



SB 906

Measure Title:	RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.
Report Title:	Hawaii Community Development Authority; Public Hearings; Contested Cases
Description:	<p>Adds a definition for "contested case". Amends the deadline to intervene in a proceeding to accept a developer's proposal to thirty days after the first public hearing on a developer's proposal. Requires HCDA to make certain findings on the proposed project and its impacts, including concerns expressed by community residents and stakeholders, in order to approve the proposed development. Requires developers to abide by all representations and commitments made in the permit application process.</p>
Companion:	
Package:	None
Current Referral:	HSH, JDL
Introducer(s):	CHUN OAKLAND



SB906

RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

Senate Committee on Human Services and Housing

January 31, 2015

1:15 p.m.

Room 229

The Administration of the Office of Hawaiian Affairs (OHA) will recommend to the Board of Trustees a position of **COMMENT** for SB906, which tasks the Hawai'i Community Development Authority (HCDA) and its applicants with ambiguous and potentially unreasonable standards for approving new development proposals.

In 2012, the Legislature enacted Act 15 (Session Laws of Hawai'i 2012), which conveyed in fee simple approximately thirty acres of land in Kaka'ako Makai, to settle OHA's long-disputed claims for its share of revenues from the public land trust. The conveyance was intended, in part, to provide OHA with a revenue-generating resource, to fulfill the state's constitutional public land trust obligations. Although OHA is currently master planning these properties, it will likely need HCDA approval prior to development.

OHA is particularly concerned that this measure may create an unreasonable standard for approval, in that HCDA would have to ensure that a proposed project "[a]ddresses concerns expressed by community residents and stakeholders." This language is ambiguous, as there is no definition or standard as to what constitutes addressing a concern. Additionally, the language of the bill disregards the potential diversity of interests among community residents and stakeholders. In cases where the interests of groups within the community irreconcilably conflict, addressing community concerns becomes an impossible task.

OHA is similarly concerned with the requirement that a proposed project ensure that there are no negative impacts to the "[m]aintenance and improvement of the quality of education programs and services provided by schools." Again, this is an ambiguous standard, and it is unclear who would be able to make such a determination or suggest mitigation measures for any negative impacts; notably, the maintenance and upkeep of public schools is the purview of the Department of Education, not HCDA.

OHA recognizes and appreciates the need to balance community interests with new developments. By its terms, however, this bill may create a potentially impractical burden, that would not only affect OHA's property in Kaka'ako, but also projects in Kalaeloa and He'eia, where other Hawaiian land owners have holdings.

Mahalo for the opportunity to testify on this measure.



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

SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING

ON

SATURDAY, JANUARY 31, 2015

1:15 P.M.

State Capitol, Conference Room 229

in consideration of

**S. B. 906 – RELATING TO THE HAWAII COMMUNITY
DEVELOPMENT AUTHORITY.**

Purpose: Adds a definition of "contested case;" amends deadline for intervention to 30 days after the initial public hearing; requires HCDA to make certain findings on the proposed project and impacts, including community concerns; and requires developers to abide by all representations and commitments made in the permit application process.

Position: I provide the following comments with respect to the proposed amendments to HCDA rules. I note that I serve as the Authority's hearing officer and have over 13.5 years of experience in administering contested case or quasi-judicial processes such as specified in §§§91 (Public Proceedings and Records), 205 (Land Use Commission) and 206E (Hawaii Community Development Authority), Hawaii Revised Statutes (HRS) and §92 (Public Agency Meetings and Records) HRS. However, I defer to the office of the Attorney General (AG) with respect to any question of law or interpretation/application of case law.

Existing HCDA Contested Case Process Promotes Informal Public Participation. The Authority currently administers its development permit process in accordance with the requirements specified by the Legislature in §§206E-5.6 and 91 HRS. I note that contested case proceedings held in accordance with §91 HRS do not allow the public to provide testimony, but instead limit participation only to parties with standing. However, to solicit as much public input as possible, we have always allowed the public to submit both written and verbal testimony at each public hearing without the witnesses being sworn in and subject to cross-examination. While this proposal seeks to clarify and strengthen the process, it offers no instruction on this point.

Developer to Abide by Representations and Commitments. This specification is already covered in the provisions of Act 61 SLH 2014 and routinely included in the Decision and Orders issued by the Authority.

Definition of "Contested Case." While §206E and Act 61 SLH 2014 do not offer a definition for a "contested case," I note that the definition in §91 HRS is incorporated by reference and also contained in §219 Hawaii Administrative Rules (HAR).

Establishing the Deadline for Intervention as 30 Days After the First Public Hearing. As §206E-5.6 HRS specifies that hearings for development permit applications require *two* hearings, allowing intervention 30 days after the first hearing is conducted (where the facts of the case are established) is counterintuitive and upsets the rule of due process for both the applicant and any intervener. As shown in the attached exhibit, the 160 day calendar (specified by rule for the Authority to process any development permit application) would not suffer an addition of 10 days without raising the specter of an automatic approval.

Subjective Guidelines: Section 3 of this bill proposes that as a requirement for project approval, a proposed project must not have any negative impacts on various matters. Evaluating negative impacts can be very subjective and is problematic since this bill states a project must have "no negative impacts." As any

element of a project might have a negative impact for any one individual, just as it may always positively impact another, to place such a restriction on all future development permit applications would unfairly prohibit development. It may well be impossible for any development project to not produce any negative impact.

Already a Rigorous Process. The rigor of the application and hearing process; the scope of the opportunity for input and participation currently afforded the public; and the 160 day time frame within which the applicant must operate far exceeds the requirements administered by the City & County of Honolulu. It is currently a requirement of any successful proposal for residential development that as a consequence, qualified income for-sale or for-rent housing must be produced by the applicant with no government subsidy. Given our dire need for qualified income and market housing, it might be counterproductive to introduce even more rigor for any prospective developer of housing.

Thank you for the opportunity to provide our comments on this proposal.

DEVELOPMENT PERMIT

PUBLIC HEARING SCHEDULE

Minimum Days Elapsed	Days Between Events	Dates	Event	Action
0	0	Wednesday, January 21, 2015	HCDA Deems the Project Complete to begin the Automatic Approval Clock. Notice of Publication of Public Hearing	Publication by notice in the: Honolulu Star Advertiser
20	20	Tuesday, February 10, 2015	Deadline For Interested Individuals/Organizations To File Petition For Intervention.	Petition To Be Filed at the HCDA office. 20 Days Req'd by Act 61
27	7	Tuesday, February 17, 2015	Pre-Hearing For Applicant and Potential Intervenors conducted	Notification given to Applicant and those seeking to intervene. Process explained and calendar described. Timeframe for exchange of exhibits, decision-making criteria, and witness lists are established for potential Intervenors and Applicant.
47	20	Monday, March 09, 2015	Exhibit/Witness List exchanged amongst Intervenors and Applicant.	None.
54	7	Monday, March 16, 2015	Public Hearing on Petitions for Intervention/ Public Hearing	Record established.
55	1	Tuesday, March 17, 2015	Public Hearing on Modification/Variance/Exemption	Hearing on modification, variance or expectations pursuant to Act 061 of 2014
75	20	Monday, April 06, 2015	Parties file their own findings of fact, conclusions of law, and decision and order with the Authority	None.
82	7	Monday, April 13, 2015	Parties exchange exceptions to others' findings of fact, conclusions of law, and decision and order	None.
112	30	Wednesday, May 13, 2015	Public Hearing Of Authority Re: Issuance of HCDA Staff's proposed findings of facts, conclusion of law, and decision & order.*	Action Meeting Of The Authority On The Application – Adopt Staff's proposed FOF, COL, & D&O as its own. Approve/Approve With Conditions/Deny.
124	12	Monday, May 25, 2015	Deadline For Parties To File Exceptions To Authority's FOF, COL, and D&O.	Authority is in receipt of Exceptions from Parties.
<u>140</u>	16	Wednesday, June 10, 2015	Final Action of the Authority**	Final Action Meeting Of The Authority On The Application – Approve/Approve With Conditions/Deny.
Automatic Approval Dates (120) Kalaeloa (180) Kakaako Ch 217 (160) Kakaako Ch 22			Deadline For Authority Ruling On Application To Be Issued.	Ruling Issued No Later Than This Date.

*Completion of the public hearing if no exceptions are filed.

** Completion of the public hearing after consideration of exception from parties.

From: mailinglist@capitol.hawaii.gov
To: [HSH Testimony](#)
Cc: bkunies@gmail.com
Subject: Submitted testimony for SB906 on Jan 31, 2015 13:15PM
Date: Thursday, January 29, 2015 12:53:18 PM

SB906

Submitted on: 1/29/2015

Testimony for HSH on Jan 31, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Bernard Nunies	Individual	Support	No

Comments: I am in full support of SB906. It allows the community to listen to the developer and understand their plans at the first public hearing, then decide if they will choose to intervene. The current law requires the public to intervene without ever hearing the developer's proposal. This is a much needed correction to the existing law.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [HSH Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB906 on Jan 31, 2015 13:15PM*
Date: Thursday, January 29, 2015 2:14:20 PM

SB906

Submitted on: 1/29/2015

Testimony for HSH on Jan 31, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [HSH Testimony](#)
Cc: lynnehi@aol.com
Subject: Submitted testimony for SB906 on Jan 31, 2015 13:15PM
Date: Thursday, January 29, 2015 4:25:04 PM

SB906

Submitted on: 1/29/2015

Testimony for HSH on Jan 31, 2015 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments: Please accept this a testimony strongly in favor of SB906. In 2014 the legislature made meaningful progress in returning Kakaako to the people and reining in the lawless HCDA. This bill will further protect our citizens in the effort to make Kakaako a true vibrant livable community for all. Currently the poster child of greed and excess, where the vast majority of locals cannot afford to live, SB906 will turn it into a livable residential community for all. Unfortunately the legislature must impose standards because the HCDA is blind to the needs of the people. Lynne Matusow 60. N. Beretania, #1804 Honolulu, HI 96817 531-4260

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