

REPORT OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TASK FORCE ON THE EVENTUAL DISSOLUTION OF KAKAAKO COMMUNITY DEVELOPMENT DISTRICT.

PROCEDURAL HISTORY

On July 10, 2019, the Kakaako board approved the creation of a permitted interaction group in compliance with HRS Chapter 92-2.5.

In public testimony provided before the board, questions arose as to whether the goals of HCDA in Kakaako have been met including:

- Building a complete community with commercial, retail, amenities, affordable housing, and infrastructure.
- The disposition of whether housing would be allowed makai of Ala Moana Boulevard.
- Whether plans, laws, and rules currently in place and agreed to by the community would be honored.
- What city protections would be put in place to honor the community's intent in the district.

The board, on a policy level, wanted to evaluate the conditions under which any district would be considered to be "substantially complete."

In addition, the board noted HCDA holds many assets in the Kakaako area. Some of the assets fulfill a statewide purpose to provide social services (for example, affordable housing projects or the Family Assessment Center homeless shelter in the Kakaako Waterfront Park) that provides minimal lease rent but a much larger benefit the public.

However, the board recognizes that there is a "sweet spot" on when to hold or release properties. From a cost/benefit point of view, there needs to be further evaluation on the timing of properties that can transition to other entities. The board feels that there is a need to evaluate transitioning more fully to be able to maximize the state's opportunities.

The board approved a motion that reads, "Shall the Authority appoint members to a permitted interaction group to provide recommendations on conditions for the eventual dissolution of the Kakaako Community Development District consistent with the purpose and intent of Chapter 206E."

The motion passed with eight ayes, and one excused.

Members appointed to the permitted interaction group were Phillip Hasha, Jason Okuhama, Kevin Sakoda, and John Whalen.

HAWAII REVISED STATUTES

In order to decide whether a district is complete and ready to transfer to a county or any other body, it is instructive to look at the applicable law. Generally, under HRS 206E, the standard is:

§206E-1 Findings and purpose. *The legislature finds that many areas of the State are substantially undeveloped, blighted, or economically depressed, and are or are potentially in need of renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability.*

The legislature further finds that there exists within the State vast, unmet community development needs. These include, but are not limited to, a lack of suitable affordable housing; insufficient commercial and industrial facilities for rent; residential areas which do not have facilities necessary for basic liveability, such as parks and open space; and areas which are planned for extensive land allocation to one, rather than mixed uses.

It is further determined that the lack of planning and coordination in such areas has given rise to these community development needs and that existing laws and public and private mechanisms have either proven incapable or inadequate to facilitate timely redevelopment and renewal.

The legislature finds that a new and comprehensive authority for community development must be created to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development. The purpose of this chapter is to establish such a mechanism in the Hawaii community development authority, a public entity which shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition. For such areas designated as community development districts, the legislature believes that the planning and implementation program of the Hawaii community development authority will result in communities which serve the highest needs and aspirations of Hawaii's people.

The legislature finds that the creation of the Hawaii community development authority, the establishment of community development districts, and the issuance of bonds pursuant to this chapter to finance public facilities serve the public interest and are matters of statewide concern.

More specifically, in Kakaako:

[§206E-31] Kakaako community development district; purposes. *The legislature finds that:*

(1) The Kakaako district is centrally located in Honolulu proper, in close proximity to the central business district, the government center, commercial, industrial and market facilities, major existing and contemplated transportation routes and recreational and service areas;

(2) Due to its present function as a service and light industrial area, the district is relatively underdeveloped and has especially in view of its proximity to the urban core where the pressure for all land uses is strong the potential for increased growth and development that can alleviate community needs such as low-income housing, parks and open space, and commercial and industrial facilities;

(3) *The district, if not redeveloped or renewed, has the potential to become a blighted and deteriorated area. Due to its present economic importance to the State in terms of industry and subsequent employment, there is a need to preserve and enhance its value and potential;*

(4) *Kakaako has a potential, if properly developed and improved, to become a planned new community in consonance with surrounding urban areas.*

In coordinating community development in the Kakaako district, the authority shall plan a mixed-use district whereby industrial, commercial, residential, and public uses may coexist compatibly within the same area.

The authority shall plan for the above uses, but shall also respect and support the present function of Kakaako as a major economic center, providing significant employment in such areas as light industrial, wholesaling, service, and commercial activity.

§206E-33 Kakaako community development district; development guidance policies. *The following shall be the development guidance policies generally governing the authority's action in the Kakaako community development district:*

(1) *Development shall result in a community which permits an appropriate land mixture of residential, commercial, industrial, and other uses. In view of the innovative nature of the mixed use approach, urban design policies should be established to provide guidelines for the public and private sectors in the proper development of this district; while the authority's development responsibilities apply only to the area within the district, the authority may engage in any studies or coordinative activities permitted in this chapter which affect areas lying outside the district, where the authority in its discretion decides that those activities are necessary to implement the intent of this chapter. The studies or coordinative activities shall be limited to facility systems, resident and industrial relocation, and other activities with the counties and appropriate state agencies. The authority may engage in construction activities outside of the district; provided that such construction relates to infrastructure development or residential or business relocation activities; provided further, notwithstanding section 206E-7, that such construction shall comply with the general plan, development plan, ordinances, and rules of the county in which the district is located;*

(2) *Existing and future industrial uses shall be permitted and encouraged in appropriate locations within the district. No plan or implementation strategy shall prevent continued activity or redevelopment of industrial and commercial uses which meet reasonable performance standards;*

(3) *Activities shall be located so as to provide primary reliance on public transportation and pedestrian facilities for internal circulation within the district or designated subareas;*

(4) Major view planes, view corridors, and other environmental elements such as natural light and prevailing winds, shall be preserved through necessary regulation and design review; provided that no portion of any building or structure in the Kakaako Mauka area shall exceed four hundred eighteen feet in height;

(5) Redevelopment of the district shall be compatible with plans and special districts established for the Hawaii Capital District, and other areas surrounding the Kakaako district;

(6) Historic sites and culturally significant facilities, settings, or locations shall be preserved;

(7) Land use activities within the district, where compatible, shall to the greatest possible extent be mixed horizontally, that is, within blocks or other land areas, and vertically, as integral units of multi-purpose structures;

(8) Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages, and family groups; and an increased supply of housing for residents of low- or moderate-income may be required as a condition of redevelopment in residential use. Residential development shall provide necessary community facilities, such as open space, parks, community meeting places, child care centers, and other services, within and adjacent to residential development; and

(9) Public facilities within the district shall be planned, located, and developed so as to support the redevelopment policies for the district established by this chapter and plans and rules adopted pursuant to it.

Therefore the Permitted Interaction Group focused on the concepts on what criteria could be used to judge whether a Community Development District has met substantially the goals set forth by the Legislature and could be objectively be considered met, and thus ripe to transfer to any county where an HCDA Community Development District exists, either now or in the future.

Compliance with §206E-1 Findings and purpose.

In Kakaako, there are two major areas in need of renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability. It would appear as if the Sheridan Tract area is an unlikely area to create areas of economic activity because the area consists of low rise residential areas. However, in the Central Kakaako area flooding, narrow streets, haphazard parking and dilapidated road conditions could benefit from long range planning.

- §206E-1 suggests long-term planning is desirable, but does not inform the conditions that would signal that HCDA's mission in any Community Development District has been completed.

Compliance with §206E-31 Kakaako community development district; purposes.

Under §206E-31(4), the requirement that HCDA plan a mixed-use district whereby industrial, commercial, residential, and public uses may coexist compatibly within the same area has not been met. While many successful developments have been completed, the industrial component has not yet been met. Most industrial uses are in the Central Kakaako area. While HCDA has completed many improvement district projects, none have been completed in the Central Kakaako area. This has resulted in well-planned developments on the Diamond Head and Ewa ends of the district, but very little increased economic development in the middle of the district.

- The goal stated in §206E-31(4) has not been met.

Compliance with §206E-33 Kakaako community development district; development guidance policies.

§206E-33(2) states, "Existing and future industrial uses shall be permitted and encouraged in appropriate locations within the district. No plan or implementation strategy shall prevent continued activity or redevelopment of industrial and commercial uses which meet reasonable performance standards."

- Currently, very little progress has been made in promoting redevelopment of industrial areas. The industrial areas have not undergone improvement projects and suffer from flooding and other infrastructure issues. More work needs to be done in this area to ensure that the Kakaako community serves residential, commercial, and industrial needs. The goal stated in §206E-33(2) has not been met.

§206E-33(3) states, "Activities shall be located so as to provide primary reliance on public transportation and pedestrian facilities for internal circulation within the district or designated subareas"

- Currently, the internal circulation does not make it hospitable for public transportation, bike share, and pedestrian travel between the east and west sides of the district. No improvements have been made between Cooke and Kamakee Streets. The goal stated in §206E-33(3) has not been met.

§206E-33(7) and (8) states: "(7) Land use activities within the district, where compatible, shall to the greatest possible extent be mixed horizontally, that is, within blocks or other land areas, and vertically, as integral units of multi-purpose structures;

(8) Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages, and family groups; and an increased supply of housing for residents of low- or moderate-income may be required as a condition of redevelopment in residential use. Residential development shall provide necessary

community facilities, such as open space, parks, community meeting places, child care centers, and other services, within and adjacent to residential development.”

- While HCDA has made great inroads in making sure developers create multi-purpose structures with both commercial and residential uses in the same development, or a residential project where parking structures are wrapped with residential units, there are still more items to consider. Namely, how do adapt these concepts to mid-rise buildings. There has been little progress in enticing landowners and developers to imagine how to get projects in Central Kakaako to innovate and create new, exciting neighborhoods with pedestrian-friendly areas and innovative mixed-use projects. The goals stated in §206E-33(7) and (8) have not been met.

OTHER STATUTES TO CONSIDER IN CONTEMPLATING SUBSTANTIAL COMPLETION IN KAKAAKO

In addition to the foregoing, there are other statutes that consider a longer-term commitment to Kakaako by the HCDA.

- §206E-9 and §206E-31.6 allows for leases from HCDA up to 65 years;
- §206E-31.5 prohibits selling or otherwise assigning the fee simple interest in any lands in Kakaako with a few exceptions; and
- §206E-36 provides that any owner of a private road must conform and maintain the road to city standards and cannot charge for parking if the road is not maintained to county standard.

Part III of Chapter 206E contemplates a Reserved Housing Loan Program, which has never been used.

LEGAL CONSIDERATIONS

Your permitted interaction group recognizes that actions approved by the HCDA board incurs liability to the state. Therefore, a legal review must be conducted regarding the liabilities incurred by regulations and rules approved by HCDA as well as actions taken to approve master plans, development agreements, and permits issued.

As some agreements are contractual in nature, liabilities to the state may survive any changes to the laws and rules. Your permitted interaction group needs to review such liabilities before it is able to make an educated recommendation on what a sunset of the Kakaako Community Development District would look like.

ANALYSIS

To the extent that the statutes listed above have measurable goals as opposed to being purely aspirational, it would appear that there is still much work that must be done.

HCDA's biggest success is to bring master planned communities at both the Ewa and Diamond Head edges of the district, where in recent years there is increased walkability and communities are growing up around those areas. Both areas have been subject to state investment to improve infrastructure.

However, if one looks at the figure below, Central Kakaako has seen little state investment and its character remains unchanged.

In fact, one thing that is lacking is an East to West connection to provide better internal circulation to the district to provide economic activity throughout the district.

Central Kakaako has been an industrial area and so without improvement, one overriding goal to ensure the neighborhood keeps industrial and commercial uses has yet to be implemented in a meaningful way.

If one looks at commercial uses, there is a lot of retail use that has been developed, but other new commercial uses appear to be lacking.

Therefore, your board believes more work must be done to bring a fully integrated community as a pilot project that can be followed for the rest of the state.

One way of achieving that goal is for HCDA to adopt rules related to Transit Oriented Development. Several stakeholders have approached HCDA about working to adopt rules on Transit Oriented Development. HCDA already has a draft Transit Oriented Development Plan which can be amended and adopted and new rules can be subsequently adopted.

Your board notes that Victoria Ward Ltd. and Kamehameha Schools are still vested under master plans that obligate the state to certain conditions until at least 2024. At a minimum, HCDA oversight needs to continue on those two master planned areas until all projects vested prior to the expiration of the master plans.

Your board also notes that there are many complex issues that would need to be worked out in any potential transfer. We have concerns on where each piece of HCDA would go and whether that would be in the best interests of the community.

For instance, the transfer of Kakaako Makai parks to the City and County of Honolulu seemed, on the surface, to be a simple transaction that both sides said would take two months. The transfer happened more than a year later, when a number of logistical and legal issues were resolved.

CASE STUDIES

Reserved Housing

Reserved Housing is housing designated for residents in low- or moderate- income ranges. By rule, twenty percent of new housing developed in Kakaako must be Reserved.

Over the years, HCDA did not need much regulatory oversight: projects developed jointly with the Hawaii Housing Finance and Development Corporation (“HHFDC”) have been overseen by HHFDC. But in the last decade almost 700 Reserved Housing for sale units have come online. In addition, 258 more are expected to be built.

Each unit is a contractual obligation between HCDA and the homeowner, and HCDA staff must enforce homeownership rules and process paperwork to allow homeowners to refinance their units (according to the rules), repurchase units being sold within their regulated term, and release HCDA’s interest in a unit and collect shared equity on the units if the units are being sold after the regulated term expires.

Even with new laws or rules, the current units are grandfathered under the rules in effect at the time the unit was built.

HHFDC has expressed interest in taking over the administration of the program under certain conditions, but even if HHFDC were to agree, rules would have to be created that are favorable to get homeowners to opt in to the new rules. Otherwise, HCDA would continue to be obligated to continue to administer the program for those who do not opt in to the new rules.

Parks Transfer

In the 1990’s HCDA built the Kakaako Waterfront and Gateway parks. As HCDA can get state Capital Improvement Project funds in order to fund such projects, it has had no steady funding source for the upkeep of improvement projects.

After the parks were built, the state department of land and natural resources (“DLNR”) initially took care of the parks. But after budget adjustments, DLNR was no longer able to provide services to HCDA’s parks. As a result, HCDA ended up managing the parks with less than one full-time position and leveraging contracts.

In spring 2018, the City and State agreed it was best to transfer the parks to the City to solve various and sundry problems associated with the park. Initially, it was thought to be a process that would last two months. But with various complications and complexities that were not previously anticipated, the actual transfer took until the fall of 2019 – much longer than previously thought.

This episode illustrates that even though the political will may be there to do a transfer, there will be unanticipated complexities that need to be worked through. Therefore, a quick timeline for a transfer may be over optimistic.

CONCLUSION

More work needs to be done to ensure the best interests of the state are included in any transfer of the KCDD to any other entity or entities.

There is a significant liability exposure based on promises made through master plans, development agreements, or permit approvals that need to be more fully understood before such a transition can take place.

There is also a need to understand which agencies would be able to take on the assets that HCDA might divest itself during such a transition and what liabilities, assets, and opportunities might be transferred to other agencies during the transition.

And most importantly, how the public would benefit from such a transition.

Therefore, your Permitted Interaction Group recommends additional studies to evaluate legal issues surrounding the dissolution of the KCDD, including the liabilities the state may incur; and under which conditions the county surrounding the KCDD would deem acceptable to accept the district including various properties and liabilities.

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OFFICE OF PLANNING (OP) STUDY

In discussions with the OP, it became evident that it would be impossible to deliver a technical report prior to the 2020 legislative session. Procurement issues, such as securing professional services, are time consuming and OP does not have the in-house capacity to do the study without procuring technical assistance.

As such, we recommend the technical study be deferred until prior to the 2021 legislative session.

However, HCDA staff has done its own analysis of issues that must be resolved before any transfer of the KCDD can be effectuated. That report is attached as Exhibit A.

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PROPOSED LEGISLATION

Over the years, HCDA has pursued transfer of its Kakaako park land to the City and County of Honolulu. The efforts have picked up in the past three years, more specifically, in April 2018, the HCDA board was briefed on a possible transfer, and on May 2, 2018, the Kakaako board voted to approve a transfer by a vote of seven ayes, no noes, and two excused.

There was little opposition to the transfer and both the city and state were amenable in concept to the transfer. However, the initial estimates of the transfer of two months grew to more than a year because of technical issues that were not anticipated.

Before comprehensive transfer legislation can be effective, it is prudent to take lessons learned by the park transfer process. Specifically:

- To what extent HCDA zoning would be honored by the county affected,
- Whether master plans entitled under Hawaii Administrative Rules would be honored by the county affected,
- Whether HCDA assets would be accepted by the county affected including a timeline and steps that would be taken to accept such assets,
- Whether other state departments would accept any assets currently held by HCDA,

At both public meetings, the city was supportive of such a transfer.

In July 2019, the city said the condition of the parks had deteriorated and it was unable to accept the parks. In August 2019, the Kakaako board approved \$800,000 to transfer to the city to bring things to an acceptable level. At that time, the city said it had a \$1.3 million punch list of items that needed to be addressed.

In September 2019, the city submitted its punch list of things that needed to be addressed at a price tag of \$2,249,100. The Kakaako board approved the request.

Over the years, the state has spent \$210 million to improve Kakaako by expanding sewer capacity, adding drainage, and undergrounding utilities. It developed Kakaako Waterfront Park, taking a former city landfill and repurposing it into an area that can be enjoyed by the public.

HCDA has used its public facilities dedication powers to gain the Kakaako Gateway Park to provide a green space from Ala Moana Boulevard to the ocean.

HCDA has approved of master plans that have led to the walkable and vital communities in and around the Kakaako area and have provided an estimated \$40 million annually in property tax revenue for the city.

Thus, it would be instructive to hear from the city on how it plans to address various issues prior to passing legislation. Most importantly, how the city would ensure that promises made by HCDA would be honored and not be considered a taking, exposing the state to additional risk.

In testimony submitted before the legislature on SB 1530 proposed HD2, the city's testimony requested a three-year transition period to develop:

- A transition plan,
- A budget for the transition, and
- The execution of such a transition.

However, it may be most prudent for the city to present to the state a comprehensive plan that it can accept, rather than the state approving a transfer without a comprehensive understanding and a Memorandum of Understanding on what its terms and conditions might be.

Therefore, prudent legislation may be a concurrent resolution requesting the city present a comprehensive plan detailing how a transfer of Kakaako to the city would be done and any terms and conditions that it would demand.

The proposed legislation is attached as Exhibit C. (GK WORKING ON DRAFT)

Exhibit A

Staff Analysis of Issues That Need Resolution Prior to the Transfer of the KCDD to the City and County of Honolulu.

The Hawaii Community Development Authority ("HCDA") was created in 1976 as a public entity to "determine community development programs and to cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition."

Background

HCDA is viewed by many to be an agency that creates the conditions that make redevelopment favorable for private landowners in order to address underdeveloped areas of the state. Hawaii Revised Statutes 206E-1 states:

"The legislature finds that many areas of the State are substantially undeveloped, blighted, or economically depressed, and are or are potentially in need of renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability.

The legislature further finds that there exists within the State vast, unmet community development needs. These include, but are not limited to, a lack of suitable affordable housing; insufficient commercial and industrial facilities for rent; residential areas which do not have facilities necessary for basic liveability, such as parks and open space; and areas which are planned for extensive land allocation to one, rather than mixed uses."

The language suggests a transitory nature for HCDA, where once the community development needs in a district is met, that the agency can move on to other districts that are potentially in need of renewal, renovation, or improvement.

However, long-term commitments are contemplated within Chapter 206E:

- 206E-9 contemplates leasing land from a county for 65 years for property the authority certifies to be necessary for its purposes.
- 206E-14 contemplates the authority leasing for a term not exceeding 65 years for real property in conformance with a community development plan.
- 206E-31.6 contemplates issuing leases not exceeding 65 years for real property in the Kakaako district.

In addition, HCDA's board recently approved rules that would extend Reserved Housing program regulated terms to 10 years for future Reserved Housing units.

HCDA also has long-term leases and owns land within the Kakaako district.

Such leases include:

- The Historic Ala Moana Pump Station, leased to Pacific Gateway Center until January 15, 2049,
- Nohona Hale, an affordable microunit project, with a lease expiring in May 2083,
- ArtSpace Lofts, an affordable housing project, with a lease expiring June 19, 2082,
- Entrepreneur's Sandbox, in partnership with Hawaii Technology Development Corporation, with a lease expiring April 3, 2083,
- The Innovation Hale, which may be developed. If the property is developed as a job center, its lease would likely be for the maximum 65-year term,
- The John A. Burns School of Medicine, with a lease expiring in 2059, and
- Kewalo Basin Harbor, leased to Kewalo Harbor LLC until August 31, 2049.

In addition, Kamehameha Schools and Victoria Ward, Ltd. have master plans that are entitled until at least 2024, with an option to extend. Assuming there is no extension, the Reserved Housing entitlements may last until at least 2029, or 2031 based upon construction timetables. Thus, unwinding HCDA's activities in Kakaako is not as simple as repealing its authority within the district. For instance, there is an estimated \$77 million in reserved housing equity sharing payments that may be thrust into limbo without a solid transition plan that complies with the requirements of the current Hawaii Administrative Rules and HRS.

It must be noted that current HCDA staffing is much lower than its historical highs. Current staff must be considered core staff that keeps existing programs afloat and manages issues regarding land ownership, projects, and permitting issues.

Analysis

Before HCDA leaves Kakaako, several issues must first be addressed, including:

- Implementing and enforcing any laws enacted specifically for the Kakaako Area such as Act 009 of 2018 relating to county standards for private roads;
- The disposition of various laws and regulations administered by HCDA and its effect on and compatibility with the underlying county zoning;
- The disposition of long-term leases and the land at Kewalo Basin Harbor, Pacific Gateway Center at the Historic Pump Station, Nohona Hale micro-housing units, Ola Ka Ilima Artspace Lofts, Hale Kewalo, the Entrepreneur's Sandbox, and the John A. Burns School of Medicine;
- The disposition of other land owned by HCDA including Honuakaha's senior housing units, and certain remnant roads;
- The disposition of rent payments, loan repayments, shared equity payments, and other revenues; and,
- The feasibility and legality of transferring programs to different agencies, including but not limited to HCDA's Reserved Housing Program.

The foregoing factors are not necessarily a bar for HCDA to leave the district, but merely items that need to be carefully considered to prevent unintended consequences.

In central Kakaako and Sheridan tract, very little work has been done to improve the infrastructure and spur redevelopment. Roads continue to deteriorate and central Kakaako continues to flood when there is a heavy rain. Residents and people working in the area often voice concerns regarding the unimproved roads, lack of parking, and public safety due to the lack of sidewalks and haphazardly parked cars. One must consider whether the time is ripe to improve the district, or to again attempt to get support for infrastructure improvements.

There are layers of complexity that have developed over the 42-year history of the HCDA. Before a decision on a firm sunset date is made, these layers must be peeled back.

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