



Rights to access information in the establishment and implementation of land use planning and plans in Viet Nam

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Nowadays in Vietnam, the right to access information is recognized in Article 25 of the 2013 Constitution, Law on Access to Information 2016. However, in practice, the implementation of this right has not been ensured in certain areas, including the field of land. The right to access land information is a right that land users need to have to satisfy their legitimate needs and to exercise other basic rights of land users as recognized by Law [4]. The lack of transparency in land information leads to an increase in corruption opportunities, reducing the efficiency of resource utilization, and causing citizens and businesses to incur higher costs and efforts in seeking information. Therefore, understanding the legal regulations regarding the right to access land information, as well as the practical situation, is necessary to propose solutions for improving policies that ensure the effective exercise of the right to access land information in general and access to information in the formulation and implementation of land use planning and plans in particular.

1. REGULATIONS ON THE RIGHT TO ACCESS INFORMATION IN THE FORMULATION AND IMPLEMENTATION OF LAND USE PLANNING AND PLANS

In the current conditions, as Vietnam's economy continues to deeply integrate with the world, the demand for land use and the real estate market is becoming more and more vibrant. Therefore, the establishment of planning and land use plans to create functional zones which attract investment, production, and business is extremely necessary. However, in the process of making and implementing land use schemes, the decisions of competent state agencies can significantly affect the lives of people residing within areas covered by land use plans, which may be designated for various purposes to carry out projects. For this reason, citizens have the right to be informed, access, and grasp information related to the formulation and implementation of land use planning.

According to the provisions of Article 28 of the 2013 Land Law, the State is required to undertake the following tasks to ensure the responsibility for building and providing land information: (1) Build and manage a land information system and ensure the access rights of organizations and individuals to the land information system; (2) Timely publish and publicly disclose information within the land information system to organizations and individuals, except for information classified as confidential under legal regulations; (3) Notify administrative decisions

and administrative actions in the field of land management to organizations and individuals whose legal rights and interests are affected; (4) State agencies and authorized individuals responsible for land management and use are obligated to create favorable opportunities and provide land information for organizations and individuals in accordance with legal regulations.

Thus, compared with the 2003 Land Law, the 2013 Land Law has a separate provision to regulate the responsibilities of competent state agencies in providing land information to organizations and individuals. This, on the one hand, shows a change in the current state management mindset, replacing the "ask-give" mechanism with recognition of the State's responsibilities and obligations towards citizens in this matter. On the other hand, the legalization of this regulation also demonstrates the importance of transparency and openness in information, contributing to the implementation of democracy and fairness in the process of land management, use, and distribution in Vietnam. From the general principle provisions in Article 28, the citizens' right to access information in the process of making and implementing land planning and land use plans is detailed in each period.



Firstly, during the phase of land planning and land use plans.

Clause 6, Article 35 of the 2013 Land Law stipulates that land planning and land use plans must be based on the principles of democracy and publicity. This principle is further elaborated in Article 43 regarding the process of gathering opinions on planning and land use plans. Thus, it affirms that the people's right to access information is expressed very clearly, and right from the outset of the land planning and land use planning process.

During this period, the Government and the People's Committees of provinces and districts are responsible for organizing the collection of public comments on land planning and land use plans at each level. The ways for people to capture information and give their feedback are diverse and depend on the characteristics of each level.

For national and provincial-level land planning and land use plans, the process will be conducted by publicizing information about the contents of the land planning and land use plans on the website of the Ministry of Natural Resources and Environment (MONRE), along with the Provincial People's Committee. Meanwhile, the collection of people's opinions on district-level land planning and land use plans is carried out through organizing conferences, directly obtaining opinions, and publicly disclosing information on the official website of the Provincial and District-level People's Committees.

Through these transparency measures, citizens can access official, accurate, and transparent information in the process of land planning and land use plans. As a result, they can know about the location and area of land for projects and developments, and then proactively arrange their future living, working, and production activities.

However, regarding the individuals for collecting opinions according to the current regulations. This aspect remains somewhat unsatisfactory. The reason for this is that, in addition to the directly affected households in the project's designed area, some other citizens living nearby may experience varying degrees of influence due to changes in technical and social infrastructure, environment... Therefore, these individuals should also know some necessary and basic information to proactively manage their labor, daily life, production, and business activities.

Furthermore, the Law also explicitly designates the primary responsibility for publicizing this plan to the organization in charge of compensation and site clearance, as well as the Commune-level People's Committee where the land use planning project is located also have the responsibility to collaborate to complete this part of the work.

Secondly, during the phase of the land use planning implementation.

This is one of the important stages for the State and investors to engage in activities to develop and carry out projects in accordance with land use plans. It is also a period that has a great and direct influence on the lives of people whose land falls in the project planning area.

Article 48 of the 2013 Land Law stipulates the public announcement of land planning and land use plans. Accordingly, land planning and land use plans at the national, provincial, and district levels must be publicly announced after being decided and approved by competent state agencies. The MONRE is responsible for publicly announcing national-level land planning and land use plans at its headquarters and on its official website; Provincial-level People's Committees are responsible for publicizing provincial-level land planning and land use plans at their headquarters and on their official website; The District-level People's Committees are responsible for publicly announcing the district-level land planning and land use plans at their headquarters and on their official website, and also for publicizing the content of the land planning and land use plans related to communes, wards, and townships at the headquarters of the Commune-level People's Committee. The public announcement shall be announced within 30 days from the date of approval of a competent state agency's decision. The publicity is carried out during the period of land use planning. Through the above regulations, publicizing land planning and land use plans is a mandatory procedure that serves as a prerequisite for subsequent stages. In addition, publicizing land planning and land use plans also plays an important role in both material and spirit aspects for residents whose land is located in the project implementation planning area. This helps them to be more proactive in arranging all aspects of daily life, work, and production.

Thus, it can be observed that during this period, citizens can access official information on land use planning and plans through both direct and indirect ways instead of just relying on posting notices as per previous regulations. This is a new and progressive point of the 2013 Land Law, highlighting its commitment to transparency, openness and democratization in the process of state land management.



2. CURRENT SITUATION AND EXISTING ISSUES IN THE IMPLEMENTATION OF THE RIGHT TO ACCESS INFORMATION IN THE FIELD OF LAND PLANNING USE

2.1. The current situation of exercising the right to access information about land through documents published on electronic information portals

According to a study on "Evaluation of Publicizing District-Level Land Planning, Provincial-Level Land Price Lists on Electronic Platforms in 2022", conducted as part of the "Empirical Study Aimed at Enhancing Citizens' Access to Land Information" initiative by the United Nations Development Program (UNDP) in Vietnam, the assessment process extended until February 2023, through the review of the official portals across all 63 provinces, cities, and 705 districts and towns throughout the country. The transparency level of land information by provincial and district authorities was assessed based on five criteria: (1) Information Transparency; (2) Ability to search information; (3) Timeliness of information; (4) Completeness of information (for district-level land planning and use plans); (5) Information usability (readability, comprehensibility, and compatibility with common software) [3].

In this study, the results of reviewing electronic information portals revealed that out of 705 district-level units, 345 had published the Land Use Plan for the period 2021-2030 on their electronic platforms; 389 had published the Land Use Plan for the year 2022; 337 out of 704 district-level units had publicly disclosed

Table 1: Publication of information on land use planning and plan

No.	Information	Public quantity	Publicity rate	Publication on time		
				Yes	No	Unknown
1	District-level land use planning for the period 2021-2030	345	48,9%	105/345	116/345	124/345
2	District-level land use plan in 2022	389	55,2%	149/389	127/389	113/389

(Update until March 14, 2022*)

* To ensure continuity and comparability with the results of the first-year research, the publication of documents related to the searched land information is only up to March 14th, 2023.

the Land Use Plan for the year 2021 on the electronic information portal of the District-level People's Committee in the year 2021; and 389 out of 705 district-level units had publicly disclosed the Land Use Plan for the year 2022 on the electronic information portal of the District-level People's Committee in the year 2022.

With the public accessible platforms for sharing land planning and land use plans have not garnered significant user engagement, failing to capture people's attention effectively because the information about land planning and land use plans is often issued later than regulations. Specifically:

- Land use plan files are often incompletely uploaded, scattered across various sections, or posted with inconsistencies and a lack of uniformity.
- Non-standard abbreviations, compressed files, uncommon file formats (such as DGN map formats), ineffective search functionalities, and search tools failing to return relevant results.
- Many localities integrate planning software that lacks a display of legal foundations.
- Instances where seals can be separated from the document, allowing for zooming in or out and editing.
- Users are required to log in to an account to access attached documents or those uploaded on Google Drive, but access permissions for citizens are not granted.
- Approval dates of decisions are inconsistent with the posting date and the date of public notice announcement.

2.2. The right to access information by sending a direct request according to the prescribed form

According to a study on the Publication of Information on District-level Land Use Planning and Plan, along with Provincial Land Price Lists in the Electronic Environment in 2022 [3], a total of 561 requests for information were submitted to 140 district-level units, and the results are as follows:

Feedback results	Year 2021		Year 2022	
	Quantity	Percentage	Quantity	Percentage
Provide	98	17.5%	108	19.3%
Refuse	15	2.7%	6	1.1%
No reply	402	71.7%	415	73.9%
Other	46	8.2%	32	5.7%



Analysis of requests and responses in 2022 showed that:

- Among the 108 responses providing information, 7 agencies used the Request Resolution Form as specified in Template No. 03 of Decree No. 13/2018/NĐ-CP, while 45 agencies included attached official letters along with their responses.

- Regarding the 6 responses of refusal, the reasons are as follows: The information was already disclosed in accordance with regulations; Insufficient grounds for examination; Request sent for the wrong purpose; Letter sent in the wrong format according to Circular No. 34/2014/TT-BTNMT of the MONRE; Requests accompanied by a referral; No specific reason given; the request was forwarded to the District's Department of Natural Resources and Environment for further investigation. The forms of refusal include: 2 written responses of refusal, including 1 response using the Rejection Notification Form - Template No. 05 of Decree No. 13/2018/NĐ-CP; 1 response refusing to provide an answer notification; 4 responses of refusal through phone communication.

- Regarding the other 32 responses: Including notifications of transferring requests to other units for resolution; The response will provide documents, but as of February 21st, 2023, there have been no new responses; General responses indicating information has been publicly disclosed at the office or on the Electronic Information Portal (EIP); Suggesting the requester to participate in a meeting to address the request.

Based on the actual observations, it is evident that most civil servants exhibit courteous behavior, except for one individual who has an unfriendly attitude towards the public. Civil servants attempted to send response documents via postal mail, but they were returned; however, they tried to contact the requester via email to provide the necessary information. Most agencies provided comprehensive publicly disclosed documents rather than just sending the approval decision alone. Some civil servants contact and interact with citizens via Zalo app. There was no occurrence of fee collection as observed in 2021, civil servants explained the cost if document scanning was needed before returning the hard copy to the requester; Many civil servants did not use official email account to respond to citizens requires.

3. PROPOSED RECOMMENDATIONS TO ENHANCE REGULATIONS ON RIGHT TO ACCESS INFORMATION IN LAND USE PLANNING

While there have been improvements in recent years in accessing land information in general and land use planning information in particular, contributing to a better realization of people's ownership rights, certain challenges remain. These include: Many citizens are not fully informed about the procedures to access information on the electronic platforms of relevant authorities; Sometimes, the information posted lacks clarity and transparency, making it difficult for the public to access; Some public servants underestimate the importance of providing information, failing to recognize it as their responsibility; negative issues and bureaucratic hurdles can indeed have a substantial impact on the exercise of people's rights and the enforcement of sanctions. In the case of obstruction, causing difficulties when people want to access information about land use planning and plans is still unclear and ambiguous. Therefore, to ensure the rights of citizens in this field, it is proposed that in the coming time, the following synchronized solutions should be implemented:

Firstly, supplementing the procedures for providing information upon citizens' requests according to the provisions of the Law on Access to Information 2016 into the existing administrative procedures of all sectors and fields (including the field of land); Supplementing regulations on the timing of district-level land use planning approval in the provisions of the Land Law to ensure the timeliness and consistency of land use planning and plans; Specific provisions need to be established in the Land Law, as well as in the implementing guidance documents, regarding the information that must be publicly disclosed and the procedure for collecting public opinions on land use planning and policies.... Not only that but the above information must be regularly updated in a timely manner for people to access if necessary. To achieve this, the competent authorities need to actively review, amend, and supplement the process of operating their websites; Maintain the regulation on the time of land information disclosure (15 days) as in the current regulations (the Land Law 2013) instead of 30 days as in the Draft amended Land Law.

Secondly, the regulation clearly states that the agency holding land information is responsible for providing information when requested by citizens. There should be specific regulations on the responsibilities of individuals and organizations, especially the responsibilities of those in leadership positions, for not providing information inaccurate or misleading information, or engaging in corrupt



behavior when citizens require access to relevant information; Establish regulations on the long-term maintenance of land information that has been posted on the e-portals/websites of state agencies, especially in the context of Vietnam's push for digital Government development; stipulate the requirements for building interfaces, categories, and ways of disclosing information on the Government's web portal in a standardized and synchronized manner across the country.

Thirdly, strengthen and develop online services providing information in the field of land use planning and plan. Of course, these services must ensure a reliable source of accurate and legally valid information, giving citizens confidence in using these services. Currently, Decree No. 01/2017/ND-CP dated January 6th, 2017, issued by the Government amends and supplements several decrees detailing the implementation of the Land Law. This Decree has specific provisions on the conditions for organizations and individuals engaging in the establishment of land information systems. Specifically, for public non-business units and enterprises, they are allowed to establish land database systems when they fulfill the following conditions: (1) Having the function of building land database systems for public non-business units; (2) Having at least 10 individuals for district-level land database system establishment activities and at least 15 individuals for national and provincial-level land database system activities, meeting the technical standards; (3) Having the necessary infrastructure and technological equipment for constructing land database systems as regulated by the Minister of Natural Resources and Environment. In addition, individuals currently employed within above public non-business units and enterprises and are engaged in the construction of land database systems, must satisfy the following conditions: Having full capacity for civil acts; Having a university degree or higher in one of the specialized fields related to land management, cadastral mapping, geodesy, information technology, and other fields related to land databases; Having worked in the field of land resource management or developing land database systems for 24 months or more. Thus, in the near future, in addition to the information provided by competent state agencies, citizens will have additional channels to access information in the field of land, in general, and land recovery, in particular.

Fourthly, continue to disseminate and train the Law on Access to Information 2016, and the content of accessing land information in the Land Law, to officials, civil servants within government agencies and citizens; Building a section about "Access to information" on the portals/websites of governments at all levels; Systematize public information on electronic portals and websites as stipulated, enabling citizens to access it from anywhere, anytime; Add more search functionalities on the portals/websites of governments at all levels, ensuring user-friendliness for all user groups, including the elderly, people with disabilities, and ethnic minorities.

Fifthly, the responsibility of the information provider is extremely important, directly affecting people's right to access information. Therefore, it is necessary to promote and strengthen education, raise awareness, improve professional competence, and expertise of those who are responsible for providing information.

Information is a necessary need of every individual Information directly related to people's lives, production, and businesses affects their legitimate interests, especially matters such as Land use planning and plans which are now more essential than ever before. The time has come for accessing information in this field to be conducted seriously, systematically, with depth, and to bring about practical effectiveness. Implementing the right to access information in the field of planning and land use not only ensures the interests of citizens but also plays a role in serving the state management tasks, meeting the requirements of socio-economic development, accomplishing the goals of striving for the development of a modern national information infrastructure, meeting the requirements of all citizens in the current vibrant fourth industrial revolution ■

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