

TESTIMONY
SB 2913



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKAOKO
KALAELOA

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STATEMENT OF

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

BEFORE THE

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND
HAWAIIAN AFFAIR

Wednesday, February 24, 2010

2:45 P.M.

State Capitol, Conference Room 229

**S.B. 2913 - RELATING TO THE HAWAII COMMUNITY
DEVELOPMENT AUTHORITY.**

Purpose: Seeks to ensure that the Hawaii Community Development Authority ("HCDA") develops, accepts and implements any plans for the development of the Kakaako Makai Area in collaboration with the Kakaako Makai Community Planning Advisory Council ("CPAC") organized in 2007

Position: The HCDA opposes the passage of this proposal as unnecessary and restrictive of the right of the general community other than represented by the CPAC to collaborate in matters involving the development of the Kakaako Makai Area.

Act 144 SLH 2009 already clearly establishes in statute that the HCDA and its successors "shall be required to collaborate with and consider the recommendations of the Kakaako makai community planning advisory council in the development, acceptance, and implementation of any plan . . .". The proposal offers no new clarity with respect to the statutory instruction to the mandate that the HCDA and its successors "collaborate with and consider" the recommendations of the CPAC.

In addition, the construction of the proposal would seem to indicate that it is the CPAC only which satisfy the requirement on Page 3 line 8 to 15 that the master plan “remain a product of the community-based planning process founded on the vision and guiding principles developed in 2008 by the Kakaako makai community planning advisory council *representing the public interest* (emphasis added) for the development, acceptance, and implementation of any future plans for the development of the Kakaako makai area of the Kakaako community development district.” It is my belief that while the statutory instruction is for the HCDA to “collaborate with and consider the *recommendations* of the CPAC,” other members of the general public cannot be precluded from offering input and recommendations for consideration by the HCDA.

Should the Legislature choose to advance this proposal, the proposal should be amended to specify that the HCDA shall collaborate with and consider the recommendations of the CPAC *and all other stakeholders, including but not limited to community groups, organizations and individuals*. With this clarification, it would become abundantly clear that the HCDA is obliged to consider the comments and recommendations of the general public and the CPAC with no exclusions.

Public Participation Protocol. However, it is my belief that this proposal even with amendment is not needed. Since the HCDA facilitated in the convening of the working group in 2006, we have made every attempt to collaborate with and consider the recommendations of the general public and the CPAC. As evidence of our willingness to “collaborate” with the general public and the CPAC, in the later part of 2009, a Public Participation Protocol was developed. This Protocol was presented to the CPAC and the HCDA by staff and has served as our program for ensuring public participation and transparency in our operations. A copy of the protocol is attached.

Ongoing Attempts to Collaborate. Webster’s dictionary defines collaboration as “to cooperate with or work with another person”. Examples of the HCDA cooperating and working with the CPAC include, but are not limited to:

- Including designated representatives of the CPAC on its Kakaako Makai Master Planning Project Team. The only other participant on the Project Team is HCDA staff and the project consultant. The Project Team establishes the process, calendar and objectives of the planning process.
- Include designated representatives of the CPAC on the Kewalo Basin Harbor Stakeholders Advisory Group. The Advisory Group is consulting

on the scope and nature of necessary improvements to the Kewalo Basin Harbor.

- Requiring the Lessee of the John Dominis Restaurant (Ocean Investments) to present their development plans to the CPAC and solicit their comments and recommendations on the proposed project.
- Providing a number of presentations to the CPAC on the remediation plans for four lots in the Kakaako Makai area. A cost and feasibility estimate has been compiled by the HCDA for the CPAC proposal. The proposal was rejected by virtue of its expected development and operations cost. The HCDA also pursued with a member of the CPAC the possibility of that entity establishing at their suggestion, a tree farm on one of the parcels to be remediated. That entity ultimately chose not to pursue that project.
- Requiring all prospective developers on lands within the Kakaako Makai Area to make presentations to the CPAC. These developers have included the Cancer Research Center and the Department of Public Safety.

In summary, it is my belief that the proposal will not further clarify or enhance public participation or collaboration as it proposes. If anything, without amendment it may have the unintended effect of establishing the CPAC as the only representative of the public interest in the Kakaako Makai Area. In addition, the protocol and collaboration that are already in place do not need to be further memorialized in statute.

Thank you for the opportunity to testify in opposition to this proposal.

Exhibit A – HCDA Public Participation Procedures Legislative Instructions

HCDA Public Participation Procedure

Legislative Instructions

HRS §206E-5.5, SLH 2006: Provides for community and public notice requirements and posting on the authority's website. This section of HRS requires the Authority to “*adopt community and public notice procedures pursuant to chapter 91*”. The purpose is to effectively engage the public and provide information on proposed development plans within the community development district.

HRS §206E-5.6, SLH 2006: Provides that “When rendering a decision regarding: (1) an amendment to any of the authority’s community development rules established pursuant to chapter 91 and section 206E-7; or (2) the “acceptance of a developer’s proposal to develop lands under the authority’s control, *the authority shall render its decision at a public hearing separate from the hearing that the proposal under paragraph (1) or (2) was presented.*” The section also prescribes public notice in accordance with section 1-28.5 and posted on the HCDA website; provides that the decision-making hearing shall not occur earlier than five business days after the notice is posted; provides that prior to rendering a decision, the authority shall provide the general public with the opportunity to testify at its decision-making hearing; and that the Senate President and the Speaker of the House receive (1) notice of any public hearing upon posting of the hearing notice and (2) a report detailing the public's reaction at the public hearing, within one week after the hearing

HRS §206E-31.5, SLH 2006: Provides that the authority is “*prohibited from (1) Selling or otherwise assigning the fee simple interest in any lands in the Kaka’ako community development district or (2) Approving any plan or proposal for any residential development in that portion of the Kaka’ako community development district makai of Ala Moana boulevard and between Kewalo basin and the foreign trade zone*”.

HCR 30, SLH 2006: While advisory, HCR 30 provides that the State “*must demonstrate its commitment to withhold its valuable lands from development for short-term gains in exchange for the long-term good of its residents and the future generations to come*” and “*serve the highest needs and aspirations of Hawaii’s people,*” and recognizes Kaka’ako Makai for its “*learn and play land uses.*” The resolution further advises the HCDA to “*immediately convene a working group of interested stakeholders, particularly the groups and individuals that have surfaced in this controversy, to meaningfully participate in the development, acceptance, and implementation of any future plans for the development of Kaka’ako Makai*”.

Act 144, SLH 2009: Provides the Kaka’ako Makai Community Advisory Council with statutory standing as advisory to the HCDA: “*In developing, accepting, and implementing any plans for the development of the Kaka’ako Makai area within the Kaka’ako Community Development District, the authority shall collaborate with and consider the recommendations of the Kaka’ako Community Planning Advisory Council, established pursuant to house concurrent resolution no. 30, regular session of 2006, and organized in 2007.*”

HCR 111, SLH 2005: While advisory, this Resolution provides that the HCDA “requested to designate and develop the state-owned land for the state cultural public market” and “the state cultural public market be located on at least ten acres of state land on the east side within the Kaka,ako makai area of the island of Oahu, Diamond Head of Ahihi Street, and include a state-run public parking lot”.

HRS §206E-34, SLH 2005: “There shall be established within the Hawaii community development authority a state cultural public market. *The cultural public market shall be located on state land within the Kaka’ako Makai area* and developed pursuant to sections 206E-31, 206E-32, and 206E-33. A public parking lot shall be included.” The statute requires that the HCDA shall “*ensure that the Hawaiian culture is the featured culture in the cultural public market*” and provides recommendations for consideration in planning the cultural public market, including that requests for proposals shall contemplate but not be limited to the inclusion of the various types of facilities and services, such as retail outlets for ethnically diverse products; venues for businesses with ethnic themes, including restaurants and other service-related businesses; theaters, stages, and arenas designed to showcase cultural performing artists as well as community performing arts; exhibition space or museums that showcase artwork created by international and local artists; and museums or other educational facilities focusing on the history and cultures of the various ethnic groups within Hawaii, including Hawaiian history.

Public Participation

1. General Procedure

Act 251, SLH 2006 (HRS§206E-5.5, 5.6) *Ensures that community advice and concerns are received and considered by the Authority.*

HRS §206E-5.5 requires that the authority shall adopt community and public notice procedures pursuant to chapter 91 that shall include at a minimum:

- (1) A means to effectively engage the community in which the authority is planning a development project to ensure that community concerns are received and considered by the authority;
- (2) The posting of the authority's proposed plans for development of community development districts, public hearing notices, and minutes of its proceedings on the authority's website; and
- (3) Any other information that the public may find useful so that it may meaningfully participate in the authority's decision-making processes.

HRS §206E-5.6 requires that:

- (a) When rendering a decision regarding (1) an amendment to any of the authority's community development rules established pursuant to Chapter 91 and Section 206E-7; or

(2) the acceptance of a developer's proposal to develop lands under the authority's control, the authority shall render its decision at a public hearing separate from the hearing that the proposal under (1) or (2) was presented.

(b) The authority shall issue a public notice in accordance with Section 1-28.5 and post the notice on its website; provided that the decision-making hearing shall not occur earlier than five business days after the notice is posted. Prior to rendering a decision, the authority shall provide the general public with the opportunity to testify at its decision-making hearing.

HRS Chapter 91 provides directions for public notice for rule making and contested case hearing. The legislative intent in HRS §§206E-5.5 & 5.6 clearly appears to be community engagement in HCDA decision making process for approving development plans within the community development district. The public participation procedure described below pertains to approval of development plans only. Public participation for rule making will be in accordance with the requirements of HRS Chapter 91.

2. Public Participation Procedure Specific to Development Plans for Kaka‘ako Makai

CPAC Formation: In November 2006, the Authority engaged Townscape, Inc. as the consultant to organize an Advisory Working Group (AWG) to participate in the Kaka‘ako Makai Area planning process. At a workshop meeting held on March 2007, the Authority stressed that the role of the AWG was advisory and that the group should provide recommendations to the Authority on the vision, guiding principles, and actions needed to be taken in future development of Kaka‘ako Makai. On July 25, 2007, the members of the AWG voted unanimously to change its name to the Kaka‘ako Makai Community Planning Advisory Council (CPAC).

The HCDA also provided a budget (\$52,800), meeting facilities, and a meeting facilitator for the CPAC. Upon the completion of the facilitation contract with the Spark M. Matsunaga Institute for Peace at the University of Hawaii, the CPAC organized and carried out its own meetings. The result of this interactive public process is a comprehensive Vision Guiding Principles document to be used as the foundation for the planning and future development of Kaka‘ako Makai as has been defined by the CPAC and presented to the Authority.

Kaka‘ako Makai Vision and Guiding Principles

The Vision and Guiding Principles for the planning and development of Kaka‘ako Makai were adopted by the Kaka‘ako Makai Community Planning Advisory Council in 2008 and presented to the HCDA to be accepted as the foundation for the planning and development of Kaka‘ako Makai. The Vision and Guiding Principles take into consideration HRS §206E-34 and other statutory citations while clarifying intent of public use in the greater public interest. *The Vision and Guiding Principles for Kaka‘ako Makai are incorporated herein by this reference and attached hereto.*

Developing the Kaka‘ako Makai Master Plan

Pursuant to Act 144, the HCDA will include the CPAC as a member of its project team to develop a master plan for Kakaako Makai. The master plan will incorporate the vision and guiding principles developed by the CPAC. The objective of the master plan is to develop a long-range plan for Kakaako Makai and identify future development projects in the area. The master plan will also address environmental sustainability as well as economic viability of future development projects.

The CPAC will be afforded the status of a team member working along with the HCDA staff, the HCDA’s consultants and the general community in completing the master plan. Specific steps in the master planning process include the following tasks: information gathering/planning; programming, community workshops and charettes; developing conceptual master plan alternatives and selecting a preferred master plan; and evaluating the preferred master plan for environmental sustainability and economic viability.

The CPAC representatives on the master planning team will be responsible for attending all master planning meetings and keeping their organization informed. The CPAC representatives will be accorded the opportunity as a member of the project team to comment on the planning work being performed by the consultant and the overall project. However, HCDA staff and not CPAC representatives will administer the consultant contract and supervise and direct the consultant or its staff.

Act 144 - Collaborate with and consider the recommendations of CPAC for development projects in Kakaako Makai:

The objective of these procedures is to ensure that the CPAC is afforded regular and consistent opportunities to provide advice and comment on HCDA projects and activities in Kakaako Makai in accordance with legislative instructions and directions. However, the participation of the CPAC will not replace the requirement that HCDA also solicit general public comment and input.

Interim, Operational, Repair and Maintenance Projects - Interim projects in the Kakaako Makai include the projects such as the remediation of lots within the Makai area (as directed by the Department of Health) where the permanent highest and best use of the parcel (as proposed by the Makai Area Master Plan) is not being developed. Operational projects or actions include the ratification of lease or other tenancy issues and other day to day operational activities and projects that do not trigger the public notice and hearing requirements of HRS §206E-5.6. Repair and Maintenance Projects include projects such as the ongoing Kakaako Waterfront, Kewalo Basin and Gateway Parks repair projects previously authorized by the Authority which also do not trigger the public notice and hearing requirements of HRS §206E-5.6.

HCDA staff will provide updates to the CPAC at its monthly meetings. The HCDA staff report(s) (compiled before each Authority meeting) providing information or recommending action on Interim, Operational, Repair and Maintenance Projects will be provided to the Authority and the CPAC at the same time. These report(s) will be provided to the Authority and the CPAC on the Wednesday prior to the Authority meeting. The CPAC may then provide its comments at the Authority meeting on the following Wednesday.

Summary of the Interim, Operational, Repair and Maintenance Project Public Process.

1. Staff will provide monthly activity reports to CPAC at its meeting describing projects or activities in the Makai area. CPAC may request clarification of or elaboration on a particular project from HCDA staff.
2. Staff report(s) on projects in the Kakaako Makai area prepared for Authority action will be shared with the CPAC one week prior to the Authority meeting date.
3. Staff simultaneously posts the report on HCDA web site and solicits public comments.
4. At the Authority meeting, CPAC may present its comments, if any. Staff also reports to the Authority any public comments received on the matter.

Development Projects Proposed for the Kakaako Makai Area. In accordance with HRS §206E-5.6, the HCDA will follow the public notice and hearing procedures specified by the Legislature where the Authority is considering “(2) The acceptance of a developer’s proposal to develop lands under the authority’s control”.

Summary of the Development Project Public Process. In accordance with HRS §§206E-5.5 & 5.6, HCDA staff proposes the following multi-part public participation process in considering development plans within the community development district.

1. An informational presentation of the development plan or proposal is made at a scheduled Authority meeting by the developer or HCDA staff.
2. Any materials submitted by the developer will be distributed to the members of the Authority and the CPAC at the same time.
3. After the informational presentation, a copy of the development plan is made available to the public on the HCDA website as well as at the HCDA office for public review and comment.
4. Once the development plan is made available to the public, public comment will be solicited from the CPAC and the general public by convening a public meeting, mass mail out, telephone comment hot-line, or HCDC website or through a combination of all or some of these means.
5. Once CPAC and public comments are received, HCDA staff will prepare a report on the development proposal, summarize the CPAC and public comment and present it at a scheduled Authority meeting.

6. Notice for the Authority's Action Meeting on the developer's proposal will be published according to the requirements of Chapter 91 HRS. The notice will invite public comment on the developer's proposal and/or the HCDA staff report. Notice of the Authority's Action Meeting will also be provided to the Senate President and the Speaker of the House.
7. The HCDA staff report will be published on the HCDA web site and distributed to the members of the Authority and the CPAC at the same time.
8. At its action meeting, the Authority will again solicit public comments prior to rendering its decision.
9. A report summarizing the public comments received on the developer's proposal and the Authority's action will be compiled after the hearing is completed and submitted to the Senate President and the Speaker of the House with a copy of the report also provided to the CPAC.

Contested Case Proceedings. Where the administrative rules of the HCDA require it, state law specifies it, or a petitioner requests a contested case hearing process, the HCDA will convene such a forum and process. In this situation, the public participation and comment process will have to be integrated into the contested case hearing process. Since as of September 2009, the HCDA has not established contested case hearing rules, each contested case hearing request will have to be considered individually and the Authority will have to adopt specific rules and procedures for each such situation.

The intervention of the CPAC or any individual or organization in the contested case proceeding will not be automatic, but will instead be governed by the procedures established by in the HCDA's administrative rules or by the Authority in each situation.

CPAC Participation in Kewalo Basin Harbor Issues

While the CPAC sphere of interest includes the Kewalo Basin Harbor, it is important to note that the HCDA has formed its own specific advisory group for Kewalo Basin Harbor that includes various harbor stakeholders. The separate advisory group was formed because the harbor represents a unique environment and stakeholders which is separate and apart from that of the CPAC. However, it is important to note that a CPAC representative is included in the standing membership of the Kewalo Basin Harbor advisory group.

Harbor issues, complaints and operational issues will be discussed and advice sought at the harbor users meeting. Outcomes of these meeting will be shared with the Authority on a regular basis and the Authority may take action, from time to time, on some of the issues presented to the Authority for action. The CPAC will have a separate opportunity (along with the general public) for providing its own comments or advice to the Authority at its regular hearings.

Any development project within the harbor, whether a part of the master plan or independent of it, will follow the public participation process described above for Development Projects in the Kakaako Makai Area.

From: Nancy L. Hedlund Ph.D. [nancyhedlund@yahoo.com]
Sent: Monday, February 22, 2010 7:33 AM
To: WTLTestimony; Sen. Clayton Hee; Sen. Jill Tokuda; Sen. Brickwood Galuteria; Sen. Carol Fukunaga
Subject: TESTIMONY ON SB 2913_WTL_02-24-10

Aloha Senators,

Thank you for taking testimony on SB 2913 to address the widespread expectations that the HCDA should collaborate with the community in comprehensive planning for Kaka'ako makai. It is unfortunate that such legislation is needed, but it is -- and I urge support for this important confirmation of how planning must proceed for this important shoreline area.

I am a member of the Kaka'ako makai Community Planning Advisory Council since its beginning. I do not speak for CPAC but I speak as a vitally concerned citizen who has contributed to the "community voice" that needs to remain in place on behalf of Kaka'ako makai. Prior to CPAC, I was one of the Neighborhood Board 11 members who identified and publicized HCDA's lack of collaboration with the community. We are coming from a long-standing history of seeking this collaboration and having to regularly take strong stands to confirm, assure and support this important requirement for collaboration that was placed on HCDA.

This has not been an easy path.

It is vital that the planning process for Kaka'ako makai be comprehensive and that it be founded on the CPAC process, community engagement, and Vision and Guiding Principles. Many committed and informed citizens have been involved in this community advisement process. Many citizens have brought professional perspectives to complement the ideas and arguments of informed citizens about the future of this shoreline area. *This work deserves respect for its quality and its vital commitment.*

We are concerned that future actions may jeopardize Kaka'ako makai's future as a result of efforts to fragment the achievements to date and seek to create opportunities for development aimed primarily at economic objectives.

We are most grateful for the assurances built into SB 2913 and urge, as well, the inclusion of CPAC's Vision and Guiding Principles.

Mahalo for your continuing support and for the hearing on this important legislation.

Nancy Hedlund
CPAC Member
Honolulu

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 23, 2010 12:46 PM
To: WTLTestimony
Cc: RawcoHI@cs.com
Subject: Testimony for SB2913 on 2/24/2010 2:45:00 PM

Testimony for WTL 2/24/2010 2:45:00 PM SB2913

Conference room: 229
Testifier position: support
Testifier will be present: Yes
Submitted by: Reg White
Organization: Individual
Address: 1540 S. King St. Honolulu, HI
Phone: 808-222-9794
E-mail: RawcoHI@cs.com
Submitted on: 2/23/2010

Comments:

I support the testimony as submitted by Dr. Nancy Hedlund, who says it far better than I ever could. A copy is pasted below for your information.

Sincerely,

Reg White
Kakaako Makai businessman

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Nancy Hedlund
CPAC Member
Honolulu

TESTIMONY
SB 2913
(END)