

**Report of the
Permitted Interaction Group
on Proposals Relating to the
Use and Development of City Resources
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REPORT OF THE
USE AND DEVELOPMENT OF CITY RESOURCES
PERMITTED INTERACTION GROUP

The Honolulu Charter Review Commission formed a Permitted Interaction Group on March 17, 2016 for the purpose of investigating proposals for the use and development of city resources. This report describes the investigations undertaken and respectfully provides recommendations for discussion and consideration by the Charter Commission.

Members: Cheryl Soon, Reggie Castanares, Kevin Mulligan, Nathan Okubo

Background

Two proposals formed the initial basis for investigation.

- Proposal 51 (Soon) would add duties to the Department of Enterprise Services to provide authority to negotiate with non-City entities to use City land and facilities in intergovernmental and private agreements including but not limited to air rights, joint development and management of services. The objective was to create a climate of stimulation and vibrancy in and around public spaces.
- Proposal 61 (Rae) would create a new department to initiate, negotiate, and implement partnerships with other governmental entities, NGOs or private parties that address areas of municipal need. Examples include joint development of city owned property including parks, municipal buildings and areas around transit stations; negotiation of adjacent properties for common amenities, intergovernmental partnerships, public private partnerships, programs for climate change adaptation, sustainability initiatives, functional plans, jobs and economic development, affordable housing, prevention of homelessness. Includes a Partnership “Enterprise Funds; Climate Change Council; and any Advisory Committee deemed valuable.

Administration testified in support of Proposal 51, but asked that it be a new department (approach taken in Proposal 61) rather than assignment to Department of Enterprise Services. Written testimonies cautioned against using a “PLDC” style approach, although this was not defined.

Discussion and Consultation

The City & County owns hundreds of acres of land in all parts of the island. It can be challenging to keep up with the protection and maintenance of these lands to ensure their upkeep. Responsibilities now fall in a scattered fashion among multiple parties with uneven expertise and resources. Too often, protection occurs only after damage and mis-use is called to the attention of city officials.

Furthermore, there is a need to ensure that the public interest for these lands is identified, advocated and protected. At times the public interest will be to protect the natural state of the environment. At other times, the public interest may be to ensure open public spaces in an otherwise crowded city. Still more, at times, the public interest may be to work with others on a use that enhances said property through development and revenue generation. No one definition of public interest pertains to all city owned properties.

Whether the protection of the public interest includes preservation, maintenance, and/or development there is a need for a unit that is dedicated to preserving and enhancing city lands that is endowed with the dedicated expertise and resources that are now lacking.

A review of Proposals 51 and 61 finds that both proposals are rooted in the same value of proper use and protection of city lands for the public benefit. Due to the complexity of these proposals an effort was made to see whether they could be melded into a single proposal for consideration. The “melded proposal” looked at having a new Department of Land Preservation and Enhancement with the following key features:

- Three divisions: Land Management & Development; Community Benefits & Stimulus; and TOD/Joint Development.
- The new Land Preservation and Enhancement Department would consolidate land management functions of the City that are now distributed among multiple agencies.
- It would reduce silos and create efficiency by bringing together various parts of transactions in a coordinated fashion.
- It would centralize expertise for land management and disposition.
- It would clarify roles between the executive and legislative branches, leaving all final disposition decisions to the Council.
- All activities would remain subject to environmental laws. Public consultation would be required.
- Revenue generation would come from creating value from City-owned properties and dispersal of such revenues would be the purview of Council through the General Fund.

The Mayor’s office and Councilmembers were consulted. Also, environmental interests and developer interests were queried as to their reaction to said proposal.

The Mayor’s office reported that land management responsibilities are not clearly located in any single department, and risk falling between the cracks. Without greater coordination and a wider expertise, it is difficult to manage land, negotiate land deals and even to identify or control illegal activities (such as dumping, cockfights, squatting).

As an example, last year the Council placed money in the budget to purchase lands for a park at Turtle Bay. To accomplish this required coordination and negotiation by the Mayor’s office, advice from bond counsel through BFS, survey work through DDC, vendor opportunity analysis from DES, user requirements from Parks, conservation easement analysis from COR, and the determination of impacts on existing Unilateral Agreements (UA) from DPP.

With the exception of bond counsel advice, all of these skill sets could be lodged in the newly proposed entity for Central Land Services. They could be done more quickly, efficiently, and with a focus on the city interest.

Land transactions (including acquisition, lease, license, permit, sale or concession) are complex and as the Turtle Bay example shows, can go through several agencies in step wise fashion, which takes time and is difficult for private parties to navigate. Examples of expertise desired are: local real estate knowledge, appraisal, land title research, land inventory, investment analysis, and especially negotiation skills. Examples of how these skills and expertise would be used include:

- Negotiations of city interests under the Clean Water and Natural Land Fund
- Identification of and Negotiations for community benefits under Unilateral Agreements.
- Opportunities for partnership to develop homeless facilities or affordable housing beyond the current grant system
- Opportunities to improve city parks or offices through public private partnerships (3P)
- City/State partnerships to jointly develop sites that would enhance transit ridership.

The Mayor's office offered alternate language for a new department to manage, develop, and dispose of land assets of the City.

Councilmembers contacted concerns regarding creation of a new department. The Mayor may already have the discretion, without a charter amendment to consolidate these activities as a single Office within the Mayor's Office, similar to Office of Economic Development. Formation of an entirely new department might be pre-mature, too big a leap and could start first as an Office. A major concern is the growing of government by forming a new department. Finally, there was a concern that the types of skills required were not appropriate to a civil service type position, and were better administered through a personal services contract.

Further Investigation

The PIG discussed these important questions:

- 1) How could Property Preservation and Management of city owned lands be improved?

With regards to property management, it was found that positions with explicit real property management are needed. Training in modern management practices is required, and dedicated manpower is need for this function. Land preservation and management would benefit from a single point of responsibility rather than dispersed to staff who have multiple and diverse responsibilities.

At the state level, land management functions are primarily handled by one agency on behalf of others, and that agency is DLNR. DOE and DHHL, which have their independent decision-making Boards, handle their own land functions. But there is no single land entity in the City. The Department of Facility Management is responsible for buildings, not land.

If no changes are made, the status quo will continue. Preservation and management issues would be addressed not as they first arise, but rather when problems arise to an extent that they demand attention, coming to attention because of the media or concerned citizens.

2) What types of Property Preservation and Enhancement opportunities are likely to emerge in the next several years and how would city interests be identified and incorporated?

With regards to Property Enhancement, development and making improvements are now a function of the agency owning the facility. Any proposals for development or alternate use of the asset come through the normal capital budget process, planning and project proposals. Design and construction is assigned to Department of Design and Construction (DDC) and there is little partnering with private developers as a partner.

The types of roles and responsibilities needed by a preservation/enhancement entity include:

- Understanding land preservation, protection from invasive species, and erosion control
- Understanding land management techniques whether due to damage by weather, feral animals, or illegal uses by humans
- Understanding cultural sites and protection mechanisms
- Identify potential areas for city lands that may have revenue generation potential and identify the city interest thereof
- Land assembly and Site Control
- Land trusts and partnerships for land protection
- The ability to target investments and make sure investments respond to market cycles and conditions
- Leverage city resources to align with programs of others
- Loan guarantees and access to capital
- Direct development participation in projects
- Limited acquisition and banking of property

If no changes are made, land may be damaged and not restored and opportunities to make investments in lands either because of their legacy or cultural value, would continue to come through and be managed by someone in the Mayor's office. There would be limited expertise built up or continuity of ensuring City interests.

3) What would happen if we do nothing? How would things be handled?

The PIG was particularly concerned about Transit Oriented Development, and the extent to which the City could or should be a more active player in raising revenues from City lands to help defray mounting costs of the transit system. The current TOD function resides in DPP and so far has focused on station area TOD planning, regulation, and encouraging catalytic projects by others.

The PIG concern was how to build on this effort and best position the city to be a partner in TOD on city owned parcels. It was felt that the enhancement/development function is diametrically different than the land use regulation function conducted by DPP and was unlikely to emerge from that location.

Other cities are showing the way. This means Honolulu can conduct peer learning and information sharing. Research was done for other transit properties and we find in most instances that there is a robust revenue generating TOD program in place. Other rail properties have staff capacity with real estate expertise, and investment and revenue sharing models. A sampling of programs includes:

- Metro Rail and City of Seattle takes as their focus that for TOD to happen, the City must Cultivate (infrastructure, developing partnerships, leveraging resources), Catalyze (tax incentives for providing amenities), and Grow (invest in equity, infrastructure, and services for higher densities). Their strategic action plan looks for creating partnerships, investing in catalytic projects. Strong community, agency and PPP are fostered.
- Metro Light Rail and the City of Minneapolis sought to foster innovation through a TOD Manager who is a matchmaker between developers and property owners and to recruit development to areas where it would not have occurred otherwise or happened as soon, and to pursue land acquisition to create TOD opportunities.
- Metro Rail and the City of Denver has a TOD Strategic Plan focused on specific station areas and an inter-department project advisory team to align efforts. They align city departments to catalyze TOD projects through City actions. They have created an affordable housing TOD Acquisition Fund, the first in the Country.
- Portland MAX and Portland Development Commission conducts urban renewal and economic development through TIF. They also have a Commercial Property Development Loan Program, a tax abatement program and Development Charge Waiver Program for one-time incentives.
- San Francisco BART stewards its assets to contribute to ongoing financial viability of the transit system through various value capture strategies and TOD and through land use policies that will generate more ridership. They leverage their property for equity investment and to generate long term revenue. Focus on partnerships and soliciting proposals for their District-owned properties.

The PIG is concerned that Honolulu's TOD activity, lodged in DPP and focused on regulation may not be properly poised or have sufficient real estate expertise to become a

pro-active force to create and facilitate TOD activity, public benefits, and any resulting revenues. While TOD was sold as a prime reason for having rail, the nexus between the planning and revenue generation to help build or operate and maintain the rail project appears to be limited so far.

The PIG finds that if nothing changes, Honolulu may not fully benefit from land opportunity around the transit system. The question for the Charter Commission to consider is, to what extent is this a structural issue that can be addressed through a charter change? If this need is only seen as government bloat will it become an opportunity lost?

Whether to form a department, an office or a division to handle land preservation and enhancement, there needs to be transition steps. There will be costs, but they need not be onerous or place unnecessary burden on the City & County. In forming a department, the Administration working with the Council and others would define its structure, prepare job descriptions, detail responsibilities by division, write protocols and administrative rules and procedures. The Administration under its authorities would re-organize positions and resources from other departments (for example, leasing and commercial space management from BFS, real estate appraisal from DFM, land management from BWS, DPR and BFS, and possible TOD from DPP). A fully functioning department would take about three years to be in place.

The PIG considered whether the land functions should be lodged in the Mayor's office, an existing, or a new agency. These are big picture questions. We are mindful that this Charter Commission has not shied away from big issues as they affect the entire citizenry of Honolulu.

Recommendation

The latest proposed language submitted by the Mayor's office and amended by the PIG is attached to this Permitted Interaction Group Report. Although this Permitted Action Group does not make any recommendation as to whether the Commission should adopt the latest proposal language, we recommend that over the next two months the Commission continue to seek further input from the Administration, Council and the public. We recommend that the Commission call this subject out on the Agenda for the upcoming cycle of public meetings out in the community.

If a version of the protection and enhancement of city resources proposal can be crafted that is acceptable to the politicians and the public alike, this could have a significant long term benefit to the City for years to come. If the elected officials and public are not ready for this step, then we recommend that there be a study conducted of how the development function is undertaken in other cities, and in particular in other rail cities and that the community at large engage in a broad and thoughtful discussion of how the city should meet its vision for the future, and how to capture benefits derived from nearby real estate back into the city.

The Commission should continue its discussion following input received during the public meetings and then decide whether to put it before the voters in the latest amended version submitted by the Mayor's office, modified, or not at all.

(NEW)

ARTICLE VI, CHAPTER 18 DEPARTMENT OF LAND PRESERVATION AND ENHANCEMENT

Section 6-1801. Organization --

There shall be a department of land preservation and enhancement headed by a director of land preservation and enhancement who is appointed by and may be removed by the mayor.

Section 6-1802. Powers, Duties and Functions –

The director of central land services shall:

- (a) Protect, develop, and manage the land assets of the city;
- (b) Prepare and maintain a perpetual inventory of all lands owned, leased, rented or controlled by the city;
- (c) Consult with city user agencies on appropriate use or non-use of city land assets;
- (d) Practice stewardship and conservation of valued assets;
- (e) Manage land assets while transitioning any developed parcels to the appropriate city agency;
- (f) Receive and review development proposals on city lands and develop property as directed by the mayor and council;
- (g) Dispose of lands and built property through lease, license, permit, concession, or sale upon consent and approval of the council
- (h) Negotiate with others as to the joint use of city land and property upon consent and approval of the council
- (i) Negotiate public private partnerships on behalf of the city to formulate agreements, including but not limited to Clean Water Fund, transit oriented development, unilateral and bi-lateral agreements, and other discretionary land use agreements and prepare for council consent and approval.

Section 6-1803. Public Consultation

Conduct public consultation to help identify what is the public interest for city owned property. Before making recommendations to the council for land disposal or joint development of city lands the department shall conduct a public meeting in the district where the land activity would occur.

Section 6-1804. Compliance with Environmental Laws

All licenses, sales, and land use agreements whose term that involve city property and land shall be in compliance with the environmental laws of the State of Hawaii.