be accompanied by infrastructure or facility investments, whether publicly or privately funded.

Developing and getting agreement over an operational definition of concurrency would be a crucial factor in determining how effective the proposed growth management system is over time. There would be a transition period when different operational approaches will be applied and tested before a truly satisfactory linkage is arrived at.

#### ► RECOMMENDATION 7

##### **Redefine the state land use classification system.**

In its current form and usage, the existing four-district land use classification system is narrowly focused on regulating or zoning land uses. With the state assigning more land use management authority to the counties, the classification system would need to be adapted to serve as a regional planning and management tool rather than a regulatory device.

The primary purpose of a planning classification system is to complement and proactively guide and influence private and public investment decisions toward the attainment of desired land use patterns. Thus, such a system must consider the effect of land market forces on the effectiveness of growth management policies and tools. It must also account for the impact of growth management policies and tools on land market behavior, including effects on land values in the various districts.



It is recommended that the state land use district system be changed in structure and use. It is proposed that the existing classification system be redefined to provide a common regional planning and management framework, which is currently lacking among the counties' existing land use plans and zoning.

A standard statewide system enables the counties and the state to jointly assess suitable locations for physical development, infrastructure improvement, housing, and economic activity including agriculture. Such a system also allows the state and counties to jointly identify conservation areas requiring special management and protection.

Thus, the planning classification system would be used by the counties to delineate broad geographic and settlement patterns for their county comprehensive plans. County zoning could then specify the uses and arrangement of uses within these regional land use patterns, and be linked to a development program for timing, sequencing, and financing planned growth.

Each planning district would define a distinct physical system of related uses and geographic landscapes from built to natural, untouched environments. Each would have distinct planning and management requirements determined by land capabilities, the intensity of uses, and the levels of physical development and service standards desired. For example, conservation areas have unique management needs, such as habitat restoration and recovery plans, biological surveys, exotic species control, and enforcement of resource management policies. Rural and agricultural areas have particular management requirements related to agricultural enterprise development or rural development. These may include physical infrastructure (water, roads, energy), research and development, supportive tax policies, financing, market development, processing and other support facilities, and/or the development of distribution networks.

An administration bill submitted to the 1994 Legislature offered one proposal for a revised classification system comprised of urban, rural and open, agricultural, and

Table 5

1994 Admin. Bill

### Existing and Proposed Land Use Classification System

#### Existing: Land Use Districts

**Urban** Land Use District

**Rural**

**Agricultural**

**Conservation**

General subzone

Special

Resource

Limited

Protective

#### Proposed: Planning Districts

**Urban** Planning District

Urbanized lands subdistrict

Urban expansion area

**Rural & Open**

Rural settlement subdistrict

Open lands

**Agricultural**

**Conservation**

Resource subdistrict

Limited

Protective

**conservation planning** districts and subdistricts. Subdistricts, similar to the conservation subzone concept, were introduced to establish different levels of resource use, improvement standards, and management controls within each planning district. Table 5 compares the existing and proposed classification system offered in the bill. Proposed planning districts and their respective subdistricts are described below. A general discussion of management and jurisdictional issues for the planning districts follows.

#### **Urban Planning District**

The urban planning district would be comprised of built-up urban areas and smaller or emerging urbanized

areas with high densities, diverse uses and activities, and high levels of infrastructure and service systems. Two subdistricts, an **urbanized lands** subdistrict and an **urban expansion area** subdistrict, would be established. Urbanized subdistricts would include lands in urban use—generally those of most intense urbanization and services—and lands needed to accommodate growth in the short term. Urban expansion area subdistricts would include lands which are needed for future urban growth.

These two subdistricts would be used in the comprehensive plan to identify the location of future growth or infill/redevelopment of existing urbanized lands to absorb population growth anticipated over the plan's 20-year time horizon. The intent is to promote development in the urban planning district and direct public infrastructure investment to this district. An adjustment factor of 25 percent may be necessary to allow for lands being held out of use for various reasons.

The urban planning district would be under county jurisdiction with respect to the regulation of uses, densities, development standards, etc. Reclassification of lands within the urban planning district would also be solely up to the counties. Reclassification of land within the urban planning district could occur at any time. The outer boundaries of the urban planning district could be amended during the five-year plan reviews, consistent with the plan certification process.

### **Rural and Open Planning District**

The rural and open planning district would provide for non-urban development in support of agricultural and rural enterprise. This district would also serve to buffer and protect lands in the agricultural district and provide land for off-farm agricultural support activities. This planning district would be characterized by low levels of physical development, and limited availability of infrastructure service and facility systems with appropriate rural service standards. Residential uses and economic activities would be clustered in compact rural service centers. These rural



service centers should be spatially separated; where they adjoin high density urban settlements, they should be separated by open space buffers or natural landscapes.

Two subdistricts are proposed for this planning district: a **rural settlement** subdistrict, which would include rural non-agricultural cluster communities and agricultural service centers; and an **open lands** subdistrict, to include lands suited for buffer areas, passive recreation, or agricultural production.

The counties would designate lands for classification in the rural and open planning district and subdistricts in their comprehensive plans. The classifications would become effective when the plans are certified.

#### **Agricultural Planning District**

The purpose of the district is to support continued agricultural production and use of agricultural lands and resources. Physical improvements would be limited to those necessary to serve agricultural and value-added agricultural enterprise in its environs. Public services would be limited, and lower improvement and service standards appropriate to agricultural development would be sought. The intent is to tighten up the agricultural planning district (and similarly the conservation district) by limiting the lands which are to be included in this planning district to those which strictly meet the district criteria, and by closely regulating uses in this district.

The counties would regulate uses in the agricultural planning district, subject to state standards. The counties would designate lands for classification in the agricultural planning district in their comprehensive plans, and are guided by the state agricultural resources management plan in this process. Amendments to the classification of lands in the agricultural planning district could occur during the five-year reviews of the county comprehensive plans.

#### **Conservation Planning District**

This planning district is characterized by large, undeveloped areas which include protected watersheds and

water sources, scenic and historic areas, recreational and wilderness resources, and areas susceptible to natural hazards. The intent is to limit development in areas which may harm public health, safety, and welfare and to protect valued natural resources.

The district would have **three subdistricts**: a **protective** subdistrict (watershed, native ecosystems, and wilderness areas of significant ecological value); a **limited** subdistrict (areas subject to natural hazards or degradation from natural events or alteration of the landscape, e.g., steep slopes); and a **resource** subdistrict (areas for recreational use, park lands, sustainable resource development, offshore islands and territorial waters).

Existing general and special subzones would be phased out. As currently defined, they include lands that may not have high conservation value, and allow physical improvements which may not be appropriate in a protective or conservation-oriented planning district.

### **Management and Jurisdictional Issues**

The counties would manage all planning districts except conservation, subject to planning standards set by the state in statute or rules. **The counties would determine the appropriate boundaries for planning districts and subdistricts through a public comprehensive planning process.** They would also prepare a development program to guide public investment in these districts. The counties would be aided in these tasks by **state resource management plans** for agricultural development, conservation resources, and facility development. As discussed earlier, the counties may initiate amendment of planning district boundaries through their five-year plan reviews. Zoning changes and development permits would proceed provided they are consistent with the county comprehensive plan and its development program.

The **state, through DLNR, would continue to manage the conservation planning district.** DLNR would also be responsible for determining the appropriate conservation planning subdistricts for lands in the district. As outlined in Recommendation 5, DLNR management and control over



activities and improvements in the conservation planning district would be guided by the preparation of a state conservation resources management plan.

Further refinement of classification system options should yield a framework that optimizes the influence of policy and comprehensive plans over decisions in the land use market. Any classification system should provide sufficient clarity as to intent, objectives, and land capability and physical development criteria. The counties would be responsible for establishing appropriate zoning and development standards, and management techniques and tools consistent with the statewide classification criteria.

The rationalization of land capability with land classification will need to be supported by appropriate county zoning and physical improvement standards, complementary real property assessment and tax structures, and reduced reliance on variances, special permits, and conditional uses which introduce uses in areas otherwise restricted. These supportive measures could reduce the formation of investment-backed expectations and the creation of market pressures that undermine the effectiveness of the land use classification system.

#### ► RECOMMENDATION 8

**Establish a state planning and implementation assistance program to strengthen county land use and growth management capacity.**

Strengthening county capacity to manage growth is a priority in a shared framework. Fiscal constraints at the county-level necessitate that planning assistance be instituted, particularly for neighbor island counties. A permanent planning and implementation assistance program for county planning and implementation supports is essential if the state is to delegate more authority to the counties to plan and manage land use. A planning assistance program keyed to the county comprehensive planning cycle and county compliance or performance would provide focus to such a state program. Permanent or dedicated funding sources should be found to support county planning



assistance, as Vermont and Washington have by earmarking a portion of their real property transfer tax.

The assistance program could include the following:

- Coordination of state agency land use planning and implementation assistance to the counties
- Land use planning grants-in-aid to the counties
- Participation in joint information systems and statistical support and analysis, such as population and economic data and projections, and the State Geographic Information System
- Provision of or referral to conflict mediation services during county plan formulation or update
- Potential establishment of a state growth management fund that could provide funding for county plan implementation assistance, e.g., acquisition of land or development rights for conservation, county legal defense arising from county plan implementation, etc.

#### ► RECOMMENDATION 9

**Encourage collaborative planning and problem-solving processes to coordinate and integrate state and county planning and management activities.**

Fiscal constraints and increasingly complex planning issues are compelling public agencies to seek collaborative approaches and partnerships for many land use and resource management programs. The institution of collaborative processes and relationships lends itself to broad-based contingency planning when unanticipated events overwhelm agency capacity to respond.

**Concurrent or Joint Planning.** One proposal for the shared growth management framework is the development

of concurrent or joint planning processes among state and county planning agencies. This would establish a forum for counties, state, developers, and community to work towards achieving a desirable land use pattern and development program in the county comprehensive plan. Institution of such a process would greatly improve the quality of policies and plans through the sharing of ideas, expertise, resources, and solutions.

The county comprehensive plan could serve as the primary vehicle for joint planning. It would facilitate plan review and pre-certification, since it would be a forum for policy consultation, disclosure, and impact analysis and mitigation. Different approaches may be taken to aid interagency planning coordination; these approaches are likely to evolve as joint planning processes become more common.

**Conflict Resolution.** Both formal and informal approaches to public problem solving may be necessary periodically. The establishment of mechanisms for conflict resolution prior to the submission of plans for certification should be an integral component of the plan formulation process. The system administrator may provide for mediation, roundtables, or alternative dispute resolution processes during plan formulation. Specific triggers or procedures when impasse is reached may need to be worked out as implementation proceeds.

**Appeals.** Where problem-solving processes fail, judicial appeals need to be available to aggrieved parties, but these should be restricted to cases of deficiencies in plans, implementation, or process. An appeals mechanism is an important safeguard in plan implementation. Permitting, zoning decisions, and capital investments could then be challenged when they are not consistent with comprehensive plan agreements about where growth should be directed.

Standing and criteria for judicial review of state decisions would need to be defined in statute, and similar requirements may need to be established at the county level for county decisions. Judicial appeal may need to be

conditioned on the basis of evidence that all good faith efforts to resolve conflicts through joint planning or mediation have been exhausted.

**Areas of critical concern.** A separate planning mechanism is needed when the growth management system is confronted with unanticipated or unforeseen events or management shortfalls. The designation of an area of critical concern that requires joint state and county planning and management provides flexibility for contingency planning and problem-solving.

The designation of such an area would be restricted to two types of precipitating conditions: one, where management problems have reached a threshold that threatens an area with environmental, historical, natural or archaeological resources of regional or statewide significance; and the second, where the county lacks the resources or capacity to deal with regional development or redevelopment needs resulting from a natural disaster or economic dislocation.

Either the county or state should be able to initiate a determination of need for designation; however, the designation of an area should require a joint state and county planning process, to include public participation. Designation should require a negotiated agreement between the county, state, or other entities where needed, indicating management authority, agency resource commitments, appropriate land uses and patterns, development standards, and the timeframe for area designation.

#### ► **RECOMMENDATION 10**

**Require periodic plan reviews and institute state and county programs for monitoring plan and system implementation.**

A **state oversight and monitoring program** is an element missing in the existing system, making it difficult to track compliance with policy. Mandated plan reviews, in other state systems, have recast growth management as an ongoing process of local plan implementation and refinement. Many



state growth management systems encourage or limit the number of plan amendments or character of amendments as well.

**Mandatory plan review.** It is proposed that mandatory periodic plan review be instituted to ensure accountability and provide a catalyst for ongoing monitoring decision-making and development effects. The policy framework and county comprehensive plans and state growth management program plan would go through a plan review every five years to ensure that plans and programs are current with changing conditions, capacities, and community desires. This maintains their usefulness as a management and decision-making tool.

Plan reviews need to consider statutory and regulatory changes in the land use planning and growth management system at both the county and state levels, adjustments in land use and regional growth patterns, new development proposals, and the status of infrastructure and public facility development and county fiscal capacity to finance additional infrastructure improvements.

Requiring state certification for comprehensive plan amendments involving land reclassification would serve as a disincentive for intermittent or frequent plan amendments. Ad hoc plan amendments provide little stability or certainty to state and county agencies responsible for financing and providing services or infrastructure. The community has no assurances that development will occur in an orderly, predictable manner, and planning staff time and resources are tied up in procedural matters.

**Monitoring.** The counties should either be required or provided sufficient incentives in statute, to institute a monitoring system for public facility and service capacity, development and land use conditions, permitting, and capital improvements. Monitoring would confirm whether project development and infrastructure and service improvements are occurring in a coordinated and fiscally-responsible manner. It also confirms whether permitted land uses are

consistent with those set forth in the land use classification system and in the comprehensive plan.

Monitoring data would be the primary input to the five-year plan review. Systematic monitoring could shift the focus of the five-year plan review and amendment process from revising policy or land use patterns to making adjustments in implementation tools or timing to achieve the plan's desired growth patterns. Monitoring would help determine, for example, whether to slow permit approvals, step-up infrastructure investments, fine-tune development standards or regulations, or apply new technologies to achieve plan goals.

*The recommendations outlined above are essential changes that could transform the existing land use management system into a coordinated foundation for statewide growth management. The rudiments for this transformed system are in place. The transformation requires only vision and determination to bring it about.*

*The following sections describe how these proposals might work as a statewide growth management system, what benefits such a system could provide, and issues related to the transformation process.*

### **The Growth Management Process: How would it work?**

Figure 1 highlights how the different elements in this set of recommendations might work together in an ongoing comprehensive planning and growth management process. Table 6 provides the general sequence of activities and products related to this process.

The proposed statewide growth management process has four major phases. In practice, the activities of various phases are often interrelated and may be iterative or overlap over a five-year plan cycle. In each phase, public

involvement must be provided for, through representation on decision-making bodies and procedural means, to allow broad-based participation in decision-making.

### Planning Guidance

The first phase of the process—the preparation of the periodic state planning guidelines—would trigger the review and update of county comprehensive plans and other state growth management program elements.

Preparation of the guidelines involves four tasks in which state and county agencies and a cross-section of private sector and community stakeholders would provide input: an assessment of growth management statewide; review and development of state and county population and economic projections; identification of specific growth management priorities for the five-year plan cycle; and determination of county planning assistance needs.

Initially, county planning cycles are likely to be staggered, but over time their planning cycles may eventually synchronize.

### Plan Formulation and Adoption

In this phase, state and county planning agencies would undertake concurrent planning activities to develop the **county comprehensive plan** and related components of the **state resource management plans**. The counties, with input from the community, state agencies, and the private sector, would allocate growth to existing or new communities and delineate these patterns by state planning districts and subdistricts in the land use element of the comprehensive plan.

A development program would be prepared for specifying, financing, and sequencing infrastructure, utility, and services necessary to support the desired settlement patterns in the county plan. **State resource management plans** would be developed for state program supports for **urban and rural areas, agricultural development, and conservation management**.



## 36 Table 6—Phases and Activities of the Growth Management Cycle

### PHASE I: PLANNING GUIDANCE

#### *Objective*

*Statewide policy & common growth management agenda for planning period*

- ◀ Planning requirements, priorities, projections for plan revision formulated
- ◀ State Planning Guidelines issued for county and state agencies
- ◀ County planning assistance needs identified
- ◀ County plan review & revision initiated

### PHASE II: PLAN FORMULATION & ADOPTION

#### *Objective*

*Coordinated county & state plans & programs based on collaborative, open planning processes*

- ◀ County growth management goals & objectives developed
- ◀ Requests for land reclassification, public & private development proposals received by county
- ◀ Desired growth patterns, community form, state planning district & subdistrict boundaries identified by county in plan
- ◀ Important agricultural, historic or cultural, scenic, & conservation resources identified by county & state
- ◀ Potential impacts of growth patterns analyzed by county
- ◀ Development program for facility, infrastructure improvements for 5- to 10-year period prepared by county
- ◀ Concurrent state planning for resource management program plans
- ◀ Comprehensive plan adopted by county

### PHASE III: PLAN CERTIFICATION AND LAND RECLASSIFICATION

#### *Objective*

*County comprehensive plans consistent with state policy & state planning priorities, & coordinated with state programs*

- ◀ Comprehensive plan & supporting documentation submitted for state review & certification
- ◀ Public notice & public hearing(s) on plans conducted by state
- ◀ Plan certification granted or continuance granted for county to address identified deficiencies
- ◀ Certification decisions not in compliance may be appealed
- ◀ Classification of lands according to planning district designations in plan; boundaries recorded on state planning maps

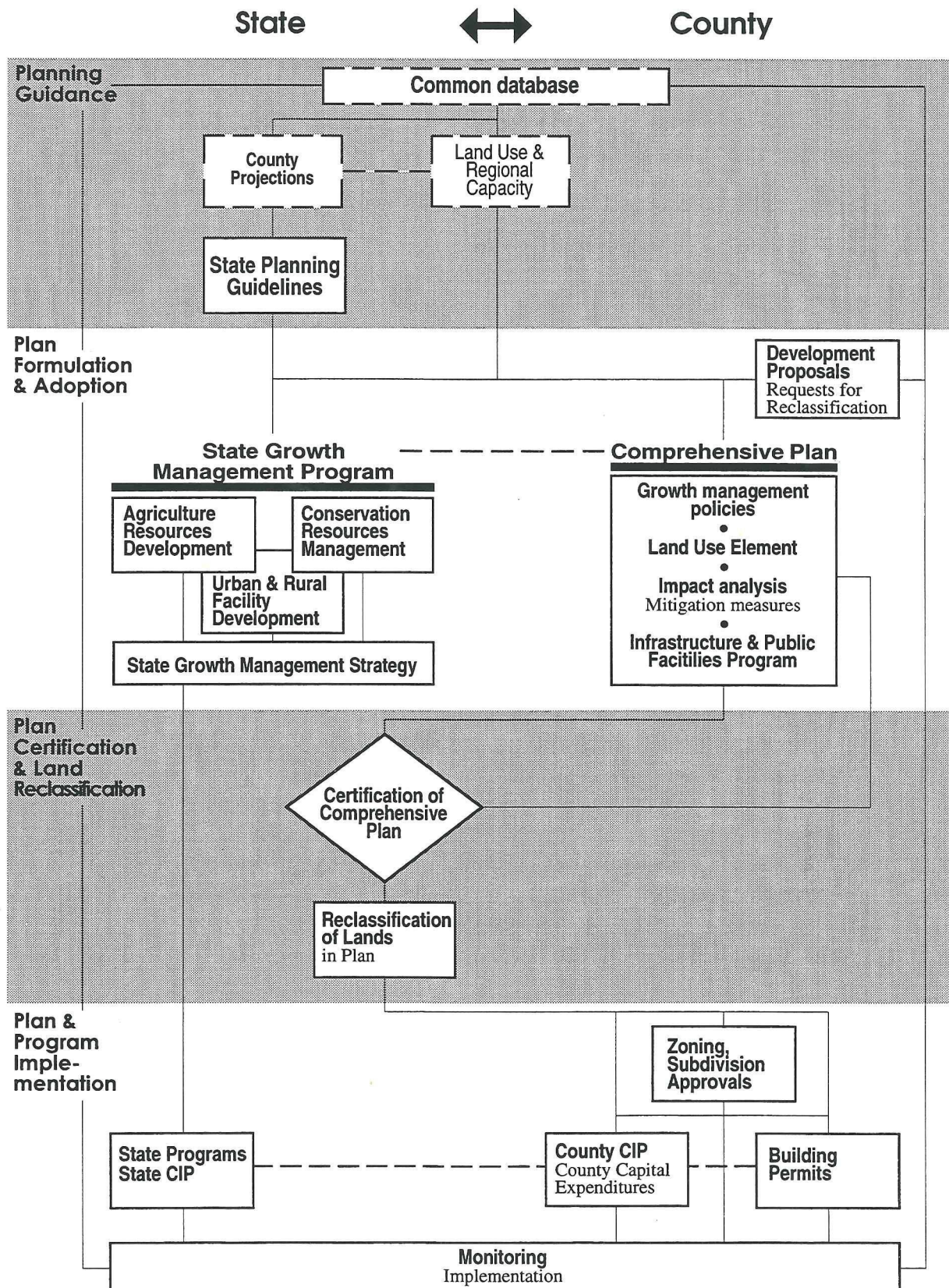
### PHASE IV: PLAN & PROGRAM IMPLEMENTATION

#### *Objective*

*County & state land use decisions consistent with plan policies, growth management objectives*

- ◀ County land use regulations amended to be consistent with certified plan if needed
- ◀ Zoning, development permits, county CIP & capital expenditures based on certified plan
- ◀ Land use decisions not in compliance with plan may be appealed
- ◀ Development actions, infrastructure & fiscal capacity, environmental sustainability, etc., monitored for plan review; basis for State Planning Guidelines







The resulting plans would be adopted by the appropriate decision-making bodies at the county and state levels. The county plans are then forwarded to the state administrative body for review and certification as to policy consistency.

### **Plan Certification and Land Reclassification**

The administrative body would review the submitted adopted comprehensive plan for completeness and receive public comments. The administrative body would determine whether the comprehensive plan is consistent with state policies and planning requirements. The plan's development program and state resource management plans would be reviewed for consistency with the other as well as the plan's land use element.

After public hearings, the administrative agency would **certify plans** in compliance or return plans to the county to address identified plan deficiencies. **Appeals of certification** decisions could be made at this time. Certification would constitute official classification of lands so designated in planning districts and subdistricts in the plan.

### **Plan and Program Implementation**

Counties would amend land use regulations, if needed, for consistency with the certified comprehensive plan. The bulk of county and state growth management activities occur in this phase, guiding development decisions being made. Appeals of plan implementation could occur. Monitoring of development permits will be a crucial element in this phase. This information is the basis for the preparation of the state planning guidelines for plan review and a new plan cycle.

## **Comparative Assessment of Existing and Proposed Systems**

The existing land use system does not function in a coordinated manner to manage growth. The proposed growth management system would incorporate a set of changes to address this fundamental shortcoming. Together, the recommendations provide for consensus building in county plan formulation and better integration of county and



state plans and planning activities. They attempt to move system focus to implementation based on plan-driven land use decisions, such that the reformulated county comprehensive plans are actively used as a management tool for decision-making and capital budgets at both the state and county levels. Table 7 compares the features of the existing system with those of the proposed.

The proposed system would shift primary responsibility for land use regulation and growth management to the counties, with the counties being accountable to comprehensive planning and implementation standards set by the state. The most distinct change would be ending state-level procedures for parcel-specific land use district boundary amendments, thus streamlining the land use decision-making process. Figure 2 depicts how development processes might be simplified in the proposed system. The state would assume new functions in providing systematic planning assistance and support to the counties to carry out their growth management responsibilities.

The proposals are not a radical departure from what the counties are currently doing or are capable of doing with their existing plans, land use regulations, public facility programs, capital budgets, or real property taxation. But it would depart from current practice in several ways. It requires the comprehensive plan to demonstrate programmed links and relationships between each of these often independent elements. It requires an assessment of the impacts of regional growth patterns with respect to these elements, and broadens the issue base for county planning and land use decision-making.

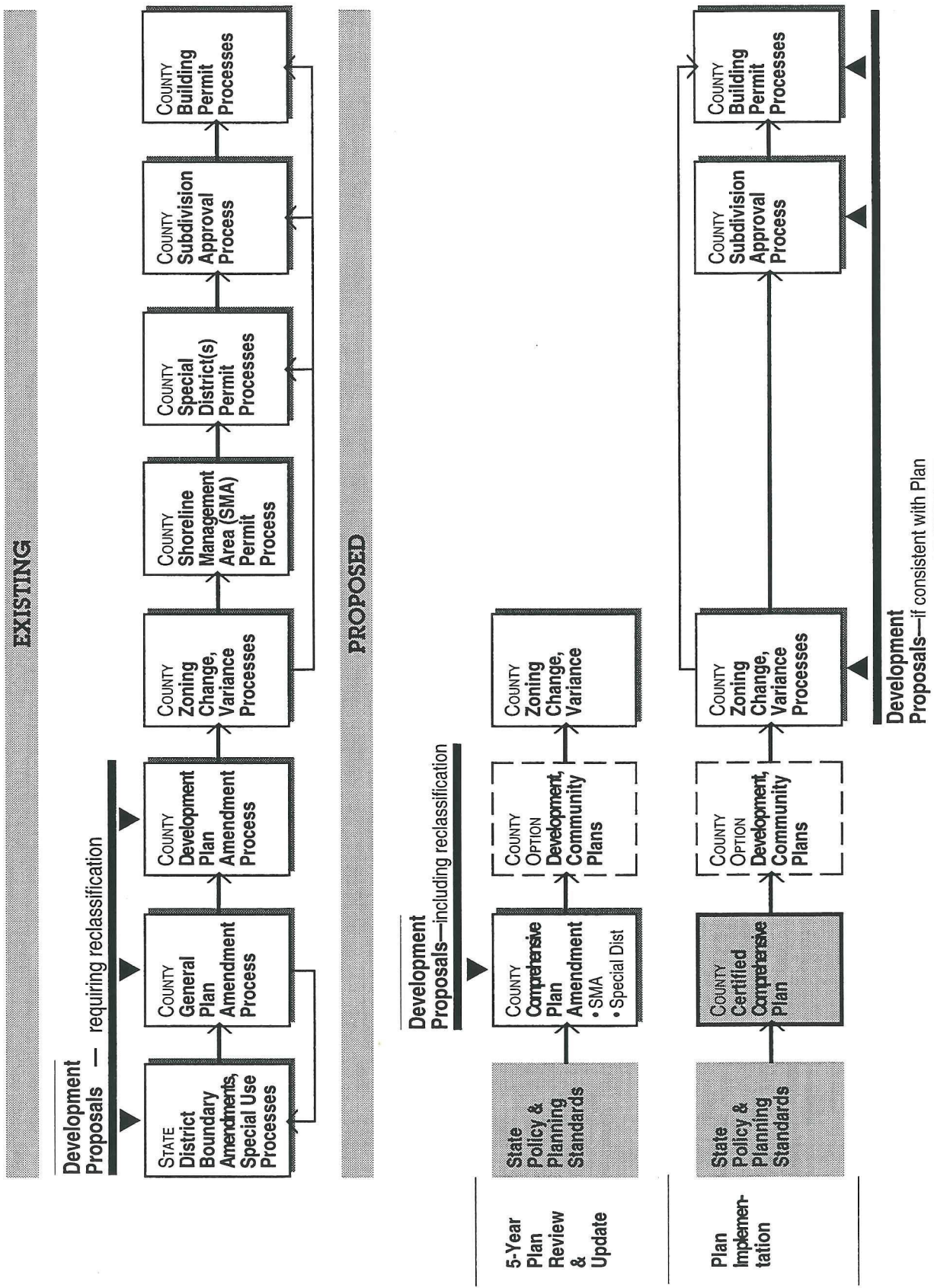
It institutes state oversight of county plan development and implementation, and enforcement of consistency requirements between policy, regulations, and development actions, as needed, to ensure that state land use policies and statewide growth management priorities are being addressed. And finally, the proposals would attempt to place accountability for decisions on growth and land use matters in the communities impacted, by ensuring public involvement in the land use decision-making process.

## 40 Table 7—Features of the Existing and Proposed Systems

	EXISTING	PROPOSED
<b>Roles</b>	<p>State &amp; counties regulate land use at parcel-level</p> <p>Top-down, two-tiered zoning</p>	<p>State planning for state, regional concerns; county planning for community, county-wide concerns</p> <p>Top-down/bottom-up planning</p> <p>Counties regulate land use &amp; development</p>
<b>Planning &amp; Growth Management Requirements</b>	<p>State land use &amp; growth management policies not well-developed, no spatial element</p> <p>Local planning &amp; growth management requirements defined primarily by counties</p>	<p>State policy, county &amp; state plans to drive land use regulation</p> <p>Minimum planning requirements set by state</p> <p>Minimum growth management requirements set by state</p>
<b>Policy Compliance &amp; Coordination</b>	<p>Self-enforcing &amp; fragmented</p>	<p>County plan certification for compliance</p> <p>Incentives for compliance &amp; sanctions established</p> <p>Concurrent planning &amp; coordinated state &amp; county programming</p> <p>State &amp; county monitoring programs</p> <p>Appeals of plan deficiencies &amp; non-compliance</p>
<b>Public Participation</b>	<p>Public hearings for state boundary amendments; involvement in boundary reviews</p> <p>Public hearings for county plan amendments &amp; regulatory decisions; involvement in plan revision process</p>	<p>Ongoing involvement required in county plan formulation &amp; implementation</p> <p>Public hearings for plan adoption by county &amp; certification by state</p> <p>Public involvement in five-year plan reviews</p> <p>Appeals</p>
<b>Planning Assistance &amp; Contingency Planning</b>	<p>Ad hoc</p>	<p>State planning &amp; implementation assistance program</p> <p>Concurrent or joint planning</p> <p>Areas of critical concern with joint planning</p>
<b>Plan Review &amp; Amendments</b>	<p>State 5-year boundary reviews</p> <p>County 6-10-year general plan revision</p> <p>State boundary amendments at-will</p> <p>County plan amendments vary—annual to at-will</p>	<p>State &amp; County 5-year plan reviews</p> <p>Limited county plan amendments &amp; land reclassification between plan reviews</p>



**Figure 2—Comparison of Land Use Management Processes in the Existing and Proposed Systems**



Adapted from a figure prepared by the Department of Land Utilization, City & County of Honolulu, for a permit streamlining task force, established pursuant to Act 227, SLH 1992; for illustrative purposes only. Office of State Planning, State Land Use Regulation and Management Study, April 1994.



**Potential Benefits**

What benefits might these recommendations provide as a whole?

- Greater accountability in land use planning and decision-making
- Administrative efficiency through the elimination of overlapping and intermittent land use redistricting
- Greater integration and coordination of state and county planning and resource management activities at the island level
- Plans and implementation programs that incorporate and are responsive to community development needs and preferences, as well as concerns for protecting important agricultural and environmental resources
- More community involvement in problem-solving critical settlement and land use issues and their attendant fiscal and environmental impacts
- Greater stability and predictability in the land use decision-making environment
- Greater capacity and assistance for county growth management
- New emphasis on planning and growth management as an ongoing process of anticipating, adjusting to, and managing change in Hawai'i's communities and the use of the islands' land, natural, and cultural resources.

Ultimately, these proposals could result in a stronger, shared decision-making environment. Its features—community consensus on growth management goals, a network of collaborative relationships to work toward these goals, and a system for sharing resources to get the growth management job done—provide a framework that would be

more resilient in conditions of uncertainty about the direction and nature of change.

## Implementation Issues

The state administration submitted a bill in the 1994 legislative session (S.B. No. 3059, H.B. No. 3437) which incorporated many of the study recommendations. Comments received on the working draft and testimony on the bill supported provisions that would have streamlined or eliminated the state role in parcel-specific land use regulation. However, there was a lack of consensus over how the state was proposing to delegate greater land use management authority to the counties.<sup>3</sup>

The counties and many in the development community found the proposed framework too rigid and convoluted. There were concerns that development could be brought to a standstill. The counties opposed plan certification and concurrency requirements as unnecessary and an infringement on county planning processes. They all expressed support for a self-enforcing system. A major concern was the additional resources they felt were needed to fully implement the provisions of the bill.

Environmentalists and community members were concerned that shifting responsibility to the counties may not ensure sound land use or environmental management. These groups were troubled by the prospect of losing state control over land use decision-making without the provision of adequate safeguards for discretionary decisions at the county or state level. These safeguards include appeals processes and stronger enforcement mechanisms to ensure that land use decisions conform to certified comprehensive plans. Other concerns focused on bill provisions which could have resulted in increased development pressures on rural lands and the redesignation of marginal agricultural lands for rural or urban use.

Study consultant Bosselman observed that the proposed system would benefit the counties by sharply reducing uncertainty and conflict imposed by existing state land use

management functions.<sup>4</sup> Clearly, in the future, the counties will need greater assurances that they will have adequate resources to do the job, that the rules will be clear, and that state implementation supports will come through as delineated in county and state programs.

### **State and County Agency Issues**

In general, system transformation would require that the institutional arrangements and planning requirements that comprise the current system be changed, and that new elements be developed and established in statute or administrative rules.

It is unlikely that specific system improvements will be of much value without first changing the way roles and responsibilities are assigned in the existing land use management system. Specifically, this entails ending LUC regulation of land use, which can only be accomplished by amending state statutes. A reorganization of state planning and land use management responsibilities could figure prominently in determining how the existing planning capacity of the Commission's staff and programs would be utilized.

State and county planning agencies would need to work together to determine how county planning processes could be adjusted or adapted to meet their growth management responsibilities and resource requirements.

### **Implementing a Program for Change**

A collaborative process involving all major stakeholders would be needed to determine the substance of state land use and growth management policies, to develop and ensure the passage of statutory provisions for needed system components, and to guide the development of appropriate administrative rules and regulations to govern the various aspects of a statewide growth management system.

A two-phased implementation program is recommended to enable the successful restructuring of the existing land use regulation and management framework to a statewide growth management framework.



The first phase would involve the development of state planning guidelines and requirements for statewide growth management. This would require a series of stakeholder meetings and community activities to lay the ground work for the guidelines and develop broad agreement on proposals for a revamped statutory framework.

The second phase would be the development of a revised growth management system, including specific proposals for program development and legislation, as well as a schedule for implementation and attendant resource requirements. This would result in the initiation of the first planning cycle under the improved statewide growth management framework.

It is anticipated that there will be an extended period in which difficulties encountered with various aspects of the system would need to be worked out and refined. Again, a participatory process involving key stakeholders would play an important role in problem-solving obstacles or assisting with procedural modifications or further statutory refinements.

## Concluding Remarks

When lawmakers were considering the proposal to establish a state land use system in 1961, its impacts and effectiveness over time were not clear. Today, there seems to be general agreement that decision-making in the current system is not timely. The system doesn't foster predictability except that those who can endure will prevail. The system has not done the best job in protecting agricultural and conservation resources. The community is not a major participant in the land use decision-making environment. And there are insufficient safeguards to ensure that land use decisions implement policy and current plan intentions.

Despite long-standing frustration with the existing system, people have learned to work within its complexity. Its familiarity is itself a barrier to change.

This is a window of opportunity to assess and make changes in the state's land use system. There is deep-felt

*major landowner?*

dissatisfaction with the two-tiered regulatory structure.

Participants and observers both have expressed a critical need for changing the state's regulatory role in land use.

A slowed development and investment climate provides a much-needed reprieve in which to consider and craft changes. There is growing public concern for government accountability. Both the state and county face fiscal situations where they will be asked to do more with less.

Many of the counties have recently revised or are reviewing their plans and land use regulations. It is timely to seek improvements in how the state system regulates and delegates authority to plan and control land use.

More importantly, the systemic nature and rapidity of change in the global economy and in our own communities threaten to overwhelm the existing system. Is it capable of dealing effectively with major land use issues that may be faced in the future, or even those confronted now in military base restructuring or the demise of plantation agriculture?

There are many uncertainties raised by the shifts these recommendations would bring in the way land use is planned and managed. However, it may be only a matter of time when systemic reforms will be necessary to help communities deal with change and protect Hawai'i's special island environment. This report suggests that this should not be precipitated by crisis, but that steps be taken now to shape these system changes.

### Endnotes

1. Burby et al, "Is State-Mandated Planning Effective," *Land Use Law*, October 1993, pg 4. Some states, like Washington, also have explicit statutory provisions for internal consistency within the plan document as well. §36.70A.070, *Revised Code of Washington, Annotated*, 1990.
2. The City and County has proposed the preparation of such functional plans in its General Plan Revision Program. Planning Department, City and County of Honolulu, *General Plan and Development Plans Revision Program*, September 1993.
3. The comments summarized in this section are extracted from either written comments to OSP on a December 6, 1993 working draft bill, or testimony submitted to a joint hearing of the Senate Committees on Planning, Land and Water Use Management, Science, Technology and Economic Development, and Government Operations, Environmental Protection and Hawaiian Programs, held on February 12, 1994. OSP conducted a series of public information meetings on the December 6 draft bill on the Big Island, Maui, Kaua'i, and O'ahu from December 6-17, 1993.
4. This observation was included in comments received by OSP from land use law consultant, Fred Bosselman, based on his review of a draft bill dated January 18, 1994 (fax dated January 28, 1994).