

JAN 27 2010

S.B. NO. 2915

A BILL FOR AN ACT

RELATING TO THE 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 the most
3 efficient use of resources at the least economic cost 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 the implementation of master
9 plans in the Kakaako community development district, include
10 expanded open space and recreational opportunities for Hawaii's
11 residents, newly constructed market and reserved housing, major
12 private sector investments to stimulate economic growth, and on-
13 and off-site infrastructure and other improvements that support
14 the broader community. Master plans are intended to create
15 well-designed communities that improve the urban environment in
16 Honolulu. These 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. These 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. Development agreements provide
8 assurances to the applicant for a particular development project
9 in the master plan area, that upon approval of the master plan,
10 the applicant may proceed with the project in accordance with
11 all applicable statutes, ordinances, resolutions, rules, and
12 policies then in existence and that the project will not be
13 restricted or prohibited by the State or county's subsequent
14 enactment or adoption of laws, ordinances, resolutions, rules,
15 or policies.

16 The Hawaii community development authority laws, codified
17 as chapter 206E, Hawaii Revised Statutes, and the plans and
18 rules adopted pursuant thereto provide for the vesting of
19 certain development rights upon the approval by Hawaii community
20 development authority of, among other matters, 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 SECTION 2. Chapter 206E, part II, Hawaii Revised Statutes,
7 is amended by adding a new subpart to be appropriately
8 designated and to read as follows:

9 " . **Development Agreements**

10 **§206E-A Definitions.** As used in this subpart:

11 "Person" means an individual, group, partnership, firm,
12 association, corporation, trust, government agency, government
13 official, administrative body, tribunal, or any other form of
14 business or legal entity.

15 "Principal" means a person who has entered into a
16 development agreement pursuant to the procedures specified in
17 this subpart, including any successor in interest.

18 **§206E-B Authorization to negotiate development agreements;**
19 **final approval.** (a) The executive director of the authority
20 may enter into direct negotiations for a development agreement
21 with any person having interest in real property located in the



1 Kakaako community development district, for the development of
2 the property in accordance with this section; provided that:

3 (1) Any development agreement entered pursuant to this
4 subpart shall be consistent with the terms and
5 conditions of the applicable master plan;

6 (2) The development agreement shall not exceed the term of
7 the applicable master plan, unless an extension is
8 granted by the authority; and

9 (3) The executive director shall conduct a periodic
10 review, as determined by the development agreement, to
11 ensure compliance with the terms and conditions of the
12 development agreement.

13 (b) Any development agreement negotiated by the executive
14 director shall be subject to final approval by the authority.
15 The authority may modify the development agreement as deemed
16 necessary.

17 **§206E-C Public hearings.** Notwithstanding any other law to
18 the contrary, the authority shall conduct at least one public
19 hearing on any request for approval for a development agreement,
20 as required under section 206E-B(b). The authority may hold the
21 public hearing in conjunction with any applicable master plan
22 public hearing held prior to the approval of the master plan.



1 §206E-D Periodic review; termination of the development
2 agreement. (a) If, as a result of a periodic review, the
3 executive director finds that the principal is in material
4 breach of the terms or conditions of the development agreement,
5 the executive director, with the approval of the authority,
6 shall serve notice upon the principal in writing within thirty
7 days of the authority's approval. The notice shall describe
8 with reasonable particularity the nature of the material breach
9 and any evidence supporting the executive director's finding.
10 The principal shall have a minimum of ninety days to cure the
11 material breach. If the authority deems necessary, the
12 principal may be granted a longer period of time to cure the
13 material breach.

14 (b) If the principal fails to cure the material breach
15 within the time period allotted, pursuant to subsection (a), the
16 authority may terminate or modify the development agreement as
17 deemed necessary; provided that the principal has had adequate
18 opportunity to either refute the finding of material breach or
19 consent to any amendment to address the concerns of the
20 authority with regard to the finding of material breach.



1 §206E-E Specific provisions of development agreements.

2 (a) For the purposes of this subpart, any development agreement
3 entered into shall include:

4 (1) A description of the land subject to the development
5 agreement;

6 (2) Specifications regarding the use of the land, the
7 density or intensity of use, the maximum height and
8 size of any proposed buildings, and any reserved
9 housing requirements;

10 (3) Any public dedication requirements and public
11 dedication credits, consistent with the applicable
12 master plan; and

13 (4) A provision specifying that upon final approval of the
14 authority, and subsequent execution of the development
15 agreement, the development rights included shall be
16 deemed vested.

17 (b) The development agreement may include commencement and
18 completion dates; provided that any dates included may be
19 extended upon the mutual agreement of the authority, the
20 executive director, and the principal upon a showing of good
21 cause.



1 (c) The development agreement may incorporate by reference
2 the terms and conditions of the applicable master plan.

3 (d) Any state, county, or federal agency may be a party to
4 a development agreement; provided that the development agreement
5 identifies which government agency shall be responsible for
6 administration of the agreement.

7 **§206E-F Amendment or cancellation of the development**
8 **agreement.** A development agreement may be amended or cancelled,
9 in whole or in part, by mutual agreement of all parties, or
10 their successors in interest; provided that if the authority
11 determines that a proposed amendment would substantially alter
12 the original development agreement, the authority shall hold a
13 public hearing, in accordance with section 206E-C, prior to any
14 approval.

15 **§206E-G Enforceability; applicable laws.** (a) Unless the
16 development agreement is terminated, pursuant to section 206E-D,
17 or cancelled, pursuant to section 206E-F, the agreement shall be
18 enforceable by any principal, including the executive director
19 and the authority.

20 (b) Any relevant state law, county ordinance, resolution,
21 rule, or policy governing the development and use of the land
22 subject to the development agreement shall remain in full force



1 and effect throughout the term of the development agreement.
2 Any subsequent state law, county ordinance, resolution, rule, or
3 policy adopted after the execution of the development agreement
4 shall not affect the agreement unless expressly stated
5 otherwise.

6 (c) The principal of any development agreement in effect
7 on July 1, 2010, may request that the authority approve
8 modifications of the existing agreement to conform with this
9 subpart.

10 **§206E-H Recordation.** The executive director, on behalf of
11 the authority, shall record a copy of the development agreement
12 or any amendment made pursuant to section 206E-F, with the
13 registrar of the bureau of conveyances within twenty days after
14 the authority approves the development agreement or any
15 amendment thereto. The development agreement shall be binding
16 upon all principals, including the authority, and any benefits
17 shall inure to all principals, including the authority."

18 SECTION 3. Chapter 206E, part II, Hawaii Revised Statutes,
19 is amended by designating sections 206E-31 to 206E-35 as subpart
20 A, entitled "General Provisions".



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. In codifying this Act, the revisor of statutes
5 shall substitute appropriate section numbers for the section
6 designations used in section 2 of this Act.

7 SECTION 6. This Act shall take effect upon its approval.
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INTRODUCED BY:

Upton Hill

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Report Title:

Hawaii Community Development Authority; Kakaako Community Development District; Development Agreements

Description:

Establishes a process for the Hawaii community development authority to enter into development agreements for lands within the Kakaako community development district.

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

