

JAN 19 2023

A BILL FOR AN ACT

RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.

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

1 SECTION 1. The legislature finds that the office of
2 Hawaiian affairs was established under article XII, section 5,
3 of the Hawaii State Constitution to "hold title to all the real
4 and personal property now or hereafter set aside or conveyed to
5 it which shall be held in trust for native Hawaiians and
6 Hawaiians." The office of Hawaiian affairs' board of trustees
7 is authorized by article XII, section 6, of the Hawaii State
8 Constitution "to manage and administer the proceeds from the
9 sale or other disposition of the lands . . . and income derived
10 from whatever sources for native Hawaiians and Hawaiians,
11 including all income and proceeds from that pro rata portion of
12 the trust referred to in section 4 of this article [the public
13 land trust] for native Hawaiians." The board of trustees is
14 also authorized under article XII, section 6, "to exercise
15 control over real and personal property set aside by state,
16 federal or private sources and transferred to the board for
17 native Hawaiians and Hawaiians."



1 In section 1 of Act 15, Session Laws of Hawaii 2012
2 (Act 15), the legislature found that a purpose of the Act was
3 to:

4 "[E]ffectively and responsibly fulfill the
5 constitutional obligation to native Hawaiians under
6 article XII, sections 4 and 6, of the State
7 Constitution between November 7, 1978, up to and
8 including June 30, 2012 . . . and providing additional
9 resources to the office in the form of fee simple
10 title to certain parcels of land."

11 In the same section of Act 15, the legislature declared that the
12 "[c]onveyance of the fee simple interest to the lands . . . will
13 allow the State to effectively and responsibly meet those
14 constitutional obligations to native Hawaiians."

15 Further, section 2 of Act 15 stated, "the fee simple
16 interest to [nine] parcels of land [including parcels identified
17 by tax map key (1) 2-1-58-129 (Lot A), tax map key (1) 2-1-58-6
18 (Lot E), tax map key (1) 2-1-60-26 (Lot F/G), tax map key (1)
19 2-1-15-61 (Lot I), and tax map key (1) 2-1-15-51 (Lot L), was]
20 conveyed to the Office of Hawaiian Affairs as grantee, as of
21 July 1, 2012, as is where is." In the same section of Act 15,



1 however, the legislature specifically directed that, "[t]he
2 [nine parcels] are and shall remain (even after conveyance to
3 the office) under the jurisdiction and authority of the Hawaii
4 community development authority with respect to zoning, land use
5 conditions[,] and all other matters over which the authority has
6 jurisdiction and authority to act," and "shall be subject to all
7 laws, except sections 206E-8, 206E-10, 206E-34, Hawaii Revised
8 Statutes, and otherwise provided in this Act."

9 Particularly pertinent to the purpose of Act 15, in
10 section 6, the legislature further declare that "[t]he
11 [p]roperties conveyed by this Act shall be deemed income and
12 proceeds from the public land trust, as if the [p]roperties had
13 been paid out of the income and proceeds from the public land
14 trust pursuant to article XII, section 6 of the Hawaii State
15 Constitution."

16 Relying on its board of trustees' authority to "exercise
17 control" over lands that the office of Hawaiian affairs holds in
18 trust for native Hawaiians, and to "manage and administer" the
19 income and proceeds from the public land trust lands it
20 receives, the office of Hawaiian affairs has asked the
21 legislature to enact this Act to allow the office of Hawaiian



1 affairs to maximize the income or proceeds that six of the
2 parcels of land conveyed by Act 15 could generate for the
3 purposes of bettering the conditions of native Hawaiians, by
4 allowing the parcels to be developed for residential use.

5 The legislature finds that the ongoing transformation of
6 Kakaako into a place where the people of Honolulu can live,
7 work, and play should increase the revenue generating potential
8 of the land conveyed to the office of Hawaiian affairs by Act 15
9 of the land and concomitantly increase the number of programs
10 and kinds of services that the office of Hawaiian affairs was
11 created and is able to provide for native Hawaiians. The
12 legislature further finds that even more revenue could be
13 generated to provide programs and services to better the
14 conditions of native Hawaiians, if the office of Hawaiian
15 affairs were permitted to develop some or all of the parcels it
16 received under Act 15 for residential use.

17 The legislature agrees that the residential development
18 restriction to which all of the parcels transferred to the
19 office of Hawaiian affairs by Act 15 were and continue to be
20 subject should be lifted to the extent necessary to allow the
21 office of Hawaiian affairs to realize the maximum income or



1 proceeds that the parcels identified by tax map key (1)
2 2-1-058-129 (Lot A), tax map key (1) 2-1-058-006 (Lot E), tax
3 map key (1) 2-1-060-026 (Lot F/G), tax map key (1) 2-1-015-061
4 (Lot I), and tax map key (1) 2-1-015-051 (Lot L) could generate
5 if they were developed for residential use.

6 Finally, the legislature finds that inasmuch as this Act
7 furthers one of the principle purposes for which the office of
8 Hawaiian affairs was established as a state agency, its
9 provisions should be deemed consistent with and not violative of
10 article XI, section 5, of the Hawaii State Constitution.

11 The purpose of this Act is to enhance the revenue
12 generating capacity of six parcels of land that were transferred
13 to the office of Hawaiian affairs by Act 15. To accomplish this
14 purpose, this Act will raise the building height limit for two
15 of the six parcels to four hundred feet and lifts the current
16 restriction against residential development in Kakaako makai, to
17 allow residential development by the office of Hawaiian affairs
18 or by third parties to which the office of Hawaiian affairs
19 conveys the parcels.



1 SECTION 2. 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- Limited residential development in Kakaako;
5 public hearing prerequisite; height limit; association fee;
6 required disclosures and nuisance mitigation efforts. (a) The
7 authority may approve any plan or proposal for any residential
8 development in Kakaako on any parcels identified as tax map key
9 (1) 2-1-058-129, tax map key (1) 2-1-058-006, tax map key
10 (1) 2-1-060-026, tax map key (1) 2-1-015-061, and tax map key
11 (1) 2-1-015-051; provided that the authorization for residential
12 development pursuant to this section shall apply to each of
13 these parcels regardless of if a parcel's tax map key number is
14 amended; provided further that approval may be granted only
15 after the applicant seeking approval conducts a public hearing
16 held in accordance with subsection (b).

17 (b) Prior to submission to the authority of any plan or
18 proposal for any residential development pursuant to this
19 section, the applicant seeking approval shall hold a public
20 hearing that shall be exempt from chapter 91. Notice shall be



1 published in accordance with section 1-28.5, at least thirty
2 days prior to the hearing. The notice shall include:

- 3 (1) The date, time, and place of the hearing;
- 4 (2) A statement of the topic of the hearing; and
- 5 (3) A description of where, when, and how the residential
6 development proposal may be viewed by the public.

7 All interested persons may submit data or opinions, orally or in
8 writing, in conjunction with the hearing.

9 (c) Prior to submitting to the authority for approval any
10 plan or proposal for residential development pursuant to this
11 section, the applicant seeking approval shall fully address all
12 written and oral submissions permitted pursuant to subsection
13 (b) regarding the proposed residential development.

14 (d) Prior to the approval of any plan or proposal for
15 residential development pursuant to this section:

- 16 (1) The authority shall hold a public hearing in
17 accordance with subsection (b); and
- 18 (2) The authority shall fully consider all written and
19 oral submissions received at the public hearings held
20 by the applicant and the authority.



1 (e) Any other law to the contrary notwithstanding, the
2 building height limit shall be four hundred feet for residential
3 development pursuant to this section on the parcels identified
4 by tax map key (1) 2-1-058-006 and tax map key (1) 2-1-015-061;
5 provided that the building height limit for residential
6 development pursuant to this section shall apply to each of
7 these land areas even in the event that a parcel's tax map key
8 number is amended.

9 (f) The office of Hawaiian affairs and any developer shall
10 provide advance written notice to potential lessees and
11 residents of the possibility of noise, odor, and other aircraft-
12 related nuisances before entering into any lease agreement. The
13 office of Hawaiian affairs and any developer shall assess and
14 propose mitigation efforts to address possible noise, odor, and
15 other aircraft-related nuisances in any development plan or
16 proposal."

17 SECTION 3. Section 206E-12, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§206E-12 Dedication for public facilities as condition to**
20 **development.** (a) The authority shall establish rules requiring
21 dedication for public facilities of land or facilities, or cash



1 payments in lieu thereof, by developers as a condition of
2 developing real property pursuant to the community development
3 plan. Where state and county public facilities dedication laws,
4 ordinances, or rules differ, the provision for greater
5 dedication shall prevail.

6 (b) This section shall not apply to lands identified in
7 section 206E- (a)."

8 SECTION 4. Section 206E-31.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§206E-31.5 Prohibitions.** Anything contained in this
11 chapter to the contrary notwithstanding, and except as provided
12 in section 206E- (a), the authority is prohibited from:

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

17 (A) Utility easements;

18 (B) Remnants as defined in section 171-52;

19 (C) Grants to any state or county department or
20 agency;



- 1 (D) Private entities for purposes of any easement,
- 2 roadway, or infrastructure improvements; or
- 3 (E) Reserved housing as defined in section 206E-101;
- 4 or
- 5 (2) Approving any plan or proposal for any residential
- 6 development in that portion of the Kakaako community
- 7 development district makai of Ala Moana boulevard and
- 8 between Kewalo Basin and the foreign trade zone."

9 SECTION 5. New statutory material is underscored.

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

11 INTRODUCED BY: *Kurt Fowle*



S.B. NO. 248

Report Title:

Hawaii Community Development Authority; OHA; Residential Development; Kakaako Makai

Description:

Allows the raising of the building height limit for 2 of the 6 parcels owned by the Office of Hawaiian Affairs in the Kakaako Makai area to 400 feet. Lifts the current restriction against residential development in Kakaako Makai to allow residential development by the Office of Hawaiian Affairs or by third parties to which the Office of Hawaiian Affairs conveys the parcels. Requires the Office of Hawaiian Affairs and any developer to provide written notice to any tenant or resident of potential aircraft related nuisances before entering into a lease, and to assess and propose mitigation efforts to address aircraft related nuisances in development plans and proposals.

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

