

# Renewing Hawaii's System of Land Use Planning & Regulation

## Background

In the early 1960's, Hawaii enacted and implemented the nation's first statewide land-use regulation system, commonly known as the State Land Use Law. Today, the State Land Use Commission (SLUC) remains actively engaged in regulating land use under the four mandated State Land Use Districts—Urban, Rural, Agricultural and Conservation. Lands that did not fall into one of the other three districts were placed in the Agricultural District; as the “residual” or “default” classification, the Agricultural District contains far more acreage than will ever be actively cultivated and thousands of acres that are poorly suited to any kind of farming.

The SLUC was initially established as a quasi-legislative body. Its most important responsibility was to carry out a comprehensive, statewide review of district boundaries every five years. Accelerating growth pressures, however, brought about two key changes during the 1970s. First, the State turned away from the comprehensive five-year boundary review after the 1974 effort (the second review), which foundered due to controversy and landowner pressure. Second, the Legislature mandated that the SLUC adopt a quasi-judicial, contested case process for considering individual applications to redistrict lands. In effect, these changes turned the SLUC away from comprehensive planning reviews and towards case-by-case rezoning actions.<sup>1</sup>

The past 25 years have seen various attempts at reforming the State Land Use Law, starting with a 1978 amendment to the Hawaii Constitution mandating that the Legislature define and map “important agricultural lands.” Despite sponsoring the development of a Land Evaluation and Site Assessment (LESA) system, the Legislature has not acted to designate important agricultural lands. Nor has the Legislature acted on other proposals for reform.

Although Hawaii's Land Use Law has worked well to contain urban development and to preserve Conservation lands, there is concern about the spread of large-lot subdivisions in the Agricultural District and the lack of well-defined strategies for conserving important agricultural lands and scenic open space. Pressure for development in the State Agricultural District is increasing due to several factors, including the burgeoning market for vacation residences; the near-total loss of plantation agriculture; and the break-up of large family land trusts. The recent Hokulia decision exposes longstanding weaknesses in the configuration of the State Agricultural District and the enforcement of State zoning standards.

In the years since Hawaii adopted its pioneering law, states from Oregon to Maryland have acted to improve land use planning—in particular, to strengthen the ties between state and local planning and to reinforce the connection between plans and regulations. Taking a major leadership role in this reform movement, the American Planning Association headed a multi-year collaborative effort to develop and publish the *Growing Smart Legislative*

*Guidebook* (2002). Subtitled “Model Statutes for Planning and the Management of Change,” the Guidebook sets forth alternative models for state systems of planning and land use regulation. These models supplant the 1930s’ Standard Planning and Zoning Enabling Acts, which formed the basis of most state and local government planning and zoning systems—including those of the State of Hawaii and its counties.

## **Problem Statement**

While everyone who works with Hawaii’s system has his or her list of shortcomings, almost every list would include the following:

- Extraordinary amounts of time required to secure development approvals;
- Duplicative State and county review processes;
- Substantial degree of uncertainty as to what can and cannot be done;
- Excessive reliance on litigation to resolve planning and zoning issues and settle specific disputes;
- Too many public resources spent on project-by-project regulation and too little spent on effective planning;
- Confusion over the purpose of the State Agricultural District, the rules for allowing residential use, and the criteria for designating agricultural lands;
- Poor coordination between land-use planning and capital program planning at the state level (i.e., education, transportation), the county level (i.e., water supply, wastewater, solid waste systems) and between the State and county; and
- Limited public participation in long-range planning and over-emphasis on narrowly-focused, often heated project public hearings.

State vs. County control is an important subtext in the ongoing discussion about how to manage agricultural/rural lands. State law delegates to the counties complete authority to zone and regulate land use in the Urban District and authority to adopt regulations more strict than the State zoning standards for the Agricultural and Rural Districts.<sup>2</sup> In granting the zoning power, HRS Sec. 46-4 states, in part:

. . . Zoning in all counties shall be accomplished within the framework of a long range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. . . .

Unlike many state zoning enabling acts, however, the Hawaii law sets no standards for the content or the process of preparing and adopting county general plans. The lack of standards shows most glaringly in the lack of planning for those lands which are neither urban nor conservation. There is no requirement calling upon the counties to plan for Agricultural and

Rural District lands, nor any guidance as to what studies should be made or factors considered in such planning.

Simple proposals like “abolish the Land Use Commission” will not suffice to address the problem. Nor would it be adequate to simply designate “important agricultural lands,” without addressing the other issues that affect rural/agricultural lands. Rather than tinker with the pieces, we need to renew the system.

## Outline of a Proposal

This proposal is formed around several ideas and draws upon the *Growing Smart Legislative Guidebook*. First, delegation of responsibility needs to be accompanied by clear delegation of authority. The authority to zone and regulate land use should be clearly linked to policies set forth in a comprehensive long-range plan that is adopted and periodically reviewed by an elected legislative body. Since the counties are mandated to prepare the comprehensive long-range plan, they should also be mandated to draft and enforce land use regulations. The State should neither set zoning standards, nor be involved in parcel-by-parcel zoning decisions—except in the Conservation District, where the State should retain sole authority for land use planning and regulation. Instead, the State should collaborate with each county in the making of its comprehensive plan and in decisions where lands are being re-zoned for development.

Second, accountability comes along with responsibility and authority. The State should set planning goals and standards to guide county comprehensive planning. These should express State policy in critical areas such as resource conservation, energy use, environmental quality, economic development, and transportation. They should also express specific expectations for the content of county comprehensive plans and the process of preparing and adopting plans, providing guidance for consultation with State agencies as well as public involvement. Accountability entails oversight, and the State should have a formal means of agreeing or disagreeing with provisions of a county comprehensive plan.<sup>3</sup>

Third, planning is more than land use regulation. Government should develop plans that fully support appropriate development. Plans should provide policies to guide the investment of capital funds in public infrastructure and community facilities. To this end, State and county agencies should be charged with preparing and following long- and short-range capital plans that are “resource-constrained”—i.e., in which the value of planned improvements are constrained by the projected amount of funding available. This includes establishing standards for the portion of growth-induced facility expansion is to be funded by government and the portion by private developers. State and county agency plans should be congruent with the county comprehensive plan. A high level of congruency can be achieved through active collaboration among agencies preparing plans.

Following is the outline of a legislative proposal. The outline presents a way of eliminating duplicative authority, improving accountability, addressing State mandates, and providing the counties a structured but flexible framework for preparing the comprehensive general plan.

It also retains the State Land Use Commission and Land Use Districts, while redefining their purpose and functions.

**I. State Land Use Commission**

- A. Vest the Land Use Commission with responsibility and authority to set policies and standards for State; and county planning and to exercise oversight with regard to plans, plan-making, and implementation. Acting in its quasi-legislative capacity, the LUC would have the following responsibilities:
  - 1. Set statewide planning goals and guidelines for areas of State interest and the four State land use districts.
  - 2. Set standards and guidelines for county general plans, including mandatory review every five years.
  - 3. Set standards and guidelines for State long-range functional plans, including but not limited to transportation and schools, with review every five years.
  - 4. Review county general plans for adequacy with State goals and standards. Amend State land use district boundaries in accordance with review of the county general plan.<sup>3</sup>
  - 5. Review State long-range functional plans for adequacy with State goals and standards.
  - 6. Exercise oversight over county land use regulations and zoning actions for consistency with the county general plan.
  
- B. Redefine the State Land Use Districts in terms of policy goals:
  - 1. The Urban District establishes the urban growth boundary, to be reviewed by each county every five years but not to be altered by individual applications.
  - 2. The Agricultural District is coterminous with Important Agricultural Lands and is intended exclusively for agriculture, aquaculture and forestry uses.
  - 3. The Rural District includes lands designated for rural community development, as well as other lands. In effect, Rural replaces the Agricultural District as the “residual district.”
  - 4. The Conservation District remains essentially unchanged, as does the State’s authority for planning and regulating land use therein.

## II. The Counties

- A. Grant the counties authority to plan and regulate land use in the Rural and Agricultural Districts, as well as in the Urban District, based on statewide planning goals and standards for county general plans; mandate that county land use regulations be consistent with the county general plan.
- B. Require the counties to prepare a comprehensive general plan for each island, to be reviewed every five years and revised as warranted. (The general plan may be comprised of one or more plans that include the official county land use plan maps for the island.) The general plan must include required elements and be based on supporting studies. Required elements would include the following:
  1. Land Use
    - a. Agricultural Lands: Based on standards and criteria adopted by the Legislature and in consultation with the State, designate and map “important agricultural lands.” Once adopted through the county general plan and agreed to by the SLUC, these lands will constitute the State Agricultural District.
    - b. Rural Lands:
      - Define criteria for “rural settlement” and designate and map areas for rural settlement. These include existing non-Urban residential subdivisions and lands where future rural settlement is planned.
      - Develop policies and other map designations for lands that are not planned for rural settlement; designate and map those areas.
    - c. Urban Lands: Designate and map lands needed for urban development for the 20-year planning period.
  2. Economic Development
  3. Historic, Cultural and Recreational and Scenic Resources
  4. Hazard and Environmentally Sensitive Areas, which would define and map areas that are hazardous for human habitation as well as areas where land development would create hazards to human habitation and/or to natural and cultural resources. These would include coastal areas, stream corridors, steep hillsides, and various hazard areas (i.e., coastal flooding, riverine flooding, shoreline erosion, volcanic eruption).
  5. Housing
  6. Transportation

## 7. Community Infrastructure and Facilities

Optional elements listed in the *Legislative Guidebook* include Human Services, Community Design, and Telecommunications.

- C. Mandate the counties to revise zoning and land development regulations to be consistent with the general plan.

### III. Collaboration and Support

- A. Mandate that the counties consult and work collaboratively with state agencies in all stages of the county general planning process.
- B. Mandate that State agencies, including but not limited to the Departments of Transportation and Education, consult and work collaboratively with each county in the development of long range functional plans.
- C. Provide State funding and technical support to the counties.

This proposal states basic principles for renewing Hawaii's system of land use planning and regulation. The intent is to use it as basis for discussion with other agencies and organizations, including the Agriculture Working Group and the State Legislature.

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#### ENDNOTES

<sup>1</sup> Since 1974, the State has conducted one comprehensive district boundary review. Initiated by Gov. Waihee's Office of State Planning in the early 1990s, this review focused primarily on resource preservation.

<sup>2</sup> The State Land Use Law does authorize the counties, subject to SLUC review, to adopt boundary changes for parcels of 15 acres or less (except for lands in the Conservation District) as well as to grant Special Use Permits (also 15 acres or less). The large number of SUPs and minor amendments granted for urban uses in the State Agricultural District is a further symptom of development sprawl.

<sup>3</sup> The American Planning Association is considering various models for State review of county general plans and will offer a detailed proposal by January 2004.