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Review of Regulating Paradise: Land Use Controls in Hawaii

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BOOK REVIEW

Regulating Paradise: Land Use Controls in Hawaii.

By David L. Callies. University of Hawaii Press, 1984 (paperbound, $14.95)

The Hawaiian island chain is geologically very ancient. There are many islands in the chain but only a handful are known by name to most Americans and other peripatetic globetrotters. These islands, Oahu, Hawaii, Maui, Kauai and to a lesser extent Lanai and Molokai represent in a decidedly non-theological sense a concept of paradise on planet earth.

Peopled originally by sea voyagers from the South Pacific, the Hawaiian islands first attracted explorers and then exploiters. The detailed botanical and scientific reports resulting from Captain Cook's exploratory missions successively fascinated English and American naturalists. In addition, the convenient locus of the islands adumbrated their use by whalers as supply depots and by the Far East trade of the United States as it developed in importance during the second half of the last century by merchants and shippers. Thus, Americans in greater numbers came to stay. With this influx of immigrants came also the displacement of an existing political and social structure that was remarkably stable and effective.

Although Professor David L. Callies, a noted authority on Hawaiian real property and environmental law, does not examine the history of American involvement with the then independent but foredoomed Kingdom of Hawaii, the genesis of the contemporary land use dilemmas depicted by him in his excellent work is to be found in the story of white settlers. Although they believed the islands to be somewhat marred by both the disquieting religious beliefs and practices of the islanders and a land tenure system that seemed to be more

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compatible with medieval English feudalism than nineteenth century laissez-faire capitalism, the settlers viewed Hawaii as a paradise.

In a remarkably short period of time, the old Hawaiian kingdom was toppled by a cabal of American merchants and maritime entrepreneurs. "Pagan" religious practices were almost entirely supplanted by Christianity and the Hawaiian language began its long and steady descent to near-extinction. Perhaps the only saving grace was the absence of the homicidal violence that accompanied most white supplantation of native peoples in the westward expansion.

The structure of the relatively small white society that insured first the overthrow of the native kingdom and then the annexation of the islands by the United States reflected interlinking interests to say nothing of intermarriage. Therefore, it was not surprising that a very small number of families emerged as holders in fee simple of a large percentage of the available arable land. In effect, one feudal system was replaced by another. While this development undoubtedly assisted agrarian and commercial development, it established the framework for a strangle hold on alienation of real property which bred a myriad of social and legal problems, some of which are still unresolved. When environmental concerns began to claim public attention, the pre-existing land holding system created difficulties in some ways different from those encountered on the mainland.

A second major factor underscoring land use control issues in the Hawaiian chain, and a factor paid little attention by Professor Callies, is the role of the military in the islands. Already in the nineteenth century, strategic theorists such as Admiral Mahan realized that America would require a naval and military presence in the Pacific to protect developing national interests in the Far East. The annexation of the Hawaiian islands, together with the not entirely unexpected emergence of Japan as a major naval and military power, provided the United States with harbor and anchorage resources of the first rank. Following the Spanish-American War, while American troops engaged Filipinos who failed to appreciate that they had been liberated, the naval and military build-up of

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Hawaii developed at varying but always increasing rates of speed. During the first five decades of this century, large acquisitions of land were made by the War and Navy Departments. Significantly, for contemporary environmental regulation issues, much of this land was coastal and involved control of adjacent harbors and water approaches. Today, the military services still control much prime Hawaiian real estate and, of greater importance, each service engages in activities which impact disproportionately on the ecologically sensitive and small-land area islands. While some activities, such as the use of the uninhabited island of Kahoolawe for bombing and gunnery training have attracted the most media attention, far more serious threats are occasioned by less noisy and noticeable activities. A second edition of *Regulating Paradise* should include an extensive examination of the impact of military use of large parts of the Hawaiian islands as a factor in achieving environmentally sound land use goals.

The strength of Professor Callies' book, which reflects his wide experience with Hawaiian land use law, is its detailed and thoughtful analysis of the role of Hawaiian government, state and county, in implementing local initiatives while also complying with the major federal environmental statutes and the programs spawned by these legislative enactments.

There is a fundamental irony to the notion expressed by the book's title. If paradise must be regulated, perhaps it is a paradise lost. Implicit in Professor Callies' analysis is the reality that Hawaii as paradise means different things to different people. For the few remaining native Hawaiians who seek to keep alive their ancient language, paradise is a memory except, perhaps, on the island of Niihau where private and paternalistic family ownership supports the maintenance of a culture which has been extirpated from most of the islands. For those who settled in Hawaii after the Second World War, the influx of tourists and new permanent arrivals threaten their vision of paradise. In most of Hawaii, large malls have replaced village stores and the growth of condominium and hotel construction, a subject of critical land use importance, is a boom industry. For tourists, Hawaii provides the climate of paradise. However, a printed notice which comes with all

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rented cars warning of the likelihood of theft of personal property from unattended cars is a reminder to visitor and resident alike that paradise has a crime-in-the-streets problem.

Hawaii must deal with all the issues of commercial and residential development while facing the dilemma of preserving much that is unique and beautiful. The amount of land available for control on the relatively small islands is not great since so much has already been developed or is under federal control, whether as military and naval land or parkland. Hawaii must comply with complex federal regulatory environmental programs, which, as Professor Callies notes, were designed with little or no consideration of the peculiar problems of an island state.

Professor Callies divides his analysis of land control issues into major program-related chapters. Thus, there are chapters on redevelopment and housing policy, historic preservation, clean air and water related problems and a particularly well-done treatment of coastal zone management issues. Unifying the chapters on federal regulatory programs is a clear and insightful presentation of attempts by state and local government to regulate land use in Hawaii.

A paradox becomes evident when examining Professor Callies' overview. Land, he notes, is highly regulated in Hawaii. On the other hand, local authorities dispense great numbers of permits under the complex land use regulations to parties seeking to develop land. What seems to have emerged is a procedural morass rather than an effective, substantive, policy-oriented control of land development. To date, only the local government of Kauai, with significant widespread public support, has effectively blocked major proposed development projects. Despite the alleged multiplicity of land use regulations, Maui, for instance, is approaching a crisis level of development conflicts.

Professor Callies' chapter on flood hazards illustrates the intense relationship between federal programs and the local land control initiatives. While the author notes the tendency of developers to build where prudence dictates that they should not, this is not exclusively a Hawaiian phenomenon.

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Hurricane damage on the American east coast and mud slides in California, with much destruction of real property, are frequent news items. What is different in Hawaii, as Professor Callies' study indicates, is the major economic impact of flood losses in an island environment which trigger federal program involvement. Economics aside, the continued development of flood plain zones threatens to exacerbate the damage subsequently inflicted by unavoidable natural phenomena. Sooner or later, a major disaster will occur and excessive development of flood plain land will help to increase personal, societal, environmental and economic loss.

Professor Callies' book is the first major comprehensive examination of land use control issues in Hawaii which integrates an analysis of dominant environmental concerns. His explanation of the interplay between state and federal interests reflects his deep understanding of the issues and his observations are not limited in relevance to the Hawaiian archipelago. The notes and bibliography accompanying the text provide strong support for the observations and conclusions of the author.

Regulating Paradise will be read with attention and concern by Hawaiians concerned with their limited, precious heritage of land. For those who grapple with similar issues on the mainland and for those who wish to preserve an island paradise compatible with legitimate developmental needs, *Regulating Paradise* is necessary reading.

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