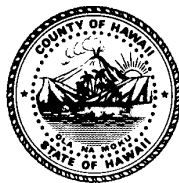


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November 9, 2004

TO: Leningrad Elarionoff, Chair
Committee on Planning

FROM: Constance R. Kiriu
Legislative Auditor

Charmaine Doran
Assistant to the Legislative Auditor

RE: Bill No. 163, Draft 3
General Plan Comprehensive Review

As you requested, we have prepared the attached Bill No. 163, Draft 3 after considering public testimony, council member comments and Planning Director Chris Yuen's memorandum dated June 14, 2004, on Bill No. 163, Draft 2. We also met with the Planning Director and interested council members after the Planning Committee workshops on Draft 2.

Many suggestions have been incorporated into Draft 3 as a result of those discussions and public testimony. Those include requiring development plans to be adopted by ordinance, dropping the reference to the non-regulatory nature of the General Plan, making a distinction between development plans and facility plans, providing separate objective and policies for intensive agricultural lands, reinstating district courses of action, restoring several policies in the 'Natural Beauty, Resources, and Environmental Quality Element,' and changing the page numbering format. Except for one correction, no map changes have been proposed from Draft 2 to Draft 3. Individual LUPAG map and facilities map changes should ultimately be reflected as the text is amended by council members.

COMMENTS

Doesn't the County have a General Plan?

Another common misunderstanding we heard in testimony was the idea that Bill No. 163 should be passed in order to have a General Plan. The County of Hawai'i has a General Plan (Ordinance No. 439, as amended) which is fully in effect and will continue to be the comprehensive policy planning document for this County until otherwise amended. The process currently undertaken is the comprehensive review of the existing General Plan, which is mandated by the plan itself. The existing General Plan until otherwise amended, will continue to be implemented through the County's public improvements and projects, and adopted subdivision and zoning ordinances.

General Plan philosophy revisited?

The General Plan as adopted in 1971, and as amended since, was developed as an innovative departure from traditional planning efforts at that time. Whereas previous planning efforts for the County were regional (i.e. Hilo, Kona) and were primarily land use oriented with no real island wide integrative coordination, the 1971 General Plan set forth policy statements to guide the comprehensive future growth of the entire island.

Driven by these interrelated elements, the General Plan is a true policy document in that a change in one or more elements would be reflected in a greater or lesser degree in all other elements as well as the land use allocation pattern(s). Similarly, a change in County goals and objectives would in turn be reflected in all elements including the land use allocation pattern(s). The interrelationship of the General Plan elements begins with the Economic Element, the cornerstone that describes the island's economic opportunities and related factors which generate population growth. The Environmental Quality, Energy, Historic Sites, Natural Beauty, and Natural Resources and Shoreline Elements describe those natural and social conditions which influence and set parameters for development opportunities on the island. The Housing, Public Facilities, Flood Control and Drainage, Recreation and Transportation Elements provide guidance to implement those services, facilities and public improvements required to support the economy and associated population growth. The Land Use Element articulates the use allocation and preferred distribution pattern of the various activities described in the other elements of the General Plan, and the Land Use Pattern Allocation Guide (LUPAG) Map identifies general locations of categories of use in relation to each other.

For example, if the Economic Element gave more weight to the projected economic impact of the military's presence on the Big Island, adjustments would be necessary in all elements to reflect that policy direction. The Energy Element is another example of how the General Plan and its policy-oriented approach responds to changing economic and social trends in a comprehensive manner. The Energy Element was added to the list of original planning elements during the General Plan review of 1978. At that time, Hawai'i's near total dependence on imported petroleum and the gasoline crisis of 1974 launched a Statewide coordinated effort to address Hawai'i's future energy needs. Although the General Plan mandatory review was primarily with the LUPAG maps, the focus on the Big Island for energy alternatives, such as geothermal and OTEC necessitated the development of a separate General Plan policy element to address the Energy issue in relation to all the other existing policy elements. Drafts 2 and 3 reduced the number of elements from thirteen to seven. Nevertheless, the planning philosophy and methodology have remained the same.

As a policy planning document, the General Plan tells us what broad interests we have identified, what to protect, and what to strive for. It does not, however, specifically tell us where, when, how, and in what order a certain program or project should be started in order for us to achieve the kind of future it identifies. That is the role of the "mid level" plans, such as community development plans (CDP's), functional plans (recreation, historic sites, etc.), and area improvement plans (Hilo Downtown Development Plan, Kailua Village Design Plan, Keahole to Kailua Plan, etc.), which, in conjunction with implementing programs at the "action" level of government (capital improvements programs, operating budget, zoning and subdivision codes, park dedication ordinances, etc.) round out our County's comprehensive planning and implementation program.

There is no denying that over the years, the “mid level” implementation efforts have largely been non-existent and thus, the burden of implementing the General Plan has been left to the “action” (administrative) level of government.

It is not surprising, then, that many of the proposals advanced in Bill No. 163, Draft 1 appear to bring more specificity to the various elements and sub-elements of the General Plan in an effort to ‘regulate and enforce’ rather than to implement its policies. The Council should carefully consider the long-term ramifications of this shift in planning philosophy.

Fundamentally, the Council has no choice in the matter; the statutes and Charter are clear: the General Plan is the comprehensive policy planning document of the County. Changes to such a document should not be made nor taken lightly, and the Council should carefully consider each and every amendment to ensure that the integrity of the plan is maintained. Revisions should strengthen the policy aspects of the plan and not burden the document by the inclusion of procedural and other implementing details that could inhibit and constrain the equal application of County policy on a comprehensive rather than site specific or issue specific basis.

It is very important that the Council understand the philosophy of the General Plan, for without it, it could easily turn into a document that may not meet the framework envisioned by its founders in statutes and the Hawai'i County Charter.

What must this General Plan amendment or revision process accomplish?

Chapter 46-4, Hawai'i Revised Statutes, requires the preparation of a comprehensive general plan to *guide* the overall *future development* of the county. The Charter provides similar language. The Council's role is clear in that all revisions or amendments to the General Plan shall ensure that they are, in the Council's judgement, beneficial to the social, economic, and governmental conditions and trends of the County; to assure the coordinated development of the County; and to promote the general welfare and prosperity of its people. Considered revisions should be positive rather than negative; inclusive rather than exclusive; and more importantly, be thoughtful and have foresight.

MAJOR CHANGES BETWEEN DRAFT 2 AND DRAFT 3

Statutory Authority

- Chapter 226-58, HRS, has been added to Draft 3. It was not cited in Drafts 1 or 2.

General Plan Program Implementation

- Draft 2 contains the statement “It is therefore, not intended to be regulatory like the zoning code or other land use regulations, but flexible and resilient.” This statement has created misunderstanding and confusion as to the mandatory role of the General Plan as a County policy document and has thus been deleted in Draft 3. The General Plan is the Council's comprehensive policy document for directing the future of the Big Island, and serves as the legal foundation for all of the other elements of the County's planning structure, including the adoption of such implementing, rather than regulatory, mechanisms such as the zoning and subdivision codes, or other land use reviews and standards. In this enabling context, the General Plan is clearly non-regulatory and thus no further statement in that regard is deemed necessary._

- Draft 2 included facility planning with development planning. Draft 3 makes a distinction between development plans and facility plans, but requires both to be initiated by Council resolution.
- Draft 2 left the method of adopting a development plan up to the Council. Draft 3 requires that development and facility plans be adopted by ordinance. Once adopted, five-year reviews by the administration are mandated.
- Draft 1 places the responsibility for preparing a community development plan largely with a steering committee rather than the planning director. This appears to be inconsistent with the Hawai'i County Charter.
- The annual reporting requirement of General Plan goals, objectives, and policies by the Planning Department in Draft 1 was dropped in Draft 2. The annual reporting requirement has been reinstated in Draft 3, but with greater specificity.

District Vision Statements

- The existing General Plan and Draft 1 do not contain island-wide or district vision statements. Draft 2 contained eight (8) district vision statements by combining the districts of North Hilo and Hamakua. Draft 3 separates the district vision statements for North Hilo and Hamakua, reverting back to a total of nine (9) district vision statements.
- District vision statements have been refined by council members. However, we recommend the district vision statements communicate an understanding of the role of the district in relation to the rest of the island community.

District Courses of Action

- District Courses of Action contained in Draft 1 have been included in their entirety in Draft 3. Please note redundancies, the lack of consistency across the planning elements, and the fact that numerous courses of action were moved to the appropriate policy section in Draft 2. District Courses of Action will require major editing.

The inclusion of district courses of action will “front-load” the General Plan and, therefore, tend to mitigate the need for immediate implementation of development plans. Policymakers must also re-examine the function of district courses of action. If the County’s capital improvements program and projects must be consistent with the General Plan, does that mean capital projects should be listed in the General Plan? What are the consequences of not stating a capital project in the General Plan? Should the General Plan’s district courses of action be amended if a development plan’s implementation differs or is expanded? What are the consequences of moving forward on a course of action not specifically listed in the General Plan?

Formatting

- Draft 3 has been reformatted by (1) separately numbering headings in each chapter, (2) separately numbering the pages by chapter, and (3) showing the chapter title next to the right-hand page number and the document title “County of Hawai'i General Plan” next to the left-hand page number.

Land Use

- Draft 1 designates certain lands as Important Agricultural Lands and adds related policies. Perhaps the greatest concern expressed of Draft 2 was its elimination of Important Agricultural Lands as a LUPAG designation and placing the responsibility for identifying, protecting, and conserving Important Agricultural Lands with the State of Hawai'i. This action was taken because of the State of Hawai'i Constitution and a Hawai'i Supreme Court decision that places this responsibility with the State legislature. While the County can assert its authority to guide the physical development of the island through the General Plan and its implementation, it should be methodical in the identification of the agricultural lands.

Draft 3 identifies Intensive Agricultural lands as the starting point for a comprehensive Intensive Agricultural program. It also acknowledges the need for detailed mapping and a program that promotes agriculture through degrees of government protection, intervention, and support as well as the extent of private action. Like Draft 1, Draft 3 includes (1) lands identified as Intensive Agriculture in the existing General Plan, (2) Prime and Unique land classes in the Agricultural Lands of Importance to the State of Hawai'i (ALISH) system, and (3) lands in the Kona coffee belt. Unlike Draft 1, Draft 3 does not contain Draft 1 category of "Lands classified as at least "fair" for two or more crops, on an irrigated basis, by the USDA Natural Resource Conservation Service's study of suitability for various crops. "

Through recent Finance Committee meetings on the County's real property agricultural tax policies, the Council learned the complexities of the agricultural industry, 'gentlemen' farming, backyard gardening and subsistence living. Council Members heard about the breadth of agricultural activities occurring on this island. The Council learned, in part, that (1) farming cannot be forced, (2) the success of agriculture does not necessarily depend upon the size of a parcel of land or the quality of the soils, and (3) there is more land than farmers.

Almost everyone supports agriculture, but far fewer people are actually working farmers who support their families by farm-earned income. It is ironic that zoning and preservation of important agricultural lands does not, in itself, assure successful agricultural enterprise. Farms are cultivated and preserved by hard-working and dedicated farmers. So, will the General Plan objectives and policies and their implementation promote the agricultural industry or are they designed to promote a desirable lifestyle? Are the objectives and policies of open space and rural lifestyle compatible with those of agricultural land use? Therefore, the encouragement of productive utilization of the County's agricultural lands must be done with great insight and clarity to assure the Council achieves its objectives. That will be the Council's challenge.

- The description of **Conservation lands** in Draft 1 is problematic in that it does not distinguish between the State's conservation lands and those distinctly designated Conservation by the General Plan. Draft 2 rolled back the Conservation lands description to the existing General Plan. However, it was learned that the reason for the description in Draft 1 was to accommodate particular circumstances, such as Keopuka. Knowing that, Draft 3 makes a distinction between the two Conservation districts. Otherwise, it is possible that the County General Plan Conservation description of uses will supercede uses permitted in the State Land Conservation District. If that is the intent, the General Plan should say so and the Council should understand its implications.

Land Use Table

- **Puna Makai-Resort Area** should be listed as “Retreat” rather than “Minor.”

Natural Beauty, Resources, and Environmental Quality

- Draft 1 new policy reinstated in Draft 3: “Protect the views of areas endowed with natural beauty by carefully considering the effects of proposed construction during land use reviews.”
- Existing General Plan and Draft 1 policy reinstated in Draft 3: “Encourage an overall conservation ethic in the use of Hawai‘i’s resources by protecting, preserving, and conserving the critical and significant natural resources of the County.”
- Existing General Plan and Draft 1 policy reinstated in Draft 3: “Review the County’s grading and grubbing laws to ensure that they adequately address potential erosion and runoff problems.”

Thank you for your patience and consideration. Should you have any questions, please feel free to contact us.