

Report to the 2025 Hawai‘i State Legislature:

Pursuant to Act 305, Session Laws of Hawai‘i 2022,
Relating to Housing

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INTRODUCTION

Act 305, Session Laws of Hawai'i 2022, also known as the Yes In My Back Yard Act, established a working group on affordable housing co-chaired by the executive directors of the Hawaii Housing Finance and Development Corporation (HHFDC) and the Hawaii Public Housing Authority (HPHA) that shall meet annually to:

1. Foster increased inter-agency coordination on housing and zoning issues.
2. Raise public awareness of the ongoing efforts by the State and counties to reduce barriers to affordable housing development.
3. Propose legislation.

SUMMARY OF WORKING GROUP ACTIVITIES

In 2022 and 2023, HHFDC and HPHA held the first three working group meetings.

On October 17, 2024, the fourth working group was convened with the following agencies and organizations in attendance. In addition to the two co-chairs, the working group is comprised of ten members:

1. The chairpersons of the respective standing committees on housing of the Senate and House of Representatives.
2. The executive director of the Land Use Commission (LUC).
3. The executive director of the Office of Planning and Sustainable Development (OPSD).
4. The executive director of the Hawaii Community Development Authority (HCDA).
5. Representatives from each county agency that has authority over zoning.

In addition, the following agencies and organizations were added to the list.

6. The Governor's Housing Team.
7. The executive director of the Mayor's Housing Office.
8. Representatives from each county agency's housing office.
9. Representatives from the Hawaii Business Roundtable, Housing Hawaii's Future, Land Use Research Foundation of Hawaii, and AARP.

DISCUSSIONS

The fourth working group provided updates to its members. Then a facilitated discussion on the top four challenges to housing production was made to generate potential solutions that could be considered for further action. The salient features of the fourth working group meeting discussions are summarized below.

Challenge 1: Duplicative Land Use Regulatory System

State Land Use Law

- Enacted in 1961 and administered by the Land Use Commission (LUC)
- Classifies all lands into Urban, Agricultural, Conservation, and Rural land use districts
- Quasi-judicial process to reclassify land use
 - Complex, time-consuming, and subject to legal challenges
 - Creates uncertainty and delays for housing projects

Law intended to protect valuable land and resources, but

- Duplicates county zoning ordinances, which also dictate land use
- Often results in significant delays in housing development

Brainstorm Opportunities: Possible Amendments to the State Land Use Law

- Shift the land use classification responsibilities to the counties
- Areas designated for urban growth in county plans are automatically included in the Urban state land use district

Stakeholders Comments to Address Challenge 1

One working group member suggested that counties could handle parcel-level planning and allow them to designate their urban lands. The State should only have input in county land use processes when state-level concerns such as water conservation, health, schools, and traffic are impacted. However, another member pointed out there are legal implications for such a proposal, so consultations with the AG will be necessary to get feedback. For example, will counties handle contested case proceedings? This procedure affects individual landowners' rights and property interests, and the courts have ruled that is what has made the LUC have to do quasi-judicial hearings to make decisions.

Another member noted that OPSD could serve as a petitioner in district boundary amendments, but it lacks the resources to prepare the EIS and complete the necessary studies to support any application.

To optimize efficiency, another member proposed counties should permit the bundling of multiple amendments (the general plan, LUC district boundary, and zoning amendments) in one application.

Challenge 2: Restrictive County Zoning Regulations

Zoning regulations dictate where and what kind of housing can be built, creating inflexibility in land use

- Prevents the adaptation of underutilized areas, such as agricultural, industrial, or commercial lands for residential purposes
- Restricts the availability of affordable housing
 - By limiting the density, height, and design of residential buildings
 - Imposing minimum parking requirements
 - Prohibiting certain housing types

Brainstorm Opportunities: Force densification of urbanized areas and encourage mixed-use development

- Prohibiting county zoning that allows one- or two-family detached dwellings.
 - Limits the availability of affordable housing
 - Social and environmental downsides
- Anti-snob zoning—No minimum lot size (or minimum lot size of ____)

Stakeholders Comments to Address Challenge 2

One member highlighted the success of Honolulu’s zoning for TOD, which could be used as a model as an example of using a proactive approach by setting minimum standards for TOD and streamlining approval processes for higher-density projects. In Honolulu’s case, all TOD neighborhood plans have been adopted so it is known where TOD areas are where additional heights and density will be sought. If the property owner is going to develop property following prescribed development standards, those projects can avoid getting discretionary approval.

Challenge 3: Land Aggregation Process

Land aggregation, or the process of assembling multiple parcels of land

- Difficult for infill developments due to the complexity and cost
- Requires negotiation of agreements with multiple private landowners who may have different interests and valuations for their property

The State’s eminent domain powers to condemn private lands largely limited for public use restricts the ability of the State to intervene in this process to facilitate affordable housing projects

Brainstorm Opportunities:

- Expand the State’s power to condemn private lands for public use, particularly for TOD projects that have clear public benefits
- The State incentivizes voluntary land sales to landowners sell their properties for housing development

Stakeholders Comments to Address Challenge 3

One member expressed concern with the use of eminent domain because it could disenfranchise vulnerable older populations. Instead, another member suggested using land trusts and business improvement districts as alternatives to the eminent domain, which could incentivize landowners.

Another member suggested establishing joint development agreements at the county level to simplify the land aggregation process. Joint development agreements with different landowners could be a way to avoid the subdivision process and bind the properties so that setbacks and zoning codes apply only to the largest of the properties.

Challenge 4: State-Owned Land Sales Process

State-owned lands comprise about 50% of the total land area in Hawaii

- Typically, no cost basis
- Valuable opportunity for affordable housing development

Sale of most State-owned lands requires consent of two-thirds of the Legislature

- Involves public notice, detailed report outlining rationale, terms, and expected benefits
- Major obstacle to conversion of State lands for fee-simple residential use
- Questionable Policy
 - Hawaii Facing a potentially irreversible brain drain driven in part by housing unaffordability
 - What are the lands being hoarded for?

Brainstorm Opportunities: Ease the requirement that the Legislature approve any sale of State-owned lands and increase the availability

- Exception for State lands for affordable housing development
- Exception for State lands near TOD areas

Stakeholders Comments to Address Challenge 4

The group discussed the distinction between ceded and non-ceded lands regarding housing development and sale restrictions. One member pointed out that any territory purchased after 1900 that was not land exchange for ceded lands has a different basis, i.e., non-ceded. The requirement of two-thirds legislative approval for a resolution applies to ceded lands. Another member pointed out that agencies holding executive orders for State lands must understand existing legal limitations. An agency can develop ceded lands, but alienating ceded lands could be a challenge.

Another member pointed out that HRS 171 has restrictions when State lands are transferred to the counties via executive orders. It was suggested that HRS 171 should be amended to simplify the process.

NEXT STEPS

The fifth working group meeting is planned for 2025 and it will continue discussions with its members and include developers to discuss other issues that impede housing development and look for opportunities to resolve them.

CLOSING

The community of housing stakeholders – HHFDC, HPHA, chairpersons of Senate and House of Representatives housing committees, LUC, OPSD, HCDA, representatives from county planning departments, and others are committed to working together to provide recommendations to reduce barriers to housing production in Hawaii.

Thank you for the opportunity to provide this update.