

May 9, 1974 - 9:30 a.m.
DPED Conference Room

Commissioners Present: Eddie Tangen
Alexander Napier
Sunao Kido

Staff Present: Tatsuo Fujimoto
Ah Sung Leong
Gordan Furutani
John McConnell
Dora Horikawa

Consultants Present: James Yamamoto
Yutaka Ishii
Bill Eads

ET First thing. The chart there spells out in detail proposed changes in the handling of petitions. We're going to start with that.

JY Let's go over procedures first and detailed steps of procedure. (See Flow chart of Petition Review Procedures Draft submitted by Jimmy)

TF (Under #7) You made a statement that staff will then seek additional information, if necessary. The thing I'm getting at, is, when does it become new evidence and when it doesn't.

JY I don't know.

ET As far as that, I don't see any problem. If there's any conflict, you may check with different agencies for clarification. He is talking about after the 15 days, the Commission will then contact further.

JY If necessary for clarification on the testimony, by staff.

ET Suppose staff doesn't feel that they need further clarification?

JY They don't have to.

JM To me, the 15-day requirement means you must afford them opportunity during that period. It doesn't say after that period or any time, you can't get information you want. Legislative hearings, you can talk to anybody. They don't have right to come back after 15 days. They can take that period and submit information.

ET I don't think we need that procedure because it can reverse-- because they're going to insist on their right.

JY Staff makes specific recommendation to the LUC. The LUC takes action and makes action known to petitioner. Petitioner accepts all conditions LUC places so he has to act in affirmative.

TF What is the affirmative action he has to take?

ET Staff notified him of Commission's action. You say he takes affirmative action. What is required?

JY He accepts those conditions--that he will comply, and annually he will notify you--what he is doing, what the status of his project is. Land Use staff will take appropriate action relative to LUC responsibilities. At the same time, check with local authorities if project is moving. There's a finding by staff based on reports from the locality and from the petitioner. And then they would recommend certain course of action to the LUC. This leads to incremental change--the idea in the regulation is to provide the amount of improvement that will keep project alive. He'll have to perform before he comes back on next increment. If there are mitigating evidence, like shipping strike, I think staff will take that

into consideration. The idea is timing performance, compliance set forth by LUC which they agree on.

ET Who makes determination?

JY LUC

SK Decision-making. Supposing that petition is approved partially. Let's say petitioner comes in and requests urban on 100 acres. The Commission, in its wisdom, determines only 50 acres of that would be urbanized. You say that affirmative action on the part of the petitioner is to agree or disagree. Supposing the petitioner objects to it. The affirmative action that the Commission took at the meeting must now be reversed.

JY That's right.

ET He gets the 50 acres on the basis that's what he's getting and pau. If he doesn't like it, why do we have to go back and take action to take 50 acres.

JY If the LUC says OK we'll give you 50 acres. There's no way of enforcing that because once they receive 50 acres, the counties will have to enforce your conditions. What you could do is to make another petition to withdraw.

TF You're talking about conditions on land. You're saying petitioner has to take affirmative action to say whether he agrees to conditions placed. Commission gives X number provided certain conditions are met. What if the Commission doesn't impose any conditions but that we will give 50 acres of 100 acres. If a

petitioner says he doesn't agree. You're saying Commission has to reconsider action. That's what you said.

JY No.

TF You're talking only about condition?

JY If the petitioner comes in and wants 100 and Commission says only 50 acres. If the petitioner doesn't agree, what you're saying is that you don't have to agree but we'll give you 50. 50 is better than 100. I see no problem.

TF You said if he doesn't agree with 50 acres, Commission has to reconsider.

JY No, no, no. What I'm suggesting in R&R. You're not solely granting conversion of land. You're placing conditions. You're giving an example of no condition.

TF Your proposal is saying place conditions on all?

JY Equity in condition so everybody has to comply with conditions.

TF Your proposal is saying every action on petition by commission will have conditions.

SK We do impose conditions and let's say petitioner says he doesn't agree--it shouldn't be 50 but 100 acres. Since they are not willing to accept conversion aspect, do we come back and say we deny?

JY The Commission takes action and puts certain conditions and that's the end of it. The action taken is conditioned on certain things. If those conditions aren't followed, there are certain

remedies Commission can pursue and downzone. It doesn't matter whether he assents or not. That's what it is. He can take it or leave it.

SK That's why I'm questioning the wisdom of that. If the Commission approves, that's it.

JY In cases of non-compliance, as I understand it, under the existing process, the LUC will have to initiate a new petition. You have to hold a hearing on that.

ET Can we remove the diamond? I don't care what petitioner says. Make a circle there.

JY We're showing you 2 ways. We're trying to alter that.

ET He doesn't have to sign anything. We take action and staff sends letter that LUC voted to approve petition No. so and so with the following conditions. That's the end of it. This guy is not required to answer.

TF Under our R&R, it's the petitioner who has to go through process of submitting to the Bureau of Conveyances the condition imposed. The representation made at the public hearing is the affirmative reply. In the hearing process, they're agreeing to this condition.

JY Monitoring. The petitioner files annually status report on the project and this is corroborated by the localities. At that time, the LUC staff makes its findings known to the Commission-- compliance or non-compliance of recommended action. At that time, you could decide whether you can take a course of action.

ET When we have this thing in terms of failure to comply to show cause, etc. Is there a way, John, where we could apply as a condition, let's say for incremental? We say OK we'll give you 50 acres and you must do this, that and the other, and impose conditions, and say further we will give you the additional 50 acres provided you meet all conditions that we have placed on the first 50. So that when we get the report that he has complied, he moves into the next 50 without having to file any petition before the Commission.

JM Yes, I think if you have enough information and the public understands, and contingent on performance, you can.

JY Certain things you might be able to handle administratively. Next increment handle administratively. Staff report of findings and report to the Commission and next increment is given.

Et I don't want petitioner to think he can review. I don't agree with everything you say because/^{of}this part and that part and I want you to reconsider, and get hung up. As far as we're concerned, all that means is the guy says OK I agree. Or he doesn't get it if he doesn't meet conditions. Supposing he wrote a letter and said I don't agree. Then what do we do? Do we have to petition again? Or can we say after 1 year and he doesn't comply, we don't need to downzone. He downzones it himself.

 Let me try and clear. An application comes in from petitioner and he goes to staff.

TF Is that an area the Commissioners are going to be involved?

ASL Particular commissioner from the particular island.

TF What it's saying is no Commissioner can talk to any petitioner by themselves informally. That they have to have pre-consultation in a public place with the staff and Commissioners.

ET Supposing a guy comes to our office and says I'm thinking about doing this and that with the property.

JY It will avoid indiscretion of the Commissioners. Make pre-consultation strictly with staff. OK, that can be done.

Et LUC office is public place. He is going to come to staff and say this is the kind of thing we have in mind. I want to know Commission's standards and what will I have to do to meet them-- what information can you give me before I file petition--let me see if I can overcome problems, so when I file, it will make some sense. That's being done now.

TF Informally. No procedure set up where every petitioner knows that's something he can do. What Jimmy is saying is by this/procedure he is trying to propose, everyone will know and everyone will have opportunity to meet with staff.

JY This is suggested, not mandatory. By avoiding any discussion prior to formal submission as to probability of how the petition will be treated.

TF The procedure he is suggesting--it's an informal meeting. However, record kind of thing, logging time, keep a record of the pre-application meeting with the staff and petitioner, with minutes of what has been discussed.

ET It's not informal, seems to me.

JY There's a log kept. Something in the file says staff met with Mr. A and discussed land at so and so. To avoid embarrassment to Commission and staff in process of reviewing petition.

TF The area where LUC is involved. At request, meeting can be arranged with Commissioners.

SK Wisdom of including LUC at that stage. Pre-consultation meeting is strictly a meeting to perfect the application. I really don't think it's necessary for Commission to get involved.

Et A guy walks by and says what will have to be done, what is the Commission's standards for a petition? I have a discussion with them. That will precluded. How do I talk to anyone?

JY You'll advise gentleman to call Mr. Fujimoto.

SK If we go according to this. We have to call staff and staff will arrange time for this pre-consultation. I say why formalize it?

JY Two things. To provide potential petitioner adequate information and to assure that Commission is not indiscreet.

JM The way I think the law is--this hearing mechanism, that whole chain you go through. There's nothing in that chain that says Commissioners may not talk to so and so about his petition or any person he wants to. So what difference does it make whether he files an application in the middle of the fact finding process? My view of the law says there's nothing to preclude Commissioner from discussing this. It may get to the point where any information you get will be governed by proceedings but I don't think that's where

we are now. It's not realistic now.

ET I talked to 32 individuals representing 90% of people in West Maui. There was no argument from anybody that I talked to anyone. I want to gather all the knowledge I can get. That's why I don't want to get involved in whether it's discretionary.

I see nothing wrong with petitioner going to staff and saying here is what I have in mind, what do I have to do, whom do I have to contact, what do I have to provide, then going to the counties. But here we have to have public place. Commissioners can't discuss it. I don't think that's going to improve process.

JM The other thing--are you suggesting that you require this pre-application process?

JY No.

JM The guy files and we have to accept it. This pre-application is to assist the guy.

JY At this point, he may have everything ready and you may reject it.

TF In essence the petitioner does call and talk to staff. So why don't we drop No. 1 in terms of procedure.

JY We can drop it.

ET It's being done.

JY The only problem. By putting it in R&R, you let people know the fact that they could go through pre-application procedure.

TF We can make administrative kind of policy. We have a list of requirements that they can go through and see if application fits

some of these requirements. Things of that nature can be instituted without putting it in R&R.

ETL The other danger. Somebody comes in and accepts this as part of proceeding. Suppose staff forgets or overlooks something and they file it. It comes to hearing and they say staff didn't advise them and they're going to scream. Then we'll have more criticism. Anybody on this committee feels anything wrong to throw out that? OK.

JY Filing doesn't mean you accept. We'd like to change R&R. You won't have to accept incomplete application.

JM It's certainly arguable. You can accept, go through motion and deny. You can't just say we're not going to have a hearing on your petition because something is wrong. They'll go to court and say the law says this.

JY City and County can do that.

JM Under the existing statutes, I question whether you could or not.

ET Again, we run into problem. Someone says LUC refused to accept petition.

SK We have the same situation under Reg. 4--whether or not the Chair has a right to refuse to accept an application.

ET They have the advantage of discussion and I assume same right for the staff. But staff not be put in position to say we refuse petition.

JY If you don't do that, it's very difficult for this kind of procedure, within 5 days.

TF What we can do. When we receive petition, many times there are certain additional information we need--like maps, or they don't have enough data to say what they're doing. We write letter and say we're holding the petition back.

ASL It has to be a proper application before it's accepted.

ET Is the petition form itself--does it have any discussion as to its adequacy?

TF Staff feels that the form itself is very minimal in terms of requirement. We haven't discussed whether we should change it or incorporate another form. But we submit to the petitioner a list of some of the kinds of data we want to have which they should look at. Depending on the petition, they don't have to comply with all the requirements. For instance, in cases abutting an urban area, we don't want feasibility studies.

ET Clock doesn't start running. Staff has X days to review petition in terms of whether it's complete or not. And that the petitioner will have 10 days in which to supply information required in order for staff to make evaluation. And then staff receives information and then clock starts running. What if we had that kind of thing? Petition comes in--staff has 5 days to determine whether form has been filled out adequately. Just whether or not the necessary information as required by the form has been submitted. If it has, then he is notified on 6th day that the petition has been accepted and hearing will be held within 60 days. If not adequate, you have 10 days from this date to supply the following information which was omitted from the form. If he does within 10 days, whatever

date he submits it, clock starts running. If he doesn't, he just doesn't have a petition on file.

JM My concern is the statute talks about time table in terms of receipt of petition.

ET If we can interpret that as petition being complete. Maybe requires revising form. Staff looks at petition and he hasn't answered questions--how he is going to provide water, etc.

TF What we have in R&R is adequate?

JM Right.

ET Should we consider setting up procedure that spells out that staff shall notify the prospective petitioner before receipt of petition, the staff must notify petitioner whether or not petition is filled out in accordance with form and, if not, the petitioner shall have 10 days in which to submit information. Or the petition will not be accepted.

JM It's pretty well covered under existing R&R. They've got to say what they want, the nature of their request and reason.

BE The statute doesn't define what the petition is. The system we're talking about is seeking lot more information from petitioner than you get now. Minimum information places a great deal of burden on staff to analyze the petition. Time will start running and you have to go through a great deal of effort.

ET Suppose we give consideration to new form requiring that petition shall not be received until form is satisfactorily filled and information presented. Something like that. May take him

3 or 4 weeks to get from the county some of their requirements, and it will also take care of some of the county's concerns.

JY We're trying to introduce 2 things here:

1. Consolidated petitions
2. Ask for more information to make petition decision.

In order to assure that by consolidating petitions we have better chance to apply regional concept. You won't treat each petition by itself. Next workshop we'd like to go through Central Oahu--what 4 or 5 major developers are suggesting. You're going to have to treat that in a broader perspective. By doing this, it gives the staff a better picture of the development of an area. And that you require that information.

ET The petition is actually received and clock starts and staff has all information from the petitioner to make evaluation. Then referred to the counties.

JY I hope you understand that when we talk about quarterly meeting, the date is pre-set on an annual basis on each island so you have cut-off dates. So acceptance of petition is very important. ONce the clock starts, that's it. Once you accept, you're running against date.

ET The second point is, staff will have maximum information that petitioner should have on petition before it's received. The time limits will be up to the petitioner.

We can get to second one where petition is received. It's going to counties. Counties are going to come back with input.

We get over to the third stage. Assuming now that the county input has come in to staff. Those 4 rectangles mean the agencies. Does that mean it's being referred to other agencies besides counties?

JY This means at this time LUC staff reviews petition, raises specific questions using 3 tools to state and local agencies as relative. Counties haven't responded yet.

ET Third stage is sending out questions. Then in No. 4, agencies are submitting findings to LUC staff and are you also saying that findings of these agencies are then referred to petitioner.

JY No. The petitioner may be submitting more information.

TF Your whole concept is mandatory referral. When you talk about your procedure--agency referral. Your whole concept is mandatory referral to these agencies. But you talk about appropriate agencies.

JY Certain agencies should be automatic--City Planning, DPED, DOA, DLNR, DOT. There are others you may want to refer--Fish and Wildlife, Department of Interior. There may be cases where you wish to refer petition because of character of the request and location.

Et Eliminate LUC block. The whole thing. No. 2 the petition is received by the LUC staff and referred to the counties within 5 days. No. 3 the Commission staff will make referral down to the others. No. 4 the others are going to refer back to Commission staff. You said in that petitioner's block in No. 4, that's for him to submit additional information. Why can't he submit anywhere along the line?

JY Yes, anywhere along the line he can. We would like to have it by hearing.

ET Do we have a cut-off for the petitioner to submit before the hearing?

ASL There's no cut-off until after the hearing. Then 15 days.

ET No. 4. We have now got input from the agencies. #5 that goes down and this goes up. Staff advises the public and community-- here's a statement of facts relating to A B C D petitions. That's the staff evaluation.

SK Is that in effect a staff report?

ET #6. Public hearing. Staff report will go out 2 - 3 weeks before hearing. They're going to report to public?

JY Statement of facts.

SK Regardless of what you call it, it's staff report. You'd better be really careful. This is the whole situation we got involved in in the Kona thing. You're going to make this available to the public. You'd better be sure Commission has it before or at the same time. You're going to be fighting the petitioner in the media.

TF In your detailed rationale. What I couldn't understand is you're saying staff findings and recommendation action. What do you mean by action in terms of this particular document? When you talk about action, what kind of action are we going to bring out to the public?

JY The action you take is release of statement of facts.

TF You'd better clarify that.

JY ~~The action you take is release of statement of facts~~ Specific action by staff--you issue that.

ET No. 5. Issuance of staff report to public except Commission. The thing Sunao raised. What's going to happen if reporter of a group wants to talk to you. We have to say we can't talk to you. They want to know what our reaction is about the staff report which left out socio-economic part, and I haven't had staff report. Everydoby else is running all around without Commissioners having chance to participate.

JM I see what Jimmy's getting at. What he's saying is that this is to encourage public participation. If reporter calls, you can say we're not discussing this before public hearing.

ET It's at the public hearing where people have say. The Advertiser and Bulletin will have their say before public hearing and then you're confronted with everybody saying it's no good.

JY What you have now--Life of the Land and eco-freaks making comments without facts.

TF The kind of things you want in this so-called staff report, and this is where the Commission should take a good look. Will that report include recommended conditions, dedications or denials for each application?

BE That's for the action meeting. That's for the decision-making meeting.

ET When you talk about eco-freaks and Life of the Land. These guys will be popping up without sound data. They're going to pop off anyway. On Molokai, for one year after attending meetings, they kept it up. Now they're saying if they're allowed to put in own water it's going to ruin crops. All that was brought up by

water experts and they had all kinds of interview with me, Sunao, and they're still going on with this kind of campaign. That's the kind of thing will happen, field day, all kinds of misinformation, and we'll have hard time to overcome at public hearing. Because Advertiser, radio will be making misstatement of facts. They're under oath. They'll have to be more careful. They'd better be sure when they're sworn in. That makes a lot of difference.

AN I agree with you--swearing in part. Shouldn't there be some way that they sign when they're sworn in. He can deny he was sworn in. What evidence do we have?

ET We'll ask for names of those who are testifying.

SK I'm wondering how realistic it is to have staff prepare this fact finding staff report 3 weeks prior to date of hearing. Question of time whether it would afford staff sufficient time to prepare a report. It will depend on number of petitions under consideration.

JM Will give public chance to roast staff--gives everybody to roast but they've got to do it at public hearing under oath. The philosophy is this will make better decision. That's why he suggested it. It doesn't make job easier but will make for better decisions.

SK Make better decision because of prior discussion? This will be trial in the media. That's why Commission made ruling not to make staff report available prior to the hearing. I don't think it's in the best interest of either the LUC or petitioner.

JM To me it gets right down to how you see your function. We're just going to make decisions or we're going to consider public.

ET We're saying we'll listen to all arguments at the hearing.

JM How can they prepare for hearing?

TF All of them that want to testify and want to get facts come to LUC office to look at files. In essence, the present procedure is they will have adequate time to look at petition file and make own judgment in terms of findings of facts, as well as staff going through petition and making their own findings of facts and presenting it at public hearing. We have a referral system. We have input from public agencies to give better picture as to the kinds of policies and programs they have. The present procedure is saying staff will comply with all those things and give them out to the public.

JM The purpose is to facilitate this kind of thing.

SK Even subsequent to the hearing, the public is allowed 15 days to comment, so to me I don't think we're taking away any kind of public participation or input.

BE Role of Commission. Trial occurring in press and does not give petitioner fair chance if people can attack him in press--Petitioner versus Life of the Land. I think the function of the Commission is more to look at public interest of the whole State and petitioner's interest is marginal. He is subject to the public interest of the State.

ET Where did you get that impression? I'm talking about Commission acting in the best interest of the State. Whether or not it's in the best interest of the State to release report 3 weeks before

public hearing. I'm not worried about petitioner.

SK I think staff is concerned. They're going to be placed on trial.

TF If the statement of facts doesn't involve analysis but compilation, it's no problem. But if it means analysis in terms of how staff feels about information we have. Presently, we have some analysis in our staff report.

SK Staff report contains analysis but no recommendations.

TF Jimmy is saying no recommendations, but what about analysis?

BE It will contain some of the comments and recommendations coming in from the agencies, facts of the petition and lands involved and petitioner's information. But it doesn't contain what staff feels.

JY We're talking about moving up the release of the statement of facts 2 to 3 weeks before hearing.

ET Anything to prevent anyone from getting comments from the Board of Water Supply, etc.?

TF Present procedure is they can look at the file except the neighbor islands because the office is in Honolulu. Only Honolulu people can come and look at it. They can make own fact finding. Even if we sent 3 weeks ahead, people will come in. They don't accept this report as fact. They may want to check. Even though we let them out, they'll come in. You can't prevent that.

ET What if some agency doesn't respond in 2 or 3 week period?

JY That's good because you can say these agencies didn't respond. It will work to your advantage.

ET Our reports now say no comments were received from Department of Health, etc. Or this agency commented as follows. We're talking

about timing when this information will be made available.

JY 2 or 3 weeks before. At that time people can assess because of the prior knowledge as to how these things are analyzed, made by specific rules. In other words, the issues are clearly delineated by the time statement of facts are offered to public so they know context under which petition will be reviewed.

ET I don't see how this is advantageous, that 3 agencies didn't respond.

JY Our interviews suggest that most developers view that this is where they ought to spend all their time because that's where it comes relative to their investment. Because you're notifying prior to the hearing that the statement of facts will include non Land use Commission findings and it becomes very important. The emphasis is State is trying.

ET If they don't respond, that's to our advantage?

JY Sure, because you can set up priorities. That's why you put it out before.

TF This procedure. Are you suggesting that we mail these reports out of everyone, including private organizations and individuals? Is it mandatory that LUC mail these out?

JY This will be available at public places, library.

TF You're requiring us to make this available 2 weeks before public hearing. What happens if we don't meet deadline?

JY If you can't meet it, what's the difference between getting it ready for public hearing?

TF

TF It's different from meeting public hearing deadline. The other deadline in some circumstances, we will not be able to meet it. Can we say staff report will be available within a reasonable time instead of saying 3 weeks ahead?

JM He's saying the rules will say to the public that you are entitled to this kind of report.

ET What's happening here--we'll find LUC laying down the procedural rules for its sister agencies. This is not the function of the LUC to be laying out for other agencies what they are to do and it may put some heat on, but I'm not sure it's in the public interest.

JY We look at the process--how it works now. We're saying LUC ought to change role if you want to maintain more control in land development process. We're doing that. If you don't want it it's fine.

ET Changing the roles. We're going to change the role of the agencies.

JY Right. You have to do that.

ET It's going to have adverse effects. I know these agencies. They'll say--you see what LUC's done now. We'll fix them. We'll say as of this time we could not see our way clear to approve development. You'll know it wasn't the result of study or thorough going over. That's what Commission will be hung with.

JY The process as we understand from the developers. The real ones are the localities. I think what we're trying to do in this process is really to pinpoint responsibility. Lot of myth in land

conversion process--that LUC has extraordinary powers. In effect, you really don't, if you talk to the developers.

ET We don't have it but we're going to live with it until the Legislature changes it. We tried to make some minor changes. We have to live with existing law. We can't change the roles of the counties.

JY In this process, we're exposing the developmental decision process in a more defined manner.

Et Let's not expose it by R&R. That's not going to help. I'm not interested in putting any heat on anyone or a crusade by adopting R&R that's really going to fix county and state agencies.

JY That's not the point. It's to provide community a mechanism to respond. The mechanism is when you go through public hearing process, you know what the role of the Department of Health, DOE, etc., is. The thing is that the LUC is not responsible for those kinds of decisions and you're being blamed for it. This disclosure will pinpoint that kind of responsibility so the public can go to DOE and ask why--it will pinpoint the responsibility.

ET We're not accepting that. Right now we have comments from the agencies of a failure on the part of the agencies to comment. I don't see the public using any mechanism, going to the DOH, etc.

JY Disclosure process will show responsibility of agencies.

ET We're talking about R&R that's going to improve the present system that we can do by statute, and we certainly cannot put time limit on these agencies to respond.

JY I grant you that.

ET Why are we putting heat? Let the public do that. I don't agree with the way they function but this is not the Commission's job. You can say this in the report. You can say this is the position of the Commission but the Commission cannot do anything about it until statutory changes.

JY Procedural mechanism can overcome some of the shortcoming of statute. Right now you can't coordinate functional agencies. How far will you be willing to go to pinpoint these agencies?

ET In the report you can say we're not satisfied. We feel all these agencies should be required to respond within X days. Let's let the public put the heat where it should. It's our recommendation that the statutes require responses.

BE Statute now says they're supposed to cooperate.

ET Then why are we fooling around with this?

TF Maybe we can compromise. Get back to this idea. In the manual they talk about staff findings and proposed actions should be made public--staff activities in processing and making findings must proceed out of the public limelight (page 38)--but after recommendations are submitted to the LUC, before the public hearing staff findings and actions should be made public. That I think is not proper. Ask the Commissioners about the history about making recommended action of the staff at public hearing. I can't answer.

ET Let's see how procedure was set up. Here is the Commission. They have staff to provide them with all information they can get

so Commission can make best decision. The procedure is that the public comes and listens to information and add their information. At that time or 15 days subsequent, the LUC has all information available and can make decision. And there will be time to evaluate this within 45/90 days. The hearing is a disclosure meeting, information gathering meeting. Staff has no right to make recommendation. It was set up for that purpose--to get information from professional staff and make available to public for comment. Petitioner and everybody to comment and within 15 days the Commission has all information that's available and therefore can make decision based on information. In addition to that, staff is required to compile this information and based on that make some recommendation on the petition which the Commission may or may not agree. Here you have the public has it, everybody has it, and it's done in about as good a participatory democratic procedure as you can have. There's only one value in what you said--it will put heat on agencies and I say that's not our role. It's better that agencies be required and I think we ought to recommend that in our report--not just say they'll cooperate. That's the best we can do. This will just create problems.

JY Prior disclosure of findings--eliminate. Available at the time of the hearing--throughout the State or place of hearing. Person has to go to appear at hearing to avail himself.

ET It can be made available at the State agencies or county

planning departments, library. At the conclusion of the meeting it can be left at county or library. We can find a place. I don't see any problem--where it's going to be made available.

TF Once application received by LUC, it's available at the counties but not on specific island.

ET Now we're at public hearing.

AN Eliminate #1 and #5?

JY No. 7. Prepare action memo, recommendations to the LUC.

SK Rectangle block--I have a suggestion. Flow chart should reflect legal requirements of 15 days.

ET Staff assembles all data and make recommendation and now goes to Commission. Eliminate petitioner. Then goes to monitoring performance.

JY Commission determines whether complying or not complying.

ET What about county's monitoring. What do we have that says county has to do that. Because they'll scream like hell. You put in your report that there should be statutory change. Counties will scream--but we'll do everything we can but you can't make requirement.

JY This is to give LUC leverage to follow up. Petitioner has to report in. County will report and you take action on report.

ET Staff will make recommendation on compliance or non-compliance, whether you'll get next increment or not. We get a report and we say you satisfactorily completed the conditions on increment 1

and therefore you can proceed on increment 2, or that you have not satisfactorily complied. What is the actual procedure in a case where a guy does not comply, if you don't have this administratively set?

JY You have show cause hearing.

ET We impose conditions, we notify petitioner, and at that time he agrees to conditions. Later on, in monitoring, he did not comply. Therefore, you're saying administratively you can take away his second increment--it lapses. If he doesn't agree, we can't do it administratively. We'll have to go through show cause hearing?

JY If he doesn't do that, land will convert to previous category. In monitoring, LUC staff makes finding that he did not comply.

ET If the guy agreed and said yes and he didn't do it. Administratively we can do it. But if he did not agree, didn't answer us, then we would have to go through show cause.

JM Either way, you'll have to go through show cause. The guy admits it--there's no problem in having hearing. Basically, he is entitled to that procedural right.

ET What I'm getting at--you say there's a difference and John says there's no difference.

JY The thing is, he has to comply with annual report.

JM Another thing you can do--nothing. Assuming the guy is not doing anything. But if he starts developing, you'll have to take him to court.

AN If petitioner says he can't work under the condition, the petition goes out.

JM He can come in and ask for modification but he's still bound.

JY He makes representation that he will do ABC and he signs on the dotted line. If you want response from him, he has to say yes, I do. At the appeal, he can say I did not make that representation--the LUC did. The placing of conditions for each petitioner may be different. These are specific kinds on each petition and not uniformly on all petitions.

ET Maybe we should have time limit as we do now. The Commission has approved your petition on the following conditions and you will respond to us that you accept the conditions. If he says no, his failure to accept these conditions--the land is not changed. Right now, we just say it's been changed.

JM It's got to be recorded.

ET Substantial development shall occur within 5 years. We'll give reasonable time from the action meeting.

JY The idea is to nail him. This is his representation. So when he appeals, he will appeal against his own representation.

ET At the meeting we will impose conditions and he will have a period of time within 30 days to indicate his acceptance of our approval based on conditions that we impose. The guy will have to say within 30 days whether he accepts our conditions. If not, land reverts right back where it was--disapprove petition without having to go back to public hearing.

JY Automatic reversion clause, in a sense.

TF What happens in situations where he asks for modifications?

ET There's no process in there for modifications.

JY Then we'll have to go through another hearing. If he doesn't accept those conditions, he doesn't get it.

JM Our rules provide that if he wants changes he can come in.

ET When that gets final, have it ready Jimmy.

TF Why don't we hammer this out among ourselves and call Jimmy.

ET Let's go into this disqualification section--page 40. We've got the State Ethics Law. I for one had most experience. I see no reason at all why we should have such a thing in our rules. Taken care of by the legislature. I don't see why our R&R should have this. Everything here we are required to do already. I'd just as soon leave that to the state body that's set up to do that.

JY It's only a declaratory statement that you're are cognizant of the state policy.

ET All this stuff is subject to legal interpretation from somebody. It puts a cloud on the decision. It puts this Commission in a position of holding these kinds of hearing and that's what the Ethics Commission is set up to do.

JY From our conversations in the course of our study, these issues were raised--the idea of disclosure--so I thought maybe a simple statement that LUC in fact is declaring.

ET We are. We're all abiding by state Ethics Law. We're abiding by all laws. I don't want to say I abide by City Traffic Laws, this and that.

SK I would recommend that we exclude in total this disclosure part.

JY OK.

BE Paragraph on page 4, Part I. That should be cut out too of existing regulations.

ASL Pages 7 and 8 make some kind of reference too.

JY Existing Rules and Regulations.

ET That's all right, as far as I see. We'll run into trouble if we remove ethical standards.

JY e and f on page 8--1 year after.

JM That's also covered by ethics.

JY Public officials--2 years; civil service employee--1 year.

ET We'll just leave that then. We're in agreement that we delete disclosure thing.

Let's take up 2.7. It's on the boundary review cross reference sheet, Part II. It's talking about 10 years--2 years, that sort of thing.

BE Page 25 of new regulations.

JY 2.7, (b) (5), page 6. Page 25 of proposed.

TF Go back to page 25 of the other.

ET In terms of the rationale--that very little happen with any of those lands--also some downzoning may occur. What kind of

downzoning are we talking about?

JY We're talking about reversion of land to former district if no development occurring within next 5 years. Very little chance development will occur--absorption rate of residential land. For example like Makakilo. They haven't used all urban lands. Another one would be on Big Island.

ET What is the rationale there?

JY I'm simply saying--here's an area of 500 acres. They developed 250 acres. Within next 5 years this 250 acres may be reverted to give LUC guide for development. Developer can hold this back because they would like to see land appreciate. LUC would like to see people use land.

ET Why would we downzone Makakilo?

JY 2 purposes: Use and Guidance. If they're not willing to use land, you ought to apply guidance policy. Production rate indicates they're not using land--lack of financing maybe. I don't know.

ET Downzoning should show real bad faith--not financing, etc. They're building there and moving up there. We'll have to have good reason for downzoning.

SK Would we recommend downzoning if they cannot proceed because of legal action? Would this be sufficient reason for downzoning. In the case of Boise Cascade, they're going through litigation. I don't know whether this would be a rationale for continuing the existing zoning.

ET Don't you have a feeling that they did everything they said

they were going to do--roads, golf course, recreation areas. They spent money like crazy and it's being held up because of lawsuit. They had operator and developer. No question in my mind. That wouldn't be a reason--you didn't follow through with your resort development--we can't help it if somebody sues you.

AN They sold only 90 lots so far. I understand that people are concerned--only 90 lots sold and after X number of years, owners are subject to maintenance of golf course.

ET Home owners association takes over at a point, but the developer maintains control until a certain percentage of the lots actually belongs to individuals. But no question in my mind--I certainly wouldn't take a position that Waikoloa should be downgraded when you see the kind of loot they put in that place.

JY How about in cases where you want to give somebody else a chance to develop that land. If Boise Cascade can't do it, somebody else can.

ET Pretty hard put to show Boise Cascade hasn't done good job. They've been hung by government agencies and lawsuit.

JY It's not in the best public interest to stake a 1,500 foot well because 1) the County of Hawaii has probably highest water rate; 2) water system on big island is expensive proposition; 3) they put in lots in areas where costs are high. How about Molokai, Kaluakoi?

ET Maybe we ought to take a look at Lanai. It was the landowner's fault that they made misrepresentation and you can show by lack of

action, no intention to do what they said they were going to do.

JY We're suggesting maybe some of these things should be resolved before LUC consider seriously during this review.

ET I'm asking what areas now in your study will indicate this.

JY Kaluakoi--3,400 acres. 600 acres--interim zoning by County of Maui. Within 10-year development period, 5-year improvement program, how much can they develop. When you designate extensive piece of property, you foreclose other options for other landowners. To guide growth, would you be able to give it to somebody else in another area so you won't curtail economic development on the island. Leaving options open. If this were a declared policy to increase economic opportunities through this new process, maybe you'll get things moving. The idea is Kaluakoi Corporation can't perform and maybe give others a chance. The first question that might have been raised--why did they depend on public expenditure for water? This decision was contingent on that decision to use that transmission line. I'm saying now what are the probabilities of using that line.

ET DLNR has given OK. Commitment, but any time they use it for anything else, they have to put in own line. They're going to pay for use of line. So why are we blaming them? We can't say we're taking it away just because we decided.

JY The idea is that you want them to turn over this land.

ET Nobody can turn over that land without water.

JY If in fact they want to use transmission line, then why should they have this tremendous amount of land?

ET What have they done or not done that changes the justification?

JY We're not weighing the basis of designation back in 1968. We're assessing based on 1974 idea and we're saying we ought to recapture leverage. The leverage will be you will be able to place conditions on land--open space, etc. If the counties are going to take care of it, that's fine.

ET County is completely satisfied. They'll take care of that.

JY If the counties were to implement LUC concerns, we don't have any problems. But the state is not satisfied with sequence of development. What is the interest of the state in this particular project? Maybe what you want to do is seriously entertain the possibility of changing status of these lands.

ET Gets back to the problem of a developer being subject to the whim of the Commission or a group--people acting on behalf of the state, when there's no default on the part of the petitioner. But we're going to make it tougher for you and take it away. I don't want to set that kind of precedent. You didn't do anything wrong--it was OK in 1968 but now we changed our mind.

 Take time for lunch. Meet at quarter of 2.