



HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY



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KALAELOA

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STATEMENT OF

ANTHONY J. H. CHING, EXECUTIVE DIRECTOR  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES  
AND  
HOUSE COMMITTEE ON HOUSING

Monday, February 8, 2010

9:15 A.M.

State Capitol, Conference Room 325

**H.B. 2918 – RELATING TO KAKAOKO COMMUNITY DEVELOPMENT  
DISTRICT**

**Purpose:** Establish a development agreement mechanism designed to strengthen the implementation of Master Plan Permits issued by the HCDA

**Position:** The HCDA takes no position on the proposal, but offers the following comments.

The HCDA currently administers a Master Plan Permit program in the Kakaako Community Development District (KCDD). This program is described in the KCDD administrative rules and master plan permits issued under this program have the force of law. I note that the objectives for our Master Plan Permit program mirror the objectives described in the legislative proposal for to establish a formal development agreement executed pursuant to a Master Plan Permit issued by the Authority. These existing objectives are cited below.

“Master Plans are intended to encourage timely development, reduce the economic cost of development, allow for the orderly planning and implementation of public and private development projects, and provide a reasonable degree of certainty in the development approval process.”

[Subchapter 8 §15-22-200(a) HAR]

The intent of the Master Plan Permit is also clearly described in the administrative rule and is again consistent in seeking to provide clarity and certainty to the developer of master plan lands. These intentions are cited below.

“An approved master plan will provide assurances to landowners, developers and investors that projects proposed within a master planned area that are in accordance with the applicable mauka area rules in effect at the time the master plan is approved will not be restricted or prohibited at the permit stage by subsequent changes to those rules.” [Subchapter 8 §15-22-200(c) HAR]

Page 6 lines 13 to 16 of this proposal raises the subject of vesting. The proposal specifies that any development agreement entered into shall include:

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

With respect to the vesting of development permit approval, the HCDA Master Plan Program rules provide specific language and assurance to the landowner/developer in this matter. That section reads:

“The purpose of this subchapter is to provide landowners and developers assurances that once they have met or agreed to meet all of the terms and conditions of the master plan approval, their rights to development permit approval in accordance with the development rules in effect at the time of the master plan approval shall be vested for a specified period.” [Subchapter 8 §15-22-200(c) HAR]

It is my belief that the current HCDA Master Plan Program rules provide explicit assurances to any landowner/developer with respect to their rights to development permit approval from the HCDA. Any other assurances that the landowner/developer would require would have to be provided by another authority.

Thank you for the opportunity to provide these comments.



Via: [WLOtestimony@Capitol.hawaii.gov](mailto:WLOtestimony@Capitol.hawaii.gov)  
[HSGtestimony@Capitol.hawaii.gov](mailto:HSGtestimony@Capitol.hawaii.gov)

February 8, 2010

**Support of HB 2918 KAKAAKO  
(HCDA Development Agreements)**

The Honorable Representative Ken Ito, Chair, Vice-Chair Sharon Har  
and Members of the House Committee on Water, Land & Ocean Resources,  
The Honorable Representative Rida Cabanilla, Vice Chair Pono Chong,  
And members of the House Housing Committee,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF supports the development of housing projects in Kaka`ako which include market and affordable housing units, commercial and light industrial uses. We also **strongly support HB 2918**, which will enable the Hawaii Community Development Authority (HCDA) to enter into development agreements,

The development agreements to be allowed by HB 2918 will result in predictability in the development approval process, and will encourage maximum efficient use of resources at the least economic impact to the public. This predictability is especially important in view of the substantial investment required for any development project and the more conservative lending and investment practices resulting from the recent economic crisis.

Public benefits derived from implementing master plans in the Kakaako Community Development District include expanded open space and recreational opportunities for Hawaii's residents, newly-constructed market and reserved housing, major private sector investments to stimulate economic growth, and on-and off-site infrastructure and other improvements that support the broader community. Such master plans are intended to create well-designed communities that improve the urban environment in Honolulu. Such benefits may not be realized unless development rights for a specific period are clearly vested and investments are made to develop and complete the proposed projects.

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

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

Chapter 206E, Hawaii Revised Statutes, and associated plans, rules, and regulations, provide for vesting of certain development rights, upon approval by the HCDA, of matters including master plans and development agreements in connection with an approved master plan. To achieve the goals and public benefits from each approved master plan, owners, developers, and their lenders and investors need a predictable and stable framework that assures these parties they can develop and complete their proposed projects pursuant to the terms of an approved development agreement.

Based on the above, we respectfully request that your Committees **favorably consider and approve HB 2918.**

Thank you for the opportunity to express our **strong support for HB 2918.**



## KAMEHAMEHA SCHOOLS

TESTIMONY TO THE HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES  
AND THE COMMITTEE ON HOUSING

By

Sydney Keli`ipule`ole, Director  
Endowment/Residential Assets Division

Hearing Date: Monday, February 8, 2010  
9:15 a.m.  
Conference Room 325

February 5, 2010

TO: Rep. Ken Ito, Chair  
Members of the Committee on Water, Land, & Ocean Resource  
Rep. Rida Cabanilla, Chair  
Members of the Committee on Housing

RE: H.B. No. 2918 - Relating to the Kaka`ako Community Development District

Thank you for the opportunity to comment on H.B. No. 2918 (this "*Bill*").

Kamehameha Schools ("*KS*") respectfully supports this Bill. If adopted, this Bill would encourage new development, redevelopment and construction projects within the Kaka`ako Community Development District, including projects that would benefit the local community and general public, such as parks, plazas, public facilities and early reserved housing projects. It would help create new jobs, stimulate our local economy in a difficult time and help revitalize an aging urban neighborhood, without using any legislative funds.

**A. Provides a Stable Framework for Development**

This Bill would provide a more stable framework for development in Kaka`ako under master plan permits and development agreements.

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Rep. Rida Cabanilla, Chair  
Members of the Committee on Housing

Master plans in the Kaka`ako mauka area are “*intended to encourage timely development, reduce the economic cost of development, allow for the orderly planning and implementation of public and private development projects, and provide a reasonable degree of certainty in the development approval process.*” HCDA’s Mauka Area Rules §15-22-200(a).

This “reasonable degree of certainty” is essential for investments or developments to occur under a master plan. Without it, landowners, developers, and their lenders, cannot justify investing in parks, plazas, public facilities or other projects that benefit the public, unless each project standing alone provides a market return. Landowners and developers are forced into a parcel-by-parcel approach, without any ability to predict or rely on approvals for future projects.

Recent attempts by the State to enact statutes that impose new, more difficult requirements on lands covered by master plans have added yet more uncertainty into an already difficult development environment. This Bill would protect landowners, developers and businesses on lands covered by master plan permits and development agreements from those types of statutes and would help to provide that “reasonable degree of certainty” necessary to encourage investments in private and public benefit projects under a master plan.

**B. Provides a Stimulus to Our Local Economy**

This Bill would help stimulate our local economy by encouraging new investments and developments on lands covered by master plans in Kaka`ako, which will lead to new construction, jobs, industry growth and housing opportunities. This stimulus can be accomplished without any legislative funding; it only requires the State agree to let landowners and developers make private investments and proceed with certainty.

**C. Supports the Creation of a Well-Designed, Diverse Urban Community**

This Bill would help fulfill the State’s vision of Kaka`ako as a well-designed, diverse urban community, by encouraging private investments in parks, plazas, public facilities and projects with broader public benefits, by allowing landowners and developers to develop under master plans that must be consistent with the State’s plans for the area, HCDA’s Mauka Area Rules §15-22-205(b), and that must provide public benefits “*which are generally provided by government and would not otherwise be required from private developers.*” HCDA’s Mauka Area Rules §15-22-200 (b)

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**D. Supports the Construction of Early Reserved Housing.**

The passage of this Bill would support the development of early reserved housing units in advance of the development of market units.

Current reserved housing requirements impose a landowner/developer subsidy between \$75,000 and \$100,000 per unit, figures that have been generally confirmed in discussions with the HCDA. Given this subsidy, no landowner or developer would undertake to construct early reserved housing units as a credit against requirements imposed on future market units, unless there is “reasonable certainty” that when the landowner or developer does construct the market units (which will pay for the subsidy), the governmental requirements and conditions for construction of those units are predicted and unchanged. This Bill would provide that future certainty, so that landowners and developers can undertake early reserved housing projects.

**E. Helps Level the Playing Field for Kaka‘ako.**

This Bill is closely patterned after an existing statute (Part VII of HRS ch. 46 entitled “Development Agreements” adopted in 1985) that gives counties the authority to enter into development agreements to vest property rights. The finding and purpose of the existing statute (HRS §46-121) mirror the need for certainty in the development approval process. Specifically, the existing statute states:

*“The legislature finds that with land use laws taking on refinements that make the development of land complex, time consuming, and requiring advance financial commitments, the development approval process involves the expenditure of considerable sums of money. Generally speaking, the larger the project contemplated, the greater the expenses and the more time involved in complying with the conditions precedent to filing for a building permit.*

*The lack of certainty in the development approval process can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning. Predictability would encourage maximum efficient utilization of resources at the least economic cost to the public.*

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*Founded and Endowed by the Legacy of Princess Bernice Pauahi Bishop*

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Rep. Ken Ito, Chair

Members of the Committee on Water, Land, & Ocean Resource

Rep. Rida Cabanilla, Chair

Members of the Committee on Housing

\* \* \*

*Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted . . . legislation which may conflict with any term or provision of the development agreement or in any way hinder, restrict, or prevent the development of the project. Development agreements are intended to provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enact and enforce laws which promote the public safety, health, and general welfare of the citizens of our State. The purpose of this part is to provide a means by which an individual may be assured at a specific point in time that having met or having agreed to meet all of the terms and conditions of the development agreement, the individual's rights to develop a property in a certain manner shall be vested."*

This Bill levels the playing field by confirming that HCDA has the same authority possessed by the counties since 1985. The benefits of development agreements vesting property rights are available to landowners in each county through specific legislation, to the exclusion of landowners of Kaka'ako. This Bill eliminates an existing barrier to development that is unique to Kaka'ako (and other lands under the jurisdiction of the HCDA).

**F. Furtheres the Intent of the HCDA's Rules on Master Plans**

The HCDA and the Kaka'ako Community Development District were created "*to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development.*" (HRS §206E-1.)

Consistent with this long-range planning, HCDA adopted the mauka area plans and rules. These plans and rules were developed through a community-driven process and reflect the community's goals to revitalize Kaka'ako mauka to include mixed-use neighborhoods and a well-rounded scope of "work, live, visit, learn and play" activities.



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Members of the Committee on Water, Land, & Ocean Resource  
Rep. Rida Cabanilla, Chair  
Members of the Committee on Housing

An important part of the mauka area plans and rules to achieve such a well-designed community is the assurance provided to those developing lands under a master plan. Under the HCDA's rules, "[a]n approved master plan will provide assurances to landowners, developers and investors that projects proposed within a master planned area that are in accordance with the applicable mauka area rules in effect at the time the master plan is approved will not be restricted or prohibited at the permit stage by subsequent changes to those rules." HCDA's Mauka Area Rules §15-22-200(c).

This Bill would similarly, and for all the same reasons given by the HCDA in their rules (e.g., reasonable certainty, public benefits, orderly planning), provide landowners, developers and investors with assurances against subsequent changes to legislative statutes.

**G. Advances the Public Benefits of the Kaiāulu 'O Kaka'ako Master Plan**

Kaiāulu 'O Kaka'ako (Kaka'ako community) Master Plan is KS' master plan encompassing 29 acres of Kaka'ako mauka. From its initial submission to HCDA on November 26, 2008, to the issuance of the master plan permit on September 2, 2009, KS' master plan has received strong community support. It envisions a progressive, twenty-first century mixed-use urban village offering the opportunity for residents to "work, live, visit, learn and play" in Kaka'ako. Kaiāulu 'O Kaka'ako is an urban redevelopment project promoting a "smart living" community alternative to traditional suburban communities.

The HCDA, in its formal findings of fact for the issuance of the master plan permit (paragraphs 59.a. to 59.s.) found no fewer than nineteen public benefits intended to be created as the result of implementation of KS' master plan. These include:

1. Job creation of as many as 9,291 on-site construction jobs and 10,202 off-site jobs generating approximately \$933 million in workers' payroll,
2. At full build-out, 5,466 full time professional and service jobs generating approximately \$230 million in annual workers' payroll,
3. Increased real property tax and general excise tax revenues from the redevelopment and incubation of new businesses,

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Members of the Committee on Water, Land, & Ocean Resource

Rep. Rida Cabanilla, Chair

Members of the Committee on Housing

4. During construction, tax revenues to the state of \$141.5 million in excise tax and \$73.7 million in income tax,
5. Annual income tax revenues to the state of upward of \$18.1 million at build-out,
6. Annual real property tax revenues to the county of upward of \$8.9 million,
7. New living options for existing residents and young people returning to Hawaii to work,
8. Up to 2,750 new residential dwelling units,
9. Delivery of reserved housing,
10. Reduction of urban sprawl,
11. Incorporation of best smart urban growth principles and practices,
12. Creation of sustainable communities with green buildings,
13. Well-designed open spaces and landscaping,
14. Beautification along public streets to enhance the city's urban environs,
15. Pedestrian and bike friendly streets and a phase out of on-street parking,
16. Land dedications by KS years in advance of any redevelopment (*"Since 1989, [KS] has dedicated approximately 3 acres of land in [Kaka`ako] for the HCDA to develop public projects including Pohulani Housing Development, Mother Waldron Park and portion of the Makai Gateway Park"* at paragraph 66),
17. Improvements to public facilities (with KS already contributing millions of dollars toward infrastructure costs),
18. Protection of cultural and historic resources, and

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Members of the Committee on Water, Land, & Ocean Resource

Rep. Rida Cabanilla, Chair

Members of the Committee on Housing

19. No mass relocation of existing tenants.

Specifically, the HCDA's findings of fact and conclusions of law states: "*105. The public benefits described in paragraph 59 above and described below are consistent with the Mauka Area Plan and Rules. These public benefits enhance the surrounding communities and provide a benefit to the residents of the area, as well as the general public.*"

Investments to implement the master plan and achieve the vision for Kaka'ako will not occur as long as uncertainty of development rights exists. This Bill would reduce that uncertainty and provide the best opportunity for these public benefits to be realized.

We appreciate the opportunity to express our views on this measure.



February 5, 2010

PRINCIPALS

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The Honorable Rep. Ken Ito, Chair and Members – Committee on Water, Land & Ocean Resources

The Honorable Rep. Rida Cabanilla, Chair and Members – Committee on Housing House of Representatives State of Hawaii

Re: H.B. No. 2918

Aloha:

My name is Ralph Portmore and I am an Urban Planner and Principal at Group 70 International, an architectural, planning, interior design, and environmental services consulting firm with a 40 year history of contributing to sustainable and culturally sensitive development in Hawaii. I am speaking today on behalf of Group 70 in favor of HB 2918.

This bill establishes good public policy by providing greater predictability in the development approval process, while also providing ample opportunity for public comment and agency review. As noted in the bill, development agreements strengthen the implementation of approved master plans. They expand public benefits by broadening the areas of benefits allowed in negotiations beyond regular zoning actions. Development agreements also streamline the regulatory process and provide stability for investment expectations.

Specifically, adoption of the provisions of this bill will provide the following benefits:

1. **It will stimulate the economy.** Certainty in rules and exaction requirements, while always desirable from a business standpoint, has become even more critical given current economic conditions in Hawaii, the U.S., and throughout most of the world. Banks are much more conservative and lending practices more stringent in the global economic crisis. Such institutions look for greater security in loan applications and investment opportunities. Vested development agreements will provide a significant degree of comfort to lending institutions and encourage them to loosen the flow in the financial markets. This will be an important factor in the stimulation of the local economy.
2. **This bill will enhance job creation.** Fixing regulatory rules will to the point in time of the development agreement will add additional stability to the development climate. This will encourage developers to proceed with greater confidence in starting construction activity. When this happens, jobs will be created in the construction and building trades,

which have been among of the hardest hit sectors in this economic downturn.

3. **Certainty in exactions and conditions will allow developers to more accurately assess benefits and risks.** This will help them make quicker and more informed decisions on whether to proceed with a development. Knowing that future rules will not alter the bases for their rates of return is a huge benefit and will increase their confidence that a fair return on investment is possible. This will improve the business climate of Hawaii and promote more investment.
4. **The resulting developments will bring with them public benefits such as affordable housing, parks and open space, school improvements, community services contributions, and expansion and/or repair of needed infrastructure.** As projects move forward the associated public benefits will also be realized. Developers will use their resources more efficiently to complete projects that create benefits that improve the quality of life in Hawaii.

HB 2918 will clearly help the economy of Hawaii, as well as help to ensure that future developments are sustainable and contribute to our quality of life. I strongly support and encourage passage of HB 2918.

Thank you for the opportunity to present this testimony.

Sincerely,



Ralph E. Portmore, AICP

February 5, 2010

To: *Committee on Water, Land & Ocean Resources*  
Representative Ken Ito, Chair  
Representative Sharon Har, Vice Chair

*Committee on Housing*  
Representative Rida Cabanilla, Chair  
Representative Pono Chong, Vice Chair

**Not in Support – HB 2918**

Hearing: February 8, 2010, 9:15am in Room 325

Testimony Via Web

We are **not in support** of HB2918. This proposed Legislation grants entitlements to the Kamehameha Schools and General Growth Master Plans. Without this Legislation, it is our understanding that the laws of Hawaii recognizes issued building permits as an entitlement for landowners because building permit plans are much more definitive and specific in nature as opposed to the issuance of master plan permits because master plans are much less definitive and broader in nature. This appears to be a maneuver to prevent the Legislature and HCDA from having control over the Kakaako air rights above 45 feet.

Since Kamehameha Schools and General Growth are the only landowners with enough land to obtain a master plan permit, this proposed legislation would only benefit these two landowners in Kakaako.

This proposed Legislation would mean that Kamehameha Schools and General Growth could keep their affordable housing requirement at 20% of units (approximately 10% of floor area) for a very long time. The purpose for creating the Redevelopment Neighborhood was to provide an urban apartment neighborhood option for Hawaii's residents. Twenty percent (20%) of the apartments for the low income, fifty-five percent (55%) of the apartments for the middle income and twenty-five percent (25%) for the wealthy. The master plan process in the 1982 documentation for the Redevelopment Neighborhood was created to expedite new construction and completion of the full redevelopment of Kakaako. Again, the master plan section in the Kakaako Rules is not to grant entitlements to landowners which cannot be changed or modified due to future uncertainties.

Master plans do not necessarily create a "public purpose" for Redevelopment Neighborhoods. Using over \$500 million of taxpayer dollars to transform a blighted neighborhood can be justified if the "public purpose" is to provide low and middle income households with affordable housing. To allow Kakaako to be a neighborhood for more luxury and/or second home apartments than affordable housing essentially defies the "public purpose" for the Redevelopment of Kakaako.

Respectfully Yours,

Kenneth Matsuura and Momi Cazimero

February 5, 2010

**NOT SUPPORT – HB2918**

To: *Committee on Water, Land, & Ocean Resources*  
Representative Ken Ito, Chair  
Representative Sharon Har, Vice Chair

*Committee on Housing*  
Representative Rida Cabanilla, Chair  
Representative Pono Chong, Vice Chair

Kamehameha had the correct master plan in the 1980's. Please see the attached newspaper article.

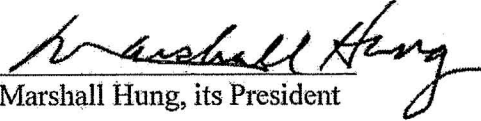
What a change. From 2,700 apartments at attractive prices to a new master plan in 1999 where only approximately 10% of the floor area (20% of the apartments) will be affordably priced.

Kamehameha's master plan of the 1980's was in line with the 1982 Redevelopment Public Purpose of Kakaako. It was a long term vision for the State of Hawaii. In our opinion, Kamehameha Schools is being foolish to chase the large profits from luxury residential development and forsake affordable housing for its people.

General Growth is a company from Chicago that purchased their land from the Ward Estate. We believe that General Growth did not do a complete due diligence on their purchase. They now have a master plan approved in 2009. Why are the landowners disrespecting the Redevelopment purpose for 20% low income and 55% middle income housing in Kakaako? Why is HCDA, the Authority agreeing with the landowners and issuing luxury second home master plan permits in 2009? We think it is all about lots of money.

Respectfully Yours,

Marshall Realty, Inc.

  
Marshall Hung, its President

*Citizen Testimony from:*

*Marshall Hung as a member of a Limited Liability Company develops unsubsidized work force apartment housing for middle income households of \$50,000 to \$100,000 per annum in urban Honolulu. He believes that the majority of new residential development in Kakaako should be for Hawaii's residents because it is the optimal solution for reversing the brain drain and providing the needed work force housing in the urban core.*

November

G'S TOP STORIES

NEWS



AP photo

agnitude earthquake rocked Drages stand by a fault that say that since the June 28 use from major structural h of the 5-foot-deep crack.

as been vetoed — but a ey lawmaker says it could e revived if the Legislature olds a special session.

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COLLEGE FOOTBALL

# 6,800 more may live in Kakaako

## Bishop Estate envisions 2,700 apartments, attractive prices

By Kit Smith  
Advertiser Financial Writer

Pauahi Place, the Bishop Estate's label for its 54-acre master plan for the ewa/makai portion of Kakaako, could become home to some 6,800 residents.

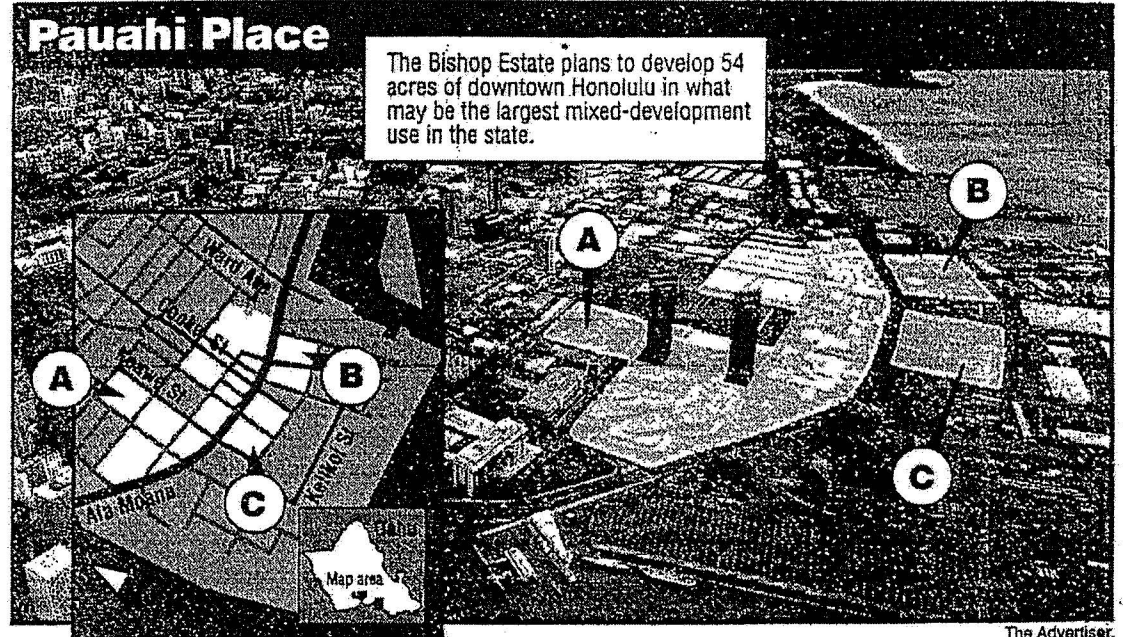
The projected 3 million square feet of residential space would include about 2,700 apartments, said Neil Hannahs, manager for Kakaako improvement for the Bishop Estate.

About 3 million square feet of office space is also projected for Pauahi Place.

The apartment developments must offer the things people look for most in homes, such as security, an attractive price, adequate living space, parks, schools, etc., Hannahs said. Surveys show that proximity to place of work ranks relatively low as a priority among home buyers, he said.

A project officially "in progress" but with no work under way is Waterpark Towers, projected to be a lower-priced condominium than the Waterfront Towers development that is immediately makai of it. Hannahs said that if the current developers, Bruce Stark and Phil Gray, can't proceed, the estate will seek another developer.

In line with its "urban village" concept for Pauahi Place, Bishop Estate envisions turning



The Advertiser

Auahi Street (between South and Cooke streets) into "a place where people will want to meet" — by creating a mall or limiting vehicular traffic, Hannahs said.

Retail development ranks as a lower priority because Ala Moana Center and Ward Warehouse and Ward Centre exist within walking distance, Hannahs said.

Some light industrial development might be desirable, for the convenience of the commu-

nity and as a source of jobs, Hannahs said. But in light of relatively high property values it might be difficult to make space affordable for light industrial operators, he said.

As the master plan is built out, Bishop Estate wants to consider serving, too, as developer, as opposed to assigning responsibility to outside developers, Hannahs said. Generally development is possible for a charitable trust if the project is designed to generate income

rather than develop properties for sale, he said.

Thus, while "our first priority is to do the master plan, we would reserve first option on all development opportunities," he said.

Clearly the Bishop Estate, Hawaii's largest landowner, has the financial muscle. Hannahs estimated its assets at between \$5 billion and \$6 billion. He said the estate's latest annual net operating income totaled \$177.5 million.