

JAN 21 2011

S.B. NO. 683

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 makai of Ala Moana boulevard and between
18 Kewalo basin and the foreign trade zone.

19 "Kakaako mauka" means that portion of the Kakaako community
20 development district mauka of Ala Moana boulevard and between
21 Kewalo basin and the foreign trade zone.

22 [~~3~~] "Local governing body" means the county council.



1 ~~[(4)]~~ "Project" means a specific work or improvement,
2 including real and personal properties, or any interest therein,
3 acquired, owned, constructed, reconstructed, rehabilitated, or
4 improved by the authority, including a residential project, a
5 redevelopment project, or a commercial project, all as defined
6 herein, or any combination thereof, which combination shall
7 hereinafter be called and known as a "multipurpose project".
8 For purposes of this definition, a project includes the
9 following:

10 ~~[(A)]~~ (1) "Residential project" means a project or
11 that portion of a multipurpose project, including
12 residential dwelling units, designed and intended for
13 the purpose of providing housing and such facilities
14 as may be incidental or appurtenant thereto;

15 ~~[(B)]~~ (2) "Redevelopment project" means an
16 undertaking for the acquisition, clearance,
17 replanning, reconstruction, and rehabilitation or a
18 combination of these and other methods, of an area for
19 a residential project, for an incidental commercial
20 project, and for other facilities incidental or
21 appurtenant thereto, pursuant to and in accordance
22 with this chapter. The terms "acquisition, clearance,



1 replanning, reconstruction, and rehabilitation" shall
2 include renewal, redevelopment, conservation,
3 restoration, or improvement, or any combination
4 thereof;

5 [~~(c)~~] (3) "Commercial project" means an undertaking
6 involving commercial or light industrial development,
7 which includes a mixed use development where
8 commercial or light industrial facilities may be built
9 into, adjacent to, under or above residential units.

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

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



1 [~~7~~] "Public facilities" includes streets, utility and
2 service corridors, and utility lines where applicable,
3 sufficient to adequately service developable improvements in the
4 district, sites for schools, parks, parking garage, sidewalks,
5 pedestrian ways, and other community facilities. "Public
6 facilities" shall also include public highways, as defined by
7 statute, storm drainage systems, water systems, street lighting
8 systems, off-street parking facilities, and sanitary sewerage
9 systems.

10 [~~8~~] "Qualified person" includes any individual,
11 partnership, corporation or any public agency, possessing the
12 competence, expertise, experience, and resources, including
13 financial, personnel and tangible resources, required for the
14 purposes of the project and such other qualifications as may be
15 deemed desirable by the authority in administering the chapter.

16 [~~9~~] "Real property" means lands, structures, and
17 interests in land, including lands under water and riparian
18 rights, space rights, transferable development rights, and air
19 rights and any and all other things and rights usually included
20 within the term. Real property also means any and all interests
21 in such property less than full title, such as easements,
22 incorporeal hereditaments and every estate, interest, or right,



1 legal or equitable, including terms for years and liens thereon
2 by way of judgments, mortgages, or otherwise.

3 "Receiving real property" means the real property to which
4 transferable development rights are transferred.

5 "Sending real property" means the real property from which
6 transferable development rights are removed.

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

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

18 **"§206E-4 Powers; generally.** Except as otherwise limited
19 by this chapter, the authority may:

20 (1) Sue and be sued;

21 (2) Have a seal and alter the same at pleasure;



- 1 (3) Make and execute contracts and all other instruments
2 necessary or convenient for the exercise of its powers
3 and functions under this chapter;
- 4 (4) Make and alter bylaws for its organization and
5 internal management;
- 6 (5) Make rules with respect to its projects, operations,
7 properties, and facilities, which rules shall be in
8 conformance with chapter 91;
- 9 (6) Through its executive director appoint officers,
10 agents, and employees, prescribe their duties and
11 qualifications, and fix their salaries, without regard
12 to chapter 76;
- 13 (7) Prepare or cause to be prepared a community
14 development plan for all designated community
15 development districts;
- 16 (8) Acquire, reacquire, or contract to acquire or
17 reacquire by grant or purchase real, personal, or
18 mixed property or any interest therein[+], including
19 transferable development rights; to own, hold, clear,
20 improve, and rehabilitate, and to sell, assign,
21 exchange, transfer, convey, lease, or otherwise
22 dispose of or encumber the same;



- 1 (9) Acquire or reacquire by condemnation real, personal,
2 or mixed property or any interest therein for public
3 facilities, including but not limited to streets,
4 sidewalks, parks, schools, and other public
5 improvements;
- 6 (10) By itself, or in partnership with qualified persons,
7 acquire, reacquire, construct, reconstruct,
8 rehabilitate, improve, alter, or repair or provide for
9 the construction, reconstruction, improvement,
10 alteration, or repair of any project; own, hold, sell,
11 assign, transfer, convey, exchange, lease, or
12 otherwise dispose of or encumber any project, and in
13 the case of the sale of any project, accept a purchase
14 money mortgage in connection therewith; and repurchase
15 or otherwise acquire any project which the authority
16 has theretofore sold or otherwise conveyed,
17 transferred, or disposed of;
- 18 (11) Arrange or contract for the planning, replanning,
19 opening, grading, or closing of streets, roads,
20 roadways, alleys, or other places, or for the
21 furnishing of facilities or for the acquisition of



- 1 property or property rights or for the furnishing of
2 property or services in connection with a project;
- 3 (12) Grant options to purchase any project or to renew any
4 lease entered into by it in connection with any of its
5 projects, on such terms and conditions as it deems
6 advisable;
- 7 (13) Prepare or cause to be prepared plans, specifications,
8 designs, and estimates of costs for the construction,
9 reconstruction, rehabilitation, improvement,
10 alteration, or repair of any project, and from time to
11 time to modify such plans, specifications, designs, or
12 estimates;
- 13 (14) Provide advisory, consultative, training, and
14 educational services, technical assistance, and advice
15 to any person, partnership, or corporation, either
16 public or private, to carry out the purposes of this
17 chapter, and engage the services of consultants on a
18 contractual basis for rendering professional and
19 technical assistance and advice;
- 20 (15) Procure insurance against any loss in connection with
21 its property and other assets and operations in such
22 amounts and from such insurers as it deems desirable;



- 1 (16) Contract for and accept gifts or grants in any form
- 2 from any public agency or from any other source;
- 3 (17) Do any and all things necessary to carry out its
- 4 purposes and exercise the powers given and granted in
- 5 this chapter; and
- 6 (18) Allow satisfaction of any affordable housing
- 7 requirements imposed by the authority upon any
- 8 proposed development project through the construction
- 9 of reserved housing, as defined in section 206E-101,
- 10 by a person on land located outside the geographic
- 11 boundaries of the authority's jurisdiction; provided
- 12 that the authority shall not permit any person to make
- 13 cash payments in lieu of providing reserved housing,
- 14 except to account for any fractional unit that results
- 15 after calculating the percentage requirement against
- 16 residential floor space or total number of units
- 17 developed. The substituted housing shall be located
- 18 on the same island as the development project and
- 19 shall be substantially equal in value to the required
- 20 reserved housing units that were to be developed on
- 21 site. The authority shall establish the following
- 22 priority in the development of reserved housing:



- 1 (A) Within the community development district;
- 2 (B) Within areas immediately surrounding the
- 3 community development district;
- 4 (C) Areas within the central urban core;
- 5 (D) In outlying areas within the same island as the
- 6 development project.

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

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

15 "[+]§206E-31.5[+] **Prohibitions.** Anything contained in
16 this chapter to the contrary notwithstanding, the authority is
17 prohibited from:

- 18 (1) Selling or otherwise assigning the fee simple interest
- 19 in any lands in the Kakaako community development
- 20 district to which the authority in its corporate
- 21 capacity holds title, except with respect to:

- 22 (A) Utility easements;



- 1 (B) Remnants as defined in section 171-52;
- 2 (C) Grants to any state or county department or
- 3 agency; [øø]
- 4 (D) Transferable development rights; or
- 5 [~~(D)~~] (E) Private entities for purposes of any
- 6 easement, roadway, or infrastructure
- 7 improvements; or
- 8 (2) Approving any plan or proposal for any residential
- 9 development in [~~that portion of the Kakaako community~~
- 10 ~~development district makai of Ala Moana boulevard and~~
- 11 ~~between Kewalo basin and the foreign trade zone.]~~
- 12 Kakaako mauka."

13 SECTION 6. The Hawaii community development authority
 14 shall develop and adopt rules pursuant to chapter 91, Hawaii
 15 Revised Statutes, to implement this Act. The rules shall
 16 include the following:

- 17 (1) The form of and procedure for recording the
- 18 instruments necessary to sever transferable
- 19 development rights from the sending real property and
- 20 to affix the transferable development rights to the
- 21 receiving real property. The rules shall require that
- 22 these instruments shall be executed by the affected



1 property owners and any lienholders. The instrument
2 shall identify the transferable development rights
3 being transferred and the legal descriptions of the
4 sending real property and the receiving real property;

5 (2) A methodology to address the preservation of the
6 character of the sending real property and assure that
7 the prohibitions against the use and development of
8 the sending real property shall bind the landowner and
9 every successor in interest to the landowner;

10 (3) A list of residual uses for the sending real
11 properties when all transferable development rights
12 have been conveyed;

13 (4) A system for monitoring the severance, ownership,
14 assignment, and transfer of transferable development
15 rights;

16 (5) The identification of parcels, if any, within Kakaako
17 mauka that are inappropriate as receiving real
18 properties;

19 (6) Permitted uses and the maximum increases in density in
20 Kakaako mauka;

21 (7) The minimum acreage of a sending real property and the
22 minimum reduction in density of the sending real



- 1 property that may be conveyed in a transfer of
2 development rights;
- 3 (8) An assessment of the infrastructure in Kakaako Mauka
4 that identifies the ability of the area to accept
5 increases in density and the Hawaii community
6 development authority's plans to provide necessary
7 utility services within Kakaako mauka;
- 8 (9) A procedure whereby the Hawaii community development
9 authority may review and approve the conveyance prior
10 to its completion to determine whether the transaction
11 complies with the provisions of this Act and any rules
12 adopted pursuant hereto. An application by the
13 affected parties shall be deemed approved upon the
14 determination of compliance with this Act and any
15 rules adopted pursuant hereto and upon recordation of
16 the instrument transferring the development rights in
17 the bureau of conveyances or the land court, as
18 applicable;
- 19 (10) The allowance for non-residential density in Kakaako
20 makai to be converted to an increase in the square
21 feet of a residential, commercial, industrial, mixed-
22 use, or other use on the receiving real property; and



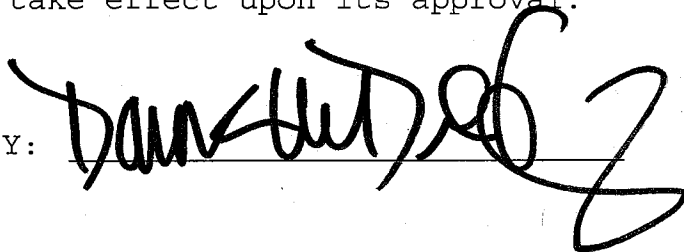
1 (11) Such other provisions as the Hawaii community
2 development authority deems necessary to aid in the
3 implementation of the provisions of this Act.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "Dan Claitor", is written over a horizontal line that follows the text "INTRODUCED BY:". The signature is highly cursive and extends to the right of the line.

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.

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

