

Book Review

David L. Callies, *Regulating Paradise: Land Use Controls in Hawai'i* (2d ed. 2010)

Reviewed by Patricia E. Salkin*

PROFESSOR DAVID CALLIES PROVIDES a fresh look at the land use regulatory scheme in Hawai'i that he first described more than 25 years ago in *REGULATING PARADISE* (1984). Unlike mainland states, the history of land ownership and regulation in Hawai'i—dating back to the mid 1800s—is unique and deeply rooted in centralized control both before and after the State became a territory. Callies explains how the State's oft-studied 1961 land use law continued this trend, with zoning accomplished at the state level. He points out that from this strong tradition of centralized control, however, a new system of land use regulation has emerged with layers of county laws and the influence of myriad federal statutes and regulations as well as special purpose state statutes and programs. Hawai'i's unique history has slowly yielded to the more familiar models of land use regulation found on the mainland. With these layers of regulation, Professor Callies demonstrates how it is that land development projects in the State can take more than a dozen years to get permitted and built. He sets forth a series of issues—thirteen, or a baker's dozen, that suggest challenges resulting from these regulations that include: housing affordability, the subjects of development agreements, condemnation, defining open space and agricultural lands, takings, cultural sensitivity, environmental assessment, the prevalence of covenanted communities, and redevelopment. By the end of the introduction, readers are left questioning whether governments have engaged in “over-protecting” paradise.

Not only is this book a must-read for land use lawyers and planners in Hawai'i, but it provides an excellent roadmap, in easy to understand prose, about the land use regulatory tools generally available in the mainland, making this a good resource for all those interested in land

* Patricia E. Salkin is the Associate Dean and Director of the Government Law Center of Albany Law School and Raymond & Ella Smith Distinguished Professor of Law.

use controls. In addition, the book offers excellent discussion and guidance about myriad federal programs that impact local land use planning such as the Clean Water and Clean Air Acts, the Endangered Species Act, the Coastal Zone Management Program and NEPA.

Chapter one walks readers through the system of state land use controls, explaining how a State General Plan was converted to a statute in 1975. Chapter two segues into local planning and zoning, quickly covering the state enabling legislation and the importance of zoning provisions in the county and city charters. The chapter ends by describing the provisions in the county and city zoning laws that both resemble traditional land use regulatory approaches and incorporate more innovative approaches. Chapter three offers a straightforward explanation of subdivision regulation and conditions that may be placed on development, providing a good overview of the leading U.S. Supreme Court opinions on exactions and dedications. The subject of impact fees, as authorized in Hawai'i, is also discussed, as well as development agreements (Hawai'i is in the minority of states that expressly provide statutory authorization for development agreements), and a good practitioner-oriented checklist for statutory compliance. The chapter concludes with a brief explanation of the State Building Code and its impact on the subdivision process.

Not surprisingly, a significant percentage (47%) of the land in Hawai'i is owned or leased by the federal or state governments. Chapter four explains how private development may occur on parts of public lands, leading readers through a clear review of state and federal park land policies, the use and disposal of federal lands, ceded lands and special controls over lands that are environmentally sensitive. Professor Callies has succeeded in making dense federal and state regulatory regimes easy to understand in the context of their application to the local land development process. Chapter five examines the subject of redevelopment and the role of public corporations, reviewing the powers of duties of several public authorities including ones created since the first edition of this book.

Surrounded by water, managing the coastal zone is of particular importance to Hawai'ian planners and regulators, and this is the focus of chapter six. Professor Callies explains the interplay between the federal coastal zone management act and the State counterpart. Coordination with areas of particular concerns and special management areas is discussed, as well as federal preemption and federal assistance to state and local governments when it comes to regulating development in the coastal zone. Coastal communities are prone to flooding and chapter

seven offers excellent insights into floodplain regulation and the Federal Emergency Management Agency. The statutory, programmatic and zoning tools information contained in this chapter, is crucial for avoiding and mitigating disasters related to coastal waters.

The opening discussion on historic preservation in chapter eight provides an overview of the National Historic Preservation Act and explains how state and local governments can preserve historic and sacred sites both on public and private lands. The book concludes with an examination of the federalization of land use control in Hawai'i in chapter nine, with a focus on federal environmental laws that impact local land use control.

In sum, this handy single-volume resource should be required reading for all players in the land use game in Hawai'i. However, one need not reside or practice in Hawai'i to benefit from Professor Callies' clear and direct writing style that untangles the interplay between federal, state and local roles in land use planning and decision making.

