

State Land Use Review Community & Stakeholder Meeting Notes

Community and Stakeholder Comments, Questions, and Perspectives

November 2014 – January 2015



State of Hawaii
Office of Planning

Notes – Stakeholder Meeting No. 1 – Oahu

Thursday, November 20, 2014, 6:00 p.m.

Washington Middle School

1633 South King Street, Honolulu

Community and Stakeholder Comments, Questions, and Perspectives

a. Share Your Experiences

- Make-up of LUC shouldn't be so development-oriented.
- Any consideration of special rights for native Hawaiians in developing land or projects, e.g., for kuleana lands?
- Comments on length of process, streamlining process.
- How do you know that process isn't efficient?
 - Look at data and make it public before moving forward.
 - Slow down process.
 - Everyone needs to be represented.
- Are there criteria for determining what conditions are imposed by LUC?
- Who looks at and enforces conditions for approved boundary amendments and whether they're being met? Which agencies are responsible? Is OP trying to verify the accuracy of how conditions being met?
 - There is no accountability.
 - Read annual reports at face value? There needs to be follow-up.
- Enforcement of conditions – limited by budget constraints, public is told information is on LUC website.
- Pressure from development/unions to support/pass/approve petitions/projects like Hoopili.
- Complaint-driven system, people doing what they want on State land, lax enforcement.
- Concerns: maps may be misleading
 - Strict regulations within zones.
 - Need to consider within all zones.
- No LUC chair indicated on website – need info updated.
- Turtle Bay purchase: process let community down; paid \$40 Million for what the system should have delivered for community.
- Does the State have adequate jurisdiction/power it says it has? Does the State have authority/responsibility or control over land use when there isn't a treaty of annexation to justify State authority, especially if we're talking about planning for Hawaii's future?

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- How does OP represent interest of State? What are the interests of State? Are they determined by the Governor?
- Only three to four Land Use districts is monolithic and forces big questions regardless of size of project.
- Landownership pattern and changes over time – this information is essential to understanding how the system is doing.
- Problem with servicing urban uses outside urban designated lands when first boundaries established.
- Percentage of LUC denials of projects seems low. Percentage does not reflect what common person wants. We're ruining the State.
- Lots of State and county laws overlap; don't see a lot of information coming out of the LUC about how the Land Use law and districts are functioning.
- Regarding public participation: Quasi-judicial (QJ) system allows intervenors if they're interested parties. QJ process works / allows public partnership.
- Missing county system here – counties work at zoning/micro-level; here people have to go to both State and county if they want to develop or if they have concerns.
- Process being conducted to turn LUC into quasi-Legislative decision-maker – would be like the county councils (politically-oriented, 3-minute testimony).
 - The strength of current system: allows people to intervene in process – all sharing information and place at the table.
- Concerned that the argument being made that LUC is not needed anymore, and that plantation agriculture is gone, so don't need to protect agriculture anymore.
- Quality of people on LUC – pro-development; bias.
- Transitions from one district to another: trend or pattern?
 - What's most likely?
 - Is there a repository for the information?
- Island-wide housing strategy converting ohana zones:
 - Accessory Dwelling Units (ADUs) – will increase density in areas.
 - Already dense areas that can accommodate increased density aren't ohana-zoned
 - Density will go up in urban areas.

b. An Ideal Land Use System

- What is being valued? Are we valuing what we care about? We could probably find agreement about common values, like mountain views, biota, and Hawaiian culture. These values need to be specified. Right now we have embodied in system "highest and best use", not what we value.
- Land use system that encourages everyone to participate. System dominated by those who can pay to engage, skewed to capital and land-rich.

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- 2050 Sustainability Plan: influence on Land use?
 - Living research sites/zones: Communal living, sharing resources important to future/food security. Now, there is nowhere to do that
- Land Use system is laid out in State Plan.
 - Comprehensive and enforceable – identify what agency is responsible.
- Would provide for people of Hawaii – includes housing, since there is a shortage of housing.
- Protection of land suitable for agriculture.
- Sierra Club believes process shouldn't be made longer and more expensive. Should speed up provision of housing in right place, in right way.
- LUC that protects natural/cultural/residential/agricultural land as in Chapter 205
 - Hoopili – in County UGB.
- 2 systems because have 2 separate interests.
 - County: property tax revenue base (increase tax base).
 - State: responsibility to protect land for other values/resource value.
- Other states outline framework for their counties; we have islands, have food baskets that aren't being protected (like Hawaiian fishponds) these places should be honored in codes; we're ignoring this.

c. Ideas for Improvement

- Special rights for Native Hawaiians in developing land/projects.
- Cultural/Historic districts need to be mapped.
- Conservation district should have sub-districts.
- Ahupuaa alert – to alert the public when we're running out of water in a watershed, or traffic and within ahupuaa. Red lights are already flashing.
 - Very vulnerable, so close to something very bad happening (extreme hurricane, tsunami).
- Is there criteria for LUC in terms of geographical composition? Neighbor island representation? Who decides makeup? Should add environmental expertise/geographical expertise.
- Video conference option to testify.
 - Don't waste time or money in being at LUC hearings.
- Use new technology to reach others (video, internet, live feed).
- LUC needs bigger, more comfortable rooms for hearings.
- LUC should be increased to at least 15 members – need more diversity.
- Clarify in Chapter 205 for the Agricultural district: who is responsible for enforcing what?
 - Enforcement of fake farms: counties say "not us"
- Get back to planning system:

State Land Use Review Stakeholder Meeting

- Are the functional plans being reviewed by legislature?
 - Do 5-Year Boundary Reviews.
- A mechanism to identify State-level district boundary amendment system that conserves conservation land more. We need a process that has teeth.
- The Hawaii State Plan Policy Council should be reinstated. State never gets down to community level; there is a disconnect.
- Clarify and bring into State and county processes into one system so it's clear who's responsible, and increase accountability for land use system.
- Don't support that fallow or undeveloped land with urban designation has huge value – need a condition that “entitlement” expires after 20 years so that you lessen the pro-development pressure.
- Break the land use districts into more specific purposes which would then require less/smaller questions – we'll see that need and existing districts may not be applicable.
 - Consider agriculture/conservation/open space lands – as separate uses.
- Problem with quality of people on Land Use Commission: they're pro-development – make them elected.
- Provide data regarding infrastructure costs and land ownership.
- Provide the public with electronic access to annual reports and data/mapping for analysis.
- Need to reclassify unused Agricultural land to create housing; bring down cost of housing.
- Redesign how zoning gives incentives to people especially in terms of housing on agriculture lands. Existing code gives incentives encouraging what we don't want to see.
- Chapter 205 is not land use system. Does county have enforcement powers? Who does? This should be spelled out in Chapter 205.
- Need to see data: What is the staff size of whoever is responsible for managing LU systems? Need to see trends/data to measure effectiveness and efficiency.
- Is there adequate staffing? Is it working? What is the criteria for “streamlining” and determining what is effective and efficient?
- Consider flood maps and seawater rise. There are maps showing flooding to King Street – this is how we need to look at our community.

Miscellaneous Comments about State Land Use Review Process

- Useful summary/information first, as done with prior 5-Year Boundary Reviews.
- Only focusing on Chapter 205, why aren't you taking into consideration Chapter 205A, State Plan, etc.?

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- “Stakeholders” need to be broader more public
- Next time around, people like those here should be involved in this project.
Stakeholder list disappointing
- Differentiating between landowner and resident – why is absentee landowner considered a “stakeholder”?
- Why is there no meeting in west Oahu?

Attendance – Stakeholder Meeting No. 1 – Oahu

Thursday, November 20, 2014, 6:00 p.m.

Washington Middle School

1633 South King Street, Honolulu

Name	Organization
Randy Ching	Sierra Club
Lisa Taber	Oahu Citizen
Tisha Woytenke	UH Manoa – PUBA Student
John Kirkpatrick	Belt Collins Hawaii
Randall Imada	-
Victoria Cannon	-
Dana Gusman	-
John Bond	Kanehili Cultural Hui
Tina Ain	Hawaiian Island Land Trust
Earl Yamamoto	State of Hawaii Department of Agriculture
Paul Oshiro	A&B
Frederic Berg	Berg Enterprises
Dennis Callan	Hawaii Geographic Society
Jonathan Ching	Office of Hawaiian Affairs
Rod Low	Esri
Kathy Sokugawa	City and County of Honolulu – Department of Planning and Permitting
Erik Horn	Self
Angela Kieran-Valt	Hawaii Army National Guard
Dawn Hegger	Hawaii Army National Guard
Donna Wong	Hawaii’s Thousand Friends
Pauline MacNeil	Lani-Kailua Outdoor Circle
Rafael Bergstrom	Surfrider Foundation
Sharon Schneider (sp?)	Neighborhood Board #4
Beth McDermott	-
Hunter Heavilin	Asia-Pacific Center for Regenerative Design
Konia Freitas	-
Marti Townsend	Outdoor Circle
Elizabeth Reilly	Livable Hawaii Kai HU
Dr. Kioni Dudley	Friends of Makakilo
Gil Riviere	Senate
Vincent Shigekuni	PBR Hawaii
David Atcheson	Transition Oahu
Guye Lee	Hulikos Trust
Blake McElheny	North Shore resident
Andrea deCosta	Myself
Rendell Bowg (sp?)	Hui O Maui Ola (sp?)
Duane Preble	-

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Karen Piltz	-
Les Ihara Jr.	Senate
Michele Matsuo	Public
Allegra Matsuo Mossman	Public
Andrew Yanoviak	ESP & DC
Anthony Aalto	Sierra Club
Michele David	HPU – Sustainability Program

Notes – Stakeholder Meeting No. 2 - Maui

Tuesday, November 25, 2014, 6 p.m.

Maui Planning Commission Conference Room

250 South High Street, Kalana Pakui Bldg, #140, Wailuku

Community and Stakeholder Comments, Questions, and Perspectives

a. Share Your Experiences

- Access: Meeting locations are not conveniently located for public attendance.
- Sequence of events needs to be adjusted – Community Plan, Zoning, Land Use Commission (LUC) or County first?
 - Community Plan first, then LUC, then Zoning
- The LUC proceedings impose numerous conditions, thereby preventing county council members from deciding issues that should be reserved to the county because of home rule and because county councils are closer to the communities.
- LUC proceedings are duplicative with county proceedings
- LUC doesn't always have local perspective
- The LUC notice is insufficient to allow intervention – need more time.
- The LUC ignores input from individuals. But as bad as the outcomes have been, the process allowing for public input is good.
- Wants to keep this process that allows the public to speak
 - Reorder process to provide more protection
 - Home rule good
 - “You can ignore me even though I'm right – that's bad”
- The EA/EIS are prepared by developers or consultants paid by developers, preventing a neutral and unbiased report. EA process needs to be more non-biased.
 - Who funds the EA/EIS process?
 - How are LUC members chosen?
 - Need to educate LUC members on laws.
- More clarification on role of LUC:
 - What triggers an EA/EIS?
 - Retroactive rights?
 - More public education/involvement!
- The HRS protections of agriculture are outdated because they are based upon a sugar cane or plantation-based agriculture. The statutes and rules must be modernized to promote the new smaller diversified farming economy.
 - Put old rules on a diet – needs to be more pro-Ag
 - Update rules to reflect growing agriculture needs
- The EA/EIS process does not work:
 - The public can't comment on the final EA/EIS

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- The LUC accepts without debate the EA/EIS
- The LUC does not require that the mitigation measures within the EA/EIS be complied with and followed
- Any oversight power over areas of particular concern?
 - They're using lands in disagreeable ways
 - Power over water?
- Be more specific about the LUC:
 - The LUC is biased. Attorneys on the LUC are employed by businesses who are engaged in development. Realtors are on the LUC who have an interest in more development. Provide the development interests with an advisory voice, but not a seat on the LUC.
 - LUC commissioners with developer's interests. Should be taken off and be advising. They shouldn't have a vote.
 - Qualified people are not given a chance.
- There is a disconnect between goals and reality. The 2015 Maui Island Strategic Plan proposes to create a "unique sense of place." But a "unique sense of place" is not created by the expansion of cookie-cutter residences and retail outlets or big box stores. Smart growth principles are not applied to create open space, cultural sites, and walkable areas. We need to enforce smart growth principles. Maui County Strategic Plan land use should be more proactive reinforcing smart code/growth.
- Developers hire experts to help the developer. The county does not check the accuracy of the consultant reports.
- This Boundary Review is mandated, but hasn't been done in 22 years? Why are we here?
- The LUC does not conduct a good cultural review process. They are required to do so by the Ka Pa'akai case but they don't.
- Create a wilderness designation in which you can enter at your own risk without any liability to the landowner or obligation for signage. This may overlap with conservation classification. Inform visitors by putting notice on agricultural forms.
- Not all agriculture lands are actually agriculture because of slopes, gulches, etc.
- The County placed BMP requirements on Honokahau to deal with runoff. But the developer graded on a steep slope, and the BMPs couldn't stop muddy water from flowing into the ocean. Not all lands are good for Agriculture.
- Principles that guide the work of the LUC should not be superseded by political concerns.
- "To bring forth a project, petitioner must have the land title" – but the LUC doesn't look at land titles, even though there is a rule requiring proof of ownership. If the LUC does not deal with land titles, it should not require it or consider cases in which there is a dispute over land titles.
- LUC decision-making is ad-hoc, without looking at other projects or the cumulative effects. So, no single project makes a large impact, even though the cumulative

State Land Use Review Stakeholder Meeting

impact of a number of projects may be large. There should be a single comprehensive review once a year. Boundary reviews take place every five years but developers can't keep coming back – should look at all Boundary Review at one time.

- There is no training for LUC members, and no process to correct bad decisions.

b. An Ideal Land Use System

- More local expertise in local planning process.
- How can the public help make better conditions?
- Move to an Ahapuaa-based system where the overriding view is from a larger perspective.
- Protect land for long-term public benefit.
- County and State agency [processes?] should be more integrated – more seamless. There is duplication between county and State processes. The district boundary amendment and zoning processes are essentially the same (same criteria/issues considered at different times).
- Would like to see more meetings per island – just one is not sufficient.
- This review project a “step child”? Needs more funding for better public comment.
- People don't have the power to determine how their counties are developed, e.g., Honolulu Bay. Development should be guided based on what is good for the residents, not the visitors.
- We feel like we don't have the power to develop Maui the way we want to see it developed (i.e. hotels) – people have no power to determine locations or approvals of hotels.
 - Developers should benefit people that live here – not those who come to visit.
- LUC should know law and care about law
 - LUC should be tested to see if they know law
 - System needs to consider what's brought to table
- Will Spence (Maui Planning Director) was asked for his position: Everyone seems to agree that things can be done better. Public participation is a part of that process to make things better. Seven years is very long, and the county would welcome suggestions on how to shorten that time period. Agrees with home rule and the importance of community plans which should perhaps be more than just a factor, but also a primary requirement. Issues of enforcement have also been raised.
- Developers should be prohibited from having their employees arrive early and take all the seats before hearings. If employees testify, they should be required to disclose that they are employees of the developer.
- No one suggested getting rid of the LUC – most comments intended to improve current process. Process has good foundation.
- Need updated county plan maps and zoning maps.

State Land Use Review Stakeholder Meeting

- Nominate Charlotte for LUC.
- Food security is not a reality. We need more protection for agriculture. There needs to be an emphasis on what's best for the islands. What's best is not what is most profitable. We need to be more proactive in promoting agriculture; diversified agriculture.
- Climate change/sea level rise/sea walls are causing a loss of our beaches, but people are still building on the beaches. Concerned that buildings in West Maui falling into ocean.
 - (LUC commissioners should consider): What about setbacks? Coastal expertise?

c. Ideas for Improvement

- The LUC should be filled with knowledgeable people from the public who do not have any financial interest in development. There are regular people who are qualified to serve.
- Provide more public outreach to colleges, and middle and high school students because they will inherit the future which the LUC creates – to make process more understandable to young generation
- Create a wilderness zone (designation?) in which you can enter at your own risk without any liability to the landowner or obligation for signage. This may overlap with conservation classification. Inform visitors by putting notice on agricultural forms.
- There are three phases:
 - 1. Before the case gets to the LUC, there should be the EIS review, public participation, and public comment on the Final EIS
 - 2. The proper sequencing of approvals, with the community plans, then LUC, then zoning
 - 3. Enforcement and implementation. There should be a clearly established entity responsible for ensuring compliance with conditions (OP or County?), and a time limit for initiating the project (the project can expire). Annual reports are not enough.
- All EISs should be monitored and approved by a non-development/non-real estate/unbiased body. The likelihood of incompetent or biased agency decisions is too high.
- Affordable Housing Committee shouldn't accept EIS because they're not trained; needs to be fair. Cross-section of public.
- EIS: most important elements:
 - People hired for EIS need to be neutral/unbiased
- Reduce/compress the 7-year development timeframe – it is a challenge for smaller developers and for affordable housing projects. Approvals should be done in parallel, not sequentially for at least some of these projects.

State Land Use Review Stakeholder Meeting

- Create 3 additional LUC members for each county (or island) who would sit on cases for that county (island)
- Create a Native Hawaiian cultural advisor and archaeology expert on the LUC (staff?)
- Native Hawaiians as cultural advisor and archeologist. Objective: non-biased expertise!
- Create a sunset provision for every project (no expiration date on entitlements has adverse impacts). There is an adverse effect on county planning and circumstances change over time. Impose a sunset provision and enforce it.
- LUC should impose impact fees in entitlement process. The county evaluates all proposals for impacts on sewage, water, etc. The State only imposes an impact fee for schools, and the fees are too low. The LUC should impose impact fees for traffic, sewage, recreational areas, parks, bike lanes, fire, police, etc. People who live here already shouldn't have to pay for the development. County needs bigger stake in process up front to guide process.
 - Be careful before imposing too many impact fees that will have to be paid by the individual purchasing the home. Can't put everything on developers – may detract from affordable housing, for example. Some level of reason is needed.
- Open experimental technology, i.e. GMO test fields, should trigger EIS – current law doesn't take this into account.
 - Genetically Engineering tech – a concern for islands – need to update laws to reflect public safety issues. Genetic experimental technology is not covered by the rules which have not adapted to modern technology.
- Public GIS-based maps should be made available to the public before any district boundary amendment proceeding.
 - Public should be noticed of project 6 months ahead.
 - There should be mailing notices for developers' projects.
- More conservation lands along coastline – maintained by local groups – no more homes along beach.
- Provide adequate funding to the State for planning.
- Clear the LUC of any conflict of interests, and provide more outreach to the public.
- Follow the Aha Moku system. There should be a cultural practitioner on the LUC to bring the Aha Moku principles to the LUC.
- Entitlements shouldn't transfer from one owner to another.
- Entitlements should not be forever. If construction is not completed within a certain time, the landowner should be required to take down any construction and restore the land to its original condition.
- The EIS laws should be revisited and reevaluated based upon modern technology and conditions.
- The money from the developments should not go off-island or out of state, and developers should be required to hire first from the local labor force.

State Land Use Review Stakeholder Meeting

- The LUC should be trained and tested that they know the law, and they should be required to consider what the public brings to the table.

Attendance – Stakeholder Meeting No. 2 – Maui

Tuesday, November 25, 2014, 6 p.m.

Maui Planning Commission Conference Room

250 South High Street, Kalana Pakui Bldg, #140, Wailuku

Name	Organization
Capre (sp?)	Ao Makele (sp?)
Michele Lincoln	-
Johanna Kamaunu	Aha Moku o Wailuku
Diana Dahl	-
Megan Powers	-
Mae Nakahata	-
Warren Watanabe	-
Francis Ballard	-
Blanca Lajolette	Pacific Rim Land
Charlotte McLaughlin	-
Abner Nakihei Jr.	-
Dace B. Bonar	-
Tamara Paltin	-
Ellie Raw	-
Kevin Spellman	-
Edmond Bartlett	-
Dick Mayer	-
Trinette Furtado	-
Alice L. Lee	-
Darin "Trail" Delio	-
Frank DeRego Jr.	Maui Economic Development Board
Morgan Gerdel, AIA	Nishikawa Architects
Mark Pigao	-
Sandi Ioakimi	-
Scott Jensen	Council Services
Chancy Hopper	Council Services
Paz Padilla	-
Terez Amato Lindsey	-
Alapake Heanu	Wailuku Kou / (sp?)
Grant Chun	A&B Properties, Inc.
Rory Frampton	Rory Frampton Consulting
Pam P.	-
Nomi Carmona	Babes Against Biotech
John Fitzpatrick	-

Notes – Stakeholder Meeting No. 3 – Hilo, Hawaii

Thursday, December 2, 2014, 5:30 p.m.

Aupuni Center Conference Room

101 Pauahi Street, Suite 1, Hilo

Community and Stakeholder Comments, Questions, and Perspectives

a. Share Your Experiences

- The public wants more information about the State Land Use (SLU) Review task force:
 - What is the composition of task force? How do you become a member of task force?
 - What is the task force doing?
 - Is the review required by law?
 - Is it an open and public process?
 - Is there across the board representation on the task force?
 - Some members of the public are concerned about the balance of the task force (in terms of development versus environmental interests).
 - What are the main themes of discussion during task force meetings?
- The same process is now prescribed regardless of the cost of the property but this should be revised. The “little guy doesn’t stand a chance” because it’s too big of a burden.
- We have been successful in protecting land that would otherwise be developed via the Land Use Commission (LUC).
- There are many Chapter 205 issues.
- The system is broken.
- Your office needs more money/funding to do what you need to do.
- We can’t reasonably preserve everything like nothing has happened, like there has been no development.
- Should DHHL represent indigenous people? Should this be part of the process?
- What about Hawaiian water rights?
- People aren’t using agriculture for agriculture because the lots are too small, so how are the Ag lands being used instead?
- Is Hawaii’s history and politics involved in this [review?] process? The old land use system worked well and there is a lot we can learn from it.
- Regarding managing conservation lands, government agencies are practicing “extreme management” (e.g. re-planting fruit trees).
- What laws does the LUC operate under to make decisions?
- I support contested case hearings.

State Land Use Review Stakeholder Meeting

- Who is involved in the process of re-zoning land? Are they required to show ownership of clear title?
- Sixty to seventy percent of properties have unpermitted structures because the land use process is so onerous – this needs to be looked at. The burden is the same for the big and little guys which is not fair.

b. An Ideal Land Use System

- Public access should be easier.
- The land use process needs to be fair and open to everyone.
- Property owners need better access in the development process.
- Everyone should be able to talk to all departments in government to assist them through the development process of coastal lands. As it is now, there is often no response from government officials. It is frustrating and borderline illegal.
- Avoid re-zoning land to urban; there is already a lot of urban land and there is no need for more.
- There should be more support for local food from agricultural land uses.
- What is the relationship with the ahupuaa system and the current land use system? The ahupuaa system should be incorporated in the existing land use system.
- Some members of the public are concerned about the balance of participation of the LUC regarding financial and development interests. In general, it seems “over weighted” with development interests; there should be a better balance.
- There should be more [stakeholder] meetings in all counties.
- When determining what will happen with future of lands, policymakers need to be more aware [of the varying interests at play] in order to balance political pressure.
- Two issues OP should address:
 - There is currently no balance in the conversion of conservation land into industrial land (e.g. Mauna Kea).
 - Geothermal subzones should be put back in Chapter 205 to give better perspective to lands subject to energy development.
- There needs to be a systematic approach (not arbitrary) that the public can access when buying land so that they are aware of what they’re getting into and so that we can protect our lands.
- Consider the balance between the “concrete jungle and affordable homes.” It is not an impossible task; it can be done.

c. Ideas for Improvement

- There should be a public advocate on the LUC because it is difficult for the public to gather all of the facts.
- We need to look at what works and what needs fixing.

State Land Use Review Stakeholder Meeting

- Shoreline erosion and climate change should be incorporated in the SLU Review analysis.
- Video testimony at LUC so people on neighbor islands can participate.
- All departments should keep stakeholders informed of the land they own and give early notification when development on those lands is to occur.
- The land use law should be revised to support sustainable lifestyles and sustainable communities (i.e. sharing land), making them easier to develop/achieve.

Attendance – Stakeholder Meeting No. 3 – Hilo, Hawaii

Thursday, December 2, 2014, 5:30 p.m.

Aupuni Center Conference Room

101 Pauahi Street, Suite 1, Hilo

Name	Organization
Cory Harden	-
Nancy Cook Lauer	West Hawaii Today
Amy Miwa	County Council
Dwayne Yoshina	Community Member
Clinton Yamada	Planning (??) – DOT
Cherub Silverstain	Community Member
Susan Lancaster	Lancaster Real Property
Ken Church & Joan Hildal	-
Kerri Marks	Occupy Hilo
Jim McCully	Community Member
Nelson Ho	Sierra Club
La'a Carvalho	Ma'a Radio
Paul Makuakane	-
Deborah Ward	Sierra Club

Notes – Stakeholder Meeting No. 4 – Kona, Hawaii

Wednesday, December 3, 2014, 6:00 p.m.

Natural Energy Lab Hawaii Conference Room at the Gateway Energy Center

73-4485 Kahilihili Street, Kailua Kona

Community and Stakeholder Comments, Questions, and Perspectives

a. Share Your Experiences

- All should voice as to whether there should be telescopes on Mauna Kea.
- Land use districts do not acknowledge ahupuaa land divisions or watershed – don't coincide with rain follows forest.
- Need clarification as to whether wells and watersheds are in the Agricultural District or the Conservation District. Where do the maps show the watersheds?
- Regarding the Bridge Aina Lea ruling:
 - What is the status of the needed infrastructure?
 - What is the hold up?
 - What about enforcement of failed conditions?
 - When is reclassification appropriate?
 - If conditions are not met after many years, is the Supreme Court saying you cannot revert the land?
- In Land Use Commission (LUC) approval, is there an express condition of reversion in the Decision and Order? Would reversion be easier if it was expressly stated?
- A successful example of converting land to the Conservation District is Pohue Bay, which was not suitable for the Agricultural District.
- Agricultural parks are not successful in this state (i.e. Keahole).
- There are high density subdivisions planned in Koa Ridge and Hoopili, on good agricultural land. How do statutes allow for that? How can those lands be urbanized?
 - Koa Ridge: It's about aesthetics – beautiful land for homes that produce millions of dollars. This creates the balance that we need.
- There are thousands of 1-acre lot agricultural subdivisions, although there is no agricultural production there. There should be no 1-acre lot subdivisions for residential use in the Ag District – the economics do not work (think infrastructure improvements, dirt, etc.) and the risks are too high.
 - “I disagree! My family lives on 1-acre land and it is productive land.”
- It is difficult for the public to get involved.

b. An Ideal Land Use System

- Efficiency is not democracy – efficiency should not be the primary goal of land use process. Transparency and inclusion, however, are very important in the land use process. In Ooma, each step served the public well to achieve the end goal – triumph for community vision for protection.
- Need more efficiency in terms of quality of development and money for development. Need to see certainty in terms of time [for processing land use applications?] – the processes need to be parallel process, not linear.
- It is important to be careful and protect places with good soil. Reclassifications need to be for the good of general public – follow the constitution.
- All agencies in government need to work together to solve homelessness and recognize homelessness is a symptom of a problem. We need to make better use of resources (health, education, jobs.) and community involvement. We need land and a place for the homeless.
- The developer is responsible for enhancing the environment.
- There is a lot of land in the Ag District and some of it needs to be moved to the Rural District. There is an appropriate process to reclassify agriculture land to rural land and we can use it. Work with County Planning Departments to do it.

c. Ideas for Improvement

- Align district boundaries with ahupuaa boundaries.
- Designation of Important Agricultural Lands process is good. We should fund counties' IAL designation early in the process; counties need more motivation/funding.
- Expressly state reversion is an allowable condition in LUC Decision and Order.
- Land use categories need to be revised to be more specific for natural resources – there need to be more categories (i.e. lava which is a “thing of beauty”).
 - Need more land use categories in between urban and conservation.
- When land use applications are submitted to reclassify agricultural lands to rural lands, OP should support it.
- Make timeframe shorter for finishing plan [General Plan and Community Development Plans] because things change rapidly.
- There is an expanding market for ornamental agriculture.
 - Increase size/availability of agriculture lots.
 - Large sums of money going into ornamental – look into reclassifications of conservation land to agricultural land.
- Do not allow building on conservation land (protect the shoreline areas from investment). If you want to build there, you must reclassify.

State Land Use Review Stakeholder Meeting

- Developers should not hire their own consultants in the EA/EIS process due to the potential conflict of interest.
 - In California, the EIS goes out for RFP.
- Need to provide the schools and the general public with [land use] education because the process is difficult to understand.
- In order to encourage quality development, land use decisions should be made in less than one year. The current time requirement is too long; it should be reduced to 90 days or 6 months and if not decided within that time, then kick back to the county.
 - Ninety days is not sufficient to make a decision.
- Create a GIS tool which would allow the public to view land use permits that are in process, issued, etc.
- Create an email list to send notifications to the public of any [land use] decisions made, and extend the noticing buffer. The public needs easier access.
- Auto-approval of land use applications should never be given – the 365-day rule to make a decision is not good and it may indicate that the development was very bad.
- Do not overlook aesthetics, and it is ok to slow the process down to look at this – social and economic values increase if the project is “pretty.”
- Utilize federal money to help.
- Incomplete applications sent to the county or state delay the process, so make sure that applications are complete upon submittal.
- Make the application criteria/guidelines clearer or more simplified (and this may address the timing issue).
- State agencies need to take CDPs into consideration when planning and making decisions.
- Surrounding agricultural lands and conservation lands can act as buffers which is very important (i.e. Ooma).

Attendance – Stakeholder Meeting No. 4 – Kona, Hawaii

Wednesday, December 3, 2014, 6:00 p.m.

Natural Energy Lab Hawaii Conference Room at the Gateway Energy Center

73-4485 Kahilihili Street, Kailua Kona

Name	Organization
David Tarnas	MCS International
Jojo Tanimoto	-
Jeff Zimpfer	National Park Service
Kelley K. Ashley	-
Carolyn Lucas-Senk	West Hawaii Today
Aric Arakaki	National Park Service
Dave Bateman	Self
Shannon Rudolph	Self
Liz McCourt	-
Kelly Greenwell	Self
Janet Britt	Hawaiian Island Land Trust
Janice Palma Glennie (sp?)	Self
Ross Wilson Jr.	-
Nancy Pischio	Self
Bobby Command	County Planning Department
Jaime Ortiz Nava	County Real Property Tax Office
Linda Goeth	Self
Nakoa Nelson	Self
Anika Glass	Self
Brian McCourt	-
J.Leina'ala Sleightholm	Self

Notes – Stakeholder Meeting No. 5 - Kauai

Wednesday, December 10, 2014, 6:00 p.m.

Kauai Planning Commission Conference Room

4444 Rice Street, Lihue Civic Center, Moikeha Building, Room 2A-2B, Lihue

Community and Stakeholder Comments, Questions, and Perspectives

a. Share Your Experiences

- Streams are polluted; we don't have water – and the system works?
 - We're not protecting public trust resources.
 - Process doesn't work – one of goals is to develop land, when is enough?
- What's not working is the length of time for district boundary amendments. Will still have development; needs to be done in systematic manner. To do that, we should rely on County plans, state functional plans, and other approvals.
- Timeline of 7+ years doesn't reflect time to get general plan amendments, which is 1+ year.
- Quasi-judicial process adds enormous amount of time to process
 - There's an impact on the cost of housing from length of process.
- We're experiencing pollution coming off of Agriculture lands, due to legacy of plantation pesticide use (i.e. atrazine levels).
- Few watersheds are in the Conservation District – just in the upper watershed – no one considers streams as part of Conservation District.
 - Need to adopt comprehensive storm water protection program.
 - Include rivers and stream corridors in Conservation District.
 - Ahupuaas and watersheds are basically the same.
- Major landowners now participate in the Watershed Alliance and lands are included in Conservation District (upper watershed).
- Important Agricultural Lands (IAL) – garbage in/garbage out:
 - Legislative criteria is not good, for example:
 - 18,000 acres of taro at time of Cook's arrival, but can't designate as IAL now because not currently in agriculture.
 - Removal of water source upstream from taro led to demise of taro.
- Environmental and cultural issues now need to be addressed in EA/EIS before going to Land Use Commission – this takes care of some of these concerns, addresses the concerns about impacts.
- At time of adoption of Land Use Law, big issue/goal was to protect Ag lands. Back then, counties may not have had general plans in place. State called in to manage county land use. Now, all counties have plans and capacity to manage growth.
- All these watershed issues: how do they relate to what you're doing? What you're looking into? What's the relationship to the land use process?

State Land Use Review Stakeholder Meeting

- When LUC acts like Planning Commission and Council, you get overlap in conditions and sometimes different conditions.
 - Too much detail at LUC level
- Reason this room isn't packed is people are disenfranchised from the current process; it's top down.
 - Oregon has found that the number of contested case hearings has dropped since establishing watershed councils.
- Regarding agriculture and agricultural lands:
 - Embarrassing that we're importing so much food into our state.
 - Need to say where best soils are and where is water for Ag.
 - IAL designation not working.

b. Ideas for Improvement

- Re-establish watershed councils.
- Water code doesn't define stream or river channels.
 - Other states (Washington): channels are included in riparian zone.
- Made same recommendations for 20 years and not going anywhere; reefs dying.
 - Have destroyed urban areas on Oahu; cemented watersheds there; that's why native fish are dying.
- Hawaii has top-down process. Oregon has a bottom-up approach for watershed improvement or management. Hawaii had Aha Councils.
- Set limit on development based on impervious surfaces and available resource/capacity.
 - Take watershed-by-watershed approach.
- General plans are way too general – need to be very explicit about what and when they are going to do it.
 - No variance; no after-the-fact permits.
- General Plan has good language for taking ahupuaa approach, but nobody does it.
 - Attorney General should weigh in/rule on stream channel definition.
 - Restore state water code review commission; has not been reviewed for 15 years.
- Maybe State should decide on larger projects, e.g., 500-1,000 acres; counties decide everything smaller.
 - Counties want more home rule; they are better able to do this.
- Sat on State Functional Plan (SFP) committee and spent a lot of time participating in this. Maybe OP could tie SFPs to State land use approval process.
- Water should be driving this process: there is not enough drinking water for all the lands being planned for growth.
 - Need more inclusive process, starting with bottom-up watershed councils.

c. Other Comments and Comments about State Land Use System Review Process

- Can change be done through Administrative Rules?

State Land Use Review Stakeholder Meeting

- Task Force proceedings should be accessible through video-conferencing.
- Can LUC oppose or argue against OP report and findings?

Attendance – Stakeholder Meeting No. 5 – Kauai

Wednesday, December 10, 2014, 6:00 p.m.

Kauai Planning Commission Conference Room

4444 Rice Street, Lihue Civic Center, Moikeha Building, Room 2A-2B, Lihue

Name	Organization
Terry Abendroth	Private Party
Don Heacock	Hawaii Farmers Union United
Tom Shigemoto	A&B Properties, Inc.

State Land Use Review Stakeholder Meeting

Notes – Stakeholder Meeting, APA Hawaii

December 8, 2014, 11:30 a.m.

PBR Hawaii Conference Room

1001 Bishop Street #650, Honolulu

Stakeholder Comments, Questions, and Perspectives (*Responses in italics*)

1. Has anyone commented on the original intent of the land use law at the public meetings? *At the public meetings, some have expressed that the land use law has effectively protected lands and is less political than the county zoning process.*
2. Has anyone asked about the agricultural industry at the public meetings? *No*
3. The biggest problem is the time it takes to obtain permits. The permitting time in Hawaii is long as compared to the mainland. This may deter businesses from coming to Hawaii.
4. Has OP reached out to the new committee chairs at the State House and Senate? *There are legislative representatives on the task force. OP will be reaching out to the new committee chairs.*
5. Is the land use law purpose and intent being looked at in its historical context? The land use law was written when there was a statewide agricultural industry, now it is more island based. Should let counties regulate agricultural lands and decide what to do with non-IAL agricultural lands.
6. There should be a constitutional amendment for stating the importance of agricultural lands.
7. Urban land has not increased at the same rate as population. Urban density has increased because while population has doubled, there has been very little increase in urban lands.
8. Without an affirmation of purpose for the State in the land use system, the LUC reverts to a zoning-type project level review. There is a need for a clear defining role for the LUC. Commissioners need criteria and guidance to focus upon.
9. The public believes that the LUC is a planning commission, which it is not. The LUC does not match projects to land use plans.
10. County planning departments have struggled for many years with appropriate uses for and between the agricultural and rural districts, and the legislative intent of the state land use districts. The 1/2 acre minimum lot size can lead to rural sprawl.
11. The Agricultural district is the "residual" district, but creating a new Open Space District might lead to suits for reimbursement.

State Land Use Review Stakeholder Meeting

12. It is very difficult to do rural development well. In addition to typical zoning regulations, more tools are needed at the county level to discourage rural sprawl. A new concept is needed for the rural district.
13. The Rural district could be effective if it is used properly. Should non-IAL lands be shifted to Rural district? *The Rural district is not well understood. There would need to be very specific criteria on the Rural district for it to work properly and this is hard to do.*
14. Agriculture in Hawaii is a romantic notion. Economically it makes more sense to import many agricultural goods, however, the legislature will continue to support agriculture because it is important to our history.
15. Look at the timing of the trigger for HRS 343 as it relates to the LUC. Due to the time it takes to obtain entitlements, an HRS 343 document can become stale. Perhaps do HRS 343 documentation after LUC action when there is more clarity on the project.
16. As long as the LUC does project-specific reviews, HRS 343 documentation will be required to provide commissioners with the details they desire. Does the State need a project-by-project review to do boundary amendments?
17. The State law should be changed to redefine the "earliest practicable time of decision-making" that HRS 343 documentation should be prepared to ensure that information stays current for projects.
18. In Washington State there is a phased environmental review process. An EA is done up front followed by an EIS as you get further down the line.
19. There is a need for more transparency and public review at the LUC. Also greater commitment to consensus building. Oregon and Washington are states that have demonstrated a commitment to building public consensus.
20. If the report OP is preparing does not contain recommendations, how will a decision be made to move forward? The danger is that OP will issue the report and then proceed with minimal changes. There doesn't seem to be a way to get policy issues to the forefront. *No legislation is being proposed for the 2015 session, but OP may consider it for 2016.*

Attendance – Stakeholder Meeting – APA Hawaii

December 8, 2014, 11:30 a.m.

PBR Hawaii Conference Room

1001 Bishop Street #650, Honolulu

Name	Organization
Paul Schwind	-
Dean Minakami	-
Lee Sichter	-
Tom Smyth	-
Bill Yuen	Alston Hunt Floyd & Ing
Melissa Uhl	Alston Hunt Floyd & Ing
Elizabeth Chinn	-
Vincent Shigekuni	PBR Hawaii
Kimi Yuen	PBR Hawaii
Ingrid Friedberg	R.M. Towill Corporation
Cal Chipchase	Cades Schutte
Bob Freitas	Department of Hawaiian Home Lands
Jesse Souki	Department of Land and Natural Resources
Tessa Ng	Munekiyo & Hiraga
Bob Crone	-
Kathy Sokugawa	City & County of Honolulu Department of Planning and Permitting
Robert Mills	PBR Hawaii

Notes – Stakeholder Meeting – Real Estate Attorneys

Tuesday, January 6, 2015, 12:00 p.m.
Office of Planning Conference Room
235 S. Beretania Street, Honolulu

Stakeholder Comments, Questions, and Perspectives

1. Assign hearing officer to the case to make the process more efficient.
 - Would use the same contested case process;
 - Continuous hearing days could allow cases to conclude faster without the multiple delays required when only two-day increments are available
 - Public testimony would not be required during the hearing.
 - Public testimony could be given at the time of the assignment and after the matter is returned to the Commission (added post-meeting).
 - This process may be particularly useful when intervenors are involved;
 - This process may be particularly useful for long or complicated hearings.
 - The Land Board often uses hearings officers.
2. Set aside one day for public testimonies, easier for public to plan.
3. Hold public testimony after rather than before hearing, so public has benefit of hearing presentations and discussions. HCDA follows this process.
4. EIS requirements already provide for much of the information discussed and raised at LUC hearings, so you could expedite petition hearings by omitting most consultant study presentations.
5. Identify and focus on important state interests, and eliminate issues that are not state interests that will be covered later at the County;
 - There is an overlap of state and county interests;
 - Identification of important state interests may be difficult to reach agreement on
 - Archaeological and cultural impacts; public trust resource impacts, environmental impacts, state facility impacts may be some of the important state interests that some people want protected at the state level;
 - Items like fire, police, and ambulance services seem to be county interests that do not need to be addressed at the LUC;
 - Are there other issues like drainage, sewer, landfill, etc. that can be eliminated from LUC review?
 - What do you do if a commissioner has an interest in and wants to talk about drainage?

State Land Use Review Stakeholder Meeting

6. The growth in the number of conditions is problematic, redundant with law, creates financing issues, difficulties when trying to release conditions in the future.
7. Enforcement – The Aina Lea Supreme Court decision throws enforcement into question. The LUC cannot just issue an Order to Show Cause, but essentially they need to go through a reverse reclassification process when the petitioner has substantially commenced work on the project.
8. Per Lanai Water and Aina Lea decisions, counties are clearly responsible for enforcement of LUC conditions. Historically, counties have not initiated enforcement actions based solely on LUC conditions.
9. Contested case requirements needed? Contested cases are currently a requirement per the Supreme Court's Town decision. It is unclear if a legislative change would be sufficient to change the contested case requirements for case-by-case reviews. Regional amendments every so many years could be quasi-legislative.
10. Per Kapaakai and Kauai Springs decisions, archaeological and cultural impacts and public trust resources must be considered and conditions imposed as needed to address issues such as cultural and water resource impacts. Are there other ways of protecting these interests other than simply delegating the responsibility to the counties? Can the state just delegate these issues to counties consistent with its constitutional obligations?
11. Public advocate for intervenors seems like a good idea, but where would this advocate come from?
12. A strong chair is often needed and much appreciated when an intervenor is pro se. A hearings officer could also fulfill this function of providing clear direction and parameters to pro se intervenors.
13. The loss of so many experienced commissioners will pose challenges for the new commissioners who will not have the benefit of the experiences of the past commissioners.
14. Governor should set the direction for LUC re growth management. Governor can affect direction by appointments to the LUC.
15. Two 6-vote requirements can be problematic (action vote, then D&O adoption) and should be combined – motion to approve based on findings and conditions. May be easier to get one 6-vote decision, but this requires more upfront work.
 - o But the action vote may make it easier to focus on and get consensus on the specifics of the D&O.

State Land Use Review Stakeholder Meeting

16. LUC should circulate proposed D&Os w/conditions to parties in advance to facilitate discussion and approval.
17. Site visits should not be held until after intervenors if any are identified.

Attendance – Stakeholder Meeting – Real Estate Attorneys

Tuesday, January 6, 2015, 12:00 p.m.
Office of Planning Conference Room
235 S. Beretania Street, Honolulu

Name	Organization
John S. Nuha	HSBA Real Property and Financial Services Section
Jodi Yamamoto	Yamamoto Caliboso
Diane Erickson	Department of Attorney General
Curtis Tabata	Matsubara – Kotake
Wyeth Matsubara	Matsubara - Kotake
Greg Kugle	Damon Key
Jeremy Grad	The Grad Law Firm
Scott Arakaki	Badger Arakaki
Jennifer Lim	Carlsmith Ball
Yuko Funaki	Kobayashi, Sugita
Bryan Yee	Department of Attorney General
Rodney Funakoshi	Office of Planning