The Land Between:

Renewing Hawaii's System of Land Use Planning & Regulation

American Planning Association, Hawai'i Chapter

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Introductory Note

The American Planning Association, Hawai'i Chapter, initially issued this position paper in February 2004. The paper has been well-received and well-used, including serving as the centerpiece for panel discussions on Oahu, Kauai, and Maui. The 2005 Legislature enacted and the Governor signed two bills directly affecting The Land Between:

> (1) Act 205 prohibiting golf courses in the agricultural district while authorizing them in the rural district and calling on the counties to work with the Land Use Commission "to develop policy and recommend boundary amendments to expand and enhance the use of rural districts;" and
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> (2) Act 183 setting forth "policies and procedures for the identification of important agricultural lands" and "providing for a process to develop proposals for state and county incentives to promote agricultural viability, sustained growth of the agriculture industry, and the long-term use and protection of important agricultural lands for agricultural use" and assigning roles to the Department of Agriculture, the county planning departments, and the Land Use Commission in implementing the Act.

The new title of this paper, "The Land Between," reflects the critical concern for the future of the land that is neither urban nor conservation. It is how we use and conserve these lands that will in large part determine the future of Hawaii.

In addition to the new title of the paper, a number of changes have been made in the text to clarify and add detail to specific elements. The proposal remains the same in concept.

I. 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 logically fall into one of the other three districts were placed in the Agricultural District. Thus, many acres of land that ended-up in the Agricultural District were not and are not suited for 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.[1]

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: (1) the burgeoning market for vacation residences; (2) the near-total loss of plantation agriculture; and (3) 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 1920s' 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.

II. 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;
- A reliance on litigation to resolve planning and zoning issues and settle specific disputes;
- Confusion over the purpose of the State Agricultural District, the rules for allowing residential use, and the criteria for designating agricultural lands;

- Use of the Agricultural District as the "residual" or "default" class, leading to far more acreage designated "agricultural" than will ever be actively cultivated and thousands of acres that are not suited for any kind of farming;
- Too many public resources spent on project-by-project regulation and too few spent on effective planning;
- Poor coordination between the State (i.e., education, transportation) and the counties (i.e., water supply, wastewater, solid waste systems) in terms of land-use planning and capital program planning; and
- Limited public participation in long-range planning and over-emphasis on narrowly-focused, often heated public hearings on specific projects..

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.[2] 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, such as "abolish the Land Use Commission" do 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.

III. 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 preparation 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.

Third, planning is more than land use regulation. Government should develop plans that fully support appropriate development. Such plans should provide policies to guide the investment of capital funds in public infrastructure and community facilities. Long- and short-range capital plans should be "resource-constrained," i.e., the cost of constructing improvements included in such plans is not to exceed the projected amount of funding available. This includes establishing standards for determining the portion of growth-induced facility expansion to be funded by government and the portion to be

funded by private developers. State and county agency plans should be congruent with the county comprehensive plan. Such 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.

1.1 III.A State Planning Commission (SPC)

1. Transform the Land Use Commission into the State Planning Commission and vest it with responsibility and authority to establish State planning goals and to set standards for the content of and the process for making county general plans and State long-range functional plans. The SPC, which would act as a quasi-legislative body, would have the following responsibilities:

    a. Set statewide planning goals and guidelines for areas of State interest and the four State land use districts.

    b. Set standards and guidelines for county general plans, including mandatory review every five to seven years.

    c. Set standards and guidelines for State long-range functional plans, including at minimum ground transportation and schools, with review every five to seven years.

    d. Review and certify county general plans that meet the standards for county general plans. (If the plan meets the standards, it is to be certified. The SPC is not to be in the business of revising or amending county general plans.) Amend State land use district boundaries in accordance with the certified county general plan.[3] Certification will be required in order for State funds to

be obligated and expended to serve urban and rural areas not previously developed.

e. Review and certify State long-range functional plans for conformance to State goals and the standards for functional plans.

f. Monitor county land use regulations to assure they are consistent with the county general plan.

2. Redefine the State land use districts in terms of policy goals.

a. The Urban District would include lands needed to accommodate projected long-range growth over a 20-year planning period. It would in effect establish urban growth boundaries, to be reviewed by each county every five years but not to be altered by individual applications.

b. The Agricultural District would include lands that are of high agricultural resource value (Important Agricultural Lands, if IAL are designated) and that are intended exclusively for agriculture, aquaculture and forestry uses.

c. The Rural District would include lands designated for a range of rural uses, such as dispersed settlements, agriculture, and small-scale economic enterprise.

d. The Conservation District would remain essentially unchanged, as would the State's authority for planning and regulating land use therein.

e. State law would no longer specify parcel development standards – such as permitted uses and minimum lot size – in the Rural and Agricultural Districts. Instead, the Counties would configure zoning districts and development standards that are consistent with State and County policy and that reflect the specific planning intent for each area.

f. State land use district boundaries would be represented in a general manner and would not be subject to metes-

and-bounds interpretation (except in the case of the Conservation District.)

III.B The Counties

1. 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.

2. Require each county to prepare a comprehensive general plan, to be reviewed every five years to seven years. (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:

   a. Land Use. Policies for and mapping of all lands would take into account environmental constraints and the preservation of important natural, cultural, and scenic resources.

      - Agricultural Lands:

        Designate and map lands that are of high agricultural resource value, which would include or be coterminous with "Important Agricultural Lands" (if IAL's are designated). Once adopted through the county general plan and agreed to by the SPC, these lands would constitute the State Agricultural District.

      - Rural Lands:

        Define criteria for the rural district including designating and mapping areas for rural settlement, agriculture, small-scale commercial enterprises (especially agriculture-related enterprises), and other rural uses.

      - Urban Lands:

Designate and map lands needed for urban development for the 20-year planning period and establish policy for the development of communities.

b. Economic Development

c. Historic, Cultural, Recreational and Scenic Resources

d. Hazard and Environmentally Sensitive Areas:

e. 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).

f. Housing

g. Transportation

h. Community Infrastructure and Facilities

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

4. Mandate the counties to revise zoning districts and land development regulations to be consistent with the general plan. This would specifically entail redefining the regulations for Agricultural and Rural districts.

III.C Collaboration and Support

1. Mandate that the counties consult and work collaboratively with state agencies in all stages of the county general planning process.

2. 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.

3. Provide State funding and technical support to the counties. Financial assistance to the counties for planning should be specified as a certain percentage of funds from a stable and predictable state revenue source. After the first three or four years of funding, only counties having a SPC-certified general plan would qualify for this funding.

IV. Benefits of Renewal

Problems of the existing system of land-use planning and regulation are identified in Section II above. This section summarizes how the proposal surmounts these problems.

Extraordinary amounts of time required to secure development approvals; and Duplicative State and county review processes.

The counties are given the power to plan and regulate land uses. County land use regulations are to be consistent with the county general plan. The State will no longer be involved in review of parcel rezoning applications. Its role will be to set planning goals, standards, and guidelines and review and certify county general plans. These changes eliminate duplication and clarify state and county responsibilities.

Substantial degree of uncertainty as to what can and cannot be done.

The State Agricultural District will consist of the important agricultural lands and those lands will be use for agricultural purposes. The land in the Rural District will be used for rural settlements, natural and cultural preserves, small-scale commercial enterprises, especially those related to agriculture, and other rural uses designated by the county. These changes, which vastly clarify what land in the Agricultural and Rural Districts can and cannot be used for, will significantly will reduce the present, prevalent degree of uncertainty.

Reliance on litigation to resolve planning and zoning issues and settle specific disputes.

Litigation occurs when ambiguity and uncertainty exists as to the uses to which specific parcels of land may be put and multiple agencies have jurisdiction over the processes for making decisions.

For example, the State has not defined "farm dwelling" in operational terms, yet the counties have the job of reviewing and acting on subdivisions. The elimination of state zoning standards will clearly focus the State on land use policy and clearly delegate authority for zoning to the counties.

Confusion over the purpose of the State Agricultural District, the rules for allowing residential use, and the criteria for designating agricultural lands.

Use of the Agricultural District as the "residual" or "default" class, leading to far more acreage designatde "agricultural" than will ever be actively cultivated and thousands of acres that are not suited for any kind of farming.

Once the Agricultural District is redefined to consist of high-value agricultural lands, and the use of lands in that District is restricted to agricultural uses the present confusion will be eliminated. At the same time, policy and regulations for managing residential use in The Land Between will be clearly focused on the Rural District. The State Planning Commission's role will be to establish statewide planning goals and guidelines for the Rural District and the monitor county plans for conformance. The county's role will be: (1) to set policy and designate lands for various types of rural uses, including residential, in its general plan; (2) to establish appropriate zoning districts and standards to carry out plan policies; and (3) to zone rural lands in conformance with the general plan.

Redefinition of the land use districts means that the Agricultural district would be more strictly defined and be reduced in size; it would no longer serve as a residual district. Conversely, the Rural District would be the more broadly-defined classification and would become the focal point for planning and regulation of The Land Between.

Too many public resources spent on project-by-project regulation and too little spent on effective planning.

Poor coordination between the State (i.e., education, transportation) and the counties (i.e., water supply, wastewater, solid waste systems) in terms of land-use planning and capital program planning.

The Land Use Commission, which currently engages in project-by-project regulation, will be transformed into the State Planning Commission. It will be performing planning, not regulatory functions. It will be setting goals, standards and guidelines and reviewing and certifying county general plans. Equally important, the SPC will devote significant attention and resources to guiding State long-range planning for public facilities and the CIP, and to coordinating State and county capital spending with agreed-upon county land use plans.

One major function of the State Planning Commission will be to set standards and guidelines for state long-range functional plans, including at a minimum ground transportation and schools. Furthermore, the new law will mandate that the counties and the state agencies, especially the Departments of Transportation and Education, work collaboratively.

Limited public participation in long-range planning and over-emphasis on narrowly-focused, often heated public hearings on specific projects.

The new emphasis on long-range planning at the State, e.g., the new State Planning Commission, and in the counties, e.g., the new general plans with both required and optional elements and the new responsibilities for regulating land uses in the Agricultural and Rural Districts, will provide opportunities for public participation in setting goals and guidelines, which will determine how the State and individual counties will grow.

In conclusion, the proposal outlined in Section III provides the means for surmounting the problems identified in Section II.

V. What Is Required For Implementation?

The proposal states principles for renewing Hawaii's system of land use planning and regulation. The intent is to use it as basis for discussion with public officials and agencies, private organizations and associations, and the State Legislature. Before renewal can be accomplished, there needs to be general agreement about: (a) the scope of the problems characterizing the current system; and (b) the need for a broad initiative to redefine State and county responsibility and authority.

The key steps for implementing renewal of Hawaii's system of land use planning and regulation include the following:

1. The enactment of legislation rewriting Chapter 205 HRS and other related statutory provisions;

2. The establishment of the State Planning Commission and its adoption of statewide planning goals, as well as standards and guidelines for county general plans and State functional plans;

3. The adoption of a schedule for implementing the new statutory provisions that provides sufficient time for the counties to revise their general plans and the State agencies to prepare (or revise) long-range functional plans; and

4. The provision of technical assistance to the counties to assist them in formulating a new general plan, especially in terms of conceptualizing the significantly revised agricultural and rural districts.

The two legislative measures adopted in 2005 take initial incremental steps in the right direction, but Hawaii still needs to clearly delegate responsibilities for developing land use policy, regulations, and capital investment plans that will reinforce the fundamental concepts of compact urban settlement and will lead to the development and implementation of policies to manage The Land Between. Through system renewal, Hawaii once again can be a national, and even worldwide leader, in land use planning.

ENDNOTES

[1] 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.

[2] 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.

[3] There are various models for State review of general plans prepared by local governments, ranging from compulsory certification to a presumption of adequacy with provisions for appeal to a State planning body or the courts. This is a critical element that should be examined and resolved among the stakeholders.