SPEC. TASK FORCE REP. NO. 2 -08

Honolulu, Hawaii
January 18, 2008

RE: H.R. No. 259

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Mr. Speaker:

The Interim Task Force on Smart Growth created pursuant to House Resolution No. 259, Regular Session of 2007, begs leave to report as follows:

BACKGROUND

The State of Hawaii has experienced tremendous growth over the past three decades. As a result, it has been increasingly difficult for government to keep up with infrastructure needs, preserve open space for recreation, and maintain existing resources. Other problems that have surfaced include conflicts between conditions set forth by the Land Use Commission (LUC) and the counties as they relate to reclassification of lands and entitlements respectively. These conflicts have created inefficiency in government, overlap between state and county jurisdictions, as well as additional costs for all stakeholders in resolving these conflicting conditions. The House of Representatives, therefore, adopted House Resolution No. 259 during the Regular Session of 2007 to establish the Interim Task Force on Smart Growth (Task Force) to:

(1) Consider the incorporation of the principles of smart growth in land use and development decision-making; and

(2) Develop legislation for improved land use, more open spaces, compact urban areas, more affordable housing, decreased infrastructure costs, and other ideas relating to the principles of smart growth.

LAND USE DEVELOPMENT

From the outset, it is important to understand that development is a function of the counties and not the State. Consequently, there were challenges for the Task Force in drafting legislation as it pertained to development without usurping the authority of the counties. To resolve this jurisdictional issue, the Task Force approached smart growth by:

(1) Supporting the counties' efforts in directing growth while preventing urban sprawl; and

(2) Creating synergy between the LUC and the counties.

It is clear that each county has specific and different needs with respect to development. The counties are responsible for directing growth via county general plans, county community plans, or county development plans. This differs from the function of the LUC, which is 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. The counties are required to update their general plans every ten years. Currently, each county has updated or is working towards updating their individual general plans. All of the counties are implementing smart growth principles in some form or another although the smart growth principles have not been codified via ordinance. In coming up with legislation, the Task Force had a goal of helping counties make development and the incorporation of smart growth principles more efficient, and of helping the counties achieve smart growth.

While the counties have already taken steps to incorporate smart growth principles into their respective development planning, the Task Force encourages them to use the SmartCode, a form-based code created by Andres Duany, one of the nation's leading architects. The SmartCode, a model design and development code, has been enacted in states such as Florida and has promoted the principles of smart growth via zoning, thereby creating true smart growth communities.

The Task Force could not have gathered the information contained in this report without the help of many individuals statewide. The members of the Task Force express their appreciation to those individuals who generously offered their time and knowledge, and most of all for their dedication, in helping the Legislature address Hawaii's planning and development needs.

TASK FORCE MEMBERS AND PARTICIPANTS

Representatives:
Sharon E. Har, Chair
Karen Leilani Awana
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Other Representatives not on the committee who were present and participated in meetings:
Representative Joe Bertram III
Representative James Kunane Tokioka

Participating and Contributing Agencies and Organizations:
A & B
Campbell Estate
Castle & Cooke Hawaii
City and County of Honolulu Department of Planning and Permitting
County of Hawaii Planning Department
County of Kauai Planning Department
D.R. Horton
Department of Education
Department of Hawaiian Home Lands
Gentry Pacific
Grove Farm
Hawaii Association of Realtors
Hawaii Community Development Authority
Hawaii Housing Finance and Development Corporation
Hawaiian Electric Company (also representing Maui Electric Company and Hawaii Electric Light Company)
Honolulu Board of Water Supply
Kamehameha Schools
Kapolei Property Development
Kauai Electric
Ko Olina Princeville
Land Use Commission
Land Use Research Foundation
Maui County Planning Department

Office of the Governor
Olowalu Town
Stanford Carr Development
U.H. Sea Grant

The Task Force apologizes if there were any inadvertent omissions.

PRINCIPLES OF SMART GROWTH

There are ten principles of smart growth:

(1) Create a range of housing opportunities and choices;

(2) Create walkable neighborhoods;

(3) Encourage community and stakeholder collaboration;

(4) Foster distinctive, attractive communities with a strong sense of place;

(5) Make development decisions predictable, fair, and cost effective;

(6) Mix land uses;

(7) Preserve open space, farmland, natural beauty, and critical environmental areas;

(8) Provide a variety of transportation choices;

(9) Strengthen and direct development toward existing communities; and

(10) Take advantage of compact building design.

TASK FORCE SUMMARY

The Task Force held five public meetings at the State Capitol, and the Chair also met with Planning Directors and other officials who were unable to attend all of the public meetings.

Meeting No. 1: July 19, 2007

The first meeting of the series opened with remarks by Speaker Calvin K. Y. Say and Majority Leader Kirk Caldwell. Chair Har provided opening remarks and introductions.

The primary goal of this initial meeting was to provide the Planning Directors from each county the opportunity to present their views on smart growth and to explain what each county is doing to promote smart growth.

Oahu

Kathy Sokugawa represented Henry Eng, the Director of the City and County of Honolulu (C&C) Department of Planning and Permitting (DPP), and described how C&C already incorporates smart growth principles through mixed-use zoning and planning, preservation of culture, preservation of land, urban growth boundaries, various sources of transportation, and a green building initiative, among other things. C&C DPP recommended that the Legislature support county smart growth efforts by appropriating funds to implement projects.

Kauai

Ian Costa is the Director of Planning for the County of Kauai. He explained that Kauai is currently experiencing the most development proposals over the last 30 years. Infrastructure and safety issues, such as adequate fire departments, police departments, and hospitals, have been raised. Kauai is working on updating its General Plan from the '80s, and there is a bill currently being considered by the Kauai County Council to regulate vacation rentals.

Maui

Jeff Hunt is the Director of Planning for the County of Maui. He provided examples of developments occurring on Maui that include smart growth principles, such as the Town Center in Kahului, Kapalua resort project, Pulelehua, and Olowalu. Maui is also working on updating its General Plan. Maui recommended that:

(1) The LUC support county-drawn boundaries;

(2) The Department of Transportation (DOT) consider the counties in the decision making process; and

(3) The Department of Education (DOE) build smaller schools.

Hawaii

Chris Yuen is the Director of Planning for the County of Hawaii. The Big Island has experienced a population increase, with 21,000 people moving there in six years. Most of these people are from the mainland. In 2004-2005, 6,500 building permits were issued, almost the same amount as Oahu. There is no smart growth pattern. Mr. Yuen described that smart growth is primarily an urban issue, and the county needs to drive development, which should follow the path of least resistance. The Big Island recommended:

(1) Looking at current regulations that make development difficult; and

(2) Schools should serve a relatively compact area.

Discussion

After the presentations, discussion occurred on various topics related to infrastructure, walking and biking trails, impact fees, LUC process, streamlining the planning process, transportation, schools, and utilities.

Several suggestions and comments arose from the discussion:

(1) The county should be considered in deciding where roads and sidewalks are placed;

(2) It's not the LUC's role to oppose a use approved by the counties;

(3) Laws need to foster smart growth and smaller communities;

(4) Counties should administer urban land; and

(5) Financing of new schools is a problem. Even if a developer pays to build a new school, DOE's operating budget is affected.

A representative of the LUC clarified that its role is not to be an obstacle to the counties. Its purpose is to promote appropriate patterns for development. LUC also addresses issues of statewide concern such as land density and the environment.

Meeting No. 2: August 23, 2007
Three developers were invited to conduct presentations on current developments promoting or incorporating smart growth principles.

Kapolei Property Development

Steve Kelley of Kapolei Property Development, a subsidiary of Campbell Estate, conducted a presentation on Kapolei. The presentation began with a background of Kapolei and Campbell Estate's historical development of the region. Kapolei is now trying to catch up with infrastructure needs. There is a $172 million initiative to fast-track roads through a partnership with C&C. There are currently 25,100 jobs in the region, and 40,000 new jobs are projected by 2025.

Nineteen projects are in the planning or construction phases. There are three large projects planned for Kapolei: Makaiwa Hills, Kapolei West, and Kapolei Harborside Center, comprising 6,500 residential units and 7,320 new jobs. Projects are planned with the following criteria: diversity, ecologically sensitive, culturally sensitive, sustainable growth, sustainable design, connectivity, Hawaiian design, and sense of community.

After the presentation, discussion on Kapolei included issues pertaining to zoning, obstacles to smart growth, and impact fees. Regarding zoning, the critical mass is arriving now and less dense areas should be redeveloped. The Kapolei Harborside project is still being considered by LUC, and it is felt that LUC may be overstepping its mandate regarding sustainable affordable housing. With regard to impact fees, the amount of impact fees collected is not enough to cover the projects in the area.

Olowalu Town

Bill Frampton and David Ward conducted a presentation: "Olowalu Town, For Maui, By Maui." Maui is traditionally an island consisting of small towns. In the 1930's the focus was on building communities, not just houses. In the 1970's the focus was on houses, not communities. This reversal is directly related to zoning laws.

Olowalu Town is being developed according to the following guiding principles and values: project location and subject property, community-based planning, community for Maui families, respect for host culture and natural resources, smart growth, and incorporating traditional neighborhood design. The Olowalu Town project was designed by Andres Duany and will be guided by the SmartCode to ensure the development of walkable and mixed-use neighborhoods, complete and compact communities, and discourage sprawl development.

The plan includes 1500 housing units for various income-levels, education facilities, parks, a greenway system, emergency services, a place to live and work, and space for public facilities and social services. Completion of the entire project is estimated by 2025.

After the presentation, discussion included land ownership, transportation, and land use classification. The development plan includes a new bypass road to be built concurrently with the community as a public-private partnership. Currently, lands are owned by one landowner and are classified as agricultural.

Kapolei/Ewa

Dean Uchida of D.R. Horton conducted a presentation on developments in Kapolei and Ewa including Ho'opili and Mehana. The presentation also included some background information on smart growth based on concepts from the Smart Growth America website: www.smartgrowthamerica.org.

Background on land use in Hawaii was also provided. There are four classifications: agricultural, conservation, urban, and rural. On Oahu, 33 percent of land is classified as agricultural and 41 percent classified as conservation. Population is expected to grow from 912,500 to 1,117,300 by 2030, yet housing growth only accounts for about half of the demand.

Ho'opili is a master-planned mixed-use community planned for Ewa. A primary focus is on mass transit, as this is the first development in Hawaii which incorporates rail into its plans and designs. In addition, this project is targeted toward the first-time homebuyer. Mehana at Kapolei is planned as a mixed-use live-work environment. The presentation included the topic of "what's limiting more density in the primary urban core?" Some of the barriers are: infrastructure, deficient roads and bridges, and lack of funding.

Meeting No. 3, September 13, 2007

The purpose of this meeting was to begin developing ideas for legislation to promote or remove barriers to smart growth. Suggestions and comments included the following:

(1) Expedited permitting and review process;

(2) Establishment of criteria for smart growth;

(3) Third party review process;

(4) Establishment of incentives;

(5) Encouragement of smart growth in non-new development areas;

(6) LUC support of county-drawn boundaries outside of urban areas;

(7) State transportation plans that conform to county plans;

(8) A method to expedite building new schools, including the possibility of allowing developers to build schools without affecting DOE's operating budget;

(9) Creation of smart growth design standards for schools;

(10) Encouragement of smart growth concepts in all areas;

(11) Funding priority given to projects that implement smart growth principles;

(12) A study to analyze savings over time to a community that implements smart growth;

(13) Provision of tax incentives for smart growth developments;

(14) Entitlement process carried out entirely by the counties; don't add another layer of bureaucracy;

(15) Focus on infrastructure support and funding, rather than on development mechanisms; and

(16) Respect for state-county boundaries.

Meeting No. 4, October 4, 2007
The purpose of this meeting was to continue the discussion on proposals for legislation relating to smart growth, with a focus on four concepts:

(1) LUC supporting county-drawn boundaries;

(2) The State consulting with the counties on the State Transportation Plan (STIP);

(3) Providing incentives for developers to build infrastructure; and

(4) Conducting studies on whether smaller schools are more cost-effective.

Suggestions or comments included the following:

(1) Concerns were raised that state legislation may interfere with the counties' current efforts to implement smart growth;

(2) Infrastructure should include other forms of transportation besides cars, such as increasing bike lanes;

(3) Tax credits to encourage development in Kapolei do not appear to have been successful. Should evaluate how useful they have been;

(4) Community facilities districts (CFD) or a task force should be considered to further examine CFDs, although a concern was raised that CFDs may create higher property taxes;

(5) State, counties, and developers need to coordinate the construction of infrastructure; and

(6) DOE is happy to have developers build schools as long as DOE funding is not affected. DOE prefers the use of general obligation bonds.

The Chair planned to solicit suggestions from stakeholders who were unable to attend, including DOT and the county planning directors.

Meeting No. 5, December 6, 2007
Prior to this meeting, the Chair e-mailed eight bill proposals to stakeholders for their consideration. This meeting was dedicated to discussing the proposals and ways in which they could be improved. These bills are being considered for inclusion in the

House Majority Package. Below is a summary of the discussion on the proposed bills. Note that in some cases, information was provided to the Chair after the meeting that would affect the disposition of the measures.

PROPOSED LEGISLATION

1. Adding an objective to the Hawaii State Plan that land development be in compliance with smart growth principles.

- The State Plan, known as Act 100 and codified in Chapter 226, Hawaii Revised Statutes (HRS), has never been substantially updated since it was enacted in 1978. The principles of smart growth should be added as an objective.

- There needs to be a balance between quality of life and economic and financial development. It seems like the economic side has been omitted.

- In existing statute, there is a statement that "County general plans or development plans shall indicate ***desired*** population and physical development patterns..." (emphasis added) A suggestion was made to change "desired" to "expected" or "projected." A representative of C&C DPP stated that they already base decisions on "projections" rather than "desires," so a change in the bill would be acceptable.

- A suggestion was made that infrastructure and incentives should be added.

2. Amending LUC decision-making criteria to require consideration of the county general plan and community, development, or community development plans.

- This is a housekeeping measure because the LUC is required to give consideration to the master plan or general plan of each county in districting and classification of lands (see section 205-2, HRS) but this requirement should be placed in section 205-17, HRS, "Land Use Commission decision-making criteria" as it relates to reclassification of lands.

- C&C DPP would support this measure.

3. Allowing a county land use decision-making authority to reclassify land areas of less than 50 acres, or lands from a county-initiated petition to reclassify lands to conform with a county general plan or other community or development plan.

- Based upon research of the current law, it appears the current 15 acres was arbitrarily chosen. The rationale in increasing the acreage from 15 to 50 is that larger acreage has statewide impact which is the focus of the LUC. Conversely, the smaller the acreage, it is less likely of having statewide impact.

- A suggestion was made not to specify an acreage at all, and to let the counties decide on the number. However, this would still create a redundancy of reviews.

- The purpose of this bill is to streamline and create synergy between the counties and LUC.

Note: Subsequent to this meeting, the point was raised that allowing counties to reclassify unlimited number of acres to comport with county general plans may have major statewide impact. Chair is working with counties to add additional language that would minimize impact.

4. Requiring the statewide transportation plan to take into consideration county transportation plans and county general plans.

- There seems to be a disconnect between the counties and the state as it relates to building of county and state roads.

- The original language of this bill would have mandated DOT to integrate county plans in formulating the Statewide Transportation Plan (STIP). The Director of Transportation raised the point that since the State receives federal funds for most state road projects, federal law prohibits STIP projects from being dictated by county plans. Chair indicated that in speaking with the Interim Director of Transportation, Hawaii's STIP is taken from the State Long Range Plan, in which counties have input.

- Suggestions included adding a provision stating that DOT must comply, as long as the state is not at risk of losing federal funds or to require county plans to be considered for projects funded solely with state funds.

- This bill would primarily address neighbor island issues, since the Oahu Metropolitan Planning Organization dictates road projects for Oahu, while DOT dictates road projects for neighbor islands.

5. Requiring the Hawaii Community Development Authority (HCDA) to adopt rules to include smart growth principles for development within HCDA's community development districts.

- Chair noted that the goal of this bill is to revitalize the urban core with smart growth principles and that these are simply guidelines.

6. Requiring the Department of Budget and Finance (B&F) to provide for financing periodic payments for purchase or lease of public school facilities provided by private parties.

- Developers are willing to build schools turn-key because new schools are a selling point for developers. DOE, however, does not favor long-term leases of schools for purchase because lease payments would impact DOE's operating budget. Since the Legislature appropriates funds only for two years, it is too risky for DOE to lease schools, which is why DOE favors general obligation bond appropriations, since B&F pays down debt service and not DOE.

- DOE commented that in the past, operating budget has been affected by such lease agreements. As long as the operating budget is not affected, these changes are okay.

Note: Subsequent to the meeting, Chair met with DOE representatives to discuss the proposed legislation. One of the representatives advised Chair that legislation amending section 36-32, HRS, was enacted in Act 220, Session Laws of Hawaii 2007. This legislation creates the Lease Payments for Schools Account under the State Educational Facilities Improvement Special Fund. Act 220 creates a funding mechanism for lease payments for new schools, upon meeting certain conditions. Accordingly, the proposed bill appears to be unnecessary.

7. Requiring affordable housing built under the Hawaii Housing Finance and Development Corporation's expedited process to be developed in compliance with smart growth principles.

- Chair noted that the goal of this bill is to build affordable "communities," and not just affordable "housing".

- Various concerns were raised, including that the process is not being used on the neighbor islands and tends to apply to individual buildings and not entire communities.

- Other concerns were raised that federal tax credits may not apply to mixed-use developments and that housing affordability should be addressed in a different forum, and not be mixed in with the goals of the Task Force.

- Further concerns were raised that this will create a longer process, rather than the expedited process which it was intended to be.

- It was agreed upon by the members that this proposed measure would impede the goals of affordable housing by creating more obstacles. Accordingly, the Task Force members agreed that this bill will not be included in the smart growth package.

8. Appropriating matching funds for bikeways and pedestrian walkways in West Oahu.

- Chair noted that this bill is a work-in-progress because there is a possibility of obtaining matching federal funds. This bill will encompass several legislative districts, and may eventually lead to connecting the bikeways and walkways with those located in other districts. Kauai is working on a bikeway that will circle the entire island. The ultimate goal will be to do something similar for Oahu.

Note: Chair had a discussion with Scot Urada of the DOT regarding the Leeward Bikeway Project. DOT informed Chair that the bike path is already part of the Oahu Metropolitan Planning Organization STIP and that DOT currently has capital improvement project (CIP) funds appropriated for Phase I (Waipio Point Access Road to Hawaii Railroad Society Train Station) and Phase II (Hawaii Railroad Train Station to Lualualei Naval Road) but that additional CIP funds will be required in the 2010-2012 fiscal biennium budget request. Accordingly, this proposed measure will not be included in the smart growth package but will be revisited in 2010.

FINDINGS

Development is directed by the counties. Because development and planning are directed by the counties and the counties have the responsibility over the functions of planning and permitting, legislating smart growth on a statewide level is limited. However, the Legislature can enact legislation to empower the counties to implement smart growth, remove barriers, or make it more efficient for counties to implement. Counties are already trying to implement smart growth principles, and the Legislature should give them the necessary tools to achieve this objective.

The counties should use SmartCode in planning for development. SmartCode is a model planning ordinance that has been adopted by other municipalities and is an excellent tool for implementing smart growth principles in communities and new developments. Each planning director was given a copy of the SmartCode with the hope that this form-based code would be implemented at some level by the counties.

LUCs boundaries should be reassessed. In 1985, section 205-3.1, HRS, was established, giving LUC authority over boundary amendments involving land areas of 15 acres or less. Because growth and land use have changed dramatically since the LUC was established in the 1960s, its boundaries should be reassessed.

Transportation needs to be better coordinated between the State and counties. DOT's plans and the counties' plans are usually not in sync with each other. It is not the intent of the Task Force to criticize DOT, but rather, to create synergy between the counties and the State with regard to transportation planning.

Developers should be allowed to build new schools. Developers are willing to build schools, but have encountered barriers because DOE's operating budget has been affected in the past. Again, it is not the intent of the Task Force to criticize DOE. However, the Task Force learned that legislation was passed during the Regular Session of 2007 that should enable developers to build new schools and not affect DOE's operating budget.

More walkways and bikeways are needed. In the midst of rapid development, the State also needs to preserve land for open space and recreational needs, as well as to make it easier to use alternative modes of transportation in a safe environment.

The urban core needs to be revitalized and improved. Infrastructure in the urban core has not kept up with population growth. The principles of smart growth can help to guide HCDA to revitalize the urban core.

The State Plan should be updated. The State Plan was created during a time that growth in the islands, particularly on Oahu, was rampant. The islands are once again experiencing a period of rapid growth, yet the State Plan has not been significantly updated since it was enacted in 1978. This is an ideal time to update the State Plan to incorporate the principles of smart growth as an objective.

CONCLUSION

The Task Force spent numerous hours meeting with public officials, stakeholders, and members of the public to receive input on how smart growth can be more efficiently implemented, and what the Legislature can do to help. In fulfilling its mission, the Task Force repeatedly asked:

> "What is the role of state government as it relates to smart growth development?"
>
> "What do you want the Legislature to do to obtain this objective?"

The Task Force's recommendations are responsive to the ideas and comments received in its meetings, including the idea that legislation can sometimes be a barrier. As a result, the Task Force chose to eliminate some of the suggested legislation because it was seen as more of a hindrance, and instead focused on legislation that would help remove barriers to development that incorporates the principles of smart growth.

The Task Force recommends that the Legislature adopt its suggested legislation. The Task Force further recommends that the counties adopt legislation using the SmartCode as a guideline.

Finally, the Task Force again thanks the participants for their time and effort, and encourages them to testify when measures related to smart growth are heard by standing committees during the Regular Session of 2008.

Respectfully submitted on behalf of the members of the members of the Interim Task Force on Smart Growth,

SHARON E. HAR, Chair