
A BILL FOR AN ACT

RELATING TO KAKAAKO.

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

1 SECTION 1. Chapter 206E, Hawaii Revised Statutes, is
2 amended by adding a new section to part II to be appropriately
3 designated and to read as follows:

4 "§206E- Transfer of development rights. (a) Subject to
5 adoption of rules by the authority pursuant to chapter 91 and
6 the conditions in this section, an owner of real property in
7 Kakaako makai may convey all or a portion of the transferable
8 development rights appurtenant to that real property to an owner
9 of real property in Kakaako mauka.

10 (b) Prior to the conveyance of transferable development
11 rights pursuant to subsection (a), the sending real property
12 owner, the receiving real property owner, and their respective
13 lienholders, if any, shall submit an application for the
14 conveyance to the authority on the form provided by the
15 authority and shall meet all other conditions required by the
16 authority, pursuant to rules adopted by the authority.

17 (c) Transferable development rights conveyed pursuant to
18 this section shall be interests in real property and shall be



1 considered as such for purposes of conveyance and taxation.
2 Once an application under subsection (b) has been approved by
3 the authority and a deed conveying the transferable development
4 rights to the receiving real property owner has been recorded in
5 the bureau of conveyances or the land court, as applicable, the
6 transferable development rights shall vest in the grantee and
7 thereafter may be transferred to a successor in interest. Any
8 transfer of the development rights to a different property in
9 Kakaako mauka shall be subject to review by the authority
10 pursuant to this section and any rules adopted thereto.

11 (d) Concurrently with the recordation of the deed
12 conveying the sending real property's transferable development
13 rights to the receiving real property as described in subsection
14 (c), the owner of the sending real property shall record in the
15 bureau of conveyances or the land court, as applicable, a
16 declaration that runs with the land that shall permanently
17 remove the transferable development rights from the sending real
18 property. The declaration shall also contain a description of
19 residual uses of the sending real property. The declaration
20 shall be executed by the sending real property owner and
21 countersigned by the authority.



1 (e) No amendment to the development plan for Kakaako
2 mauka, nor any amendments to rules governing zoning for Kakaako
3 mauka initiated by the authority that eliminate or materially
4 restrict, reduce, or modify the uses or the density of use
5 permitted in Kakaako mauka applicable to any receiving real
6 property to which transferable development rights have been
7 conveyed shall be effective with respect to the property unless
8 there has been a mistake, fraud, or change in circumstances
9 substantially affecting the public health, safety, or welfare.

10 (f) The authority shall adopt rules pursuant to chapter 91
11 that establish procedures, methods, and standards for the
12 implementation of this section."

13 SECTION 2. Chapter 501, Hawaii Revised Statutes, is
14 amended by adding a new section to the part designated
15 "Voluntary Dealing with Land after Original Registration" to be
16 appropriately designated and to read as follows:

17 "§501- Transfer of transferable development rights.
18 Notwithstanding section 501-109, transferable development
19 rights, pursuant to section 206E- , shall be considered an
20 appurtenant real property right that runs with the land, and
21 shall be reflected on the title of the registered land of the
22 receiving real property, as defined in section 206E-2, in this



1 manner. A declaration filed in accordance with section 206E-
2 (d) shall be treated as an encumbrance on the title of the
3 registered land of the sending real property, as defined in
4 section 206E-2, for purposes of this chapter. The instrument of
5 conveyance shall follow the requirements set forth in section
6 501-103."

7 SECTION 3. Section 206E-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§206E-2 Definitions. As used in this chapter, the
10 following words and terms shall have the following meanings
11 unless the context shall indicate another or different meaning
12 or intent:

13 [~~(1)~~] "Authority" means the Hawaii community development
14 authority established by section 206E-3.

15 [~~(2)~~] "County" means any county of the State.

16 "Kakaako makai" means that portion of the Kakaako community
17 development district, established by section 206E-32, that is
18 bounded by Ala Moana Boulevard, inclusive from Punchbowl Street
19 to Piikoi Street, from Piikoi Street to its intersection with
20 the Ewa boundary of Ala Moana Park; the Ewa boundary of Ala
21 Moana Park from its intersection with Ala Moana Boulevard to the
22 shoreline; the shoreline from its intersection with the Ewa



1 boundary of Ala Moana Park to the property line between Pier 2
2 and Pier 4 from its intersection with the shoreline to Ala Moana
3 Boulevard; and Ala Moana Boulevard from its intersection with
4 the property line between lands identified by Pier 2 and Pier 4
5 to Punchbowl Street. The makai area also includes that parcel
6 of land situated mauka of Piers 6 and 7 and makai of Nimitz
7 Highway, being the site for the existing Hawaiian Electric power
8 plant and related facilities.

9 "Kakaako mauka" means that portion of the Kakaako community
10 development district, established by section 206E-32, that is
11 bounded by King Street; Piikoi Street from its intersection with
12 King Street to Ala Moana Boulevard; Ala Moana Boulevard,
13 exclusive, from Piikoi Street to its intersection with Punchbowl
14 Street; and Punchbowl Street to its intersection with King
15 Street.

16 [~~3~~] "Local governing body" means the county council.

17 [~~4~~] "Project" means a specific work or improvement,
18 including real and personal properties, or any interest therein,
19 acquired, owned, constructed, reconstructed, rehabilitated, or
20 improved by the authority, including a residential project, a
21 redevelopment project, or a commercial project, all as defined
22 herein, or any combination thereof, which combination shall



1 hereinafter be called and known as a "multipurpose project".

2 For purposes of this definition, a project includes the

3 following:

4 [~~A~~] (1) "Residential project" means a project or
5 that portion of a multipurpose project, including
6 residential dwelling units, designed and intended for
7 the purpose of providing housing and such facilities
8 as may be incidental or appurtenant thereto;

9 [~~B~~] (2) "Redevelopment project" means an
10 undertaking for the acquisition, clearance,
11 replanning, reconstruction, and rehabilitation or a
12 combination of these and other methods, of an area for
13 a residential project, for an incidental commercial
14 project, and for other facilities incidental or
15 appurtenant thereto, pursuant to and in accordance
16 with this chapter. The terms "acquisition, clearance,
17 replanning, reconstruction, and rehabilitation" shall
18 include renewal, redevelopment, conservation,
19 restoration, or improvement, or any combination
20 thereof; and

21 [~~C~~] (3) "Commercial project" means an undertaking
22 involving commercial or light industrial development,



1 which includes a mixed use development where
2 commercial or light industrial facilities may be built
3 into, adjacent to, under or above residential units.

4 ~~[(5)]~~ "Project cost" means the total of all costs incurred
5 by the authority in carrying out all undertakings which it deems
6 reasonable and necessary for the development of a project
7 including but not limited to~~[+]~~ studies; surveys; plans;
8 specifications; architectural, engineering, or any other
9 development related services; acquisition of land and any
10 improvement thereon; site preparation and development;
11 construction; reconstruction; rehabilitation; the necessary
12 expenses in administering the chapter; the cost of financing the
13 project; and relocation costs.

14 ~~[(6)]~~ "Public agency" means any office, department, board,
15 commission, bureau, division, public corporation agency, or
16 instrumentality of the federal, state, or county government.

17 ~~[(7)]~~ "Public facilities" includes streets, utility and
18 service corridors, and utility lines where applicable,
19 sufficient to adequately service developable improvements in the
20 district, sites for schools, parks, parking garage, sidewalks,
21 pedestrian ways, and other community facilities. "Public
22 facilities" shall also include public highways, as defined ~~[by~~



1 ~~statute,~~ in section 264-1, storm drainage systems, water
2 systems, street lighting systems, off-street parking facilities,
3 and sanitary sewerage systems.

4 ~~[-8-]~~ "Qualified person" includes any individual,
5 partnership, corporation or any public agency, possessing the
6 competence, expertise, experience, and resources, including
7 financial, personnel, and tangible resources, required for the
8 purposes of the project and such other qualifications as may be
9 deemed desirable by the authority in administering the chapter.

10 ~~[-9-]~~ "Real property" means lands, structures, and
11 interests in land, including lands under water and riparian
12 rights, space rights, transferable development rights, and air
13 rights and any and all other things and rights usually included
14 within the term. Real property also means any and all interests
15 in such property less than full title, such as easements,
16 incorporeal hereditaments and every estate, interest, or right,
17 legal or equitable, including terms for years and liens thereon
18 by way of judgments, mortgages, or otherwise.

19 "Receiving real property" means the real property to which
20 transferable development rights are transferred.

21 "Sending real property" means the real property from which
22 transferable development rights are removed.



1 "Transferable development rights" means the development
2 potential of real property that can be removed from the real
3 property to which it is appurtenant and transferred to other
4 real property to increase the amount of development allowed on
5 the other real property. For purpose of this definition,
6 development potential includes the permitted uses and density of
7 development that would be allowed on the sending real property
8 under rules adopted by the authority that are in effect on the
9 date a transfer is made."

10 SECTION 4. Section 206E-4, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§206E-4 Powers; generally.** Except as otherwise limited
13 by this chapter, the authority may:

- 14 (1) Sue and be sued;
- 15 (2) Have a seal and alter the same at pleasure;
- 16 (3) Make and execute contracts and all other instruments
17 necessary or convenient for the exercise of its powers
18 and functions under this chapter;
- 19 (4) Make and alter bylaws for its organization and
20 internal management;



- 1 (5) Make rules with respect to its projects, operations,
2 properties, and facilities, which rules shall be in
3 conformance with chapter 91;
- 4 (6) Through its executive director appoint officers,
5 agents, and employees, prescribe their duties and
6 qualifications, and fix their salaries, without regard
7 to chapter 76;
- 8 (7) Prepare or cause to be prepared a community
9 development plan for all designated community
10 development districts;
- 11 (8) Acquire, reacquire, or contract to acquire or
12 reacquire by grant or purchase real, personal, or
13 mixed property or any interest therein~~[, to]~~,
14 including transferable development rights; or own,
15 hold, clear, improve, ~~[and]~~ rehabilitate, ~~[and to]~~
16 sell, assign, exchange, transfer, convey, lease, or
17 otherwise dispose of or encumber the same;
- 18 (9) Acquire or reacquire by condemnation real, personal,
19 or mixed property or any interest therein for public
20 facilities, including but not limited to streets,
21 sidewalks, parks, schools, and other public
22 improvements;



1 (10) By itself, or in partnership with qualified persons,
2 acquire, reacquire, construct, reconstruct,
3 rehabilitate, improve, alter, or repair or provide for
4 the construction, reconstruction, improvement,
5 alteration, or repair of any project; own, hold, sell,
6 assign, transfer, convey, exchange, lease, or
7 otherwise dispose of or encumber any project, and in
8 the case of the sale of any project, accept a purchase
9 money mortgage in connection therewith; and repurchase
10 or otherwise acquire any project which the authority
11 has [~~theretefere~~] sold or otherwise conveyed,
12 transferred, or disposed of;

13 (11) Arrange or contract for the planning, replanning,
14 opening, grading, or closing of streets, roads,
15 roadways, alleys, or other places, or for the
16 furnishing of facilities or for the acquisition of
17 property or property rights or for the furnishing of
18 property or services in connection with a project;

19 (12) Grant options to purchase any project or to renew any
20 lease entered into by it in connection with any of its
21 projects, on such terms and conditions as it deems
22 advisable;



- 1 (13) Prepare or cause to be prepared plans, specifications,
2 designs, and estimates of costs for the construction,
3 reconstruction, rehabilitation, improvement,
4 alteration, or repair of any project, and from time to
5 time [tē] modify such plans, specifications, designs,
6 or estimates;
- 7 (14) Provide advisory, consultative, training, and
8 educational services, technical assistance, and advice
9 to any person, partnership, or corporation, either
10 public or private, to carry out the purposes of this
11 chapter, and engage the services of consultants on a
12 contractual basis for rendering professional and
13 technical assistance and advice;
- 14 (15) Procure insurance against any loss in connection with
15 its property and other assets and operations in such
16 amounts and from such insurers as it deems desirable;
- 17 (16) Contract for and accept gifts or grants in any form
18 from any public agency or from any other source;
- 19 (17) Do any and all things necessary to carry out its
20 purposes and exercise the powers given and granted in
21 this chapter; and



1 (18) Allow satisfaction of any affordable housing
2 requirements imposed by the authority upon any
3 proposed development project through the construction
4 of reserved housing, as defined in section 206E-101,
5 by a person on land located outside the geographic
6 boundaries of the authority's jurisdiction; provided
7 that the authority shall not permit any person to make
8 cash payments in lieu of providing reserved housing,
9 except to account for any fractional unit that results
10 after calculating the percentage requirement against
11 residential floor space or total number of units
12 developed. The substituted housing shall be located
13 on the same island as the development project and
14 shall be substantially equal in value to the required
15 reserved housing units that were to be developed on
16 site. The authority shall establish the following
17 priority in the development of reserved housing:
18 (A) Within the community development district;
19 (B) Within areas immediately surrounding the
20 community development district;
21 (C) Areas within the central urban core;



1 (D) In outlying areas within the same island as the
2 development project.

3 The Hawaii community development authority shall
4 adopt rules relating to the approval of reserved
5 housing that are developed outside of a community
6 development district. The rules shall include, but
7 are not limited to, the establishment of guidelines to
8 ensure compliance with the above priorities."

9 SECTION 5. Section 206E-31.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§206E-31.5[+] **Prohibitions.** Anything contained in
12 this chapter to the contrary notwithstanding, the authority is
13 prohibited from:

14 (1) Selling or otherwise assigning the fee simple interest
15 in any lands in the Kakaako community development
16 district to which the authority in its corporate
17 capacity holds title, except with respect to:

- 18 (A) Utility easements;
- 19 (B) Remnants as defined in section 171-52;
- 20 (C) Grants to any state or county department or
21 agency; [~~or~~]
- 22 (D) Transferable development rights; or



- 1 ~~[-D-]~~ (E) Private entities for purposes of any
- 2 easement, roadway, or infrastructure
- 3 improvements; or
- 4 (2) Approving any plan or proposal for any residential
- 5 development in ~~[that portion of the Kakaako community~~
- 6 ~~development district makai of Ala Moana boulevard and~~
- 7 ~~between Kewalo basin and the foreign trade zone.]~~
- 8 Kakaako makai."

9 SECTION 6. The Hawaii community development authority

10 shall develop and adopt rules pursuant to chapter 91, Hawaii

11 Revised Statutes, to implement this Act. The rules shall

12 include the following:

- 13 (1) The form of and procedure for recording the
- 14 instruments necessary to sever transferable
- 15 development rights from the sending real property and
- 16 to affix the transferable development rights to the
- 17 receiving real property. The rules shall require that
- 18 these instruments shall be executed by the affected
- 19 property owners and any lienholders. The instrument
- 20 shall identify the transferable development rights
- 21 being transferred and the legal descriptions of the
- 22 sending real property and the receiving real property;



- 1 (2) A methodology to address the preservation of the
2 character of the sending real property and assure that
3 the prohibitions against the use and development of
4 the sending real property shall bind the landowner and
5 every successor in interest to the landowner;
- 6 (3) A list of residual uses for the sending real
7 properties when all transferable development rights
8 have been conveyed;
- 9 (4) A system for monitoring the severance, ownership,
10 assignment, and transfer of transferable development
11 rights;
- 12 (5) The identification of parcels, if any, within Kakaako
13 mauka that are inappropriate as receiving real
14 properties;
- 15 (6) Permitted uses and the maximum increases in density in
16 Kakaako mauka;
- 17 (7) The minimum acreage of a sending real property and the
18 minimum reduction in density of the sending real
19 property that may be conveyed in a transfer of
20 development rights;
- 21 (8) An assessment of the infrastructure in Kakaako mauka
22 that identifies the ability of the area to accept



1 increases in density and the Hawaii community
2 development authority's plans to provide necessary
3 utility services within Kakaako mauka;

4 (9) A procedure whereby the Hawaii community development
5 authority may review and approve the conveyance prior
6 to its completion to determine whether the transaction
7 complies with the provisions of this Act and any rules
8 adopted pursuant hereto. The rules shall require the
9 department of budget and finance to contract with a
10 Hawaii financial institution, as defined in section
11 412:1-109, Hawaii Revised Statutes, to oversee any
12 transfer of development rights pursuant to this Act.
13 An application by the affected parties shall be deemed
14 approved upon:

15 (A) The determination of compliance with this Act and
16 any rules adopted pursuant to this Act by both
17 the Hawaii community development authority and
18 the Hawaii financial institution contracted
19 pursuant to this paragraph; and

20 (B) Upon recordation of the instrument transferring
21 the development rights in the bureau of
22 conveyances or the land court, as applicable;



1 (10) The allowance for non-residential density in Kakaako
2 makai to be converted to an increase in the square
3 feet of a residential, commercial, industrial, mixed-
4 use, or other use on the receiving real property; and

5 (11) Such other provisions as the Hawaii community
6 development authority deems necessary to aid in the
7 implementation of the provisions of this Act.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2050.

11



Report Title:

HCDA; Kakaako; Conveyance of Transferable Development Rights

Description:

Allows the conveyance of transferable development rights from landowners in Kakaako makai to landowners in Kakaako mauka, subject to approval by the Hawaii community development authority. Requires the Hawaii community development authority to adopt rules to regulate and authorize these conveyances; rules shall provide for oversight of the conveyances by a Hawaii financial institution. Effective 7/1/2050. (SD1)

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