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# 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 at the least economic impact to the  
4 public. This predictability is especially important in view of  
5 the substantial investment required for any development project  
6 and the more conservative lending and investment practices  
7 resulting 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 off-  
13 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. Such benefits may not be realized unless development  
17 rights for a specific period are clearly vested and investments  
18 are made to develop and complete the proposed projects.



1           Development agreements are a mechanism to strengthen the  
2 implementation of an approved master plan. Such agreements  
3 encourage private and public participation in the implementation  
4 of the master plan, reduce the economic cost of development, and  
5 allow for the orderly construction of recreational and publicly  
6 available facilities through the vesting of rights to develop  
7 the balance of the projects.

8           As an administrative act, development agreements also  
9 provide assurances to the applicant for a particular development  
10 project in the master plan area that upon approval of the master  
11 plan, the applicant may proceed with the project in accordance  
12 with all applicable statutes, ordinances, resolutions, rules,  
13 regulations, and policies then in existence and that the project  
14 will not be restricted or prohibited by the State or county's  
15 subsequent enactment or adoption of laws, ordinances,  
16 resolutions, rules, regulations, or policies.

17           Chapter 206E, Hawaii Revised Statutes, and associated  
18 plans, rules, and regulations, provide for vesting of certain  
19 development rights, upon approval by the Hawaii community  
20 development authority, of matters including master plans and  
21 development agreements in connection with an approved master  
22 plan. To achieve the goals and public benefits from each



1 approved master plan, owners, developers, and their lenders and  
2 investors need a predictable and stable framework that assures  
3 these parties they can develop and complete their proposed  
4 projects pursuant to the terms of an approved development  
5 agreement.

6 The purpose of this Act is to enable the Hawaii community  
7 development authority to enter into development agreements.

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

11 "§206E-A Definitions for Development Agreements. The  
12 following terms as used in this part shall have the following  
13 meanings unless a different meaning clearly appears from the  
14 context:

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

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



1        §206E-B Development agreements; general authorization.

2        The authority, through its executive director, shall be  
3        authorized to enter into a development agreement with any person  
4        having a legal or equitable interest in real property for  
5        purposes of development in accordance with this section;  
6        provided that:

7            (1) An application is submitted by or on behalf of persons  
8            having a legal or equitable interest in the real  
9            property in accordance with this part;

10           (2) A public hearing on the application shall be held by  
11           the authority; provided that a public hearing held in  
12           connection with the approval process for the master  
13           plan shall be sufficient for this purpose;

14           (3) The executive director of the authority shall  
15           administer the agreements after such agreements become  
16           effective;

17           (4) The executive director of the authority shall conduct  
18           a review of compliance with the terms and conditions  
19           of the development agreement on a periodic basis as  
20           established by the development agreement;

21           (5) The development agreement does not exceed the term of  
22           the master plan, as may be extended; and

1       (6) The time periods for the review and appeal of  
2           modifications of the development agreement are  
3           consistent with those for master plans.

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

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

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



1        (b) If the principal fails to cure the material breach  
2 within the time period given, as may be extended by the  
3 authority, then the authority unilaterally may terminate or  
4 modify the agreement; provided that the authority has first  
5 given the principal the opportunity to:

- 6        (1) Rebut the finding and determination; or
- 7        (2) Consent to amend the agreement to meet the concerns of  
8        the authority with respect to the finding and  
9        determination.

10        **§206E-E Development agreement; provisions.**    (a) For  
11 purposes of this part, a development agreement is any agreement  
12 entered into pursuant to a master plan permit, including any  
13 amendments, modifications, or supplements, necessary for the  
14 implementation of the master plan permit.

- 15        (b) The development agreement shall:
- 16        (1) Describe the land subject to the development  
17        agreement, which shall include the land comprising the  
18        master plan area;
- 19        (2) Specify the permitted uses of the land, the density or  
20        intensity of use, the maximum height and size of  
21        proposed buildings, and the reserved housing  
22        requirements, which shall be consistent with the



1           master plan in effect at the time of entering into the  
2           development agreement;

3           (3) Provide, where appropriate, the public dedication  
4           requirements and public dedication credits consistent  
5           with the master plan in effect at the time of entering  
6           into the development agreement;

7           (4) Provide that upon the execution of the development  
8           agreement, all development rights in the development  
9           agreement shall be deemed vested; and

10          (5) Provide a termination date for no less than the length  
11          of the term of the master plan; provided that the  
12          parties shall not be precluded from extending the  
13          termination date by mutual agreement or from entering  
14          into amendments, modifications, or supplements to the  
15          development agreement to implement the master plan.

16          (b) The development agreement may provide commencement  
17          dates and completion dates; provided that such dates as may be  
18          set forth in the agreement may be extended at the discretion of  
19          the authority at the request of the principal upon good cause  
20          shown subject to subsection (a) (5).

21          (c) The development agreement may incorporate by reference  
22          the terms and conditions of the approved master plan.



1        (d) The development agreement also may cover any other  
2 matter not inconsistent with this chapter, nor prohibited by  
3 law.

4        (e) In addition to the authority and principal, any  
5 county, federal, or local government agency or body may be  
6 included as a party to the development agreement. If more than  
7 one government body is made party to an agreement, the agreement  
8 shall specify which agency shall be responsible for the overall  
9 administration of the agreement.

10        **§206E-F Enforceability; applicability.** (a) Unless  
11 terminated pursuant to section 206E-D or unless canceled  
12 pursuant to section 206E-G, a development agreement, and any  
13 amendment, modification, or supplement thereto, once entered  
14 into, shall be enforceable by any party thereto, or their  
15 successors in interest, notwithstanding any change in any  
16 applicable law adopted by the State or county subsequent to the  
17 execution of the original development agreement, which alter or  
18 amend the laws, ordinances, resolutions, rules, regulations, or  
19 policies specified in this part.

20        (b) All state or county laws, ordinances, resolutions,  
21 rules, regulations, and policies governing the development and  
22 use of the land that is the subject of the development





1 agreement, including the density or intensity of use, the  
2 maximum height and size of proposed buildings, and the reserved  
3 housing requirements shall be those laws, ordinances,  
4 resolutions, rules, regulations, and policies made applicable  
5 and in force at the time of execution of the original  
6 development agreement, notwithstanding any subsequent change in  
7 any applicable law, which alter or amend the laws, ordinances,  
8 resolutions, rules, regulations, or policies specified in this  
9 part and such subsequent change shall be void as applied to  
10 property subject to a development agreement; provided that a  
11 development agreement shall not prevent a government body from  
12 requiring the principal from complying with laws, ordinances,  
13 resolutions, rules, regulations, and policies of general  
14 applicability enacted subsequent to the date of the development  
15 agreement if they could have been lawfully applied to the  
16 property which is the subject of the development agreement at  
17 the time of execution of such development agreement if the  
18 government body finds it necessary to impose the requirements  
19 because a failure to do so would place the residents of the  
20 residential project or of the immediate community, or both, in a  
21 condition perilous to the residents' health or safety, or both.



1        (c) This part shall apply to any development agreement  
2 heretofore entered into by the authority, and all laws,  
3 ordinances, resolutions, rules, regulations and policies  
4 governing development and use of the land covered by such  
5 development agreement, which were in effect as of the date of  
6 the original development agreement, shall control. Upon the  
7 written request of the principal, the authority shall amend such  
8 agreement to conform to the provisions of this part II.

9        **§206E-G Amendment or cancellation.** A development  
10 agreement may be amended or canceled, in whole or in part, by  
11 mutual consent of the parties to the agreement, or their  
12 successors in interest; provided that if the authority  
13 determines that a proposed amendment would substantially alter  
14 the original development agreement, a public hearing on the  
15 amendment shall be held by the authority before it consents to  
16 the proposed amendment.

17        **§206E-H Administrative act.** Each development agreement  
18 shall be deemed an administrative act of the government body  
19 made party to the agreement.

20        **§206E-I Filing or recordation.** The authority shall file  
21 or record a copy of the development agreement or an amendment to  
22 the agreement, or a short form thereof, in the office of the



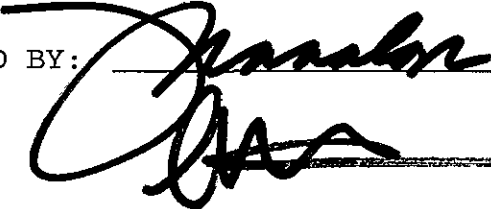
1 assistant registrar of the land court of the State of Hawaii or  
2 in the bureau of conveyances, or both, whichever is appropriate,  
3 within twenty days after the authority enters into a development  
4 agreement or an amendment to such an agreement. The burdens of  
5 the agreement shall be binding upon, and the benefits of the  
6 agreement shall inure to, all successors in interest to the  
7 parties to the agreement."

8 SECTION 3. For purposes of this Act, the Hawaii community  
9 development authority may adopt rules without regard to chapter  
10 91.

11 SECTION 4. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY: 

JAN 27 2010



**Report Title:**

Hawaii Community Development Authority; Development Agreements

**Description:**

Enables the Hawaii Community Development Authority to enter into development agreements.

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

