

State Land Use Review Task Force

Meeting 2

Thursday, April 3, 2014

**Oral Comments and Post-It Comments
from Task Force Members**

Please note, the colored shading is used to indicate the distinction in topics throughout the tables.

Strengths/No Change Needed (Green Post-Its)	
Topic	Comment
LUC Process	In general, the process is doing what it is/was intended to do; some refinements may be needed.
	The quasi-judicial process puts things in a solid framework, allows for in-depth analysis.
	Exact time schedule aside, it is good to deliberate on land use/discretionary permits.
	LUC needs to be a place to tell the story of the land. County decision-making is one level and is often a political decision. Our lands deserve a second chance to have their stories told. LUC is that chance.
	Framing of discussion. Need to be conscious of bias. For example, "Only 2% of land has gone from Ag to Urban.' That assumes it is okay. A small amount. That's 40,000 acres. Could have easily said "Already 2% has been converted from Urban to Ag.." Also, the focus on how it takes 7 years on average to go through re-designation process did not mention that if a developer proposes a land use consistent with the land's designation, then it is a year or two until construction begins. Why not assume the designations are at the level they need to be. Why assume there is not enough Urban and there is too much Ag?
	It is good to be transparent on land use decision-making, but...
	Commissioners are hardworking and deliberate.
	Cooperation among parties is pretty good.
	The 15-acre threshold for county land use district boundary amendments is good, it is an appropriate size.
Public Participation	The State Land Use District Boundary Amendment process is not a ministerial process; it is a public process. People have the ability to participate in the land use decision-making process.
	Contested case hearing process in general ensures every interest is heard in the decision-making process,
	Keeping hearings on island affected as much as possible. Use technology to save costs.
State and County Roles	Keep counties as parties in State District Boundary Amendment.
	County planning process in general. The problem is the plans are not well adhered to.
State Land Use Districts	Basic districts as a concept is good.
	Four classifications are very good, broad umbrellas and should not be changed.
	Protection of IAL and Conservation District.
	OCCL (DLNR) having authority over Conservation lands.

Questions/Information Needed (Yellow Post-Its)

Topic	Comment
Digital Process	<p>Q: How do you plan to move LUC process into the digital age, with interactive maps, apps, texting as a method of providing testimony, as examples? A: <i>The State is working on digitizing the process. Most of the information is now available online. Electronic participation will be the next step.</i></p> <p>How does LUC process move into digital age?</p>
Enforcement	<p>Counties' perspectives on usefulness of annual reports (in DBA and SP) for monitoring and enforcement.</p> <p>Information on counties' enforcement of conditions on DBA and SP.</p>
Existing Conditions	<p>With the 2% increase (3%-5%) from 1969-2014 in urban district, by what percent has Hawaii's population grown?</p> <p>Estimate of un-planned development or illegal uses in State Land Use Districts?</p>
LUC Process	<p>Q: How does the LUC determine what goes into Findings of Fact? [Ag. always seems to get short shrift; can we improve the standards?] A: <i>(1) Parties submit proposed FOFCOL; (2) Staff/LUC looks at the record to determine whether the evidence or record is consistent with and supports the proposed FOF; and (3) There are rules, constitutional and statutory criteria that FOF must address.</i></p> <p>Why is the land use district boundary amendment process reactive? We should be proactive and do this based on long-range plans (look at what proposals have been submitted and where, and then examine the "big picture" of what the public wants) rather than individual petitions.</p> <p>Why does boundary amendment process seem reactive based on who owns the land instead of proactive based on data, geography or some public plan?</p> <p>Why is amendment process reactive rather than plan based on geography, etc.</p> <p>How does LUC staff determine what is or is not included in the staff report to the LUC?</p> <p>It would be useful to know how the Five Year Boundary Review process addresses long-range plans or boundary amendments for many parcels or regions.</p> <p>Where do the Five Year Boundary Review and the State Land Use Process review overlap?</p> <p>Statistics on the number of petitions/proposals submitted; how many withdrawn; how many go to contested cases with interveners; how many denied; how many approved?</p>
Previous State Land Use Reviews	<p>Q: What was changed in the last Land Use Review? A: <i>The last time the process was reviewed was in 1990. Most of the changes were proposed boundary amendments.</i></p> <p>What happened to the [last] Five Year Boundary Review process? Will that information be fed to the Task Force? The historical information that we have will form the basis for where we are and where we need to go.</p>
Projected Need for Various Land Use Districts	<p>Need to provide carrying capacity analysis for the state and then each island to support the number of residents to show how many acres of various types of land are actually needed; to guide land use decision-making.</p>
Public Participation	<p>Q: Is notice of LUC petitions and hearings given to neighbors or the public, and how is this done? A: <i>Rely on petitioners to provide notice to parties and adjacent property owners; generally notice of hearings to public is through notices in newspapers.</i></p>

Rural District	<p>Q: Why isn't the rural district used more? Petitioner asks for classification; not many ask for Rural.</p> <p>A: <i>Amendments are dependent on petitioners; not many petitioners request rural reclassification.</i></p>
State and County Roles	<p>What is the value-added for state LUC decisions? Is there any agreement that the state-level process improves LU decisions?</p> <p>What evidence is there that LUC effectively stopped an action that would have been approved by a county-level process? Has this changed over time?</p> <p>What role did the counties play in the initial zoning efforts by the state in 1961?</p> <p>If effort to create a Ch. 205 were done now, what would it look like (with counties increased planning and permitting capacities, etc.)?</p>
State Interest	<p>We need to determine what we trying to protect and what we want to move forward. Then we can figure out the process from there.</p> <p>It would be good to have a synopsis [from the State] of what works well and what does not work well.</p>
Other	Impact of Koontz Case on impact fees and other monetary exactions.

Weaknesses/Changes Needed (Pink Post-Its)	
Topic	Comment
Agricultural and Rural District	Maybe the 15-acre threshold is too small for the cutoff for county land use district boundary amendments. It is a time-consuming and repetitive process; the same impacts are being considered whether you are at the State or county level, so streamlining the process would not necessarily shortcut analysis of and dealing with impacts. The acreage threshold should be increased (to 50 acres, for example).
	Greater scrutiny for Ag; higher threshold.
	Higher threshold/scrutiny for agricultural lands.
	Increase county authority over special permit threshold from 15 acres to 100 acres.
	Allow counties to reclassify land greater than 15 acres.
	Ag district unrealistic. Many, many places [currently designated as Ag] should be Rural.
	Ag is now a catch-all. (Small farm residence, low scale.) Why not make Rural bigger and act as the catch-all? This will satisfy the future better than a big Ag District. Too much Ag need ???
	Create new benchmarks for judging agricultural lands that updates the land study bureau.
	ALISH is useful filter (but is often ignored because valuable lands are converted to non-agriculture use despite the high ALISH rating.)
	Should LUC designate rural districts instead of relying on individual petitions to come forward?
	Hawaii Revised Statute (HRS) 205 should be revised to use the rural district more. This may prevent residential development ("farm dwellings") in the agricultural district.
	People flinch at the idea of rural; it needs to be better defined.
	Eliminate the Rural District and have higher-density ag. within the Ag. district (though this might have impact on real property tax).
	Better use of Rural classification, possible as a substitute for uses of Ag where there is no Ag.
Enforcement	Need conditions or hammer at the county level.
	Define clearly who has responsibilities to monitor on-the-ground compliance for LUC conditions.
	Define clearly who has responsibility to enforce LUC conditions and what happens when they are not met.
	Reversion if DBA conditions or extractions not met should be common. For example, DW Aina Lea.
	Legislation to be clear on the ability of LUC (and counties) to enforce conditions on granted approvals.
	Legislation to allow LUC greater flexibility to enforce conditions -- beyond reversion -- allowance to amend conditions.
Environmental Review	Change the order of environmental review (detailed analysis?) until later-after LUC decision-making?
	EA/EIS is a disclosure document, not a decision-making document.
Land Use Policy	It is a different world now from when the land use law was adopted; we should start from scratch.
	Need to reframe how we do things; should not be thinking business-as-usual.

We need to clarify when it is appropriate for the Legislature to weigh in on the land use process. There is currently a disconnect between policy at the Legislative level and implementation at the local level. There needs to be a way to make policy change work and be effective.

If the "may" in Ch. 205 giving authority to state to request boundary amendments based on 5-year boundary review is changed to "shall", then this would address a lot of what is being discussed and developers wouldn't have to come in on their own.

Define clearly the standards that need to be met to determine prime ag land is "un-needed" and can be urbanized.

Abolish state LU districts. They are based on the Hawaii of yesteryear. Counties are much more capable of making solid land use decisions.

Issues in the 1975 report are the same today (regarding speculation, infrastructure, etc.).

Redistricting too political and difficult considering low percentage of Urban and Rural lands.

Do we need to have police powers to enforce or direct how to grow if we are built out? We need to understand where we are spatially in terms of accommodating more growth/development, then determine how the process needs to change to deal with our capacity to grow.

System has done well in preserving and protecting ag. and conservation lands, but has not helped with developing housing or urban expansion.

If you take out the conservation land that cannot be developed anyway, then the change in urban acreage is pretty significant.

LUC Process

Architects' problem is too slow processing, ministerial permits by state/county agencies.

Lengthy process leads to cost of housing and living.

The LUC gets into too much detail regarding the conditions (such as the types of street lights and road treatments). These things are beyond the purview of the LUC. The LUC adds conditions when there are no impacts to mitigate.

We need to fine tune the process. For example, the LUC should not dictate what type of street lights to install.

During zone change process, after LUC conditions, petitioner/developer having problems meeting needed transportation mitigations due to the development's transportation impact to the state highway system, especially with loss of state roads.

We need to set parameters in terms of where we are and where we are going. We need to look at the baseline, apply some lessons learned from prior boundary reviews, and make a new baseline or process for the land use system.

Change for the sake of change is not necessarily a good thing. It is a good system that needs tweaking; there is no need to throw the process out wholesale.

Ka Paakai analysis should be required of all state agencies with impacts on public lands or not.

Use County General Plans as boundary amendment document with appeal via dec-ruling.

Move local/regional input/review in process and approvals.

LUC rules require that LUC must consider county plans in its decision-making, but LUC should consider those plans more closely. How can county general plans, community plans and development plans be used by the LUC in a more proactive manner?

Greater emphasis on review of cumulative effects.

	<p>Protection of cultural properties is weak and often depends on "desk review" not site review. Subsistence cultural value.</p> <p>Improve the quality of site visits. They often show commissioners very little of the real value of the site.</p> <p>Early, meaningful consultation.</p> <p>Maybe we can streamline certain matters, such as affordable housing or fish ponds, so that such issues do not have to go through the seven year permitting/process. This would improve efficiency.</p>
Public Participation	<p>At various points in the development approval process, there is potential for lawsuits (environmental review, LUC, zoning, etc.). Sometimes it is not appropriate for intervention at that point. Could we consolidate the points of intervention to reduce delays/uncertainty?</p> <p>There should be a live web stream of the LUC hearings.</p> <p>The "public" part of the public process needs improvement.</p> <p>Have intervening parties pay a fee of \$1000.</p> <p>Allow easier ways for interested parties to enter a contested case. And allow for conditions subsequent decisions or be consistent with a decision or final order.</p> <p>Allow witnesses for a contested case to testify electronically if they are elderly or live in remote areas.</p> <p>Burden on the public if the contested case process. Do not want to undermine the public nature of the process. But consider an ombudsman/citizen advocate position in the LUC. This would help demystify the process and reduce some of the burden on the public to participate.</p> <p>Signs should be required on sites under LUC review with contact info.</p> <p>Provide a more meaningful avenue for public participation and expertise to be utilized that is not as time consumptive as an intervention in the contested case.</p>
Quasi-Legislative v. Quasi-Judicial	<p>Return to quasi-legislative and initial role of LUC.</p> <p>Remove requirements in HRS prompting Tow Decision that turned LUC into quasi-judicial. County zoning is quasi-legislative already and should be the same for LUC.</p> <p>Change LUC process from quasi-judicial to quasi-legislative; too much spent on procedural matters rather than content.</p>
State and County Roles	<p>Counties have authority already under Ch. 205 to bring petitions to change land use district boundaries, to reclassify. State has done so in the past (under prior Five Year Boundary Review).</p> <p>Counties should have the authority to decide what uses are permissible in the agricultural district.</p> <p>State LUC responsibilities to be strategically reduced and counties' [responsibilities] increased.</p> <p>Greater local/regional role in approval process.</p> <p>Provide funding for counties to conduct/complete IAL process.</p> <p>How do you address the overlap of LUC and county zoning process?</p> <p>Allow county and state initiated district boundary amendment without requiring EIS and Decision and Orders.</p> <p>Automatic alignment of county GPs with Land Use designations. For example, lands within urban growth boundaries.</p>

State Interest	We need to identify what we want and use county plans to guide land use changes. Focus on development/petitions that are consistent with plans rather than have individual petitioners trying to maximize their development interests.
	If we look at the State's interest in land use, we see that it exists and it is almost always in prime ag. land. We need to determine the State's interest in 2014 and determine how to express them.
	The issue is: how does the state provide leadership to counties, developers, the public? If state has interest in what happens in land use, then how does this get done?