

# State Land Use System Review



**DRAFT REPORT**  
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Prepared by  
**Office of Planning**  
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Department of Business, Economic Development & Tourism



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## PREFACE

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In 2014, the State Office of Planning, on its own accord, initiated an examination of the State land use system with focus on the State's land use district boundary amendment process. The review sought to explore what aspects of the current system work, and where in the process might greater efficiencies and effectiveness be achieved.

Although there are other components to land use management, the State's land use system is important because it defines how Hawaii's lands may be used—as agricultural, urban, conservation, or rural lands. For major development projects, the State land use district reclassification is often the first land use approval needed for the development.

Much has changed since the original Land Use Law was established in 1961, including the State's population, housing and transportation needs, and the state of our natural and cultural resources.

Through a series of Task Force and public meetings, the Office of Planning has developed a planning framework and compiled a list of potential system improvements. These range from being relatively easy to implement, by fine tuning the existing system, to more complex solutions requiring a new or very different system. Appreciation is extended to Task Force representatives, other stakeholders, and the public across the State that have shared their thoughts and comments with the project team.

The preliminary set of suggestions require further research and analysis to better understand their cost, effectiveness, and implications, but they represent an important first step toward long-term change.

# EXECUTIVE SUMMARY

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## 1. STATE LAND USE SYSTEM REVIEW PROJECT

On its own initiative, the State Office of Planning (OP) has undertaken a review of the State land use system, with a focus on the State Land Use Commission's (LUC) land use district boundary amendment process in Hawaii Revised Statutes (HRS) Chapter 205, commonly referred to as the State Land Use Law. Since passage of the Land Use Law in 1961, there have been recurring concerns that the process has become increasingly complex, duplicative, and time-consuming.

In February 2014, OP convened a task force representing State agencies, county planning departments, and development, civic, and environmental interests to discuss and identify improvements to the State land use system. From November 2014 to March 2015, OP hosted community and stakeholder meetings statewide to solicit broader public input.

The purpose of the Review is to explore ways to increase the effectiveness and efficiency of the land use system without compromising the original intent of the law, i.e., "... to preserve, protect and encourage the development of the land in the State for those uses to which they are best suited" (Act 187, Session Laws of Hawaii 1961).

This report is a product of the Office of Planning. While Task Force, community, and stakeholder group members provided invaluable insights and expert opinions on the State land use system, the findings of the report are those of OP and are not necessarily endorsed by the Task Force or its individual members. OP anticipates that the Review findings will lead to further work and recommendations for consideration by the Land Use Commission, the Governor, and the Legislature.

## 2. OVERVIEW OF THE CURRENT SYSTEM

Hawaii's pioneering State Land Use Law was enacted in response to the State's rapid and ill-planned growth following World War II and statehood. All lands in the State are classified into four districts—Urban, Agricultural, Conservation, and Rural. The Agricultural and Conservation Districts comprise 95 percent of all lands in the State. The Urban District comprises 4.9 percent and the Rural District less than 0.1 percent of all lands statewide.

At the State level, the Hawaii State Plan sets goals, objectives, policies, and priority guidelines to guide the future long-range development of the State, with more detailed agency Functional Plans directing actions (HRS Chapter

226). At the county level, general plans, community plans, and development plans guide land use regulation.

Also at the State level, the Land Use Commission is a nine-member volunteer body appointed by the Governor whose major areas of responsibility include:

Land Use District Boundary Amendments. Petitions to amend district boundaries are subject to approval by the LUC

Special Permit. Within the Agricultural and Rural Districts, “unusual and reasonable” uses not otherwise allowed may be permitted by the county planning commissions, and if greater than 15 acres, also approved by the LUC.

Important Agricultural Lands. The LUC designates Important Agricultural Lands (IAL) through a voluntary landowner or county-initiated process.

### 3. PREFERENCES FOR A DESIRED LAND USE SYSTEM FOR HAWAII

Through discussions with the Task Force and the broader public, OP developed a collective vision of an ideal land use system, which was used to guide further discussions of what improvements might be needed. The following reflects the desired outcomes from an ideal land use system that emerged from Task Force and public input.

Land Use Outcomes. A desired land use system for Hawaii should result in:

- Protection of natural and cultural resources,
- Protection of agricultural lands,
- Built environment and communities that protect the natural environment and meet societal needs,
- Resilience to hazards, and
- Sustainable natural and built ecosystems and environments.

System Performance. The desired system should provide for:

- Fair and open process for land use decision-making,
- Certainty and predictability in the land use decision-making and development process,
- Sound analysis and informed decision-making,
- Clear policy and planning framework for land use decision-making,
- Consistency and conformance with policies and plans,
- Plan-based, plan-driven land use decisions and development,
- Infrastructure capacity concurrent with planned growth,
- Effective enforcement of compliance with policies and plans,
- Efficient, cost-effective review and decision-making process,
- Efficient and sustainable use of resources, and
- Adaptable to changing needs and conditions.

There was general agreement that the State has a major role as a resource manager for public trust resources including water resources, cultural resources



and agricultural land resources, and for public health, transportation, housing, and educational facilities.

There was also general agreement that the counties have the primary role in planning for and managing urban growth and development at the local level, ensuring adequate infrastructure to support planned growth and infill redevelopment, protecting community character, and ensuring that development does not adversely affect the capacity of natural systems to support communities.

#### 4. ANALYSIS OF LAND USE SYSTEM ISSUES

Since 1975, the decision making process for amending State land use district boundaries has followed contested case hearing procedures as a result of the Supreme Court's *Town v. Land Use Commission* ruling in 1974. From 1975 to present, there were 427 petitions for district boundary amendments, of which 70 percent were approved, 6 percent were denied, and 11 percent were withdrawn or pending. During this time, approximately 56,880 acres were reclassified from the Agricultural and Conservation Districts to the Urban District.

In this Review, OP found there is no consensus that Hawaii's Land Use Law or the State land use system needs major change. There are divergent views, reflecting the interests of the respective stakeholders, as to how well the system—and the processes used—are working. Below is a summary of issues and problems most frequently raised over the course of the Review project.

1. Meaningful public participation. The general public has commented on the difficulty in participating effectively in the land use process, hampered by the lack of an easy means to testify; poor notification of hearings; and the need for help to demystify the process.
2. The land use process takes too long. A frequent criticism is that the land use process takes too long, contributes to project delays and higher costs for development, and discourages developer investment in Hawaii. Developers say that it takes anywhere from seven to ten or more years to get land use permits including county permits. On the other hand, proponents of the State's role in land use point to the need for full and deliberate examination of project impacts.

The timeframe for LUC decision making adds at least one year to the development process. For the period 1995-2014, the median processing time for petitions for district boundary amendments was 1.14 years or about 14 months. Intervention in a docket lengthens the time for LUC approvals by an average of 34 percent.

3. Project-by-project review doesn't foster effective project or plan implementation. Critics of the LUC's role in project-by-project reviews feel it is duplicative of county zoning and permitting processes, and that it gets

into details that are not relevant to determining the appropriate district classification. Environmental and community representatives feel a second level of review is warranted and ensures a full examination of the concerns and impacts of proposed development.

Since 1975, LUC proceedings have delved into greater project detail, taken slightly longer to process, and resulted in a gradual increase in the number of conditions imposed on petition approvals, from zero in 1976 to a median of 25 conditions post-1995.

4. The LUC process duplicates county zoning. Critics contend the LUC process is redundant and duplicative of county zoning. Supporters of the existing system assert there is continued need for a second level of scrutiny and State review, providing balance to county land use decision making processes which they believe are unduly influenced by developer interests. The LUC process provides a forum for State agencies to anticipate and address project impacts on infrastructure, facilities, services, or resources of agency concern.
5. LUC should go back to a quasi-legislative process. Changing the LUC process from a quasi-judicial process to a quasi-legislative process was frequently recommended. But for proponents of the quasi-judicial process, retaining the contested case hearing protects public trust resources and public interest in major land use decisions statewide.

In *Town v. Land Use Commission* (1974), the Hawaii Supreme Court ruled that to protect due process for impacted parties, the LUC must conduct contested case hearings which allow for interventions. From 1975 to present, there were intervenors in 78 petitions, 18 percent of all petitions. Quasi-judicial decisions are also easier to appeal than quasi-legislative decisions of county councils. Even though most petitions are approved over time, environmental and community groups still see this as the only viable means to provide a check on county land use decision making.

6. Certainty and predictability for parties. The land use process is hampered by little certainty and predictability for all parties; there are no clear standards or rules to follow in the land use process. The LUC decision making and development process can be disrupted by intervenors, appeals, or orders to show cause. There are multiple decision points in the approval/development process where permit documents are subject to unclear standards, or where the documents/applications can be appealed.
7. Protection of resources.

### Agricultural Lands

Although counties designate agricultural lands in their general plans and community plans, the process of county identification of Important Agricultural Lands (IAL) is incomplete. The district standards in Chapter

205 contribute to the siting of non-agricultural uses in the Agricultural District: the minimum lot size and allowable density are more suited for suburban or semi-rural settings. Over the years, the permissible uses for the Agricultural District have been amended repeatedly to broaden the uses allowed in the Agricultural District—from 5 uses in 1965 to 21 uses currently—which has weakened the nexus to agricultural production and bona fide farming. The Special Permit has been increasingly used to permit non-agricultural uses, notably vacation rentals, in the Agricultural district.

### Rural Lands

There is limited use of the Rural District. Chapter 205's Rural District standards and uses are inappropriate for managing rural landscapes and settlements—they encourage low-density sprawl and increase demand for extensive infrastructure and services. There is no flexibility to texturize or differentiate rural communities and land use patterns; rural communities in effect are urban.

### Conservation Lands

There is no clear vision or broad understanding of what critical conservation resources and conservation resource lands should be protected and how they will be protected. Continuing development pressure, coastal development, changes in watersheds, and climate change will continue to challenge the statewide land use system to develop new tools and models for more effective management of our conservation resources and built environment.

8. Implementation. The system falls short in providing adequate infrastructure and public facilities in planned growth areas. There is no long-range comprehensive planning and coordination between State and county capital improvement planning, and State plans are absent or not updated to inform the LUC or county land use decisions. The Hawaii State Plan does not provide effective coordination for a statewide land use system. State functional plans intended to guide the allocation of State resources are over 20 years old and are not used.

The current system also hinders the development of sufficient affordable or workforce housing through the cost of the actual process, the time for review, and the uncertainty of the result. While some have claimed that the LUC process restricts the total land supply and increases the price of houses, preliminary OP analysis of undeveloped lands within the Urban District using satellite aerial imagery show there are significant amounts of undeveloped lands within the Urban District on all islands, including approximately 25,700 acres on Oahu, 5,400 acres on Kauai, 9,800 acres on Maui, and 33,900 acres on Hawaii island.

9. Comprehensive analysis for informed decisions. Community participants are concerned that the cumulative impacts of projects are not addressed,

analysis of carrying capacity is needed, and developer-prepared environmental documents are biased. Others feel there is a need for better indicators and planning thresholds such as for transportation and water.

For petitions before the LUC, the detailed assessments, plans and studies are undertaken too early in the development process. Some participants suggested conducting environmental reviews later in the development process, when project plans have matured.

10. Adequacy of enforcement of Chapter 205. There is inadequate enforcement of conditions imposed by the LUC and with the enforcement of uses in the Agricultural District. The LUC is authorized to determine whether an action is in violation of its conditions, to order that the violation cease, and to revert the Petition Area to its former classification. The LUC, however, does not have the power to enforce a cease and desist order, such as the power to fine. Counties can enforce LUC conditions but this power has not been exercised.

Because reversion is such a harsh penalty, it is not appropriate for all violations. The value of the Order to Show Cause proceeding as a threat, therefore, may outweigh its value as an actual punishment.

OP has reviewed some best practices in other states such as California, Maryland, Oregon, Washington and Rhode Island which have instituted land use planning systems that strengthen the ties between state and local planning and to reinforce the connection between plans and regulations. California, Maryland, and Rhode Island require, by statute, certain general plan elements and provide financial and technical assistance during the preparation of local government plans. In states like Oregon, state planning agencies review and approve local plans to ensure consistency with state plans and planning policies.

Other states are able to balance development and protection without reliance on quasi-judicial proceedings. Oregon and Washington rely on state policy guidance, the preparation of comprehensive plans, and consistency with these plans as the foundational elements of their land use systems, along with land use appeals boards to hear land use disputes.

## 5. PROPOSED IMPROVEMENTS TO HAWAII'S LAND USE SYSTEM

The Task Force and other stakeholder proposals for improvements were organized into two categories:

- 1) Fixes to the system that can be implemented in the near term or can be made with little or no changes to the existing law; and
- 2) System Redesign proposals that seek fundamental reforms to how the State land use system operates.

## 5.1 FIXES TO THE SYSTEM

### 5.1.1 Improving Public Participation

- Live Web Streaming of Hearings; Testimony via Teleconference or Video Conference. The use of available technology to increase public awareness and access to the hearings has been suggested, which could include telephone conferencing, use of public access television stations, or internet web conference.
- Hear Public Witness Testimony After Initial Petitioner Presentations. It has been suggested that the public would be better served and better able to speak to the project if they were allowed to testify towards the end of the day's hearing or after the petitioner presents his case.
- Improved Notice and Signage. To improve public awareness and involvement, the petitioner should be required to post and remove notice signs of the proposed development and upcoming hearing at or near the project site. More advance notice of all hearings should be provided to the impacted community.
- Public Advocate. The notion of a public advocate to represent individual citizens or community groups would provide more equal footing with the petitioner which has retained legal representation and consultants to argue his case.

### 5.1.2 Better Information for Decision Making

- Use of Thresholds to Guide Decision Making. The use of thresholds has been suggested to provide more objective standards to guide land use decisions relative to the adequacy of public resources such as transportation and water resources. In highways transportation planning, level of service operational criteria could be relied upon to determine the adequacy of roadway capacity for accommodating planned developments.
- Move Environmental Review to Post-LUC Decision Making. It has been suggested that environmental review process occurs too early and should be conducted after LUC decision making. At the initial LUC boundary amendment phase, developers typically have only conceptual plans, without detailed access, circulation, landscaping and development design plans. From the impact assessment standpoint, it is preferable to base impacts on what will be built, to what height and density, at what specific locations on the project site, rather than on conceptual layouts subject to significant changes.
- Unbiased Environmental Documents. To promote neutral and unbiased environmental documents, it would be desirable to revise the EIS law to require that agencies assume responsibility for the contents and document preparation including consultant selection,

while the developer pays for the EIS and any needed technical or scientific studies. This would make the process similar to the federal EIS process and many states which have adopted similar practices.

### 5.1.3 Improving the LUC Process

- Broaden LUC Representation. For appointments to the LUC, many have called for broader diversity and more objective representation on the Commission. Many opined that appointees should not have direct ties to development interests, and there should be greater diversity of persons with environmental, natural science expertise, and more community members.
- Use of Hearings Officer. The use of a hearings officer could provide a more efficient means of conducting contested case hearings, particularly for controversial projects. The hearings officer would conduct the hearing, receive evidence and witness testimonies, and prepare a report with recommendations for consideration by the Commission.
- Limit Review to State Interests. To address the duplication of review between the State land use and county zoning, a conscious effort could be made by the LUC to emphasize and focus on addressing State interests, avoiding as much as possible issues under county jurisdiction, such as police, fire, and county utilities and roadways.

### 5.1.4 Improving Enforcement

- Availability of Annual Reports to Public. Making annual reports more readily accessible to the public would facilitate agency and public monitoring of development progress and compliance with imposed conditions of approval. The petitioner would submit the annual reports in electronic format to facilitate posting and archiving by LUC staff, with emailed notice of postings to interested parties.
- LUC Ability to Amend Conditions. To help with enforcement, the LUC should be able to modify conditions of approval, including consequences for non-compliance. Currently, the LUC's only remedy is the granting of an Order to Show Cause which could lead to the property being reverted to its former land use classification.
- Set Time Limit for Development. Many reclassifications that were granted sometimes decades ago remain undeveloped but retain their Urban District designation. This proposal would set a deadline of perhaps 7 to 10 years for starting construction or face the prospects of the land reverting to its former classification.

### 5.1.5 Land Use Districts and IAL Designations

- Increase Agricultural District Minimum Lot Size. Increasing the minimum lot size for agricultural parcels, which is currently at a minimum of one acre, to a larger minimum such as 25 acres, would make it less feasible and more difficult to subdivide, and serve to preserve larger lots and reduce infrastructure needs.
- State to Propose IAL Designations and Update Soil Rating System. This proposal assigns the State with the responsibility for completing the designation of IAL in the County of Maui and County of Hawaii which have yet to begin the designation process. The OP and the Department of Agriculture would lead the task of evaluating and recommending IAL designations for approval by the LUC. There is also the need to review and update the soil rating system to resolve concerns over the use of the Land Study Bureau (LSB) productivity ratings in regulating land uses in the Agricultural District.
- Implement Five-Year Boundary Review. The OP could resume implementation of the Five-Year Boundary Review as a priority activity to ensure the periodic comprehensive review of land uses as required by HRS Section 205-18. The last Five-Year Boundary Review was done in the early 1990s and has not been undertaken since due to the requisite studies and costs of pursuing boundary amendments.
- Increase Acreage Threshold for County District Boundary Amendments. It has been proposed that greater authority should be given to counties in determining District Boundary Amendments by increasing the acreage threshold from 15 to 100 acres. This would achieve some efficiencies, but addressing State interests would not be assured and the beneficial aspects of contested case hearings for the public would be foregone.

## 5.2 SYSTEM REDESIGN

System redesign refers to reform measures that seek fundamental changes to the manner in which the State land use system operates. Five forms of system redesign were generated by the Task Force.

### 5.2.1 State Growth Management

The State Growth Management option would set forth clear directions for how the State wishes to manage growth and development while preserving cherished natural and cultural resources. The present role of the LUC is unchanged.

- The State would prepare a growth and conservation vision for Hawaii.

- The State would develop statewide strategic plans for major land use and development objectives, including agriculture.
- The State would develop a process for planned growth consistent with infrastructure development in designated growth areas.

There is a clear need for a comprehensive update of the Hawaii State Plan, Functional Plans, and their implementation process. A coordinated growth vision and resource protection strategy for agriculture and conservation could lead to better outcomes in protecting valued resources.

### 5.2.2 County Plan-Based Boundary Amendments

The County Plan-Based Boundary Amendments option proposes that district boundary amendments conform to county plans which would be the primary basis for land use decision making.

- LUC would undertake regional boundary amendments based on conformance with county general and/or development plans using quasi-legislative process and limited conditions of approval.
- Individual boundary petitions to the LUC would be needed for proposals not consistent with the county plan, using the quasi-judicial process.
- State input and oversight of county plan compliance with State plans and criteria.
- Appeal via LUC declaratory ruling would be enabled for boundary amendments granted based on county plans

The County Plan-Based option places greater reliance on the county planning processes for determining areas of future growth. This option alters the checks and balances which the dual system presently provides, with primary responsibilities for land use decision making occurring at the county level. For some, the county process is perceived to be more political and less objective than the LUC. However, inclusion of an appeals process could restore the balance and increase accountability by providing a mechanism for public appeal of decisions.

### 5.2.3 County Plan-Based Planning Framework

This option is a comprehensive reform proposal with these major features:

- A. Transform the LUC into the State Planning Commission:
  1. Recommend goals and guidelines for each land use district.
  2. Recommend standards and guidelines for the content of county general plans and development plans to the legislature.
  3. Review and certify County General Plans and Development Plans as meeting established standards.
  4. Approve boundary amendments for the Conservation District; for proposals involving lands that do not have a certified General



- Plan or Development Plan; proposals changing the status of (i.e. removing) IAL lands; and for proposals not consistent with certified general plans or development plans.
5. Hear appeals to boundary amendments processed by the counties.
- B. Counties would prepare General Plans and Development plans that incorporate statewide goals and guidelines, and content requirements established by the State.
  - C. Counties would have authority to process district boundary amendments for lands that are within the Urban, Agricultural or Rural districts to make them conform to certified County General Plans and Development Plans. The County Councils shall render the final decision on the proposed boundary amendment. The State Planning Commission shall serve as the appellate body.

Clearer articulation of State land use goals and State certification of county plans will help assure State interests are addressed, but this may elicit county home rule concerns. Delegating most district boundary amendments to the counties would reduce processing time, eliminate duplication, and lessen project-by-project, detailed reviews at the State level.

The option would eliminate quasi-judicial favored by many for the greater opportunity it provides intervenors to hear and present evidence and witnesses, cross-examine parties, and have decisions based on fact-finding and legal conclusions. The appointed State LUC is also perceived as being more objective and less subject to political influence than the elected county councils. The appeals mechanism could help address public concerns over county decision making.

#### 5.2.4 Regional Five-Year Boundary Amendments

The regional five-year boundary amendments would provide for regional consideration of boundary amendments using a quasi-legislative decision making process that occurs only once every five years. The LUC's role would not include any project-specific decision making or quasi-judicial hearings. The option thus provides:

- Comprehensive regional boundary amendments undertaken only once every five years for each island.
- Quasi-legislative process for boundary amendments.

This option would replace the individual petition process with reclassifications allowed to occur only once every 5 years. The regional assessments would primarily seek conformity of the State land use districts with county general and community/development plans adopted by the counties.

The regional review and reclassifications allow for a more comprehensive and coordinated approach to land use and infrastructure planning. Since the process proposes that multiple petitions be considered on a regional basis, a quasi-legislative processing procedure can be justified

#### 5.2.5 Contested Case Hearing at the County Permit Level

This proposal would shift contested case hearings and the detailed examination of individual projects to the county review process, at or after zoning when project plans are more fully developed and impacts can be better evaluated. LUC decision making would be quasi-legislative, focused on the district classification question.

The proposal allows for some streamlining, forgoing detailed review at LUC, while retaining the ability for the public to participate through the contested case process, if needed, at the county level. It is noted that County zoning is approved by county councils which are not subject to the quasi-judicial process.

### 6. SUMMARY OBSERVATIONS AND CONCLUSIONS

Hawaii's land use system has not changed much since it was enacted more than 50 years ago. From this Review process, there's a shared sense that the State has an important role to play in land use in Hawaii and that the current Land Use Commission role offers a brake or check on development. The concerns expressed, however, demonstrate that there are many deficiencies and system-wide weaknesses in how we manage land use in Hawaii.

The analysis of issues and the range of improvement options provide a good basis for further discussion. Importantly, none of the options by themselves would provide the range of features and tools to improve system-wide performance in addressing concerns raised in the Review. Getting consensus on how to improve the system will be complicated by the diversity of interests and opinions on how the system is working.

The Review process elicited many ideas and tools that could be pursued to fix the existing system or to redesign the entire system. A shift in State role from its direct project-by-project review will require system-wide improvements to build in checks and balances in other parts of the system, and provide a range of mutually-supporting tools that assure balance and increase trust in the land use system as a whole. Future efforts will need to work with stakeholders to examine a range of options to craft system improvements that will address the concerns and interests of stakeholders in achieving shared community goals and system objectives.

# 1. INTRODUCTION

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The State of Hawaii Office of Planning (OP) has undertaken a review of the land use system components and process set forth in Hawaii Revised Statutes (HRS) Chapter 205, the Hawaii State Land Use Law. Since passage of the Land Use Law in 1961, there have been recurring concerns that the process over the years has become increasingly complex, duplicative, and time-consuming. OP sought and explored improvements that would make the process more efficient and effective without compromising the original intent of the law: “to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare [.]” See Act 187, Section 1, Session Laws Hawaii (SLH) 1961. Towards this end, a Task Force comprised of diverse stakeholders representing State and county government, development, and environmental concerns, was assembled to assist in the Review, and community and stakeholder meetings were held to gather broader input. In addition, a public review draft was made available for review and comment.

This report is a product of the Office of Planning. While Task Force, community, and stakeholder group members provided invaluable insights and expert opinions on the State land use system, the findings of the report are those of OP and are not necessarily endorsed by the Task Force or its individual members. OP anticipates that the Review findings will lead to further work and recommendations for consideration by the Land Use Commission, the Governor, and the Legislature.

## 1.1. PURPOSE OF THE LAND USE SYSTEM REVIEW

The State land use system review is intended to assess the State land use system with a focus on the State Land Use District Boundary Amendment process in HRS Chapter 205. The Review findings are expected to lead to further work on developing recommendations that can be considered by the State Land Use Commission, the Governor, and the Legislature to increase the effectiveness and efficiency of the land use system without compromising the original intent of the law. This Review was undertaken pursuant to HRS Section 225M-2(b)(3), which authorizes OP to engage in reviewing existing or proposed regulatory activities of State and county agencies, and to formulate mechanisms to simplify, streamline, or coordinate interagency development and regulatory processes.

## 1.2. INPUT AND REVIEW PROCESS

In January 2014, OP asked a diverse group of stakeholders, including State agencies, county planning departments, and public and private interests, to

form an informal task force to discuss and identify possible improvements to the State land use system. The first of five State Land Use Review Task Force meetings was held in February 2014. Four additional meetings, including two workshops, were held during 2014. The Task Force included representatives from the following agencies and organizations:

- Office of Planning
- Land Use Commission
- State Dept. of Transportation
- State Dept. of Agriculture
- State Dept. of Land and Natural Resources
- State Dept. of Business, Economic Development and Tourism
- Office of Hawaiian Affairs
- Hawaii State House of Representatives
- Hawaii State Senate
- County of Maui Planning Department
- County of Kauai Planning Department
- County of Hawaii Planning Department
- City & County of Honolulu Department of Planning and Permitting
- Outdoor Circle
- Waikiki Improvement Association
- Hawaii Farm Bureau
- Land Use Research Foundation
- Chamber of Commerce of Hawaii
- Building Industry Association of Hawaii
- Sierra Club of Hawaii
- American Planning Association, Hawaii Chapter
- American Institute of Architects, Honolulu Chapter

The review process included initial briefings to the Task Force on the history and evolution of the Land Use Law, the major land use approvals needed for development, and the process for amending the State Land Use district boundaries. Task Force input was obtained through the following activities:

- Identification of strengths and weaknesses in the existing system. The Task Force was asked to identify strengths and weaknesses of the system, what improvements might be needed in the system, and information that would be helpful to the Review process. A review and analysis of the issues and problems raised by the Task Force and other stakeholders are discussed in Chapter 3.
- Identification of desired land use goals and State and county roles in an ideal land use system for Hawaii. Task Force members were asked to respond to four questions to elicit information about their preferences for a land use system and system change. The responses to the first question, "What should a land use system do or provide for Hawaii?," were used to identify desired

characteristics of an ideal land use system for Hawaii, which would serve as a guide and basis for reviewing proposed improvements to the system. The Task Force responses were categorized into 1) broad land use outcomes and goals, and 2) desired aspects for how the system should perform. The results of this activity are discussed further in Chapter 3. Task Force member responses to the four system questions are found in Appendix A.

- Identification of proposals for improvements and system change. Task Force members participated in sub-group discussions held in two all-day workshops in July 2014 to identify specific, actionable ideas, and indicate preferences on suggestions to improve the efficiency and effectiveness of the land use system. Morning sessions focused on identifying options to fix the existing system, followed by indications of preference for those improvements that could have the greatest positive impact. Afternoon sessions were spent exploring redesign of the land use system to achieve an improved system. The workshops resulted in over 150 ideas for fixing the existing system and five approaches to system reform. These system improvement proposals are discussed in Chapter 5.
- Review of issue and problem statements regarding the land use system. OP compiled and synthesized all Information gathered into problem statement summaries, which were reviewed and discussed by Task Force members. The problem statement summaries provide a broad analysis of major issues that need to be addressed in any efforts to improve the land use system. The problem statement summaries are the basis of the analysis and discussion in Chapter 4 of this report.

To solicit input and additional perspectives on the State land use system from the broader public, OP hosted community and stakeholder meetings on Oahu, Maui, Kauai, Hilo, and Kona from November 2014 to January 2015. OP also held informal meetings with the four county planning department staffs, the American Planning Association – Hawaii Chapter, the Hawaii Bar Association’s Real Property Section, and with the Sierra Club Oahu Chapter. The comments, issues and suggestions received were generally consistent with and corroborated the input and suggestions made at the Task Force meetings. A record of comments received from the community meetings is provided in Appendix B. Appendix C provides a compilation of all of the comments, grouped by common themes. Comments that had not been expressed in the Task Force meetings have been incorporated in this report.

### 1.3. ADDITIONAL DATA SOURCES

#### 1.3.1. Land Use Commission Docket Information

The information used to summarize Land Use Commission docket activity and decisions, petition acreage, processing time, dockets with intervenors, and

dockets appealed was extracted from docket files and a database of LUC docket information that OP has compiled. The database does not include information on district boundary amendments or special permits of less than fifteen acres filed with and acted on by the counties. The database has also has limited data for records of dockets filed prior to 1975, and is missing data for some dockets filed prior to 1995.

OP has made every effort, within the time and resources available, to review docket files to obtain the data necessary to generate the information presented in this report. The summary docket information presented in the report is provided to illustrate general trends in LUC docket activity and decisions.

### **1.3.2. Supplemental Mapping**

This report is supplemented with information derived from geospatial information system (GIS) mapping of current spatial files for the State land use districts maintained by the LUC and archival spatial files maintained by OP's Statewide GIS Program. Spatial analysis and mapping were done to examine how the land use system is performing in key areas, including the congruence of State land use districts with county plan community boundaries, the extent of non-agricultural development in the Agricultural District, and the amount of land in the Urban District that is developed or undeveloped. This preliminary analysis and mapping is a component of a separate yet concurrent OP effort to conduct a review of the land use district boundaries using GIS analysis in partial fulfillment of HRS Section 205-18. Acreages generated from the GIS mapping will vary from acreage information derived from other sources.

## 2. LAND USE PLANNING IN HAWAII

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### 2.1. EVOLUTION OF HAWAII'S LAND USE SYSTEM

The State Land Use Law has its roots in Hawaii's history of centralized territorial planning—and before that, the legacy of a land stewardship ethic carried forward from ancient Hawaiian land holding and resource management practices.

Prior to statehood and the passage of the State Land Use Law, land use was regulated by local boards. At statehood, the planning and zoning authority exercised by local boards during the territorial period was reauthorized under county jurisdiction pursuant to HRS Chapter 46.

In the course of preparing the nation's first state General Plan, published in 1961, the State Department of Planning and Economic Development found that:

- Development of land for urban uses tended, in many cases, to occur in areas where it was uneconomical for public agencies to provide proper and adequate service facilities. Consequently, there was a lag in the provision of such facilities.
- Development of land for urban uses occurred, in many cases, on the State's limited prime agricultural land (10 percent of total land area).
- Adequate land on all islands existed to accommodate urban growth forecast for the next 20 years without employing lands suitable for intensive cultivation.
- Development of urban areas should be encouraged in an orderly and relatively compact manner in order to provide for economy and efficiency.
- Land not required at any given time for urban or intensive agricultural use should receive special attention regarding land management practices and use. (EDAW, 1970)

These concerns arose from a confluence of forces associated with unprecedented growth in Hawaii's population and economy after World War II and statehood in 1959. Real estate was in demand and rising land values and profits encouraged speculation. Scattered and ill-planned subdivisions sprang up and prime agricultural lands gave way to other urban uses.

Subsequently, the 1961 Legislature passed the State Land Use Law with the following declaration of purpose:

"...in order to preserve, protect and encourage the development of the land in the state for those uses to which they are best suited, the power to zone should be exercised by the state and the methods of real property assessment should encourage rather than penalize those who would develop those uses[.]" (Act 187, SLH 1961).

The law established a seven-member Land Use Commission (LUC) appointed by the Governor and confirmed by the Senate, whose responsibilities included:

- Conducting periodic boundary reviews
- Determining State land use district boundaries
- Deciding on proposed amendments
- Rule-making to adopt district standards and procedures

The 1961 Act established three districts: Urban, Agricultural, and Conservation. The Rural District was added in 1963 to accommodate small rural landowners. The districts were broadly defined as follows:

- Urban Districts: lands in urban use with sufficient reserve areas to accommodate foreseeable growth, characterized by city-like concentrations of people, structures streets and other related land uses.
- Agricultural Districts: lands with a high capacity for intensive cultivation, characterized by cultivation of crops, orchards, forage, and forestry; animal husbandry and game and fish propagation, with a minimum lot size of one acre.
- Rural Districts: lands composed primarily of small farms mixed with low-density residential lots with a minimum lot size of one-half acre.
- Conservation Districts: areas necessary for protecting watersheds and water sources; preserving scenic areas, providing park lands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry and related activities.

When the first boundaries were established in 1964, uses that were not clearly urban or conservation were placed in the Agricultural District. The Agricultural District specifically allowed areas not used or suited for agricultural activities. Thus, the district became a catch-all for other open, transitional, and sparsely developed areas.

The Land Use Law over the years has undergone numerous amendments, modifying but not changing the essence of the 1961 law. The following are some of the major revisions to the State Land Use Law:

**1963:** Act 205 added the Rural District and clarified permissible uses within the Agricultural District.



- 1972:** Act 187 authorized the LUC to impose conditions and to assure substantial compliance with representations made by the petitioner.
- 1975:** Act 193 reconstituted the LUC as a quasi-judicial body mandated to make impartial decisions based on proven facts and established policies (following the 1974 Supreme Court “Town” decision).
- 1985:** Act 230 assigned the five-year boundary review to OP, established LUC decision making criteria, and allowed counties to reclassify areas less than 15 acres except in the Conservation District.
- 1995:** Act 235 required LUC decisions for boundary amendment petitions be made within 365 days of proper filing.
- 2005:** Act 183 established the Important Agricultural Lands Law to conserve and assure the long term availability of agricultural lands for agricultural use, pursuant to Article XI, Section 3 of the Hawaii State Constitution.

Among the more significant revisions is the passage of Act 193 in 1975. Up until 1974, the LUC conducted hearings and made decisions under “quasi-legislative” procedures. This process meant the LUC provided public notice of their hearings, held public hearings, and afforded the public, including landowners, an opportunity to present testimony. This process was challenged in 1974 in the case of *Town v. Land Use Commission*. The Hawaii Supreme Court ruled that an adjoining landowner having property interests in a proposed land use boundary change and who challenges that proposed change should be afforded the rights of a party to a contested case (“quasi-judicial”) hearing as provided in HRS Chapter 91, the Administrative Procedures Act. The Court held that redistricting is adjudicative of legal rights of property interests. The Legislature amended the statutes to require the LUC to follow the quasi-judicial, contested case hearing process.

Act 193 also repealed the five-year boundary review process and established an interim statewide land use guidance policy to guide LUC decision making in its quasi-judicial decision making process.

Whether or not the preparation and enactment of the Hawaii State Planning Act in 1978 was intended to provide the LUC with statewide land use policies to replace the interim policies, the result was a much broader policy and planning framework to serve as a guide for the long term development of the State. Part II of the State Plan established a statewide planning framework requiring consistency of State and county plans, budget processes, and land use decision making processes with State Plan policies and priority guidelines, and the preparation of State Functional Plans to further define and implement the State Plan.

Two significant amendments to the Hawaii State Constitution were passed in 1978 that seek to preserve and protect Hawaii's natural and cultural resources. First, Article XI, Section 1 of the Constitution requires the State to conserve and protect Hawaii's natural resources, including land, water, air, minerals, and energy sources, affirming that all public natural resources are to be held in trust by the State for the benefit of the people. Second, the Important Agricultural Lands (IAL) law, enacted as Article XI, Section 3 of the Constitution, requires the State to protect and conserve agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

When the Land Use Law was passed, not all of the counties were equipped to deal with growth and did not have all comprehensive land use plans in place. Because the law gave the counties direct responsibility for exercising land use controls only in the urban districts the planning staffs were better able to focus their efforts in those areas while the state controlled the rest of the lands. Since the law's enactment, then, the role and influence of county planning departments has expanded; county planning staffs have grown in size, in professional ability and in their desire to exercise more authority over the disposition of lands within their jurisdiction (Lowry, 1980, p. 101). The City and County of Honolulu adopted the Oahu General Plan in 1964, followed by the Counties of Hawaii and Kauai in 1971, and Maui in 1980. All counties have since prepared more detailed community and development plans to guide regional land use planning and zoning.

A summary of change in acreage of the districts statewide and change in acreage of the Urban District for each major island over the past 50 years is provided in Tables 1 and 2. The Urban District has experienced the greatest increase in acreage from 117,800 acres in 1964 to 203,699 acres in 2014, an increase of 73 percent. The Urban District still constitutes only 4.9 percent of the total State acres. The Agricultural and Conservation Districts comprise 95 percent of all lands in the State.

**Table 1. Changes in State Land Use District Acreage, Statewide, 1964 to 2014**

	1964	Percent	2014	Percent	Acreage Change	Percent Change
<b>Urban</b>	117,800	2.9	203,699	4.9	85,899	2.1
<b>Rural</b>	6,700	0.2	11,063	0.3	4,363	0.1
<b>Agricultural</b>	2,124,400	51.6	1,885,315	45.7	(239,085)	-5.9
<b>Conservation</b>	1,862,600	45.3	2,022,343	49.0	159,743	3.8
<b>Total</b>	<b>4,113,464</b>	<b>100.0</b>	<b>4,124,434</b>	<b>100.0</b>		

Table 2. Changes in Urban District Acreage, by Island, 1968 to 2014

	1968	Percent	2014	Percent	Acreage Change	Percent Change
<b>Oahu</b>	74,236	60.3	104,232	51.2	29,996	40.4
<b>Hawaii</b>	24,455	19.9	56,348	27.7	31,893	130.4
<b>Maui</b>	12,442	10.1	22,928	11.3	10,486	84.3
<b>Lanai</b>	525	0.4	3,039	1.5	2,514	478.9
<b>Molokai</b>	4,551	3.7	2,287	1.1	(2,264)	-49.7
<b>Kauai</b>	6,918	5.6	14,865	7.3	7,947	114.9
<b>Total</b>	<b>123,127</b>	<b>100.0</b>	<b>203,699</b>	<b>100.0</b>		

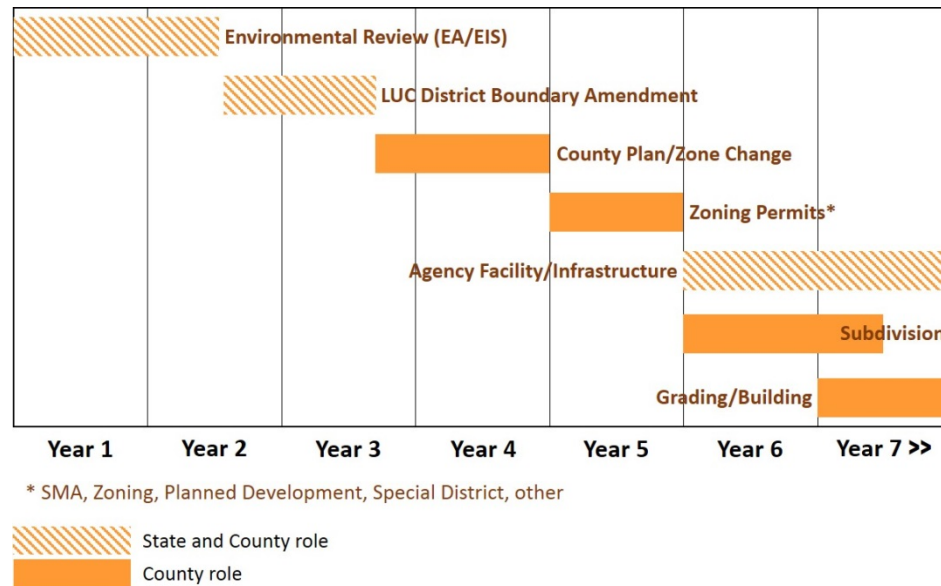
Since the Land Use Law was enacted, Hawaii's resident population has more than doubled, from 630,000 in 1960 to 1,360,000 in 2010. The visitor industry has grown tremendously, from 250,000 visitors in 1960 to over 8 million in 2013. The growth in resident and visitor populations has intensified competing demands for finite land and natural resources and amenities.

A steady decline in plantation agriculture has resulted in a large amount of agricultural land no longer in sugar or pineapple cultivation. According to a 2011 Plasch study, in 1964, Hawaii's pineapple industry cultivated 65,000 acres and supplied 80 percent of the world's pineapple supply. There is now one remaining pineapple farm in Central Oahu with less than 3,000 acres. In 1986, there were 15 sugar companies cultivating 218,000 acres. One sugar company remains on Maui with 36,000 acres. Pineapple's decline was due to lower-cost foreign producers, while sugar's decline was due to mainland competition from high fructose corn syrup, sugar beets, and lower Federal price supports. Statewide, 267,500 acres were released from plantation agriculture between 1968 and 2009. Diversified crops including vegetables, fruits, macadamia nuts, coffee and more recently seed corn, have grown from 15,000 acres in 1960 to 45,000 acres in 2009. In total, however, crop cultivation has declined from 328,500 acres in 1968 to 81,500 acres in 2009, a 75 percent decline. (Plasch, 2011)

## 2.2. OVERVIEW OF THE CURRENT LAND USE SYSTEM

Land use in Hawaii is guided by plans at the State and county levels of government and regulated through permits and approvals at both the State and county levels. A generalized sequencing of these approvals is depicted in Figure 1 below. Navigating the development approval process can take as long as seven to ten years or more.

Figure 1. Development Approval Process



Unless already zoned for the proposed uses, major development approvals required could include the State Land Use District Boundary Amendment (HRS Chapter 205), Hawaii Environmental Impact Statement (HRS Chapter 343), county zone change, county zoning permits, State and county infrastructure and subdivision approvals.

At the State level, the Hawaii State Plan, HRS Chapter 226, serves as the principal guide for the future long-range development of the State. The State Plan provides goals, objectives, policies, and priority guidelines to guide the development of the State with more detailed agency Functional Plans directing actions (HRS Chapter 226). Functional Plans are prepared by state agencies to address the areas of agriculture, conservation lands, education, energy, higher education, health, historic preservation, housing, recreation, tourism, and transportation (HRS § 226-52). These plans, however, have not been updated by State agencies in over 20 years.

At the county level, each county has adopted general plans and more detailed community plans and development plans to guide land uses in the county. County plans are governed by HRS Chapter 46 and, to a lesser extent, HRS Chapter 226, which states that the formulation, amendment, and implementation of county plans must further define the overall theme, goals, objectives, policies, and priority guidelines of the State Plan. There are no legislatively required general plan elements.

Both the Functional Plans and the county general plans must be in conformance with the State Plan (HRS § 226-59).

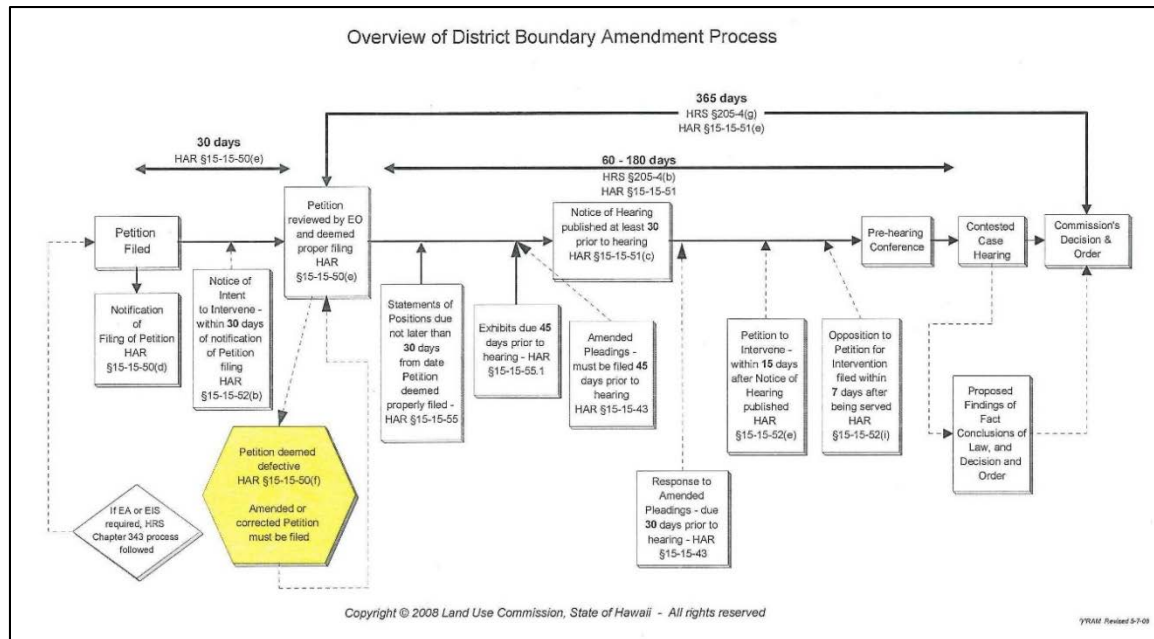
The State Land Use Law provides the overall framework for land use management through the classification of all lands in the State into the Urban, Agricultural, Rural, or Conservation District.

Land uses within Urban Districts are regulated solely by the counties. In the Agricultural and Rural Districts, the LUC establishes permissible uses and the counties, which may adopt more stringent controls, are responsible for their administration. In the Conservation District, land uses are administered solely by the State Department of Land and Natural Resources.

The LUC is currently constituted as a nine-member body appointed by the Governor and confirmed by the Senate, and includes one member from each of the four counties and one member with traditional Hawaiian cultural experience. The major areas of responsibility are discussed below.

Land Use District Boundary Amendments. Petitions to amend district boundaries are submitted to the LUC which, upon acceptance, conducts contested case hearings to decide whether to approve, approve with conditions, or deny the petition. The petitioner, the OP and the respective county planning departments are mandatory parties to the proceedings. Persons with direct interests that are clearly distinguishable from the general public may petition the LUC to become an intervenor in the proceeding. If granted, intervenors have the right to present witnesses, cross-examine the witnesses of other parties, and have standing to appeal the LUC's decision to the Circuit Court. The district boundary amendment process is outlined in the flow chart in Figure 2.

Figure 2. Overview of District Boundary Amendment Process



**Special Permit.** Within the Agricultural and Rural Districts, “unusual and reasonable” uses not otherwise allowed may be permitted by the county planning commissions through issuance of a Special Permit pursuant to HRS Section 205-6 and the guidelines established in the LUC rules. When the proposed permit area is greater than 15 acres, the approval of both the county and the LUC are required.

**Designation of Important Agricultural Lands.** The LUC is authorized to designate Important Agricultural Lands (IAL) through a voluntary or a county-initiated process subject to approval by the LUC as set forth in Part III of HRS Chapter 205. The IAL process implements Article XI, Section 3 of the Hawaii Constitution which provides that: “The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”

The county role in the land use system is governed by HRS Chapter 46 which grants counties the authority to perform long-range comprehensive planning and the administration and enforcement of ordinances and regulations governing the development and use of private land within the State Urban District. The counties coordinate with the State to regulate the use of land within the State Agricultural and State Rural Districts.

Hawaii Revised Statutes Chapter 46 also grants counties the authority to use a variety of plans, ordinances, and permits to manage land use, including sustainable community plans, zoning, subdivision controls, special management areas, and shoreline setback areas.

The environmental review process is governed by HRS Chapter 343, or the Hawaii Environmental Policy Act (HEPA), and administered by State Office of Environmental Quality Control (OEQC). It requires the analysis of environmental, social, and economic impacts of proposed projects prior to discretionary approval and identifies recommended mitigation measures for the project. The law also entails a public disclosure and public review process for impacts prior to agency decision making.

### 2.3. CHALLENGES TO LAND USE PLANNING AND IMPLEMENTATION IN HAWAII

Hawaii's limited land and resource base and its geographic isolation will continue to challenge the State and counties to effectively manage land use and physical development statewide. This physical isolation increases Hawaii's vulnerability to natural disasters and external disruptions in air and shipping traffic. Various studies estimate that Hawaii relies on imports for as much as 80 to 90 percent of the goods and commodities consumed in the islands—including food and energy—contributing to Hawaii's higher cost of living, higher energy costs, and higher housing costs.

Housing. Housing affordability and Hawaii's affordable housing shortage are a critical problem for communities statewide. Median sales prices of single family homes and condominium units on Oahu reached an all-time high in 2014. Homelessness is a visible reminder of housing insecurity in the islands. A 2011 study estimated a housing shortfall of just over 28,000 housing units statewide in the 2012-2016 period (HHFDC, 2011). By 2025, DBEDT projects a long-run demand of approximately 64,700 new housing units, assuming increase in the number of households.

Energy. Weaning Hawaii off its dependence on petroleum and reducing the energy costs of the built environment and the State's transportation systems are other challenges facing Hawaii's land use system. Hawaii's energy prices ranked first among the fifty states in 2014, and its electricity prices were three times higher than the U.S. average (DBEDT, 2014). The Hawaii Clean Energy Initiative sets a goal for the State of 70 percent of electricity to be powered by clean energy through renewable energy and energy efficiency investments by 2030.

Agriculture. Increasingly, agriculture is pitted against housing or renewable energy development in land use decision making statewide. Food security and self-sufficiency has grown in recent years as a community and public policy concern. There are more public agriculture-neighbor conflicts, including those over crops with genetically modified organisms, and competition for land between fuel crops and food crops.

Natural resources and environmental concerns. The health of the State's natural systems—water resources, coastal and marine environments, watersheds, and land-based ecosystems—is already stressed by resource consumption, development impacts, and recreational activities of residents,

visitors, and local industry. Add to this management scenario the anticipated long-term effects of climate change for the islands including sea level rise, associated thinning of groundwater aquifers due to salt water intrusion, decreasing rainfall, and more severe storm events.

Infrastructure. The system's capacity to service growth and communities is compromised because public investments have not kept pace with the increasing cost and schedule for replacing or upgrading infrastructure systems.

The State land use system needs to deal effectively with conflicting values and objectives for housing, energy, agriculture, and other community goals as readily developable land becomes more scarce and demands on limited natural resources increase. The system needs to build community resilience—providing more housing, transportation, and employment choices while reducing resource and energy consumption—if economic growth and community development are to be sustainable within Hawaii's island setting. This might require more adaptive tools and processes that can incorporate new science and best practices in a more proactive manner than existing regulatory systems.



### 3. PREFERENCES FOR A DESIRED LAND USE SYSTEM FOR HAWAII

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The land use system review needed a collective vision of what a preferred land use system might look like to guide the discussion of what improvements in the State land use system were needed and should be pursued. This vision could then be used in assessing the strengths and weaknesses of the existing system as well as proposals for system improvements in achieving desired land use goals and objectives.

Task Force members were asked to respond to the following questions designed to elicit their hopes and ideas for an ideal system:

- What should a land use system do or provide for Hawaii?
- What are the State's interests in land use?
- What are the counties' interests in land use?
- What models or practices do you know of could help us achieve the outcomes desired from an effective land use system?

The responses to the first question about desired land use system outcomes were thematically mapped to uncover areas of overlap and agreement. These common elements were organized into a descriptive outline of the land use outcomes an ideal land use system would provide and how the system would perform, which was discussed and further refined by the Task Force. Table 3 in the following section presents a summary of these elements. Appendix D includes comments from Task Force respondents that describe and illustrate each element in more detail.

Comments received during the statewide community and stakeholder meetings were reviewed to identify additional items to be incorporated into this preliminary framework for land use system goals and performance criteria.

#### 3.1. DESIRED OUTCOMES AND PERFORMANCE CRITERIA FOR AN IDEAL LAND USE SYSTEM

Two descriptive elements emerged in the thematic mapping of responses to Question 1:

- Broad land use outcomes and goals describing what the desired end states of the land use system should be, and
- Criteria for how the system should perform.

## Preferences for a Desired Land Use System for Hawaii ■ 3-2

There was considerable common ground in both what the land use system should deliver and how it should perform. Not surprisingly, the desired outcomes reflect a shared appreciation and awareness of the natural and cultural assets of Hawaii and the unique challenges we face as an island state. The compiled desired land use outcomes and performance criteria are described on the next page.

## Preferences for a Desired Land Use System for Hawaii ■ 3-3

Table 3. Annotated Attributes of an Ideal State Land Use System

A desired land use system for Hawaii results in...		
WHAT land use outcomes	<ul style="list-style-type: none"> <li>• <b>Protection of natural and cultural resources...</b></li> </ul>	... including ground, surface, coastal, and marine waters, archaeological and cultural resources, native ecosystems/habitat for species, wetlands
	<ul style="list-style-type: none"> <li>• <b>Protection of agricultural resource lands...</b></li> </ul>	... for the agricultural industry, food security—minimizing the risk of the impermanence syndrome
	<ul style="list-style-type: none"> <li>• <b>Built environment / communities that protect/s natural environment and meet/s societal needs (current and future)...</b></li> </ul>	... for quality communities with character, compact and mixed land use pattern, supportive of economic development, adequate reserve for future growth, with adequate infrastructure and facilities, affordable housing, distinctive rural and urban communities
	<ul style="list-style-type: none"> <li>• <b>Resilience to hazards...</b></li> </ul>	... that avoids and mitigates risk from natural or man-made hazards, including climate change impacts
	<ul style="list-style-type: none"> <li>• <b>Sustainable natural and built ecosystems/environments...</b></li> </ul>	... with development in harmony with natural systems for current and future generations
...and provides for:		
HOW system performance	<ul style="list-style-type: none"> <li>• <b>Fair and open process for land use decision making</b></li> </ul>	... resulting in a transparent process that allows meaningful public input on land use decisions affecting public trust resources, publicly funded infrastructure and services, etc.
	<ul style="list-style-type: none"> <li>• <b>Certainty and predictability in the land use decision making and development process</b></li> </ul>	... providing reliable milestones/expectations and order regarding entitlements and changes in the built environment
	<ul style="list-style-type: none"> <li>• <b>Sound analysis and informed decision making</b></li> </ul>	... assuring rational analysis based on good data regarding cumulative as well as direct and indirect impacts
	<ul style="list-style-type: none"> <li>• <b>Clear policy and planning framework for land use decision making</b></li> </ul>	... providing goals and objectives and clear roles and responsibilities for State vs. counties
	<ul style="list-style-type: none"> <li>• <b>Consistency / conformance with policies and plans</b></li> </ul>	... promoting compliance with laws protecting natural resources and plans and State and county agency decision making that implement State planning policies and planning framework
	<ul style="list-style-type: none"> <li>• <b>Plan-based, plan-driven land use decisions/development</b></li> </ul>	... resulting in development in accord with phasing and magnitude of planned growth in county plans
	<ul style="list-style-type: none"> <li>• <b>Infrastructure capacity concurrent with planned growth</b></li> </ul>	... resulting in adequate infrastructure is in place to support planned growth or increased density in urban areas
	<ul style="list-style-type: none"> <li>• <b>Effective enforcement of compliance with policies and plans</b></li> </ul>	... providing certainty and predictability about planned growth and resource protection
	<ul style="list-style-type: none"> <li>• <b>Efficient, cost-effective review/decision making process</b></li> </ul>	... minimizing redundancy, time, and costs related to land use decision making
	<ul style="list-style-type: none"> <li>• <b>Efficient / sustainable use of resources</b></li> </ul>	... assuring sustainability of life within an island state
	<ul style="list-style-type: none"> <li>• <b>Adaptable to changing needs and conditions</b></li> </ul>	... promoting flexibility and responsiveness to change over time

### 3.2. STATE INTERESTS IN LAND USE

There was general agreement that the State has a major role as a resource manager for public trust resources and resources afforded protection by the State constitution, including cultural resources and agricultural land resources. Other State roles mentioned included identifying those resource lands that are not appropriate for development, planning and providing State-funded infrastructure and facilities, providing guidelines and guidance for county planning, promoting affordable housing, assisting in coordinating and investing in infrastructure planning and development, and providing baseline data in terms of forecasts, population and economic projections, and needs assessments. Further work on system improvements will need to clarify the role and responsibilities of the State in land use and the options for effectively addressing State interests in land use.

### 3.3. COUNTY INTERESTS IN LAND USE

There was also general agreement that the counties have the primary role in planning for and managing urban growth and development at the local level, with some noting that the counties are closest to the community and better able to reflect the collective will of people about how communities are to be designed. Other county roles include ensuring adequate infrastructure to support planned growth and infill redevelopment, protecting community character, and ensuring that development does not adversely affect the capacity of natural systems to support communities. The role and responsibilities of the counties should be clearly defined in proposals to improve the State land use system and other system improvements identified as necessary to enable the counties to deliver the land use outcomes desired.

### 3.4. MODELS OR BEST PRACTICES FOR ACHIEVING DESIRED OUTCOMES

Task Force responses to the question on best practices included recommendations to examine features of other state and local land use systems in the U.S. that could be considered or adapted for use in Hawaii's land use system. States identified included Washington, Maryland, California, and Massachusetts. OP staff did a preliminary review of these states' land use systems and similar state systems; these systems are summarized and compared in Appendix E.

Notable features of interest to this review include:

- State frameworks for comprehensive planning at the local level, including mandatory comprehensive plan elements and criteria, review and/or approval of county plans for consistency with state planning policy and requirements;
- Incentive programs for local planning;
- Land use appeals boards for conflicts over inconsistent plans and land use decisions;

## Preferences for a Desired Land Use System for Hawaii ■ 3-5

- Promotion of consensus building in land use planning processes; and
- State-level programs to promote Smart Growth, such as sub-cabinet State growth councils or commissions that are charged with coordinating state agency activities in infrastructure investment and the protection of natural resources and agricultural lands.

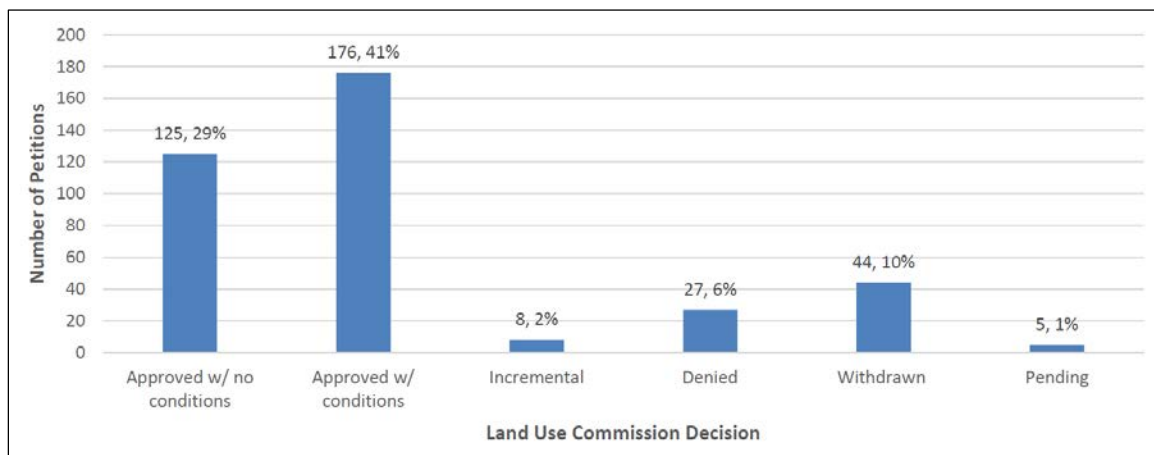
A more exhaustive review of these state systems and other innovations in land use planning and growth management, such as Smart Growth programs and tools, will be needed to identify those tools and practices of particular interest and applicability to Hawaii. The American Planning Association's *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change* (2002) provides a menu of options and tools, including model legislation, to consider in efforts to improve state land use and planning systems. The *Guidebook* is the culmination of several years of cross-sector study and working group analysis of state, regional, and local planning and land use systems across the U.S. It could be a valuable resource in further efforts to identify and develop recommendations for system improvements to Hawaii's land use system.

## 4. ANALYSIS OF LAND USE SYSTEM ISSUES

### 4.1. INTRODUCTION

Since 1975, the decision making process for amending State land use district boundaries has followed contested case hearing procedures as a result of the Supreme Court's *Town v. Land Use Commission* ruling in 1974. From 1975 to present, there were 427 petitions for district boundary amendments, of which 301 (70 percent) were approved, 27 (6 percent) were denied, and 49 (11 percent) were withdrawn or pending. There are 44 petitions for which information is missing. This is reflected in Figure 3 below.

Figure 3. Number of Petitions (1975-2014)



Over three-quarters of the district boundary amendments approved by the LUC have been reclassifications from the State Agricultural and Conservation Districts to the Urban District (see Table 3).

Table 4. Land Reclassified to the Urban District, by County, 1975 to 2014 (in acres)

Reclassification Type	Honolulu	Hawaii	Kauai	Maui	Statewide
Agricultural to Urban	18,959	13,617	5,303	9,511	47,390
Conservation to Urban	1,031	8,419	40	0	9,490
Total acres	19,990	22,036	5,343	9,511	56,880

Since 1975, approximately 56,880 acres have been reclassified from the Agricultural and Conservation Districts to the Urban District. This includes

approximately 19,900 acres on Oahu, 22,000 on Hawaii, 5,300 on Kauai, and 9,500 in Maui County. A total of 83 percent of the Urban District reclassifications are from the Agricultural District, with 17 percent from the Conservation District (mostly in Hawaii County). The data in Table 3 does not include 8,150 acres reclassified to the Urban District during the 1992 Five-Year Boundary Review. A more detailed table of district reclassifications is contained in Appendix F.

Preliminary information has been compiled on judicial appeals involving LUC dockets or decisions. Since 1972, there have been 42 appeals of LUC decisions and other court cases in which the LUC was a party. In a few instances, a single project or docket was the subject of two or more appeals to Circuit Court. A preliminary listing of appeals and case information is provided in Appendix G.

Additional data on LUC petition processing is provided in the issues and problem assessments that follow.

### 4.2. ANALYSIS OF STAKEHOLDER COMMENTS AND CONCERNS

The issue and problem assessments are intended to provide context for the viewpoints expressed, to examine how and why opinions diverge, and to inform discussions of proposed improvements to the State land use system. The issues and problems were compiled from comments, concerns, and ideas generated over the course of the Review project. They include comments from Task Force meetings and the community and stakeholder meetings conducted from November 2014 to January 2015, as well as those received in writing.

The individual comments were analyzed and clustered into ten issue areas listed below, representative of frequently-voiced concerns. Many of the issue areas are related or overlap, such as concerns about duplication and the LUC's project-by-project reviews. A deliberate effort was made to examine these concerns separately to better understand the positions expressed and to explore opportunities for creating common ground in addressing these concerns.

1. Meaningful public participation
2. Length of the land use process
3. State-level project-by-project review
4. Duplication in State and county processes
5. Quasi-judicial decision-making process
6. Certainty and predictability for parties
7. Protection of resource lands and resources
8. Implementation
9. Data and analysis for informed decisions
10. Enforcement of Chapter 205

Each issue/problem assessment includes selected viewpoints that try to capture the range of comments received both in support of the existing system and

those critical of the system. The discussion is a synthesis of information from existing statutes and rules, organizational practices, informed observations, and data compiled by OP staff from LUC docket records.

The issue/problem assessments are not rank-ordered: the order reflects the relative frequency that a particular issue was mentioned across stakeholder groups.

### 4.3. GENERAL OBSERVATIONS ON STAKEHOLDER COMMENTS AND CONCERNS

There is general agreement about the goals and performance standards for an ideal land use system. However, there isn't agreement or broad-based consensus that major revisions are needed to the LUC process or the State Land Use Law. Rather, participant viewpoints range from fierce support for the LUC process and current system to those who believe the LUC process is myopic, redundant of county processes, and contributes to a lengthy and costly development process. Despite this, no individual or group expressed that the State shouldn't have a role in land use in Hawaii—and none called for the elimination of the LUC in the course of the Review process.

Viewpoints are also divided as to whether the system is working as it was intended to. It would appear, as concluded by Lowry and McElroy in their 1976 study, that the LUC role tempers the pace of growth; and there are no longer scattered, large-scale subdivisions like those approved by local boards prior to enactment of the State Land Use Law. However, land use and growth management problems persist: an intractable affordable housing gap; a lengthy and costly development process; serious infrastructure and facility deficits; continued loss of good agricultural lands and increased rural sprawl; a regulatory system that has difficulty adjusting to changing market and community concerns; and conflicts between competing public values that make land use decision making contentious.

The issue and problem assessments that follow explore the divergent viewpoints as to the strengths and weaknesses of the State land use system.

### 4.4. ISSUE ANALYSIS

#### 4.4.1. Meaningful public participation

The general public has a difficult time participating effectively in the land use process, particularly in cases where there are competing public interests in land use.

##### VIEWPOINTS

Supporters of the LUC decision making process point out that it offers the only real opportunity for citizen participation in land use decisions, in contrast to the limited time given to testifiers before county decision making bodies. Despite this, they expressed frustration with the difficulty in actually participating in the



LUC hearings, inadequate community notice of LUC proceedings, and the complexity of the process. There was the perception that county-level decision making does not protect natural and cultural resources or other public interests as well as the LUC process.

Criticisms include the concern that intervention is granted too freely and that this is just one of many intervention points in the development process, causing delays and uncertainty for projects. Specifically, it was felt that public intervenors lengthened LUC hearings, and even longer delays are encountered if an appeal is filed.

Participants also commented that county-level planning processes, on the other hand, offer many opportunities for extensive and intensive community and public involvement in county plan revisions and updates.

### DISCUSSION

The public has legitimate interests in meaningful representation in land use decision making: they bear direct impacts of approvals (e.g., traffic) as well as cost of servicing new projects through increased property taxes or degradation of infrastructure/services. Meaningful public representation also ensures interests of non-monetized public goods, like public trust resources, are protected. When these concerns are not represented well or addressed in land use decision making, the public wants a seat at the table. Additionally, the LUC process provides an opportunity for public participation not available in other states. Hawaii is the only state in the nation with land use decision making at the state level, so the opportunity for public participation in the LUC decision making process is unique and highly valued by citizen and environmental groups.

It also provides an opportunity for advocates to participate in the decision making process, which is not available in county land use decision making. If allowed to intervene, public participants have all the rights and responsibilities of other parties, giving public parties an equal footing in presenting their position and arguments in the LUC hearing process. Although interventions are liberally granted in practice, an efficient process requires intervenors to have a certain level of sophistication about contested case hearings and/or legal processes. This is not true in every case. One recommendation to level the playing field was to create a public advocate to represent community groups in dockets before the LUC.

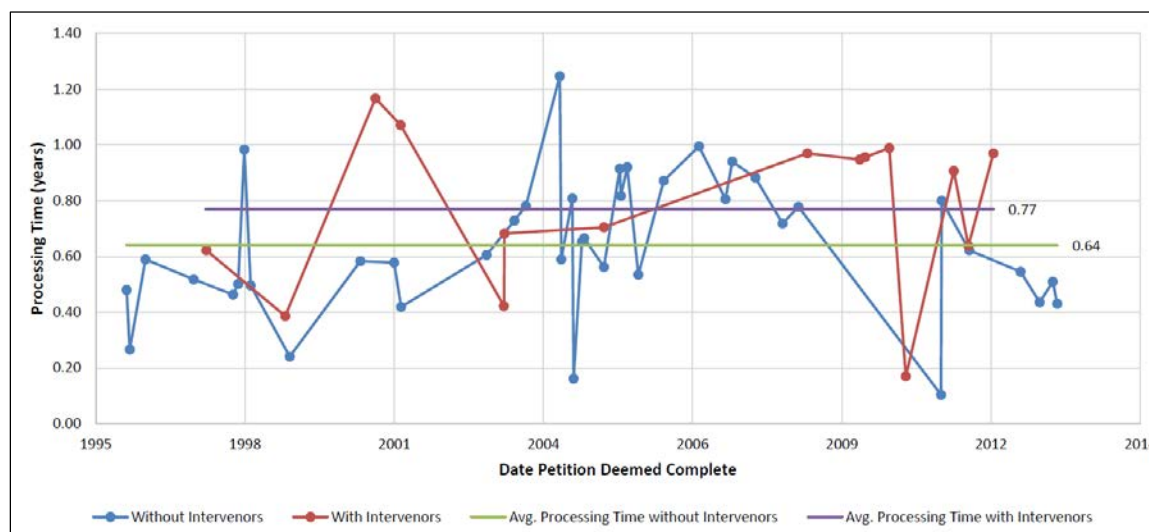
Counties do, however, provide for extensive public engagement in the county plan revision processes. While conflicting public interests are embedded in county plans, conflicts over land use tend to crystallize around specific project proposals. Project-specific approvals at the county-level are typically decided in legislative hearings without the same opportunities afforded by the LUC process.

State and county parties to the LUC present the positions of their respective administrations. In developing their positions, they must balance a host of policy objectives and State agency interests and priorities, and therefore, their interests may not align with individual community or public interest perspectives.

While the LUC's efforts in improving noticing procedures and identifying solutions have augmented, access and notification procedures can still be improved by implementing the following methods: the use of site-specific signage and noticing to inform local communities, like those used by the counties; greater use of the Internet to share LUC documents and records; and the consideration of ways to make intervention more effective.

Intervention in LUC petitions, however, is not that common – less than 20 percent have intervenors and not all of those intervenors are public intervenors. Would all parties and the public be better served with other means (e.g., additional checks and balances) to deal with land use conflicts where there are competing public interests? Figure 4 below illustrates how intervenors affect the processing time of land use petitions.

**Figure 4. Length of Time for Decision with and without Intervenors**



Other state land use models to consider are Oregon and Washington, which not only require extensive public participation in local planning, but are among several states that have pioneered the establishment of land use appeals boards to hear land use disputes.

### 4.4.2. Length of the land use process

A frequent criticism of the Hawaii's land use system is that the land use process takes too long, which critics say contributes to project delays, higher costs for

development, and discourages developer investment in Hawaii. Developers say that it takes anywhere from seven to ten—or more—years to get land use permits. A simplified version of the development process and timeline is provided in Figure 1 in Chapter 2.

### VIEWPOINTS

A common complaint among participants was that State-level review lengthens the development timetable by duplicating county processes, addressing the same impacts reviewed at the county level. Other factors cited contributing to a lengthy process included: many intervention points that allow project opponents to appeal projects; slow processing of State and county ministerial permits; and projects with entitlements that have not been able to proceed with development for one reason or another.

On the other hand, proponents of the State's role in land use point to the need for full and deliberate examination of project impacts because of the State's fiduciary obligation to protect and manage public trust resources and for fiscal responsibility in the provision of State-funded infrastructure, facilities, and services. For this group, detailed and objective public review of proposed projects is as important in the land use process as efficiency is.

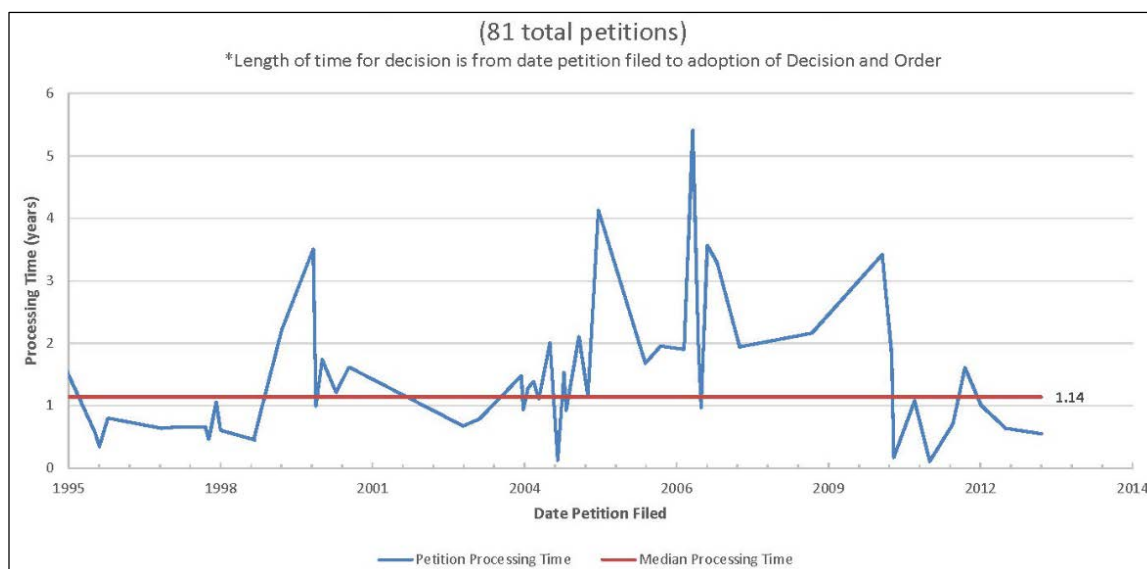
### DISCUSSION

The timeframe for LUC decision making adds at least one year to the development process, longer if a petitioner requests an extension. An analysis of LUC dockets for the period 1995-2014 shows that the median processing time<sup>1</sup> for petitions for district boundary amendments was 1.14 years or about 14 months (see Figure 5). Even before the time limit was enacted, the median length of time from the date filed with the LUC to the date of the LUC decision and order was less than a year, and this has not changed significantly since 1976.

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<sup>1</sup> "Processing time" is calculated as the time from the date the LUC deems a petition complete for processing and the effective date of the LUC decision and order.

**Figure 5. Length of Time for Decision\* (1995-2014)**

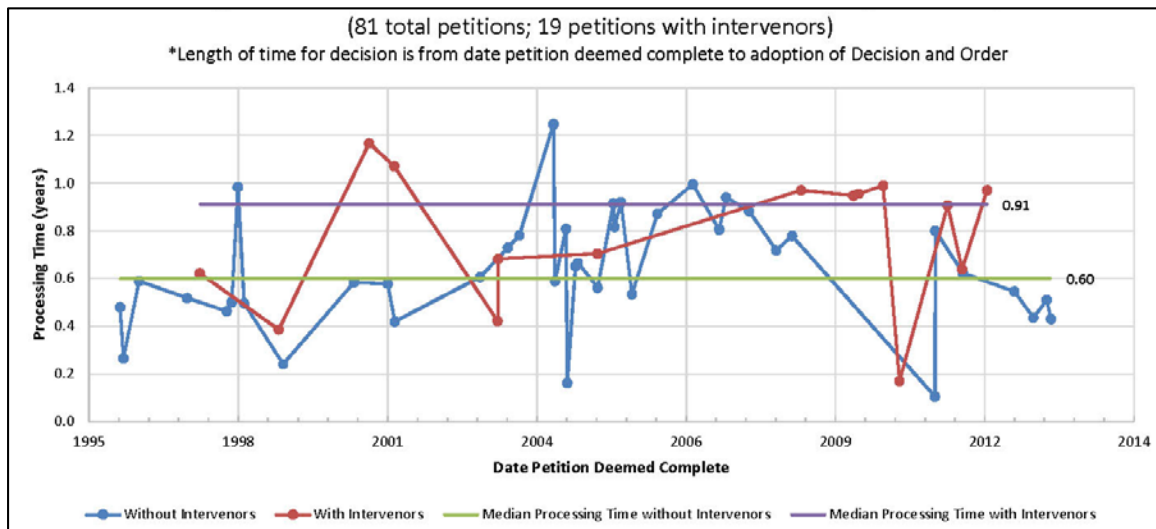


The time to prepare the documents required for a complete filing—including environmental assessments and environmental impact assessments (EAs/EISs)—is often attributed to the lengthy LUC process, without acknowledgement that these documents also serve subsequent State and county permit approval processes. EAs/EISs are often done at the LUC stage since Chapter 343, HRS, requires EAs/EISs, when triggered, for the first discretionary permit in the land use process. EAs/EISs typically take a minimum of one and a half to two years or longer to prepare and process. There is often a long lag—in excess of the time typically required to prepare necessary documents—between the date a petition is filed and the date a petition is deemed complete, which is not attributable to the LUC process, but rather to timing and project decisions made by the petitioner.

Intervention in a docket typically lengthens the time for LUC approvals, although dockets with intervenors after 1995 are still generally decided in less than one year. In the period 1995-2014, the average processing time for petitions with intervenors was 0.91 years or about 11 months, compared to 0.60 years or about seven months for petitions without intervenors, lengthening the average processing time 34 percent (see Figure 6).

Intervention has, albeit infrequently, resulted in delays in the LUC process and/or court appeals of LUC decisions that have resulted in substantial delays of projects where land use policy conflicts exist. As an example, the status of the Koa Ridge project on Oahu, whose original petition was filed in 2000, is still undecided. The project was approved three times by the LUC, appealed to the courts three times, and is still pending before the Supreme Court on appeal of the LUC's 2012 approval.

**Figure 6. Length of Time for Decision\* with and without Intervenor (1995-2014)**



Delays encountered in project development are generally due to factors external to the LUC process, such as delays encountered in the county entitlement process, failure to secure requisite infrastructure improvements to service the project (e.g., water sources still to be identified years after LUC approval), changes in the economy, problems with project financing, change in landownership, etc. Annual reports filed with the LUC evidence delays in project implementation of 10 to 20 or more years for a number of petitions statewide.

When critics talk about the burdensome length of the land use process, they are generally not just referring to the time it takes for LUC decision making, but the cumulative time to prepare for and obtain other State and county approvals required to bring a project to fruition, including plan approvals, environmental reviews, zone changes, and development permits, each with their own decision making timetables.

Streamlining the LUC process—whether by increasing the acreage threshold for county boundary amendments, narrowing the scope of LUC review, or other means—might appear to shorten the development timetable, but by itself, will not necessarily result in increased efficiency in the land use system overall. Nor will it address environmental and community members' concerns that streamlining the land use process would eliminate the level of scrutiny and the means to protect and address impacts on public trust resources and State infrastructure and facilities the current system provides.

These differing viewpoints point to the need to examine other models for making our land use system more responsive without compromising our desired land use objectives. For example, Oregon's statewide planning program requires that development permits must be processed within 120

days; but this permitting time limit is set within a larger framework of state and local land use policies, standards, and procedures that provide checks and balances to ensure that statewide land use goals and objectives are addressed. In California, some counties have initiated priority processing for land use applications that promote and incentivize Smart Growth features, such that projects that score a certain amount of points on a checklist of criteria could qualify for quicker review and save months in processing time.

### 4.4.3. State-level project-by-project review

LUC decision making on individual petitions is reactive and doesn't foster effective management of growth or plan implementation.

#### VIEWPOINTS

Critics of the LUC's role in project-by-project reviews feel it is duplicative of county zoning and permitting processes, and that it gets into details that are not relevant to determining the appropriate district classification. The project-by-project process is regulatory and reactive, responding to landowner and developer interests.

Environmental and community representatives feel a second level of review is warranted for the protection of public trust resources. The project-by-project review ensures there is a full examination of the concerns and impacts of proposed development.

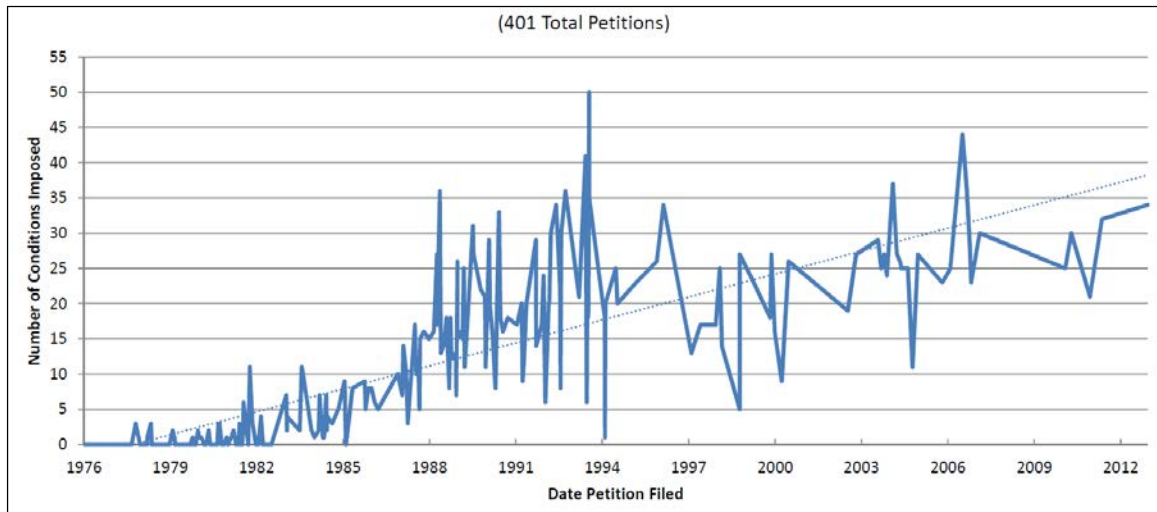
#### DISCUSSION

Prior to 1975, the LUC used a quasi-legislative process for both individual and regional district boundary amendments and no conditions were imposed on petition approvals. Following the 1974 Hawaii Supreme Court ruling on *Town v. Land Commission*, Chapter 205, HRS, was amended to require that LUC district boundary amendments be conducted as contested case hearings, and the five-year boundary review of the LUC was eliminated.

LUC project-specific review provides the opportunity for full and in-depth analysis of a project and its impacts. State and county interests are represented, addressed, and mitigated as needed.

Since 1975, LUC proceedings have delved into greater project detail, taken slightly longer to process, and resulted in a gradual increase in the number of conditions imposed on petition approvals, from zero in 1976 to a median of 25 conditions post-1995 (see Figure 7).

**Figure 7. Number of Conditions Imposed (1976-2013)**



In practice, individual project reviews engender a host of issues. Because individual petitions are driven by developer interests and timing, individual boundary amendments that are not consistent with county plans and implementation schedules provides no predictability or certainty for both the community and public agencies responsible for providing infrastructure, facilities, and services as to timing or location of approved development.

Regional and cumulative impacts are difficult to quantify on a project-by-project basis, and it is equally difficult to argue for denial if a project is evaluated on the basis of its marginal impacts rather than the cumulative impacts on a region.

In practice, the investment in studies and detailed project plans and petitioner agreement to conditions to mitigate State and county concerns, make it difficult for the State or county and the LUC to deny a petition. This upfront investment in studies and project plan development required to meet the content requirements for a district boundary amendment petition also contributes to investment-backed expectations, project entitlement, and commitment to specific mitigation measures, often too early in the land use process. This sets in place conditions that are reasonably expected to mitigate impacts at the time of the decision, but may be inappropriate or inadequate over the course of development, as projects stall or morph over time in response to market changes. Only petitioners with deep pockets survive.

Project-by-project reviews shift the decision making focus from planning, coordination, and collaboration in the provision of regional infrastructure requirements to trying to extract infrastructure improvements on a project-by-project basis, which is often too burdensome for the petitioner or developer. The individual developer is reliant on a number of other actors to provide or contribute to infrastructure improvements needed for their individual projects

to move forward, creating uncertainty and less predictability in the timing of approved projects and development.

It is also difficult to address numerous—often conflicting—State agency plans and policy priorities or emerging issues like climate change on a project-by-project basis.

Project-by-project approval 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. This can result in physical development occurring without adequate or available infrastructure capacity or public services, leading to public dissatisfaction over congestion, infrastructure shortfalls, or a diminished quality of life. Furthermore, imposing exactions on individual projects to address regional infrastructure deficiencies is not only burdensome and costly to the developer, but if it overreaches, may be challenged as unconstitutional.

Other states such as California, Maryland, Oregon, and Rhode Island have instituted land use planning systems that strengthen the ties between state and local planning and to reinforce the connection between plans and regulations. California, Maryland, and Rhode Island require, by statute, certain general plan elements and provide financial and technical assistance during the preparation of local government plans. In states like Oregon, state planning agencies review and approve local plans to ensure consistency with state plans and planning policies.

### 4.4.4. Duplication in State and county processes

Critics contend the LUC process is redundant and duplicative of county zoning. Supporters of the existing system assert there is continued need for a second level of scrutiny and State review.

#### VIEWPOINTS

Detractors of the LUC process state that the same issues and impacts are being considered at both the State and county levels and that the LUC is too detailed in its review and the conditions it imposes. They believe the LUC is involved in regulatory matters that are generally addressed at the county-level and are not of State significance, such as street lighting and road treatments. The counties' land use planning capacity and expertise has matured, and each county has robust programs for comprehensive land use planning and permitting that engages the community in land use policy and decision making. Redundancy also introduces multiple opportunities to challenge land use decisions and increases uncertainty in the decision making environment.

Supporters believe that protection of Hawaii's public trust resources, environmental quality, and community well-being requires a deliberate, in-depth analysis, and open process for project reviews as provided in the LUC process. They believe the existing LUC process provides a much-needed



balance to county land use decision making processes, which they believe are unduly influenced by developer interests.

### DISCUSSION

The redundancy created by the existing LUC process is largely a function of the project-by-project character of the LUC boundary amendment process and the evidentiary and procedural requirements of the LUC's quasi-judicial, contest case hearing process, which are discussed elsewhere in more depth.

In practice, the State's analysis is limited to a 'threshold' review of areas of county concern such as fire and police protection, leaving any concerns regarding these services to county-level processes unless they are raised by the county or a commission member in the course of the LUC hearing. Typically, an issue of county concern is not raised before the LUC unless there is a compelling public or environmental health and safety concern specific to the individual project or site. Similarly, the State through the LUC has imposed conditions of a county nature where the county lacked ordinances or rules to adequately mitigate project impacts. At one time, the LUC imposed conditions for the down-shielding of street lights to mitigate impacts on threatened and endangered seabirds prior to more widespread county adoption of such street lighting specifications.

Claims of redundancy do not consider the State's obligation to protect and manage public trust resources and Hawaii's fragile ecosystems or the different functional responsibilities of the State and counties. The current process offers a mechanism for the State to express its legitimate interests in land use and strengthens consideration of the State's resource management interests in areas where the counties generally lack the jurisdiction, expertise, or have conflicting priorities. For example, with respect to water, the State is charged with stewardship of ground and surface water resources statewide, whereas the counties have traditionally been water purveyors, tasked with providing reliable water service to customers.

Outside of the LUC process, there is no effective mechanism to assure that State concerns are addressed in county land use processes. The State does not have veto power over county plans, county land use designations, or land use decisions when State interests diverge from county interests over land use matters. The LUC process provides a forum for State agencies to anticipate and address project impacts on infrastructure, facilities, services, or resources of agency concern.

County planning department capacities and functions, along with zoning codes, have become increasingly sophisticated, complex, and data-driven, with extensive community involvement in planning processes. While county planning capabilities have matured, county land use decisions are not always aligned with the analysis and recommendations of county planning staff. Land use decisions are still subject to local development pressure and influence. This

is a critical driver in the desire for State level review to provide checks and balances in the land use system, since State review is viewed as more insulated from development pressure and the State is assumed to provide greater attention to broader resource management concerns.

Redundancy in a system is a common approach to providing reliability for the system. There are system costs for redundancy. However, if the risk from system failure is high—as in the failure to provide needed infrastructure or to adequately protect critical natural resources—then some redundancy has long-term benefits and value. Community members believe the stakes are high enough to warrant a second level of review, which should be done prior to full vesting of associated development rights. Key questions to be considered are: at what point or points in the planning and project approval process is State-level review needed? What form should State-level review take?

In other states without a State land use approval process, such as Oregon and Washington, checks and balances in land use decision making are focused at the local comprehensive plan level and the land use planning and regulatory schema requires consistency with the comprehensive plan. Central to this examination of system improvements for Hawaii is whether there are more effective ways to provide checks and balances in our statewide land use system that reduces the actual and perceived redundancy in State and county processes, rather than through the 'duplicative' project-specific LUC approval process.

### 4.4.5. Quasi-judicial decision making process

Changing the LUC process from a quasi-judicial process to a quasi-legislative process is the most frequent recommendation for change in the statewide land use system. But for proponents of the quasi-judicial process, retaining the contested case hearing is paramount to protecting public trust resources and public interest in major land use decisions statewide.

#### VIEWPOINTS

Common complaints about the quasi-judicial process include concerns that it is costly and time consuming. There is too much time spent on procedural matters and too much detail in terms of the scope of LUC review and conditions imposed. The State is not looking at the big picture and should be leaving project details and mitigation to the county level. Quasi-judicial proceedings invite intervention and judicial appeals, which delay project approvals and create uncertainty in the development process.

Supporters of the quasi-judicial process assert that it insulates land use decision making from political or developer influence common at the county level. It allows parties to intervene and participate fully in the review process, with the right to present evidence and expert witnesses and cross-examine other

parties' witnesses. Decisions must be presented in written findings based on evidence, which must meet standards in law, and are appealable to court.

### DISCUSSION

Prior to the 1974 Town decision, the LUC district boundary amendment process for individual petitions and petitions based on five-year boundary reviews used a quasi-legislative process, similar to county plan and zoning approvals. In *Town v. Land Use Commission* (1974), the Hawaii Supreme Court ruled that the redistricting of a parcel is adjudicative of property rights and to protect due process for impacted parties must be conducted as contested case hearings under Chapter 91, HRS.

In 1975, Chapter 205, HRS, was amended to institute a contested case hearing process for district boundary amendments. Thus, use of the contested case hearing is predicated on the role of the State in project-by-project reviews. The contested case hearing is an administrative, court-like hearing with rules for evidence, witnesses, cross-examination, and decisions based on findings of fact.

Chapter 91 requirements for judicial review are well-established and facilitate judicial appeals. By comparison, the standard for judicial review of quasi-legislative decisions, such as plan approvals and zone changes by county councils, is significantly higher than that for quasi-judicial decisions, with a presumption of validity that provides for broad discretion in the application of rule. Quasi-legislative decisions are thus more difficult to appeal than quasi-judicial decisions.

In its ruling, however, the Supreme Court did not determine that a rule-making hearing was constitutionally infirm: it merely found that given the lack of a clear legislative statement to the contrary, the LUC decision lent itself more to a contest case hearing than a rule-making one.

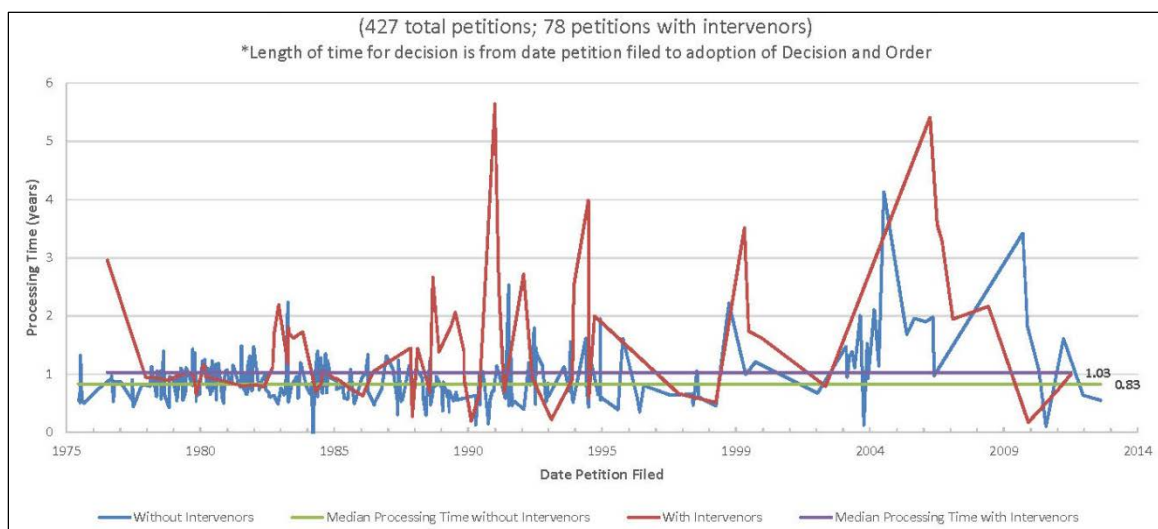
All parties—petitioners, public agencies, and public interest groups—have something to gain or lose from the use of the contested case hearing.

For petitioners, the time and cost of preparing a petition for LUC decision making and for participating in the decision making process is balanced by the creation of investment-backed expectations and clear entitlements that might not be conferred if LUC decision making were limited merely to the matter of the reclassification of land. These entitlements and project-specific commitments provide certainty for the petitioner; although these same commitments can also become burdensome when economic conditions and markets change. In cases where there is opposition to a petition from community groups, the prospect of intervenors, motions for orders to show cause, or an appeal makes the process uncertain and unpredictable, although historically petitions have generally been approved without a challenge.

For State agencies, the quasi-judicial process provides a forum for ensuring that State concerns are addressed in project development, which is not available through county decision making processes. It also provides a mechanism to address project impacts on agency resource, facility, and infrastructure concerns through the imposition of conditions for fees, land, capital improvements, etc. from the petitioner to mitigate its fair-share of project impacts on local and regional infrastructure and facilities. On the other hand, the standards for a complete filing under current LUC rules would be insurmountable for regional boundary amendments involving multiple parcels.

From 1975 to present, there were intervenors in 78 petitions, 18 percent of all petitions (see Figure 8). For public interest groups, the quasi-judicial process provides citizen groups the opportunity to participate more meaningfully in the land use decision making process. However, their participation is often hindered by the inability to attend all the hearings or their relative inexperience with participating in the court-like proceedings without professional legal support. Despite these barriers, the quasi-judicial process is perceived to be an invaluable tool in leveling the development playing field for community groups: it bars ex parte communication between decision makers and developers; it provides for a full and transparent analysis of project benefits, costs, and impacts; through the decision and order, it provides a means to hold petitioners accountable for representations made to gain project approval; and quasi-judicial decisions are easier to appeal than quasi-legislative decisions of county councils. Even though most petitions are approved over time, environmental and community groups still see this as the only viable means to provide a check on development pressure on land use decision making at the county level.

**Figure 8. Length of Time for Decision\* with and Without Intervenors (1975-2014)**



Detailed quasi-judicial review of project impacts and mitigation supports transparent, informed decision making, but it also diverts attention and scarce

public resources away from comprehensive planning and plan implementation. While the quasi-judicial process allows agencies to work out agreements on how local and regional impacts will be mitigated, reliance on conditions to guide project development is a poor substitute for proactive State and county programs to plan for, coordinate, and collaborate in the provision of infrastructure, facilities, and services to support approved development.

The relative infrequency of intervenors and appeals over time raises the question as to whether there are other tools that could instill trust in public land use decisions. Are there other ways to deal with land use policy disputes or concerns over county land use decisions?

In other states, public participation and environmental advocacy are important elements in their planning systems, but these systems are able to balance development and protection without reliance on quasi-judicial proceedings for project approvals. Oregon and Washington rely on state policy guidance, the preparation of comprehensive plans, and consistency with these plans as the foundational elements of their land use systems. They are among a few pioneering states to use land use appeals boards to hear land use disputes. These are specialized boards with expertise in planning and land use law. It remains to be seen if Hawaii's new environmental court can become a vehicle to hear land use appeals in lieu of reliance on contested case hearing for all boundary amendments.

### 4.4.6. Certainty and predictability for parties

All stakeholders want certainty and predictability in land use outcomes.

#### VIEWPOINTS

A common complaint with the existing system was the lack of predictability in terms of outcomes and delay that results from intervention, not only in LUC proceedings, but at other points in the development approval process. Another weakness noted was uncertainty and lack of predictability from the lack of clear standards and rules to follow in the permitting process, which often results in case-by-case negotiation. Another criticism was the impact of lagging infrastructure development on the ability of projects in planned growth areas to proceed with development.

Others noted that while the county planning process is a strength, the county plans are not always adhered to. Both community members and development interests pointed to the dilemma raised by environmental review documents prepared years ago: how reliance on project approvals based on those documents provides needed certainty for developers, in contrast to calls from the community to revisit and update the studies underpinning those EAs/EISs to ensure that they reflect changes in conditions and community sentiment. Another raised the issue of ensuring predictability of plan limits when build out is reached.

### DISCUSSION

Uncertainty and lack of predictability in land use system is a function of many factors. In the LUC process, the decision making and development process can be disrupted by intervenors, appeals, or orders to show cause. There are multiple decision points in the approval/development process where documents and applications are subject to unclear or uncertain standards, or where the documents/applications can be appealed.

Another dimension of predictability for developers and the public is lack of infrastructure investment in support of long-range land use plans and growth boundaries. Public agencies are expected to provide infrastructure and necessary facilities, and community members rely on land use decisions that conform to adopted land use plans to provide for orderly growth and change in communities. What happens instead, though, is the funding needed for infrastructure improvements required for new growth is often delayed, which effectively delays projects and results in case-by-case negotiation for mitigation measures.

Yet another dimension of predictability is the conditions imposed with project approvals do not provide flexibility in dealing with changing conditions and markets over time; there is difficulty in balancing “entitlement” for developer and changing conditions and expectations of community and public agencies.

Oregon’s state land use program provides predictability by requiring that clear, objective standards be used when reviewing land use permit applications. Under Oregon law, applicants are protected from arbitrary or inconsistent decisions.

As noted elsewhere, some states also provide specialized administrative appeals mechanisms to hear cases where land use decisions have not resulted in predictable outcomes.

#### **4.4.7. Protection of resource lands and resources**

There is general agreement about the need to preserve and protect Hawaii’s environmental and cultural resources. There are divergent views on how well we are protecting these resources, as well as divergence as to the level of protection and the means used to protect the resources we value as a community.

### VIEWPOINTS

Some participants feel the system’s done a good job of protecting agricultural and conservation lands, and a poor job of providing housing or lands for urban expansion. There is too much land in the Agricultural District, and the counties should have more authority for defining uses and regulating the Agricultural and Rural Districts. Use of the Rural District is limited and the Rural District is poorly defined.

Others were concerned that there isn't enough consideration of agricultural resource concerns in the boundary amendment process, and that the system is failing at regulating non-agricultural uses in the Agricultural District. Generally, there was agreement that having the Conservation District under DLNR authority is a good feature of the existing system. Environmental interests expressed concern there are lands in the Agricultural or other districts that should be identified and classified as Conservation because they possess natural and cultural resources that need greater protection.

### DISCUSSION

#### **Agricultural Lands**

The pattern of urban reclassification of the State's best agricultural lands has occurred largely because good agricultural land is also well suited for urban uses and shifts in Hawaii's economy and large landowner business models shifting from agriculture to tourism and land development. Even with the enactment of important agricultural lands legislation, protection of agricultural land is hindered by a lack of a complete picture of what lands should be protected for agricultural production into the future and the development of a cohesive strategy for protection and industry development. Although counties generally map agricultural lands in their general plans, development and community plans, the process of county identification of Important Agricultural Lands (IAL) is incomplete.

In this policy vacuum, land use decision makers are unable to come up with defensible arguments against the conversion of agricultural lands on a project-by-project basis, because applicant studies conclude that there is an "insignificant loss" of agricultural land in the context of the many acres of land remaining in the Agricultural District.

In addition, the policies and standards for the Agricultural District in Chapter 205, HRS, are permissive and fail to provide a strong policy framework to protect agricultural lands, discourage the encroachment of non-agricultural, higher valued uses in the Agricultural District, and ensure effective enforcement. The district standards in Chapter 205 contribute to the siting of non-agricultural uses in the Agricultural District: the minimum lot size and allowable density is more suited for suburban or exurban settings. In other states and localities, agricultural lot sizes are much larger: in Oregon, by state law, the minimum lot size for designated farm land is 80 acres, for forest land, the minimum lot size is 120 acres. In addition, over the years, the permissible uses for the Agricultural District have been amended repeatedly to broaden the uses allowed in the Agricultural District—from five uses in 1965 to 21 currently—which has weakened the nexus to agricultural production and bona fide farming. Counties have had difficulties controlling non-farm dwellings in the Agricultural District.

Section 205-6, Special Permits, further undermines the intent of the Ag District to protect agricultural uses by allowing use variances; the special permit



has been a vehicle to permit non-agricultural uses, notably vacation rentals, in the Ag district. Use of the Special Permit and broadening the permissible uses for the Agricultural District promotes the impermanence syndrome, which occurs with the conversion of agricultural lands to non-agricultural uses (usually higher value uses), increasing the value and price of farm land, discouraging agricultural investments and hastening the loss of supporting agricultural services and suppliers.

Land use regulation—even IAL designation—is not sufficient to assure agriculture’s future in Hawaii. A strong agricultural land use policy must be complemented and supported with a robust system of programs and other tools that promote agriculture as a business and protect the best agricultural lands where there is a compelling public interest to do so.

### Rural Lands

There is limited use of the Rural district. The Rural District was defined after the original district boundaries were established upon the request of small landowners. In the establishment of the original district boundaries in 1963-64, plantation towns and rural centers were designated Urban, even though urban land use and development standards are inappropriate for use in the context of rural settlements and rural infrastructure. All working and open lands not designated as Conservation were designated Agricultural, even if they had little agricultural resource value. Currently, less than one percent of land statewide is classified in the Rural District, and there is no land in the Rural District on Oahu.

In retrospect, the original law and established boundaries reflected an urban bias: it overlooked the important distinctions between urban and rural communities, and the need for specialized tools for planning, servicing, and maintaining working lands for farming, ranching, and forestry.

Chapter 205’s Rural District standards and uses are inappropriate for managing rural landscapes and settlements—they encourage low-density sprawl and increase demand for extensive infrastructure and services. There is no flexibility to texturize or differentiate rural communities and land use patterns; rural communities in effect are urban.

In rural land use planning, rural lands must be viewed as a permanent part of Hawaii’s landscape, not as lands premature for development. There are permanent natural, economic, and cultural resource values in these lands that should be protected to ensure the vitality of rural industries and rural communities.

The potential for preserving some of Hawaii’s open space, rural communities, and working lands lies in our ability to redefine the Rural and Agricultural District and their standards, and provide for expansion of the Rural District to accommodate uses that threaten to fragment and convert agricultural lands to other uses.



### Conservation Lands and Protection of Conservation Resource Values

Concerns raised in this process indicate that there is not a clear vision or broad understanding of what critical conservation resources and conservation resource lands should be protected and how they will be protected. Land use plans should be based on the protection of sensitive lands and making that apparent region by region. Such an effort would result in a more integrated picture of what lands should be protected and those that can be developed to meet urban needs.

Participants cited the Trust for Public Lands and OHA's Greenprint project as one such effort that could inform whether critical resource lands outside the Conservation District would benefit from further protection.

Continuing development pressure, coastal development, changes in watersheds, and climate change will continue to challenge the statewide land use system to develop new tools and models for more effective management of our conservation resources and built environment. One aspect that was repeatedly mentioned was greater integration of watershed planning and water resource management with the land use planning and regulatory system schema.

### Utility of the Land Use Districts for Policy Guidance

In summary, the land use districts as currently defined in HRS Chapter 205, fall short of providing effective policy guidance for planning and managing island landscapes, especially for agricultural lands and rural areas. However, if approached from the context of transect planning, the districts provide an opportunity to articulate a framework for landscape management across the urban to conservation lands continuum. Transect planning, as employed by planners like Andres Duany, defines along a regional transect, a set of settlement types that vary by their level and intensity of use and character (in Duany's work, from 'urban core' to 'rural preserve'). This approach enables planners and regulators to define expectations about settlement form, types of uses, levels of services, land use values, and complementary implementation tools, such as property tax policies, that work in consonance to sustain the character, quality, and integrity of the human and natural habitats along the urban to conservation continuum.

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#### 4.4.8. Implementation

The system falls short in providing adequate infrastructure and public facilities in planned growth areas. The current system also hinders the development of sufficient affordable or workforce housing.

#### VIEWPOINTS

Concerns and frustration over problems in implementation were frequently raised by participants, especially where the lack of infrastructure development is causing long delays in approved projects. Comments included: there's no

long-range comprehensive planning and coordination between State and county capital improvement planning; investment in infrastructure development in planned growth areas is lagging; State plans are absent or not updated to inform the LUC or county land use decision making; there's no fiscal discipline in plans or capital improvement planning.

Others noted the absence of incentives for planned growth. Concerns were raised about equity in paying for growth. Developers are typically expected to pay the full cost of improvements to mitigate projects, which increases the cost of housing/development or significantly delays development. But community members are wary of having the public pay for growth or infrastructure development that it does not ask for or from which it does not benefit.

Relative to housing, the obvious criticism is that somehow the system does not create or provide enough affordable or workforce housing. Truly affordable housing is not being provided, and housing development takes too long to get approved.

### DISCUSSION

The Hawaii State Plan, Hawaii Revised Statutes Chapter 226, provides a framework for a statewide planning system, but in its current form, it does not provide vision, discipline, or effective coordination for a statewide land use system (e.g., State functional plans are intended to guide the allocation of State resources but are over 20 years old and are not utilized).

State resources are devoted to project-by-project review rather than regional or long-range comprehensive planning and coordinated plan implementation. The State lacks coordinated resource protection strategies, such as an agricultural resource strategy or a unified investment strategy, for planned community development/growth. Regional infrastructure cannot be created one project at a time. Reliance on conditions of approval to provide necessary infrastructure results in an ad hoc improvement and investment strategy based on the developer's ability to provide improvements.

County plans are not fiscally constrained, and phasing components are conceptual at best; they lack the means to coordinate planned growth with infrastructure and facility development. The State and county lack a coordinated approach or strategy for planning for development and resource protection, and lack mechanisms to coordinate and cost-share needed regional infrastructure investments. Some have suggested the State and the LUC should get more involved in county planning processes (i.e., county general plans, community plans, and community plan amendments).

Implementation and financing tools, such as impact fees, community facilities districts, tax increment financing, and transfer of development rights, are used on the mainland to support growth management; the counties have the statutory authority for these and other methods, but they are not used much.

The public desires a system that invests in planned growth, reduces the cost of infrastructure development to approved projects, and discourages private investments where they are not desired. Plans are not self-executing; effective growth management requires a host of proactive tools and programs working concurrently to ensure that communities grow and develop as residents and businesses desire.

In other states, appropriate implementation strategies can serve to effectively further the goals and objectives of state agencies. In Maryland, for example, the Smart Growth Subcabinet is charged with helping to implement the state's Smart Growth Policy, recommending to the Governor changes in state law, regulations, and procedures needed to support the Policy ("Smart Growth Subcabinet," 2015). The Subcabinet, comprised of more than ten state agencies, is required to periodically report on their progress implementing the Policy. Also in Maryland, the Priority Funding Areas Act of 1997 directs state funding for growth-related infrastructure to Priority Funding Areas (PFA), providing a geographic focus for state investment in growth ("Smart Growth Legislation," 2014). Growth-related projects include most state programs that encourage growth and development such as highways, sewer and water construction, economic development assistance, and state leases or construction of new office facilities.

### Affordable Housing

According to the Hawaii Housing Planning Study, the total number of additional residential units needed from 2012 through 2016 in Hawaii that will not be provided by the current system will be 28,137 (HHFDC, 2011). Of these units, 24,049 or approximately 85 percent are needed for various classes of workforce housing. The remaining 4,088 or approximately 15 percent of the units would be needed for those making 140 percent or higher of the median income. Consequently, there appears to be a significant need for workforce housing (defined as housing for households making 140 percent or less of the median income) which will not be met by the current system.

While there are many causes for this unmet need, the Hawaii Housing Planning Study suggested that "the shortage results from market inefficiencies (lack of information or coordination, lag times, etc.), regulations that dampen supply, and economic realities (difficulties of producing units below market prices, etc.)." (HHFDC, p. 24). It is unknown to what extent the State land use process is responsible for this shortage.

Currently, the LUC requires developers to comply with county affordable housing requirements. As such, the State land use system does not require any more residential units than required by the counties. The LUC rules allow for an expedited 45-day period to process a completed district boundary amendment proceeding for a 201H designated affordable housing project. HAR § 15-15-97(o). This expedited period is too short to allow for a complete review of a

district boundary amendment, and an expedited review is rarely requested or encouraged at the LUC level.

Some of the ways in which the State land use process may “dampen the supply” may include the cost of the actual process, the time for review, and the uncertainty of the result.

With respect to the cost of the process itself, the environmental study would be required for any county review. So, the initial hiring of experts, preparation of studies, and drafting of the environmental documents would be needed even if the State land use system was eliminated. The land use attorney fees in preparing the land use documents and the expense of calling experts to testify are directly attributable to the State land use system. As compared to the total development costs, however, these direct costs would not significantly affect the cost of workforce housing. Any cost impact, therefore, is likely to be associated with the loss of time and the lack of predictability.

Some also claim that the LUC process increases the cost of housing generally by restricting the total land supply and increasing the price of houses across the spectrum. OP has undertaken a preliminary GIS assessment of the undeveloped lands within the State Urban District using satellite aerial imagery analysis (see Table 4 below). The results of this analysis show there are significant amounts of undeveloped lands within the Urban District on all islands, including approximately 25,700 acres on Oahu, 5,400 acres on Kauai, 9,800 acres on Maui, and 33,900 acres on Hawaii Island.

**Table 5. Undeveloped Lands within the State Urban District**

Island	Undeveloped Lands	Total Urban Land	% Undeveloped
Kauai	5,442	14,865	36.6%
Oahu	25,751	104,232	24.7%
Molokai	1,362	2,287	59.6%
Lanai	1,850	3,039	60.9%
Maui	9,803	22,928	42.8%
Hawaii	33,900	56,348	60.2%
<b>Total</b>	<b>78,108</b>	<b>203,699</b>	<b>38.3%</b>

Notes: Undeveloped lands were estimated using GIS analysis of lands in the Urban District, excluding lands classified by NOAA’s Coastal Change Analysis Program (2010-11 data) as either impervious surfaces or developed open space, and lands with slopes greater than 20 percent .

Given the available supply of Urban District lands, the lack of development may be due to other factors including county approvals, and the availability, need, and cost of off-site infrastructure, including highway and road improvements, and expansion of sewer, water, and drainage systems necessary to support the development.

### 4.4.9. Data and analysis for informed decisions

There is a need for in-depth, comprehensive analysis for informed decision making on land use proposals, but this is hampered by the resources required and the difficulty in obtaining and sharing data, and the adequacy of models in understanding cause and effect relationships in complex land use systems.

#### VIEWPOINTS

Community participants are concerned that the cumulative impacts of projects are not being taken into account in the project approval process: that decision makers are not looking at what has been approved and what is being proposed for the future. Carrying capacity analysis is needed to guide decision making, but others questioned whether carrying capacity could be defined.

Environmental and community members were also very concerned that developers prepare the environmental studies that provide the information used to analyze the impacts of project proposals.

A number of participants expressed the need for shared baseline data, such as housing data, and indicators to support long-term regional planning, as well as the development and use of planning thresholds, such as for transportation, which could be used to analyze cumulative development impacts at the project and regional level. There were generalized concerns that the land use system is not doing a good job in addressing systemic issues like food security, water, and affordable housing.

#### DISCUSSION

Environmental and community stakeholders expressed distrust of the information and analysis being used to inform land use decisions. With so much at stake, community members want certainty and predictability about the future of their communities. They want the most in-depth and robust analysis to ensure that the short and long-term consequences of decisions made now will not result in degradation of the natural and built environment.

In practice, analysis of individual petitions and project applications at the State and county level is conducted with imperfect data. Information for petition analysis relies in large part on environmental documents and studies prepared by the project proponent. Regional and cumulative impacts are difficult to quantify on a project-by-project basis. Data is scattered among State and county agencies without regional integration. The lack of shared planning thresholds for regional analysis, like for transportation, results in case-by-case negotiations with affected State or county agencies and less predictability in the decision making process.

For petitions before the LUC, the need for information on cumulative and regional impacts and mitigation requirements for land use decision making also requires investment in detailed plans and studies, often too early in the development process. This can result in entitlements, representations about

proposed uses and project features, and the imposition of conditions being set prematurely, so that they may not be suited to development conditions at the time that development is ready to proceed. Some participants suggested conducting environmental reviews later in the development process, when project plans have matured.

Regarding the LUC's consideration of archaeological or cultural issues, the LUC is constitutionally required to make specific findings and conclusions as to (1) the identity and scope of 'valued cultural, historical or natural resources' in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protective native Hawaiian rights if they are found to exist." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 37, 46, 7 P.3d 1068, 1083 (2000).

The LUC relies on the Petitioner's consultants, the Archaeological Inventory Survey, comments from the State Historic Preservation Division, and members of the public in its consideration of archaeological and/or cultural issues. In addition, at least one of the LUC commissioners must have "substantial experience of expertise in traditional Hawaiian land usage and knowledge of cultural land practices." (HRS Section 205-1) Although individuals within the counties and OP may have some experience on native Hawaiian archaeological and cultural issues, both offices generally do not offer testimony based solely on their independent expertise. Cultural issues, by their nature, are not susceptible to an easy, substantive evaluation.

In California, environmental review documents are prepared for accepting agencies by neutral third parties rather than the project developer. Information developed in individual environmental impact reports is incorporated into a database, which is maintained by the state planning agency and can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

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### 4.4.10. Enforcement of Chapter 205

Enforcement of both the permissible uses and conditions imposed by the LUC on approved projects under HRS Chapter 205 is weakened by unclear lines of authority and the lack of flexibility in effecting compliance with conditions.

#### VIEWPOINTS

Community critics cited lax enforcement of permissible uses in the land use districts as a major weakness, particularly in the Agricultural District. They also expressed concern that developers aren't being adequately monitored or held accountable for complying with conditions of approval. The counties were concerned about the lack of clear lines of authority or mechanisms for counties

to enforce LUC conditions—“there’s no county hammer.” The conditions were also felt to be too detailed or even duplicative of those imposed by the counties.

Representatives of the development community cited a need for more flexibility and relief if the market or project changes over time. Certainty is important, but flexibility is also desired.

### DISCUSSION

Under HRS § 205-12, the counties are responsible for enforcing the district use classifications and any restrictions on uses of LSB-rated A and B lands in the Agricultural District and reporting violations to the LUC. In addition, HRS § 205-13 provides for penalties to be imposed for violation of uses in the Agricultural District, but the party authorized to impose penalties is not defined.

With respect to enforcement of LUC conditions of petitions, in Lanai Company, Inc. v. Land Use Commission, 105 Hawaii 296, 319, 97 P.3d 372, 395, the Hawaii Supreme Court stated “the power to enforce the LUC’s conditions and orders, however, lies with the various counties[.]”—which it restated more recently in DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC, 134 Hawai’i 187, 210, 339 P.3d 685, 708 (2014). In addition, the LUC requests that the State or county agency or the petitioner submit annual reports on the status of the petitioner’s compliance with LUC conditions (HAR § 15-15-90).

Under HRS § 205-4(i) parties in a proceeding may seek judicial review pursuant to HRS § 91-14. The courts have also recognized a private right of action by citizens to enforce HRS Chapter 205. See County of Hawaii v. Aala Loop Homeowners, 123 Hawaii 391, 235 P.3d 1103 (2010).

In practice, though, policy compliance is self-enforcing and fragmented. The LUC is authorized to determine whether an action is in violation of its conditions, to order that the violation cease, and to revert the Petition Area to its former or other classification for violations of such conditions. (Hawaii Administrative Rules §§ 15-15-98 – 15-15-104.1 Declaratory Orders, and 15-15-93 Enforcement of conditions, representations, or commitments). The LUC, however, does not have the power to enforce a cease and desist order, such as the power to fine.

Typically, counties enforce their own zoning ordinances, which should incorporate the restrictions imposed by HRS Chapter 205, and often include the conditions imposed by the LUC. Counties are independently empowered to enforce the broader restrictions imposed either by State statute or LUC order. However, this power is not exercised often, leaving enforcement to private citizens or to the limited enforcement powers of the LUC.

Another concern was whether a condition requiring the Petitioner to substantially comply with its representations was too general, and would

require a time-consuming review of the record to determine whether a violation had occurred. The LUC recently changed this condition to limit the obligation to those representations listed in the Decision and Order. Although this creates a higher burden on governmental entities to review the proposed Decision and Order carefully and increases the time spent and possibly the length of the Decision and Order, the county's obligation to review the record will be limited to a single document. Furthermore, county land use enforcement is often complaint-driven. That is, the county often initiates an investigation only after a complainant has identified some particular violation. So, the county's workload may be more manageable if someone has identified the representation allegedly being violated.

Finally, there is a concern that the use of the Order to Show Cause proceeding is an insufficient enforcement tool. Over the last 10 years, the LUC has considered three petitions for an Order to Show Cause: (1) Kuilima; (2) Bridge Aina Lea; and (3) Kaonoulu Ranch. In Kuilima, intervenors asked the LUC to revert the Petition Area for failing to comply with conditions on a timely basis. The LUC decision is still pending. In Bridge Aina Lea, the LUC reverted the Petition Area to its original classification when Petitioner failed to deliver its affordable housing units as required. The circuit court reversed the LUC decision, and the appeal to the Hawaii Supreme Court was upheld; the Supreme Court held that the LUC erred in reverting the land without complying with the requirements of HRS Section 205-4 because the land owners had substantially commenced use of the land in accordance with the representations they had made to the Commission. In Kaonoulu Ranch, intervenors requested an order to show cause because the use was changed from light industrial to commercial and residential which was not in substantial compliance with the original representations. The LUC determined there was good cause to issue the order to show cause, but Petitioners agreed to file a motion to amend to bring the project into conformance.

Because reversion is such a harsh penalty, it is not appropriate for all violations. The value of the Order to Show Cause proceeding as a threat, therefore, may outweigh its value as an actual punishment. But if the counties are not enforcing the LUC conditions, either the LUC considers imposing an extremely harsh penalty, the public finds the resources to enforce the LUC conditions, or the Petitioner is allowed to violate the LUC conditions without consequences.

### 4.5. SUMMARY OF ISSUES AND PROBLEM ASSESSMENT

There is no consensus that Hawaii's Land Use Law or the State land use system needs major change. Although there is no agreement at this time across stakeholder groups about how the system should be improved, in the course of this process, Task Force and community stakeholders have all expressed dissatisfaction with how the system performs and what the system delivers. We are not getting the kind of quality growth or resource protection that is desired.



There are divergent views as to how well the system—and the processes used—are working, reflecting the interests of the respective stakeholders.

In analyzing Task Force and stakeholder comments and concerns, there emerged three overarching performance concerns, particularly for community groups, that is:

- How do you ensure alignment of community values and land use decisions—that is, how does the land use process or system engender **trust** in system outcomes?
- How does the land use process or system address differences in community values or priorities when alignment is difficult—that is, how does the system achieve **balance** among competing interests and values?
- How does the land use process or system account for change and adaptability over time such that the health of a community and environment remains robust through change and adversity—that is, does the system promote **sustainability** in our built and natural environments?

In addition, many comments and issues kept returning to the role of the State in land use decision making, that is:

- What is the **appropriate role for the State** in land use and how will its interests be addressed in land use decision making? What changes would be needed to assure the protections currently offered by State-level project approvals?

The varying viewpoints and underlying concerns provide the context for determining what system improvements are needed in the short- and long-term, and for evaluating whether proposals for system improvement will enable the achievement of desired land use outcomes. Appendix H crosswalks the comments and concerns summarized in this chapter with the desired outcomes and performance criteria of the ideal land use system.

## 5. PROPOSED IMPROVEMENTS TO HAWAII'S LAND USE SYSTEM

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A wide range of comments, suggestions, and recommendations for improvements were generated by the Task Force in the sub-group workshops held in 2014. Appendix I provides notes from the sub-group discussions on system improvements. OP clustered Task Force member recommendations for system changes into broad categories related to different roles for the State in the land use system. Additional comments on system improvements were also received during the community and stakeholder meetings, and these have been incorporated into a summary table of suggestions for land use system improvements (see Appendix J).

The Task Force member proposals for improvements were organized into two categories: fixes to the existing system and system redesign. Fixes to the system are proposals that can be considered for near term implementation or that can be pursued administratively or without much change to the existing law. System redesign are proposals that seek fundamental reforms to how the State land use system operates.

The role of the State in directly or indirectly regulating land use is important to distinguish. Presently, the State LUC and Land Use District Boundary Amendment process exert a direct role in regulating land use akin to county zoning. The various proposals for system improvements range from direct State land use regulation to indirect to no regulation by the State.

### 5.1. FIXES TO THE SYSTEM

Fixes to the existing system are proposals for improvements that can be implemented in the near term or can be made with little or no changes to the existing law. The LUC's role in all of the proposed fixes remains the same in terms of project-specific, quasi-judicial decision making. The fixes are organized into five sub-categories:

- Improving Public Participation
- Better Information for Decision making
- Improving the LUC Process
- Improving Enforcement
- Land Use Districts and IAL Designations

### 5.1.1. Improving Public Participation

#### 5.1.1.1 Live Web Streaming of Hearings; Testimony via Teleconference or Video Conference

Due to often lengthy hearings in sometimes crowded rooms or inconvenient locations, the use of available technology to increase public awareness and access to the hearings has been suggested. There could be staffing, software and equipment costs to provide such access depending on the technique used, which could include telephone conferencing, use of public access television stations, or internet web conference. While there would be improved public accessibility, not everyone is computer literate or has computer/internet access. Adjustments to commission hearing procedures and rules may also be needed.

#### 5.1.1.2 Hear Public Witness Testimony after Initial Petitioner Presentations

Presently, the only available opportunity for public witnesses to testify is at the start of the hearing before there has been any information presented on the proposed project. It has been suggested that the public would be better served and better able to speak to the project if they were allowed to testify towards the end of the day's hearing or after the petitioner presents his case. Often the public has not had the time or inclination to review the submitted petition, exhibits, and expert witness testimonies, which could be very lengthy documents.

#### 5.1.1.3 Improved Notice and Signage

To improve public awareness and involvement, the petitioner could be required to post and remove notice signs of the proposed development and upcoming hearing at or near the project site. This would be similar to county signage requirements to inform the surrounding community of the proposed development pending approval. It has also been suggested that notice be provided by email to impacted community members, and that more advanced notice up to six months be provided.

#### 5.1.1.4 Public Advocate

Direct participation in the contested case, quasi-judicial hearing process can be daunting for the uninitiated or those without legal representation. The notion of a public advocate to represent individual citizens or community groups would provide more equal footing with the petitioner which has retained legal representation and consultants to argue his case. The establishment of such program would require additional staffing and support services. Alternatively, this could be contracted on a consulting services basis as needed from a pool of pre-qualified attorneys.

OP represents the State and State programs in broadly addressing the public interest in LUC matters. By necessity, the State position must balance often

divergent public policy objectives, and thus, will not always align with the interests of individual members of the public.

### 5.1.2. Better Information for Decision Making

#### 5.1.2.1 Use of Thresholds to Guide Decision Making

To provide more objective standards to guide land use decisions relative to the adequacy of public resources such as transportation and water resources, the use of thresholds has been suggested. This would be similar to DOE facilities planning criteria which project the number of students to be generated from proposed residential developments as a basis for recommending new school facilities. In highways transportation planning, level of service operational criteria could be relied upon to determine the adequacy of roadway capacity for accommodating planned developments. The difficulties would arise from the likely high costs of mitigation, for example, from adding lanes to a highway for several miles that may be needed to achieve an acceptable operating level of service.

The use of such standards would provide greater predictability for petitioners and better guidance for decision-makers. However, given infrastructure adequacies in many areas of planned growth, this could lead quickly to regional moratoria on development.

#### 5.1.2.2 Move Environmental Review to Post-LUC Decision Making

It has been suggested that environmental review process occurs too early and should be conducted after LUC decision making. Presently, Environmental Assessments (EAs) or environmental impact statements (EISs) are required to be prepared at the earliest stage of land use decision making. Often for large developments, this occurs at the initial LUC boundary amendment phase, which determines redistricting from Agricultural or Conservation to the Urban District. At this early stage of decision making, however, developers typically have only conceptual plans, without detailed access, circulation, landscaping and development design plans. From the impact assessment standpoint, it is preferable to base impacts on what will be built, to what height and density, at what specific locations on the project site, rather than on conceptual layouts subject to significant changes. Such details are typically available when the developer is in a position to pursue county zone change approval, which occurs later in the development process.

On the other hand, the EA/EIS process is the public's best means of learning early about a proposed development, and being able to weigh in on the adverse impacts and needed mitigation measures. Such measures can then be imposed as conditions of development approvals.

#### 5.1.2.3 Unbiased Environmental Documents

The proposal is to promote objectivity by having the lead agency be responsible for environmental document preparation. In Hawaii, developers retain

consultants to prepare and process EAs and EISs to satisfy HRS Chapter 343 requirements. Unless the proposed development is an agency action, State and county agencies do not control the preparation and processing of the EA or EIS. The public perception thus is that the document is slanted to support the development and minimizes any adverse environmental impacts. To promote neutral and unbiased documents, it would be desirable to revise the EIS law to require that agencies assume responsibility for the contents and document preparation including consultant selection, while the developer pays for the EIS and any needed technical or scientific studies. This would make the process similar to the federal EIS process and many states which have adopted similar practices.

### 5.1.3. Improving the LUC Process

#### 5.1.3.1 Broaden LUC Representation

For appointments to the LUC, many have called for broader diversity and more objective representation on the Commission. This proposal could also include increasing the number of commissioners. Many opined that appointees should not have direct ties to development interests, and there should be greater diversity of persons with environmental, natural science expertise, and more community members. It is noted that Commissioners are now required to publicly disclose their financial interests, and that a standard operating procedure at the start of hearings is for members to disclose any potential conflicts of interest and to recuse themselves as needed from participation in a given docket.

#### 5.1.3.2 Use of Hearings Officer

The use of a hearings officer could provide a more efficient means of conducting contested case hearings. This has been effectively employed by the Board of Land and Natural Resources particularly for controversial Conservation District use hearings. The hearings officer would be retained by the Commission to conduct the hearing, receive evidence and witness testimonies, and prepare a report with recommendations for consideration by the Commission.

#### 5.1.3.3 Limit Review to State Interests

To address the duplication of review between the State land use and county zoning, a conscious effort could be made by the LUC to emphasize and focus on addressing State interests, avoiding as much as possible issues under county jurisdiction, such as police, fire, and county utilities and roadways. Relevant issues of overlap which should be addressed by the LUC includes conformance with county general and development plans, intersections of State and county roadways, and water source and quality issues, but not water transmission, distribution and storage.

### 5.1.4. Improving Enforcement

#### 5.1.4.1 Availability of Annual Reports to Public

Making annual reports more readily accessible to the public would facilitate agency and public monitoring of development progress and compliance with imposed conditions of approval. Currently annual reports are required by condition to be submitted only to the LUC, OP and county planning departments. Public availability would help to ensure that petitioners submit the reports annually and on a timely basis. The public will also be able to alert the Commission of any observed plan or condition deviations and any missed deadlines. The petitioner could be requested to submit the annual reports in electronic format to facilitate posting and archiving by LUC staff. Emailed notice of postings to interested parties would also be helpful.

#### 5.1.4.2 LUC Ability to Amend Conditions

To help with enforcement, the LUC should be able to amend the conditions of a land use district boundary amendment decision and order, including consequences of non-compliance. Currently, the LUC's only remedy for a petitioner's failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, is the granting of an order to show cause pursuant to Hawaii Administrative Rules § 15-15-93. The approved decision and order could then be subject to reversion, whereby the land is reverted to its former land use classification or changed to a more appropriate classification. In most cases, reversion is not the most appropriate mechanism for addressing violations and prevents the LUC and the parties from developing a more practical solution. Providing the LUC with greater flexibility to enforce conditions would be a more effective tool for ensuring that the interests of the State, the counties, and the public are protected.

#### 5.1.4.3 Set Time Limit for Development

Most petitions that were granted before 2005 do not have any deadlines for commencing construction. As a result, many reclassifications that were granted sometimes decades ago remain undeveloped but retain their Urban District designation. This proposal would set a deadline of perhaps 7 to 10 years for starting construction or face the prospects of the land reverting to its former classification. This would help to discourage land speculation or land banking. It is noted that, at the time of reclassification, petitioners are required to demonstrate market feasibility for their proposed project and their financial capability to carry out the development. The LUC has recently begun to require as a condition of approval that backbone infrastructure be commenced within ten years.

### 5.1.5. Land Use Districts and IAL Designations

#### 5.1.5.1 Increase Agricultural District Minimum Lot Size

The subdivision of Agricultural District lands, and the proliferation of non-agricultural uses therein, including estate subdivisions and transient vacation rental uses, has been a longstanding and continuing problem. More recently, the statutory allowance of subdivision and leasing of Agricultural District lands exempt from county subdivision standards HRS Section 205-4.5(f) has highlighted further enforcement problems with City and County of Honolulu officials in the Kunia Loa area.

One way to reduce the subdivision problem is to increase the minimum lot size for agricultural parcels, which is currently at a minimum of one acre, to a larger minimum such as 25 acres. This would make it less feasible and more difficult to subdivide, and serve to preserve larger lots and reduce density and infrastructure needs. This would cause some hardships for those wanting to subdivide for siblings.

#### 5.1.5.2 State to Propose IAL Designations and Update Soil Rating System

With passage of the IAL law in 2005, counties were to be funded for the identification of IAL lands within their jurisdiction, and five years thereafter, submit their report and maps with recommendations for eligible IAL lands. The State has not provided counties with funding for this effort. Notwithstanding, the County of Kauai has nearly completed its IAL designation process which is before the County Council for review and approval. The City and County of Honolulu has completed its initial phase of criteria evaluation and preliminary mapping. The County of Maui and County of Hawaii have yet to begin the process of IAL designation.

This proposal assigns the State with the responsibility for completing the designation of IAL in the County of Maui and County of Hawaii. The OP and the Department of Agriculture would lead the task of evaluating and recommending IAL designations for approval by the LUC.

Related to IAL designation, there is also the need to review and update the soil rating system to resolve concerns over the use of the Land Study Bureau (LSB) overall (master) productivity ratings in regulating land uses in the Agricultural District. Should funding be made available, OP and the DOA should undertake a study and mapping project to: (1) develop recommendations on how a USDA soils classification system and soils database or other classification systems might be used to map agricultural productivity potential in Hawaii; (2) determine how to make effective use of agricultural classifications in regulating agricultural land use; and (3) update agricultural productivity maps based on recommendations for a preferred classification system.

### 5.1.5.3 Implement Five-Year Boundary Review

There have been calls for OP to resume implementation of the Five-Year Boundary Review as a priority activity to ensure the periodic comprehensive review of land uses as required by HRS Section 205-18. The last Five-Year Boundary Review was done in the early 1990s and has not been undertaken since due to the requisite studies and costs of pursuing boundary amendments. The 1992 Boundary Review was estimated to cost \$1.26 million, including \$800,000 in consultant costs.

### 5.1.5.4 Increase Acreage Threshold for County District Boundary Amendments

Pursuant to HRS Section 205-3.1, counties are able to amend the State land use districts for lands less than 15 acres in the Agricultural, Rural, and Urban Districts (excluding IAL). It has been proposed that greater county authority should be given to determining District Boundary Amendments by increasing the acreage threshold from 15 to 100 acres. Arguably, since this authority was granted in 1985, county planning department staffs and capabilities have increased substantially. State LUC decision making would be limited to projects on larger land areas with presumably greater impacts of a regional nature.

This would achieve some efficiency in the elimination of one decision making body, but it does not address how State interests would be ensured in the county process, and the potential cumulative impacts from smaller reclassifications on State resources. As the counties are not required to conduct contested case hearings, the beneficial aspects of this process for intervenors and the public would be foregone. There could also be greater use of incremental parceling of projects to stay below the 100-acre threshold. This is already evident in the many 14.99-acre projects which are submitted to counties for district boundary amendments.

## 5.2. SYSTEM REDESIGN

System redesign refers to reform measures that seek fundamental changes to the manner in which the State land use system operates. Five forms of system redesign were generated by the Task Force:

1. State Growth Management
2. County Plan-Based Boundary Amendments
3. County Plan-Based Planning Framework
4. Regional Five-Year Boundary Amendments
5. Contested Case Hearings for County Permit

### 5.2.1. State Growth Management

The State Growth Management option would set forth clear directions for how the State wishes to manage growth and development while preserving



cherished natural and cultural resources. It seeks to more clearly articulate State interests in land use, clarify State-county relationships, and develop a vision to guide LUC decision making. The present role of the LUC in terms of project-specific decision making and quasi-judicial processing would continue. Features of this option include:

- A. The State would prepare a growth and conservation vision for Hawaii.
- B. The State would develop statewide strategic plans for major land use and development objectives, including agriculture and agricultural lands.
- C. The State would develop a process for planned growth consistent with infrastructure development in designated areas. State and county investments in infrastructure development would be directed to growth areas.

Background. Compliance with the Hawaii State Plan is one of the key decision making criteria for the LUC. HRS Section 205-16 specifies that no amendment to the land use district boundaries or any other LUC action shall be adopted unless it conforms to the Hawaii State Plan. The Hawaii State Plan in HRS Chapter 226 was adopted in 1978 to develop goals and policies to guide the development of the State. The last major review of the State Plan was done in 1985. The more detailed functional plans, covering 13 areas of State responsibility including agriculture, conservation, education, housing and transportation, have not been updated since 1991.

Assessment. The broad goals, objectives, policies and priority guidelines of the Hawaii State Plan are outdated and do not provide adequate guidance and direction for the LUC in its decision making. The more detailed functional plans intended to provide guidance for key areas of State interests are obsolete and are not used or updated by State agencies responsible for their implementation. There is a clear need for a comprehensive update of the Hawaii State Plan, Functional Plans, and their implementation process.

A coordinated growth vision and resource protection strategy for agriculture and conservation could lead to better outcomes in protecting valued resources.

The State Growth Management option also identifies the pressing need to coordinate the provision of infrastructure improvements with areas of urban growth. In nearly all of the growth areas statewide, there is inadequate infrastructure and public facilities including roads, water, sewer, and schools. The project-by-project review and decision making by the LUC does not provide a coordinated approach to address inadequacies in regional infrastructure.

The Growth Management option does not propose any revisions to the current LUC decision making process. Adequate funding would be required to conduct a comprehensive, multi-year cross-sector review and update of the Hawaii

State Plan, Functional Plans, and their implementation in a manner coordinated with county and infrastructure plans.

### 5.2.2. County Plan-Based Boundary Amendments

The County Plan-Based Boundary Amendments option proposes that district boundary amendments conform to county plans. County general and community/development plans would be the primary drivers and basis for land use planning and decision making. The LUC's role would shift to regional quasi-legislative decision making with limited project-specific, quasi-judicial decision making. Features of this option include:

- A. LUC would undertake regional boundary amendments based on conformance with county general and/or development plans. LUC decision making would be quasi-legislative, with denials or the inclusion of conditions for mitigation imposed only with demonstrated and compelling State interest.
- B. Individual boundary amendment petitions to the LUC would be needed for proposals not consistent with county plan. The current quasi-judicial contested case hearing process would be followed.
- C. State input and oversight of county plan compliance with State plans and criteria.
- D. Appeal via LUC declaratory ruling would be enabled for boundary amendments granted based on county plans

Background and Need. Over the last several decades, county planning staffing and capabilities have grown and matured significantly, particularly on the Neighbor Islands. All counties have long range planning staff, GIS capabilities and comprehensive community planning processes for developing and updating their island and regional plans.

The County Plan-Based Boundary Amendments option acknowledges the improvements made to county planning processes in proposing that the LUC should give deference to the county plans in determining district boundary amendments.

Assessment. The County Plan-Based option places greater reliance on the county planning processes for determining areas of future growth. This addresses some of the time and duplication issues of LUC and county zoning, as a quasi-legislative process for the LUC would take much less time for projects which are consistent with county plans.

The option provides for some State oversight of county compliance with State plans and needs, but the mechanism for accomplishing this is unclear. State interests may not be adequately protected at the county planning and zoning processes.

This option alters the checks and balances which the dual system presently provides, with primary responsibilities for land use decision making occurring at the county level. For some, the county process is perceived to be more political and less objective than the LUC. However, inclusion of an appeals process could restore the balance and increase accountability by providing a mechanism for public appeal of LUC quasi-legislative decisions.

### 5.2.3. County Plan-Based Planning Framework

This option reflects a comprehensive reform proposal put forth by the American Planning Association, Hawaii Chapter. The LUC's role would include limited project-specific, quasi-judicial decision making with new functions in policy guidance, plan approvals, and appeals. Major features of this option include:

- B. Transform the Land Use Commission (LUC) to the State Planning Commission (SPC):
  - 6. Recommend statewide goals and guidelines for each land use district.
  - 7. Recommend standards and guidelines for the content of county general plans and development plans to the legislature.
  - 8. Review and certify County General Plans and Development Plans as meeting established standards.
  - 9. Approve boundary amendments for the Conservation District; for proposals involving lands that do not have a certified General Plan or Development Plan; proposals changing the status of (i.e. removing) IAL lands; and for proposals not consistent with certified general plans or development plans.
  - 10. Hear appeals to boundary amendments processed by the counties.
- D. Counties to prepare General Plans and Development plans that incorporate statewide goals and guidelines, and content requirements established by the State.
- E. Counties to have authority to process district boundary amendments for lands that are within the urban, agricultural or rural districts to make them conform to certified County General Plans and Development Plans. The County Councils shall render the final decision on the proposed boundary amendment. The State Planning Commission shall serve as the appellate body.

Background and Need. As expressed by the APA, this proposal to amend the current policies embodied by HRS Chapter 205 and the practices of the LUC is reflective of the maturity of the various counties to plan and administer land use within their jurisdictions. Each County has in place a general plan that reflects the overall vision for their County's land, further, each County has

developed community development plans that further interprets the community vision for specific land use within the plan districts. Limits on urban use expansion into the conservation districts and lands designated important agricultural lands are addressed in the community development plans.

Assessment. This option provides for clearer articulation of State land use goals and guidelines and allows for State certification of county general plans and development plans. Upon certification by the State, counties would then be authorized to grant district boundary amendments within the Urban, Agricultural and Rural districts. By shifting the State's focus to the planning level and delegating most district boundary amendments to the counties, this option reduces processing time, eliminates overlaps and duplication, and would result in less project-by-project, detailed reviews at the State level.

State oversight and approval of county plans would require greater State involvement in county planning processes which may elicit county home rule concerns. However, such certification would provide greater assurance that State interests will be reflected in plans for growth and conservation impacting State agency interests such as transportation and school facilities, and for public trust resources such as water, natural and cultural resources.

Since the county zone change approval process is not conducted by contested case hearing, the option would eliminate quasi-judicial proceedings for Agricultural to Urban reclassifications that are proposed within the county urban growth boundaries. The contested case hearing process employed by the LUC is favored by many for the greater opportunity it provides intervenors to hear and present evidence and witnesses, cross-examine parties, and have decisions based on fact-finding and legal conclusions. The appointed State LUC is also perceived as being more objective and less subject to political influence than the elected county councils.

The appeals mechanism would address public concerns over county decision making, but it is uncertain if an appeals board would have sufficient authority to overturn a county council legislative decision. Oregon and Washington are among the states that have pioneered establishment of land use appeals boards to hear land use disputes....

This option does not include a mechanism for coordinating infrastructure in areas of planned growth. Some of this coordination could occur with greater State involvement in the county general plan and development plan processes.

### 5.2.4. Regional Five-Year Boundary Amendments

The regional five-year boundary amendments would provide for regional consideration of boundary amendments using a quasi-legislative decision making process that occurs only once every five years. The LUC's role would not include any project-specific decision making or quasi-judicial hearings. The option thus provides:

- A. Comprehensive regional boundary amendments undertaken only once every five years for each island.
- B. Quasi-legislative process for boundary amendments.

Background and Need. This option is similar to the periodic review of districts called for in HRS Section 205-18, in which OP is required to undertake a review of the classification and districting of all lands in the State every five years. To-date, however, there have been only three five-year boundary reviews conducted pursuant to this provision, in 1969, 1974 and 1992. Unlike the typical project-specific LUC petition process, the proposed reclassifications from these five-year boundary reviews reflected a broad-based look at statewide, county, and regional economic, environmental, and socio-cultural needs and constraints. The cost, time and effort required for the State to pursue these reclassifications are the main reasons these five-year boundary reviews have not been undertaken more frequently as envisioned.

In 1994, a regional boundary amendment was submitted by the County of Hawaii for approximately 3,800 acres of land on behalf of 18 landowners in the West Hawaii area from Kau to Keauhou, Kona, based on their conformance with the County's General Plan. The petition was eventually reduced to 955 acres following concerns for the absence of detailed archaeological and biological surveys, and ultimately only 433 acres were granted reclassification. This petition highlighted the difficulties in counties pursuing regional reclassifications.

Assessment. Unlike the above periodic review or regional boundary petition, this option would replace the individual petition process with reclassifications allowed to occur only once every 5 years. The regional assessments would primarily seek conformity of the State land use districts with county general and community/development plans adopted by the counties.

The regional review and reclassifications allow for a more comprehensive and coordinated approach to land use planning. This option addresses concerns for project-by-project review, duplication, efficiency, streamlining, and length of processing.

Since the process proposes that multiple petitions be considered on a regional basis, a quasi-legislative processing procedure can be justified. Regional assessments of proposed projects have the advantage of better addressing the cumulative impacts of development and potentially improving coordination for infrastructure planning.

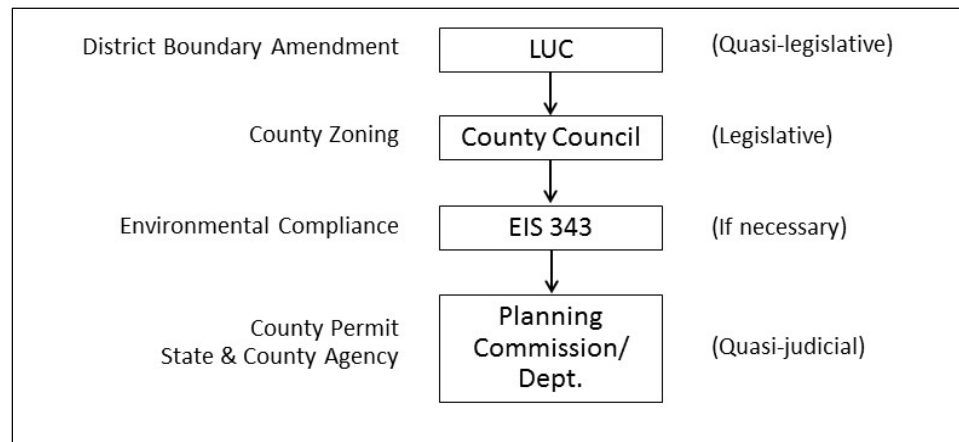
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### 5.2.5. Contested Case Hearing at the County Permit Level

This proposal would move the detailed examination of individual projects to a point in the county review process, possibly at or after zoning when project plans are more fully developed and thus impacts can be better evaluated. LUC

decision making would be quasi-legislative, focused on the district classification question. Both the county and the State would be parties to the contested case hearing. See a diagram of the proposal below.

**Figure 9. Regional Boundary Amendment Redesign Proposal**



**Background and Need.** The level of detail in which proposed developments are scrutinized at the State LUC level has been criticized given the early stage of land use approval and often only conceptual schemes for development. With more definitive development plans required at the county stage of approvals, studies would better be able to address potential impacts. Accordingly, this proposal moves from the broad to the specific, defers quasi-judicial proceedings to the county level, at or following county zoning and environmental compliance.

**Assessment.** The proposal allows for some streamlining, forgoing detailed review at LUC, while retaining the ability for the public to participate through the contested case process, if needed, at the county level. It is noted that County zoning is approved by county councils which, as elected legislative bodies, are not subject to HRS Chapter 91 contested case proceedings. County planning commissions would thus be responsible for holding any contested case hearings. A fair and open process for decision making is retained, the process is more predictable, and environmental analyses are more tailored to the proposed development.

### 5.3. SUMMARY ASSESSMENT OF FIXES AND RE-DESIGNS

Getting consensus on how to improve the system will be complicated by the diversity of interests and opinions on how the system is working.

The following table summarizes strengths and weaknesses with respect to ideal or desired system outcomes (discussed in Section 3.1 above) that illustrate where system improvements may be needed. Appendix L outlines the proposals for system fixes and improvements that came out of the Task Force

meetings and sub-group workshops. Appendix M outlines land use and planning system fixes and changes that should be considered regardless of proposals that may affect the LUC's role in the State land use system.

### Table 5. Proposals with Respect to Achievement of Desired Outcomes

Proposals for system improvements will also need to address the following questions if we are to create a system that engenders greater trust in our land use decision making processes:

- Does the proposal provide checks and balances to increase **trust** in the system and in its performance?
- Does the proposal provide means to **balance** competing interests, e.g., making the land use process more efficient without compromising public participation and resource management and protection?
- Would the proposal result in more **sustainable** built and natural systems, that is, more effective growth management and resource protection?
- Does the proposal articulate a **clear role for the State** and provide the means to express and protect State interests in land use decision making processes?



## Proposals with Respect to Achievement of Desired Outcomes

		Fixes (that address outcomes and performance)	Redesign 1 State Growth Management	Redesign 2 County Plan Boundary Amendments	Redesign 3 County Planning Framework	Redesign 4 Five-Year Boundary Amendments	Redesign 5 Contested Case Hearing for County Permit
WHAT: land use outcomes	• Protection of (significant) natural and cultural resources	• Implement 5-Year Boundary Review	• Helps achieve desired outcomes by having the State set forth clear directions for managing growth and land resources	LUC decisions based on county plans	Delegates DBAs to Counties; LUC shifts to State planning commission	Allows DBAs only every 5 years	Defers contested case hearing to County zoning level; LUC focus on regional reclassifications using quasi-legislative
	• Protection of agricultural / agricultural resource lands	• Increase Ag minimum lot size • State IAL designation	• Responds to outdated State Plan and Functional Plans. • Directs infrastructure to designated growth areas. • Retains LUC process.	• Achieving desired land use outcomes depends on how well the county planning/regulatory process can protect natural, cultural, agricultural resources.	• Achieving desired land use outcomes depends on how well the county planning/regulatory process can protect natural, cultural, agricultural resources without the LUC process.	• Helps achieve desired outcomes by: ○ Promoting regional perspective for coordinating infrastructure and public facilities ○ Promoting consideration of cumulative impacts	• Helps achieve desired outcomes by doing the in-depth review when more project details are known at the county level. • Unclear if State interests are protected
	• Built environment / communities that protect/s natural environment and meet/s societal needs (current and future)	• Implement 5-Year Boundary Review		• State interests protected - LUC can impose conditions to address State need. • State oversight of county compliance is unclear • Appeal to LUC is available.	• State certification of County plans; LUC is appellate body • Unclear if State interests are protected.	• Quasi-legislative LUC decision-making is enabled	
	• Resilience to hazards	–					
	• Sustainable natural and built ecosystems/environments	–					
HOW: system performance	• Fair and open process for land use decision making	• Public advocate • Revise LUC representation	Not addressed	± County quasi-legislative process	± County quasi-legislative process	± LUC quasi-legislative process	± County quasi-judicial process
	• Certainty and predictability in land use decision-making process	• Use of thresholds	Not addressed	+ More predictability if based on County plans	+ Improves predictability	+ Improves predictability	+ Improves predictability
	• Sound analysis and informed decision making	• Move EIS to post-LUC • Unbiased EA/EISs	+ Better guidance for decisions is provided	+ EA/EIS based on more detailed zoning plans	+ EA/EIS based on more detailed zoning plans	+ Improves consideration of regional/cumulative impacts	+ EA/EIS based on more detailed zoning plans
	• Clear policy and planning framework for land use decisions	–	+ Better State policy guidance is provided	± LUC decision-making based on county plans	+ State guidelines and certification of county plans	Not addressed	Not addressed
	• Consistency / conformance with policies and plans	–	+ Promotes State-County consistency	± Greater reliance on county plans and policies	+ State guidelines and certification of county plans	Not addressed	Not addressed
	• Plan-based, plan-driven land use decisions/development	–	+ Promotes State planning guidance	± Greater reliance on county plans and policies	± Greater reliance on county plans and policies	Not addressed	Not addressed
	• Infrastructure capacity concurrent with planned growth	• Use of thresholds	+ Promotes infrastructure concurrency	Not addressed	Not addressed	+ Promotes infrastructure coordination	Not addressed
	• Efficient / sustainable use of resources	–	+ Sustainability policies are likely to be included	Not addressed	Not addressed	Not addressed	Not addressed
	• Effective enforcement of compliance with policies / plans	• Make annual reports public • LUC can amend conditions	Not addressed	+ Appeal via LUC declaratory ruling	+ LUC is appellate body for County DBA decisions	Not addressed	Not addressed
	• Efficient, cost-effective review/decision making process	• Limit LUC to State issues • Higher acres for County DBAs	Not addressed	+ Quasi-legislative LUC process saves time and costs	+ Eliminates most State DBAs	+ Quasi-legislative LUC process saves time and costs	+ Quasi-legislative LUC process saves time and costs
	• Adaptable to changing needs and conditions	–	Not addressed	Not addressed	– Somewhat adaptable	Not addressed	Not addressed

Note: Redesign options - system performances ratings: + pros; – cons; ± pro or con.



## 6. SUMMARY OBSERVATIONS AND CONCLUSIONS

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Hawaii's land use system has not changed significantly in the 53 years since it was enacted. From this Review process, there's a shared sense that the State has an important role to play in land use in Hawaii and that the current Land Use Commission role offers a brake or check on development/development pressures. However, stakeholders are uniformly dissatisfied with how the system performs and what the system delivers: we are not getting the kind of quality growth or resource protection that is desired. And they are deeply divided about what needs to change to bring about better land use outcomes.

### 6.1. IMPLICATIONS FOR SYSTEM IMPROVEMENTS

The concerns expressed about the land use outcomes produced by the existing system clearly demonstrate that our land use management system is not self-executing: there are system-wide weaknesses in how we manage land use in Hawaii. The Review process surfaced many ideas and tools that could be pursued to improve system-wide performance. Appendix L provides a list of system improvements mentioned over the course of the Review, including those suggestions incorporated in the various proposals discussed in Chapter 5.

The fixes and re-design options which have been proposed posit different roles for the State, from direct to indirect. A shift in State role from its direct project-by-project review will require system-wide improvements to build in checks and balances in other parts of the system, and the institution of a range of mutually-supporting tools that assure balance and increase trust in the land use system as a whole.

As the State's role in land use moves from direct to indirect, system change also becomes more complex: implementation becomes more complex and getting agreement for change becomes more difficult. The generalized range of options presented in Chapter 5 is a good basis for further discussion. Importantly, none of the options by themselves would provide the range of features and tools to improve system-wide performance in addressing concerns raised in the Review (see Table 5 in Chapter 5). Appendix M provides a framework for examining how recommendations for tools and actions made over the course of the Review might be used to achieve the desired outcomes expressed for an ideal land use system for Hawaii.

### 6.2. CONCLUSIONS FOR FURTHER WORK

Simply changing the LUC's role and process, by itself, will not result in the outcomes desired by stakeholders. Rather, to achieve these land use outcomes, we will need changes in the broader system as well: changes that

## Summary Observations and Conclusions ■ 6-2

will provide a range of mutually-supporting tools to ensure the system produces land use decisions that serve the long term interests that we share for our built and natural environments. Given the diversity of opinions and general lack of agreement about the specific changes needed and how these changes should be accomplished, it will be a challenge to develop recommendations that all parties would endorse outright.

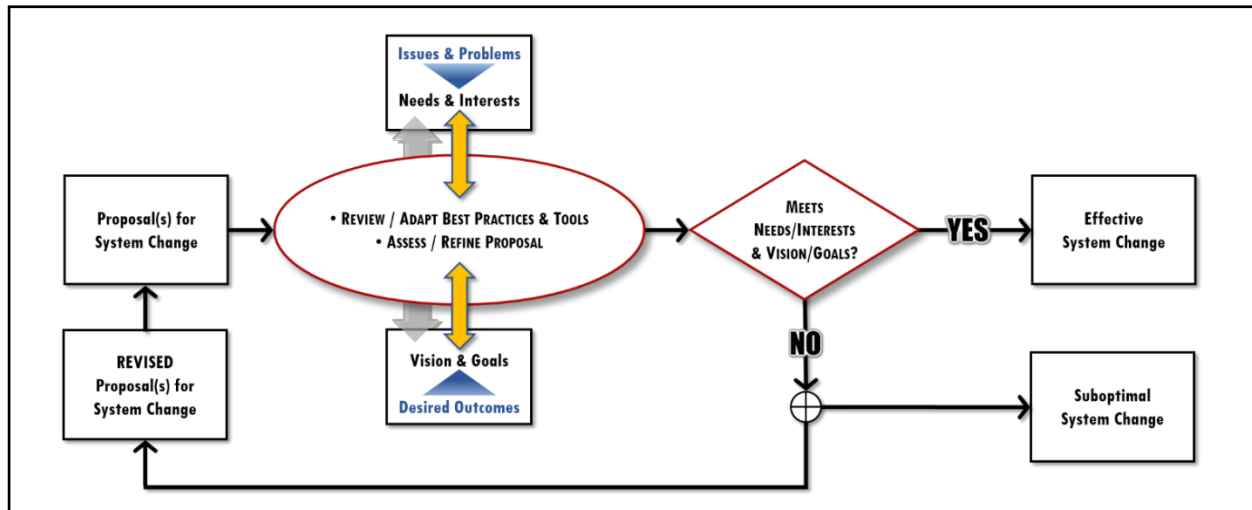
We need to create common ground for discussions about how to improve the system. Stakeholders—advocates and critics—are familiar with the system. As seen in past reform efforts, stakeholders are reluctant to support system change if it doesn't meet their interests and concerns.

Stakeholders are more likely to support system change if they can be assured that it will:

- Provide checks and balances and increase **trust and predictability** in the system and in its performance;
- Provide the means to **balance** competing interests, e.g., making the land use process more equitable and efficient without compromising public participation and resource management and protection;
- Result in more **sustainable** built and natural systems, that is, more effective growth management and resource protection; and
- Articulate a **clearly defined role for the State** and provide the means to protect State interests in land use decision making processes.

Recommendations for system change or improvement will need to be developed through a process that allows stakeholders to examine a range of options and alternatives to address and balance the concerns and interests of stakeholder groups in achieving shared community goals and system objectives, much like the conceptual process diagram in Figure 10.

Figure 10. Conceptual Proposal Development Process



The process for crafting a set of recommendations acceptable to a broad range of stakeholders will need to engage participants in joint problem solving to create that common ground for the development of proposals or solutions that can work for the different stakeholder groups. This may require stakeholders to consider alternative ways to accommodate their concerns that may appear contrary to long-held positions.

Failure to address the concerns of stakeholder groups in the course of developing proposals—or unwillingness on the part of stakeholder groups to explore alternative mechanisms to address their concerns—is likely to produce proposals that will underperform in terms of desired land use and resource management objectives. However, if balance can't be achieved in all aspects of the proposals brought forward, a collaborative development process will be able to identify the trade-offs and implications for future system performance that need to be considered in acting on any recommendations for improving the State land use system.

As an island state with a continuing need to deal effectively with growth in our population and economy, there are significant risks to delaying difficult discussions about how land use decisions are made and how our built environment is managed. What opportunities are we missing by resisting change given growth in county planning capacity and the emergence of new science and best planning practices since 1961?

Could we be doing better:

- Providing for quality development and resource protection that produce the desired outcomes we want from our land use system;
- Being more responsive to local and global market trends and value shifts; and

## Summary Observations and Conclusions ■ 6-4

- Anticipating and resolving land use conflicts where there are competing public interests?

It is clear from the comments and concerns expressed during the Review project that participants believe all parties in the land use process could, and should, be doing a better job in providing quality growth and safeguarding the well-being of Hawaii's built and natural environments.

## 7. GLOSSARY OF TERMS

Term	Definition	Source
<b>Affordable Housing</b>	<p>Housing for which the occupant pay no more than 30 percent of his or her income for gross housing costs, including utilities.</p> <p>The term is also used for regulating affordable for-sale and affordable rental housing requirements of State and county development approvals. The range of affordability is 80% to 120% or 140% of Average Median Income for the county, as set by HUD:  <a href="http://dbedt.hawaii.gov/hhfdc/developers/copy2_of_copy_of_copy2_of_copy_of_income-sales-rent-guidelines/">http://dbedt.hawaii.gov/hhfdc/developers/copy2_of_copy_of_copy2_of_copy_of_income-sales-rent-guidelines/</a></p>	<p>U.S. Department of Housing and Urban Development</p> <p><a href="http://www.huduser.org/portal/glossary/glossary_a.html">http://www.huduser.org/portal/glossary/glossary_a.html</a></p>
<b>Agricultural Lands of Importance to the State of Hawaii (ALISH)</b>	<p>An agricultural productive rating system adopted by the State of Hawaii Board of Agriculture in January 1977, intended to identify agriculturally important lands to provide decision-makers with a tool for use in agricultural preservation, planning, and development. The soil rating system considers soil properties, climatic factors, growing season, moisture supply, drainage, and crop yields. Soils rated under ALISH are classified as Prime, Unique, or Other Important Agricultural Land.</p>	<p>DOA</p> <p><a href="http://www.google.com/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=3&amp;ved=oCCsQFjAC&amp;url=http%3A%2F%2Fwww.ctahr.hawaii.edu%2Fawg%2Fdownloads%2Fps_AGSystems.ppt&amp;ei=7atCVYGLAobmoATti4CABw&amp;usq=AFQjCNFk8Rlx23gV-nf_UBndjM8nfDwMag&amp;sig2=PKRA68_p7UwMtqSgUnefrg&amp;bvm=bv.92189499,d.cGU">http://www.google.com/url?sa=t&amp;rct=j&amp;q=&amp;esrc=s&amp;source=web&amp;cd=3&amp;ved=oCCsQFjAC&amp;url=http%3A%2F%2Fwww.ctahr.hawaii.edu%2Fawg%2Fdownloads%2Fps_AGSystems.ppt&amp;ei=7atCVYGLAobmoATti4CABw&amp;usq=AFQjCNFk8Rlx23gV-nf_UBndjM8nfDwMag&amp;sig2=PKRA68_p7UwMtqSgUnefrg&amp;bvm=bv.92189499,d.cGU</a></p>
<b>Community Development Plan</b>	<p>A detailed plan for an area or region within a county that implements the objectives and policies of a county general plan and indicates desired population and physical development patterns.</p>	<p>Hawaii Revised Statutes (HRS) § 226-2 and § 226-58</p>
<b>Community Facilities District</b>	<p>A financing tool used to finance local public facilities and services whereby property owners are taxed annually for their share of the debt service on any bonds that the community facilities district has issued and/or to pay for the cost of the municipal services.</p>	<p>City of San Marcos</p> <p><a href="http://www.ci.san-marcos.ca.us/index.aspx?page=54">http://www.ci.san-marcos.ca.us/index.aspx?page=54</a></p>
<b>Concurrency</b>	<p>A growth management tool that ties development to the availability of public facilities, assuring that growth can occur only where the infrastructure needed to support it exists.</p>	<p>Delaware Valley Regional Planning Commission</p> <p><a href="http://www.dvrpc.org/reports/o2006.pdf">http://www.dvrpc.org/reports/o2006.pdf</a></p>

Term	Definition	Source
<b>Declaratory Order</b>	A petition that asks specific questions about the interpretation or implementation of statutory language in Chapter 205, HRS or the Commission's administrative rules in Chapter 15-15, HAR.	<i>Land Use Commission</i>  <a href="http://luc.hawaii.gov/completed-dockets/declaratory-orders-decisions-and-order/">http://luc.hawaii.gov/completed-dockets/declaratory-orders-decisions-and-order/</a>
<b>Environmental Court</b>	Act 218, SLH 2014, established environmental courts as divisions within the circuit courts to hear all proceedings, including certain Chapter 91, HRS, proceedings arising from environmental laws. The purpose of the Act is to promote and protect Hawaii's natural environment through consistent and uniform application of environmental laws.	<i>Act 218, SLH 2014</i>  <a href="http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&amp;billnumber=632&amp;year=2014">http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&amp;billnumber=632&amp;year=2014</a>
<b>Environmental Review</b>	Environmental review documents such as Environmental Assessments (EA) and Environmental Impact Statements (EIS) are regulated by Chapter 343, HRS, the Hawaii Environmental Policy Act (HEPA). They analyze the environmental, social, and economic impacts of proposed projects prior to discretionary approval and identify recommended mitigation measures for the project.	<i>Hawaii Environmental Policy Act (HEPA or Chapter 343, HRS)</i>
<b>Form-Based Code</b>	A form-based code is a land development regulation that fosters predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code. A form-based code is a regulation, not a mere guideline, adopted into city, town, or county law. A form-based code offers a powerful alternative to conventional zoning regulation.	<i>Form-Based Codes Institute</i>  <a href="http://formbasedcodes.org/definition">http://formbasedcodes.org/definition</a>
<b>General Plan</b>	A comprehensive long-range plan that seeks to ensure the coordinated development of the county and promote the general welfare and prosperity of the community by indicating desired population and physical development patterns for the county.	<i>Hawaii Revised Statutes (HRS) § 226-2 and § 226-58</i>
<b>Greenprint Project</b>	A scientific planning process that seeks to preserve productive agricultural lands and rare wilderness lands by balancing development with conservation and taking the land's special values into account.	<i>TPL and OHA</i>  <a href="http://cloud.tpl.org/pubs/local-hi-oahu-greenprint.pdf">http://cloud.tpl.org/pubs/local-hi-oahu-greenprint.pdf</a>
<b>Growth Management</b>	The practice of managing and directing growth to urban areas where public facilities and services can be provided most efficiently, to protect rural character, to protect critical areas, and to conserve natural resource lands.	<i>Washington State Department of Commerce</i>  <a href="http://www.commerce.wa.gov/Documents/GMS-Short-Course-Guidebook-5-1.pdf">http://www.commerce.wa.gov/Documents/GMS-Short-Course-Guidebook-5-1.pdf</a>

Term	Definition	Source
<b>Hearing Officer</b>	Hearing officers apply the law by overseeing the legal process in court. The hearing officer does the following during a contested case hearing: is impartial in his or her rulings; guides, directs and controls the presentation of evidence at the hearing; and ensures that a full and complete record is obtained.	<p><i>U.S. Department of Labor, Bureau of Labor Statistics</i></p> <p><a href="http://www.bls.gov/ooh/legal/judges-and-hearing-officers.htm">http://www.bls.gov/ooh/legal/judges-and-hearing-officers.htm</a></p> <p><i>National Labor Relations Board</i></p> <p><a href="http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/hearing_officers_guide.pdf">http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/hearing_officers_guide.pdf</a></p>
<b>Impact Fees</b>	A financing tool whereby the charges imposed upon a developer by a county or board to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.	<i>Hawaii Revised Statutes (HRS) § 46-171</i>
<b>Impermanence Syndrome</b>	Accelerated agricultural decline near urban areas due to disinvestment in farming infrastructure (such as irrigation systems, buildings, and processing facilities) in anticipation of urban development.	<a href="http://sustainable-farming.rutgers.edu/impermanence-syndrome-urban-fringe-farming/">http://sustainable-farming.rutgers.edu/impermanence-syndrome-urban-fringe-farming/</a>
<b>Infill Development</b>	The process of developing vacant or under-used parcels within existing urban areas that are already largely developed.	<p><i>Municipal Research and Services Center</i></p> <p><a href="http://mrsc.org/Home/Explore-Topics/Planning/Development-Types-and-Land-Uses/Infill-Development-Completing-the-Community-Fabric.aspx">http://mrsc.org/Home/Explore-Topics/Planning/Development-Types-and-Land-Uses/Infill-Development-Completing-the-Community-Fabric.aspx</a></p>
<b>Intervenor</b>	<p>A person who is formally admitted as a party to the LUC proceedings after filing a petition to intervene and being granted intervenor status by the LUC. Eligibility includes:</p> <p>“all persons who have a property interest in the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the processing is clearly distinguishable from that of the general public.”</p>	<i>Hawaii Administrative Rules § 15-15-52</i>
<b>Land Study Bureau (LSB) Overall Productivity Rating, Detailed Land Classification</b>	Soil productivity rating system in which soils are grouped into land types based on soil and productive capabilities. Factors considered for productivity include soil properties, topography, climate, technology, and crop type. Soils are rated from “A” (very good) to “E” (very poor/not suitable).	<i>Detailed Land Classification, Land Study Bureau, University of Hawaii, 1972</i>

Term	Definition	Source
<b>Land Use Board of Appeals (Oregon)</b>	This Board has exclusive jurisdiction to review all governmental land use decisions, whether legislative or quasi-judicial in nature. It was created to simplify the appeal process, speed resolution of land use disputes and provide consistent interpretation of state and local land use laws.	<i>Oregon Land Use Board of Appeals</i>  <a href="http://www.oregon.gov/luba/pages/index.aspx">http://www.oregon.gov/luba/pages/index.aspx</a>
<b>Level of Service</b>	A qualitative assessment of a road's operating conditions based on factors such as speed, travel time, maneuverability, delay, and safety. The level of service is designated with a letter, A to F, with A representing the best operating conditions and F the worst.	<i>U.S. Department of Transportation, Federal Highway Administration</i>  <a href="http://www.fhwa.dot.gov/planning/glossary/glossary_listing.cfm?sort=definition&amp;TitleStart=L">http://www.fhwa.dot.gov/planning/glossary/glossary_listing.cfm?sort=definition&amp;TitleStart=L</a>
<b>Order to Show Cause</b>	Any party or interested person may file a motion with the Land Use Commission requesting an issuance of an order to show cause upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of the petitioner.	<i>Hawaii Administrative Rules § 15-15-92(a)</i>
<b>Public Trust Resources</b>	Natural resources, including land, water, air, minerals, and energy sources, which are protected by the State and its political subdivisions for the benefit of present and future generations.	<i>Constitution of the State of Hawaii, Article 11, Section 1</i>
<b>Public Advocate (proposed for LUC hearings)</b>	<p>Public advocate would participate in district boundary amendments proceedings if requested by more than 20 residents and/or organizations in area in lieu of citizen intervention in LUC hearing. Would lead to fewer citizen interventions and encourage petitions to meet with concerned community members and work out differences in advance of LUC proceedings, thus improving projects and avoiding protracted LUC proceedings contested by local citizens.</p> <ul style="list-style-type: none"> <li>• Selection of per diem representative from a pool of qualified applicants similar to process for contested case hearings officers</li> <li>• Public advocate meets with concerned citizens to better present knowledge of area during LUC deliberation (can present exhibits, call witnesses, rebut statements of other parties)</li> </ul> <p>Fees would be reflected in LUC application fees for particular docket</p>	<i>Lucienne de Naie, Sierra Club</i>



Term	Definition	Source
<b>Quasi-judicial</b>	Quasi-judicial proceedings, or contested case hearings, are governed by Chapter 91, HRS, the Hawaii Administrative Procedures Act. In quasi-judicial proceedings the decision-making body must follow stricter, court-like, procedural requirements following standards of due process, including proper notice of the hearing, providing everyone with an interest in the proceedings an opportunity to be heard and to hear what others have to say, full disclosure of the facts being considered, and decisions based on facts of the case.	<i>HRS Chapter 91</i>
<b>Quasi-legislative</b>	Quasi-legislative proceedings are less formal than quasi-judicial hearings. They allow decision-makers to take testimony—gather input and data from concerned parties—and then decide on the matter at hand; decisions are subject to a fairly debatable standard of review. These proceedings allow decision-makers to exercise their rule-making authority.	<i>OP</i>
<b>Smart Growth</b>	A method of building and maintaining the urban environment. Smart growth means building urban, suburban and rural communities with housing and transportation choices near jobs, shops and schools. This approach supports local economies and protects the environment.	<i>Smart Growth America</i> <a href="http://www.smartgrowthamerica.org/what-is-smart-growth">http://www.smartgrowthamerica.org/what-is-smart-growth</a>
<b>Sustainable Communities</b>	Urban, suburban, and rural places that successfully integrate housing, land use, economic and workforce development, transportation, and infrastructure investments in a manner that empowers jurisdictions to consider the interdependent challenges of: 1) economic competitiveness and revitalization; 2) social equity, inclusion, and access to opportunity; 3) energy use and climate change; and 4) public health and environmental impact.	<i>U.S. Department of Housing and Urban Development</i> <a href="http://www.huduser.org/portal/glossary/glossary_a.html">http://www.huduser.org/portal/glossary/glossary_a.html</a>
<b>Tax Increment Financing</b>	A financing tool used to encourage development in economically challenged areas. It allows local governments to borrow against an area's future tax revenues in order to invest in immediate projects or encourage present development.	<i>U.S. PIRG Education Fund</i> <a href="http://www.smartgrowthamerica.org/documents/Tax-Increment-Financing.pdf">http://www.smartgrowthamerica.org/documents/Tax-Increment-Financing.pdf</a>
<b>Transfer of Development Rights</b>	A program whereby market forces are used to simultaneously promote conservation in high value natural, agricultural, and open space areas while encouraging smart growth in developed and developing sections of a community through the buying and selling of development credits.	<i>Hawaii County Planning Department</i> <a href="http://www.hawaiicounty.cdp.info/public-planning-resources/planpacific/transferrable-development-rights-overview.pdf/view">http://www.hawaiicounty.cdp.info/public-planning-resources/planpacific/transferrable-development-rights-overview.pdf/view</a>

Term	Definition	Source
<b>Transect Planning</b>	<p>Transect planning is based on the creation of a set of human habitats that vary by their level and intensity of urban character. In transect planning, this range of environments, from rural to urban, is the basis for organizing the components of the built world: building, lot, land use, street, and all of the other physical elements of the human habitat. See diagram below.</p>	<p>Duany, A., &amp; Talen, E. (2002). <i>Transect Planning</i>. <i>Journal of the American Planning Association</i>, 68, 245-266.</p>
<b>Urban Growth Boundary</b>	<p>A long-range planning tool that is used to separate growth areas from non-growth areas. It denotes the areas within which urban-density development requiring a full range of services, such as new multi-user sewer and water, is supported in accordance with applicable land use laws.</p>	<p>Maui Island Plan  <a href="http://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/17104">http://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/17104</a></p>
<b>Workforce Housing</b>	<p>Housing for working class households whose income is in the range of 80 to 140 percent of the HUD area median income.</p>	<p>Report to the Twenty-Third Legislature of the State of Hawaii: Requesting the Convening of an Affordable Housing Task Force / HCDC  <a href="http://www.hcdch.state.hi.us/documents/scr135-final-rpt.pdf">http://www.hcdch.state.hi.us/documents/scr135-final-rpt.pdf</a></p>

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## 9. APPENDICES

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- A. System Questions and Responses
- B. Community and Stakeholder Meeting Notes
- C. Compilation of Community & Stakeholder Comments  
November 2014 – January 2015
- D. Towards a Desired Land Use System for Hawaii
- E. State Land Use System Summaries Recommended as  
Models for Best Practices
- F. Acres Reclassified by Type of Request by County, 1975- 2014
- G. Land Use Appeals Data
- H. Comments on Existing System in Relation to Desired Attributes of  
Ideal System
- I. System Improvements with Comments and Preferences,  
Task Force Sub-Group Discussion
- J. Participant Suggestions for System Improvements
- K. Comparison of Issues and Gaps with Desired Attributes of Ideal System
- L. System Improvement Options
- M. Improvements Important to System Fix & Re-design Options

Appendices can be found in the accompanying PDF file,  
"SLU Review Report\_FINAL DRAFT-APPENDICES\_05-01-2015.PDF",  
posted at the Office of Planning's State Land Use Review Report Webpage.