
A BILL FOR AN ACT

RELATING TO KAKAAKO COMMUNITY DEVELOPMENT DISTRICT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that predictability in
2 the development approval process would encourage maximum
3 efficient use of resources with the least economic impact to the
4 public. This predictability is especially important because of
5 the substantial investment development projects require and the
6 more conservative lending and investment practices that have
7 resulted from the recent economic crisis.

8 Public benefits derived from implementing master plans in
9 the Kakaako community development district include expanded open
10 space and recreational opportunities for Hawaii's residents,
11 newly-constructed market and reserved housing, major private
12 sector investments to stimulate economic growth, and on- and
13 off-site infrastructure and other improvements that support the
14 broader community. Such master plans are intended to create
15 well-designed communities that improve the urban environment in
16 Honolulu. These benefits may not be realized, however, unless
17 uncertainty regarding the applicability of new laws and



1 regulations is eliminated, and the development rights of the
2 landowners are assured.

3 Development agreements are a mechanism to strengthen the
4 implementation of an approved master plan. Such agreements
5 encourage private and public participation in the implementation
6 of the master plan, reduce the economic cost of development, and
7 allow for the orderly construction of recreational and publicly
8 available facilities by providing an increased level of
9 stability for the development of the balance of the projects.

10 As an administrative act, development agreements also help
11 assure an applicant for a particular development project in the
12 master plan area that, upon approval of the master plan, the
13 applicant may proceed with the project in accordance with all
14 applicable statutes, ordinances, resolutions, rules,
15 regulations, and policies then in existence with a reasonable
16 expectation that the project will not be restricted or
17 prohibited by the State or county's subsequent enactment or
18 adoption of laws, ordinances, resolutions, rules, regulations,
19 or policies, except where necessary to protect the public health
20 and safety of residents and the surrounding community.



1 The purpose of this Act is to enable the Hawaii community
2 development authority to enter into development agreements in
3 the Kakaako community development district.

4 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is
5 amended by adding nine new sections to part II to be
6 appropriately designated and to read as follows:

7 "**§206E-A Definitions for development agreements.** As used
8 in this part unless the context clearly indicates otherwise:

9 "Development agreement" means any agreement entered into
10 pursuant to a master plan permit, including any amendments,
11 modifications, or supplements, necessary for the implementation
12 of the master plan permit.

13 "Person" means an individual, group, partnership, firm,
14 association, corporation, trust, governmental agency,
15 governmental official, administrative body, or tribunal, or any
16 form of business or legal entity.

17 "Principal" means a person who has entered into a
18 development agreement pursuant to the procedures specified in
19 this part, including a successor in interest.

20 **§206E-B Development agreements; general authorization.**

21 The executive director of the authority is authorized to enter
22 into a development agreement with any person having a legal or



1 equitable interest in real property located in the Kakaako
2 community development district, as established in section 206E-
3 32, for purposes of development in accordance with this section;
4 provided that:

- 5 (1) An application is submitted by or on behalf of persons
6 having a legal or equitable interest in the real
7 property in accordance with this part;
- 8 (2) A public hearing on the application is held by the
9 authority; provided that a public hearing held in
10 connection with the approval process for the master
11 plan shall be sufficient for this purpose;
- 12 (3) The executive director of the authority administers
13 the agreements after such agreements become effective;
- 14 (4) The executive director of the authority conducts a
15 review of compliance with the terms and conditions of
16 the development agreement on a periodic basis as
17 established by the development agreement;
- 18 (5) The development agreement does not exceed the term of
19 the master plan, as may be extended; and
- 20 (6) The time periods for the review and appeal of
21 modifications of the development agreement are
22 consistent with those for master plans.



1 **§206E-C** **Negotiating development agreements.** (a) The
2 executive director of the authority may make such arrangements
3 as may be necessary or proper to enter into development
4 agreements, including negotiating and drafting individual
5 development agreements.

6 (b) The final draft of each individual development
7 agreement shall be presented to the authority for approval or
8 modification prior to execution.

9 **§206E-D** **Periodic review; termination of agreement.** (a)
10 If, as a result of a periodic review, the authority finds and
11 determines that the principal has committed a material breach of
12 the terms or conditions of the development agreement, the
13 authority shall serve notice in writing upon the principle
14 within thirty days after the periodic review, setting forth the
15 nature of the breach and the evidence supporting the finding and
16 determination. This notice shall provide the principal a period
17 of at least ninety days, as determined by the authority, in
18 which to cure such material breach; provided that the authority
19 may grant an extension as the authority sees fit.

20 (b) If the principal fails to cure the material breach
21 within the time period provided, including any extensions, then
22 the authority may unilaterally terminate or modify the



1 agreement; provided that the authority shall first give the
2 principal the opportunity to:

- 3 (1) Rebut the finding and determination; or
- 4 (2) Consent to amend the agreement to meet the concerns of
5 the authority with respect to the authority's finding
6 and determination.

7 **§206E-E Development agreement; provisions.** (a) The
8 development agreement shall:

9 (1) Describe the land subject to the development
10 agreement, which shall include the land comprising the
11 master plan area;

12 (2) Specify the permitted uses of the land, the density or
13 intensity of use, the maximum height and size of
14 proposed buildings, and the reserved housing
15 requirements; provided that the reserved housing
16 requirements shall be as follows:

17 (A) For land areas more than twenty thousand but less
18 than eighty thousand square feet, the reserved
19 housing requirement for any:

20 (i) Residential square footage shall be twenty
21 per cent; and



1 (ii) Commercial building square footage shall be
2 ten per cent;

3 and

4 (B) For land areas eighty thousand square feet or
5 more, the reserved housing requirement for any:

6 (i) Residential building square footage shall be
7 thirty per cent; and

8 (ii) Commercial building square footage shall be
9 twenty per cent;

10 (3) Provide, where appropriate, the public dedication
11 requirements and public dedication credits consistent
12 with the master plan in effect at the time the
13 development agreement is entered into; and

14 (4) Provide a termination date for no less than the length
15 of the term of the master plan; provided that the
16 parties shall not be precluded from extending, for
17 good cause, the termination date by mutual agreement
18 or from entering into amendments, modifications, or
19 supplements to the development agreement to implement
20 the master plan.

21 (b) The development agreement may provide commencement
22 dates and completion dates; provided that such dates as may be



1 set forth in the agreement may be extended at the discretion of
2 the authority at the request of the principal upon good cause
3 shown subject to subsection (a)(4).

4 (c) The development agreement may incorporate by reference
5 the terms and conditions of the approved master plan; provided
6 that if any inconsistencies exist between the approved master
7 plan and the development agreement, the development agreement
8 shall control.

9 (d) The development agreement may also cover any other
10 matter not inconsistent with this chapter, nor prohibited by
11 law.

12 (e) In addition to the authority and the principal, any
13 county, federal, or local government agency or body may be
14 included as a party to the development agreement. If more than
15 one government body is made party to an agreement, the agreement
16 shall specify which agency shall be responsible for the overall
17 administration of the agreement.

18 **§206E-F Enforceability; applicability.** (a) Except as
19 provided in subsection (b), notwithstanding any change in any
20 applicable law adopted by the State or county subsequent to the
21 execution of the original development agreement which alters or
22 amends the laws, ordinances, resolutions, rules, regulations, or



1 policies specified in this part, a development agreement and any
2 amendment, modification, or supplement thereto, once entered
3 into, shall be enforceable by any party thereto, or their
4 successors in interest, unless terminated pursuant to section
5 206E-D or canceled pursuant to section 206E-G.

6 (b) A development agreement shall not prevent a government
7 body from requiring the principal from complying with laws,
8 ordinances, resolutions, rules, regulations, and policies of
9 general applicability enacted subsequent to the date of the
10 development agreement if they could have been lawfully applied
11 to the property that is the subject of the development agreement
12 at the time of execution of such development agreement if the
13 government body finds it necessary to impose the requirements
14 because a failure to do so would place the residents of the
15 residential project or of the immediate community, or both, in a
16 condition perilous to the residents' health, safety, or both.

17 §206E-G Amendment or cancelation. A development agreement
18 may be amended or canceled, in whole or in part, by mutual
19 consent of the parties to the agreement, or their successors in
20 interest; provided that if the authority determines that a
21 proposed amendment would substantially alter the original
22 development agreement, a public hearing on the amendment shall



1 be held by the authority before it consents to the proposed
2 amendment.

3 §206E-H Administrative act. Each development agreement
4 shall be deemed an administrative act of the government body
5 made party to the agreement.

6 §206E-I Filing or recordation. The authority shall file
7 or record a copy of the development agreement or an amendment to
8 the agreement, or a short form thereof, in the office of the
9 assistant registrar of the land court of the State of Hawaii or
10 in the bureau of conveyances, or both, whichever is appropriate,
11 within twenty days after the authority enters into a development
12 agreement or an amendment to such an agreement. The burdens of
13 the agreement shall be binding upon, and the benefits of the
14 agreement shall inure to, all successors in interest to the
15 parties to the agreement."

16 SECTION 3. For purposes of this Act, the Hawaii community
17 development authority may adopt rules without regard to chapter
18 91.

19 SECTION 4. In codifying the new sections added by section
20 2 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



- 1 SECTION 5. New statutory material is underscored.
- 2 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Hawaii Community Development Authority; Development Agreements

Description:

Enables the Hawaii Community Development Authority to enter into development agreements. (HB2918 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

