Reform the Hawaii LUC to encourage more housing

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Hawaii needs more housing, but building it is no easy task. Developers must work with a limited amount of land, a complicated regulatory structure and an extended permitting process. They are often discouraged by the risks associated with navigating this long and costly process.

Giving Hawaii’s counties more authority to make decisions independent of the state Land Use Commission could help increase the housing supply.
Introduction

The state Land Use Commission was created in 1961 by the state Land Use Law shortly after statehood to address problems related to urban development spreading throughout agricultural lands. The new law classified Hawaii’s lands into one of four designations: urban, rural, agricultural and conservation.

Since then, the LUC has been responsible for reviewing petitions for district boundary amendments (DBAs), which are requests to change a parcel’s land designation. Currently, the LUC reviews petitions for parcels larger than 15 acres, and the counties review petitions for parcels 15 acres or smaller. Landowners and developers often pursue DBAs to build on lands that are not yet designated for their proposed developments.

Because the LUC is quasi-judicial, it holds hearings to gather public opinion and see to what extent the requests conform to the goals of the Hawaii State Plan, which was signed into law in 1978 to “improve the planning process in this state, to increase the effectiveness of government and private actions, to improve coordination among different agencies and levels of government, to provide for wise use of Hawaii’s resources and to guide the future development of the state.”

According to Hawaii land-use expert David Callies, the Benjamin A. Kudo Professor of Law at the University of Hawaii, “The LUC process takes at least two years … And the county zoning at least another year, usually two or three. And then there are coastal zone permits, preliminary and final subdivision approvals, and a host of environmental permits. That’s 10 years at least, altogether.”

Some housing developers prefer to avoid the LUC altogether.

Peter Savio, president of Hawaiian Island Homes, said that he pursues few projects that require LUC approval because of the time it takes.

Christine Camp, president of the Oahu-based development company Avalon Group, said she specifically avoids any projects that require LUC approval, because Avalon doesn’t have the financial resources to withstand 10 to 20 years of rezoning processes and court challenges. She said developers often have attorneys represent them during these hearings, and that makes it even more expensive.

Such risks can even affect developments that have affordable-housing exemptions under county law. Maui land-use planning consultant Rory Frampton said in an email that the LUC process “added two to three years at least to a 100% workforce housing project on Maui that was just over the 15-acre threshold.”
Other projects delayed by LUC involvement include:

- A Big Island development called the Town of Aina Le‘a (formerly the Villages at Aina Le‘a), which promised to provide 2,300 homes, 20% of which would have been affordable.

The LUC approved the project in 2005 and held the developer to a five-year construction deadline. However, permitting delays caused the developer to miss the deadline, so the LUC blocked the development. The decision was overturned by the Hawaii Supreme Court in 2014. In 2016, Hawaii County held that the developer didn’t meet rezoning requirements, requiring a supplemental environmental impact statement to be completed. Construction is expected to be completed within the next 15 to 20 years.

- D.R. Horton’s master-planned community called Ho‘opili, which was planned to provide 11,750 homes.

The company started working on government approvals in 2008, but didn’t receive LUC approval until 2012. A lawsuit by an intervenor led to the Hawaii Supreme Court, which ruled in favor of the development in 2015.

- Koa Ridge, a Castle & Cooke master-planned community, received LUC approval in 2002, with construction planned to start in 2007.

It was planned to provide 3,500 homes, about a third of which would be affordable. However, a series of lawsuits filed by the same intervenor as in the D.R. Horton case led to the Hawaii Supreme Court twice, pushing the project back to 2016.

In 2017, Castle & Cooke President Harry Saunders said, “When I got my first approval (to build) in 2002, the cost of a home was $350,000. Today it’s over $760,000. So, 15 years of delay, double the price.”

As of June 2020, sales of Koa Ridge homes were to start “soon.”
People can debate individual developments, but what isn’t debatable is that delays increase the risk for developers. Partners might back out of the deal. New partners might request project redesigns. Financiers might increase interest rates. Building codes might change. Legal challenges could arise. Obtaining government approvals could drag out for years. Each change jeopardizes project profitability and completion.

Current LUC Commissioner Gary Okuda explained that housing developments must be economically viable if they are going to be successful. If Hawaii policymakers want to enable more home construction in the state, they should find ways to reduce risk for developers. Okuda said he would reduce risk by upgrading public infrastructure, but another way to do this would be to simplify decision-making authority over land use.

One difference between the state and county processes is the order of approvals. According to Maui Planning Director Michele McLean, county approvals include community-plan amendments and changes-in-zoning applications. But at the county level, “all levels of land-use regulation typically need to be changed at the same time,” so for projects on parcels larger than 15 acres, the state DBA process adds time to development that would otherwise only need county approvals.

Moreover, the LUC and county processes are partially duplicative. Both consider infrastructure, public facilities, economic feasibility, environmental concerns and conformity with the Hawaii State Plan.

The LUC, for example, sometimes requires developers to fund schools, roadways or other infrastructure, sometimes at their “sole cost.” Counties require similar conditions when reviewing development applications.

In a 1990 case, the LUC approved a Haseko housing development but regulated golf prices there and required the development to provide one “non-tourism job” for “each hotel or hotel/condominium unit Petitioner is allowed to build.” Haseko also was ordered to make infrastructure improvements acceptable to Honolulu County.

For the second phase of its Royal Kunia development, the LUC required Halekua Development to provide affordable-housing opportunities approved by the county.

Dean Uchida, former executive director of the Land Use Research Foundation, said many LUC conditions “should be done at the county level.” His statement is especially true when the counties must sign off on the conditions anyway.
It’s not the state ‘Zoning Commission’

Essentially, the LUC has been acting like a zoning board. In a letter to the state Office of Planning, land-use consultant Frampton said that DBA proceedings “have evolved into a detailed review of the specific types of proposed urban uses and detailed reviews of development design and associated impacts.” He argued such considerations make it seem that the LUC is more concerned about development and use permits than DBAs.

“There is no example of a state agency [in the nation besides the LUC] issuing what amounts to an individual development and use permit on a case-by-case basis,” he said. Moreover, the LUC’s current approach “is not necessarily consistent with language and intent of Chapter 205,” which created the LUC.

In other words, it’s not the state Zoning Commission, it’s the state Land Use Commission. The LUC is supposed to consider statewide land-use issues, while zoning is a local consideration.
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Other states balance conservation and urban growth without a state land-use commission. Hawaii land-use attorney Robert H. Thomas said in an email that in many other U.S. jurisdictions, “land-use regulations are almost an exclusively county or city matter.”

Theoretically, Hawaii could follow suit by eliminating the LUC, but that might pose political and technical problems. Thomas said that he can’t remember past efforts to abolish the LUC being taken “particularly seriously.” For example, in 2015, Senate President Donna Mercado Kim introduced a bill to eliminate the LUC, but it failed.

Instead of abolishing the LUC, other legal changes could make approvals more efficient, thus easing housing development.

For example, lawmakers could allow the counties to handle all DBAs for urban and agricultural lands. The LUC could be retained for reviewing DBAs of conservation lands, and for considering statewide environmental issues that the counties might not be equipped to handle, such as potable water availability, natural resource protection and “important agricultural land” designation.

Uchida said that the LUC was created “right after statehood when the counties were not experienced in how to review rezoning requests. That led to subdivisions in lava fields on the Big Island.” Yet, he added, the LUC “hasn’t changed its focus over the years, even as the counties have become better at planning for urban expansion.”

Reorganizing DBA authority in this way would allow more developers to avoid the costly, time-consuming and duplicative LUC process. This adjustment would be a somewhat significant change in state law. However, it would be worthwhile because more efficient land redesignations would likely promote housing development.
A simpler but incomplete option would be to raise the acreage cutoff for when the LUC reviews DBA requests. Two bills proposed during the 2020 legislative session, SB3104 and SB2620, would have increased the acreage for projects that produce affordable housing, which is defined differently in each bill.

SB3104 sought to allow counties to handle nonconservation parcels 25 acres or less when the majority of the development is for affordable housing, which the bill defines as “housing that is affordable to households having incomes at or below [140%] of the area median income as determined by the United States Department of Housing and Urban Development.” One committee report said the bill would “expeditiously develop housing for the state’s working families.”

SB2620 sought to increase the acreage to 25 for urban land reclassifications when at least 60% of the land would be for affordable housing, which in this bill means housing that “requires the purchaser to be, in perpetuity, a Hawaii resident, an owner occupant, and owner of no other real property.”

Both bills passed the House’s first reading after passing through the Senate, but neither advanced beyond that. The bills weren’t perfect, but their progress showed that adjusting the acreage is politically palatable.

And it wouldn’t be unprecedented, either. The commission website says, “In an effort to streamline the decision-making process, the law was amended in 1985 to allow applicants for land use changes of 15 acres or less to apply directly to the counties.”

In other words, the LUC in the past has acknowledged that increasing the acreage can streamline processes. Giving counties authority to handle 25-acre plots that aren’t of statewide importance would further streamline government approvals.

McLean of the Maui Planning Department said in an email that the counties would not be significantly burdened if the acreage were changed from 15 to 25. She said that any influx in DBA applications for workforce housing projects would be welcome at the county level.
Reforming the approval process for district boundary amendments would help the Land Use Commission focus on statewide land-use issues, in accordance with its stated purpose. It would also help housing developers move more quickly through the approval process. An acreage increase would have a similar result on a smaller scale.

These changes would aid housing development by opening up more land for housing. Since about 5% of Hawaii’s land is designated urban, increasing the amount of urban land by just 1% would result in a 20% increase in land available for housing.

Simplifying the DBA process isn’t a silver bullet for Hawaii’s housing crisis, but it would be a step in the right direction.
Endnotes

3 Ibid.
5 David Callies, "Why big development is so difficult in Hawaii," Hawaii Business magazine, April 8, 2013.
6 Peter Savio, president of Hawaiian Island Homes, via email, July 6, 2020.
9 The project initially received LUC approval in 1989, but it went through several owners and financial challenges.
19 Michele McLean, planning director at Maui County Planning Department, via email, Jan. 30, 2020.
24 Ibid. pp.74-75.
26 Dean Uchida, former executive director of the Land Use Research Foundation, via email, March 17, 2020.
30 Dean Uchida, former executive director of the Land Use Research Foundation, via email, March 17, 2020.
36 Michele McLean, planning director at Maui County Planning Department, via email, March 2, 2020.