



LATE TESTIMONY

HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



STATEMENT OF

ANTHONY J. H. CHING, EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

SENATE COMMITTEE ON EDUCATION AND HOUSING

Wednesday, February 4, 2009

1:15 P.M.

State Capitol, Conference Room 225

Linda Lingle
Governor

Jonathan W. Y. Lai
Chairperson

S. B. 645 – RELATING TO KAKAAKO.

Anthony J. H. Ching
Executive Director

Purpose: Amongst other requirements, this proposal increases the reserved housing requirement for planned development on lots greater than three acres to twenty-five percent of floor space in the Kakaako Community Development District Mauka Area.

Position: The Hawaii Community Development Authority (“HCDA”) agrees that the supply of affordable housing units in Honolulu is severely lacking; however, we offer the following comments and amendments with respect to the construction and specifications of this legislative proposal.

Current Planned Development Regulations. Existing planned development permits administered by the HCDA apply to lots of 10,000 square feet or more with a lot size of 80,000 square feet receiving the full benefits of a planned development. For consistency and maximum effect, the proposal should close any loophole created between lots of 80,000 square feet and three acres and subsequently for lots between 20,000 and 80,000 square feet.

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Master Planned Area [see Page 7, Line 14]. This subsection increases the reserved housing requirement to twenty-five percent of the countable floor area for any planned development with a height of more than 45 feet and a floor area that equals or exceeds 1.5 times the area for development located within a “master planned area”. A master planned area is defined as “any area for which the Authority has approved a master plan application under Title 15, Chapter 22, of the Hawaii Administrative Rules”.

The application of this subsection raises the specter of a legal challenge as it would appear to invalidate previous action duly taken by the HCDA. Recently, the HCDA approved the Master Plan Permit application of Victoria Ward, Limited (a wholly owned subsidiary of General Growth Properties, Inc.) in accordance with duly promulgated administrative rules. The Decision and Order approving the Master Plan Permit application requires that (as specified in the Authority’s administrative rules) twenty percent of the residential units to be developed within the “Master Planned Area” be set aside for reserved housing. The specification of this legislative proposal that a requirement that was previously duly ordered be retroactively increased raises the specter of an improper “taking”.

Mixed-Use Projects in the Kakaako Mauka. To promote efficiency in urban design and appropriate density within the urban core, planned development projects on lots of at least 10,000 square feet within Kakaako Mauka allow a combination including residential, commercial and/or industrial uses (i.e., MUZ-R and MUZ-C). Single use commercial and industrial projects are not allowed on planned development lots, though single use residential is allowed.

Residential and industrial activities of any size or consequence are not generally seen as compatible uses. The legislation establishing the HCDA intended to both support the development of increased residential density in the urban core

while maintaining or preserving existing industrial/commercial activities within specific areas of Kakaako. If this proposal is adopted in its current form, the critical need for reserved and market housing in urban Honolulu will likely drive land values up and preclude the maintenance or development of industrial activities and projects of any consequence. Also, placing reserved housing requirement on industrial development could inhibit new industrial development in Kakaako which runs contrary to the spirit and intent of HCDA's enabling statute. If the proposal, as an unintended consequence, does not seek to further inhibit the continuation of industrial activities within Kakaako Mauka, the proposal should be amended to exclude industrial development projects from the reserved housing requirement.

The twenty-five percent requirement applies to the “countable floor area” of a building and the proposed definition of countable floor area is problematic [see Page 5, Line 9]. In the proposal, basements, elevator shafts, corridors, and walkways (typically associated with circulation) are counted and included in the definition of “floor area”. We suggest that the reserved housing requirement instead be based on the *residential* floor area of a development, excluding area used for parking, loading, common areas, basement, stairways, hallways, driveways and access ways, lanais or balconies of dwelling units that do not exceed fifteen percent of the total floor area of the appurtenant unit, attic areas with headroom of less than seven feet, covered rooftop areas, and rooftop machinery equipment and elevator housings on the top of buildings.

Transfer of Excess Housing Credits [see, Page 9, Line 15]. This subsection establishes a mechanism or a “bank” to transfer credits for any excess reserved housing units produced by a developer to another project in Kakaako via an exchange of cash. The provision is flawed and counter intuitive and should be deleted in its entirety for the following reasons.

1. Page 9, Section (e) specifies that the “The authority shall not allow the developer of the planned development to make a cash payment to the authority in lieu of developing and making available the reserved housing floor area or units required under this section.” This prohibition would contradict the proposal that a development may “substitute” payment to another developer for units that are “owed” by that developer.
2. Page 10, Sections (1-7) proposes a rate schedule which runs contrary to conventional wisdom. Without including costs typically associated with land acquisition, construction costs are currently at \$300 per square foot regardless of their status as primary or excess units. Setting a transfer of credit fee schedule that is substantially less than the construction cost of a residential unit does not make sense.
3. Even if the rate schedule were amended to more accurately reflect the real cost of construction, the proposed allowance that a developer be allowed to transfer any or all of the reserved housing requirement to another site runs contrary to the principle that planned developments should primarily be inclusionary and include both reserved and market units.
4. This provision only creates a market for a developer with excess units and does not in and of itself increase the supply of reserved housing units developed in Kakaako Mauka.

5. In addition to the reasons cited above, the logistics (staff and record keeping) of establishing such a transfer of credit “bank” would not be worth the effort.

Reference to Area Median Income and Median Income [see Pages 6 and 19]. For consistency, references within the proposal should reference either area median income or median income.

Moratorium on accepting applications for planned developments on a lot of at least three acres [see Page 20, Line 11]. This section prohibits the HCDA from accepting any applications for planned development projects on lots of at least three acres until rules are adopted. While it is clearly within the purview of the Legislature to establish any moratorium or prohibition on accepting applications for planned developments, this would appear to contradict conventional wisdom that during the existing “down” economy, development projects should be encouraged to create economic activities rather than imposing a moratorium on development.

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



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LATE TESTIMONY

February 4, 2009

The Honorable Senator Norman Sakamoto, Chairperson
Education & Housing Committee
Hawaii State Capitol, Room 225
415 South Beretania Street
Honolulu, Hawaii 96813

RE: SUPPORT OF SB 645 RELATING TO KAKAAKO (Conf Room 225, 1:15 PM)

Dear Chair Sakamoto, Vice Chair Kidani, and Members of the Committee:

My name is Kirt Pruyn, and I am the Manager of Business Development & Community Relations for Hawaiian Dredging Construction Company. Founded in 1902, Hawaiian Dredging is Hawaii's largest and oldest full-service general contractor, currently employing over 700 employees.

Hawaiian Dredging SUPPORTS the passage of SB 645 Relating to Kakaako WITH RESPECT TO its provisions that would increase the supply of affordable—or reserved—housing units in the Kakaako area. We support this as a corporate citizen and as a general contractor.

AS A CORPORATE CITIZEN. We employ hundreds of Hawaii's citizens, and we urge the increase in the supply of homes that are affordable to Hawaii's people. As legislators, you know how critical Hawaii's housing environment has been in the past years—and how it has worsened since the close of the 2008 legislative session and the onset of this current financial recession. You know how more affordable homes have been severely undersupplied for many years. And you know the desperate consequences of this.

AS A GENERAL CONTRACTOR. Hawaiian Dredging urges passing legislation that would employ our people in building new projects. The construction industry is Hawaii's third largest industry—and it is in crisis...locally and nationally. New projects are disappearing rapidly as financing disappears...especially among the high end projects which were financed by large mainland financial institutions.

The last downturn lasted eight years from 1993 to 2001. During that difficult time, we built thousands of affordable homes in the ewa plane for Shuler, Gentry, and others. We also built hundreds of such homes in Kakaako and Makiki. Down cycles favor building affordable homes because demand for other products disappears. Demand for affordable housing remains high.... And the economics can be feasible and attractive.

It appears that it could be many years before the economy can recover. It took eight to ten years to recover from the Japanese Bubble downturn of the Nineties...and this downturn is possibly worse and certainly of a global scale.

How to survive? Keep the construction industry employed by building homes that local residents can afford. And that local banks can fund.

The opportunity is now. Kakaako is Honolulu's last urban core area that can support high density housing. For decades, the guiding principle of Kakaako has been live—work—play...Let's fulfill that dream, that opportunity, by enabling our local residents to live and work and play there in homes that are affordable...and that will be constructed during this down cycle.

We support SB 645...if it will actually work to increase affordable housing opportunities for our people.

Mahalo for your time and concern.

Aloha,

Kirt Pruyn
Manager, Business Development & Community Relations
808-735-7411





Via Capitol Website

February 4, 2009

**Senate Committee on Education and Housing
Hearing Date: Wednesday, February 4, 2009, 1:15 p.m., CR 225**

**Testimony in Opposition to SB 645 – Relating to Kakaako
(Increased Reserved Housing Requirements)**

Dear Chair Sakamoto, Vice-Chair Kidani
and Education and Housing Committee Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

LURF supports the development of housing projects in Kakaako which include affordable housing units, however, we are **opposed to SB 645 in its current form and recommend that the bill be deferred until the Kakaako stakeholders and government officials can agree on a plan and incentives to increase affordable housing in Kakaako.** LURF's opposition is based on, among other things, the following: there is no legal nexus or proportionality to justify the affordable housing requirement of 15% of floor space of common areas (including elevator shafts, corridors and stairways), residential, commercial, industrial and resort uses; the bill does not include adequate economic incentives to encourage the development of affordable housing; the proposed implementation procedures are fundamentally unfair; and it may not be consistent with the current visions, plans and processes of the Hawai'i Community Development Authority ("HCDA"), which has jurisdiction over the Kakaako area.

We would strongly recommend that the supporters of this bill work with HCDA, which has jurisdiction over Kakaako, the Hawai'i Housing Finance and Development Corporation ("HHFDC"), the major landowners and stakeholders in Kakaako and other government agencies to develop a consensus regarding the goals, incentives and implementation of housing projects in Kakaako which include affordable housing units.

Background. The history of this bill can be explained in the context of the 1982 Kakaako Community Development District Plan, which was a community and government-based plan, and the findings in the recent Standing Committee Report No. 720-08 of the House Committees on Water, Land, Ocean Resources and Hawaiian Affairs and Human Services & Housing. Based on those documents, it appears that the Kakaako Community Development District (“Kakaako district”) was envisioned as a mixed-use community, including residential, commercial, and industrial uses.

The residential development of the district is intended to encompass housing for families of various income levels. The State has invested at least \$200 million in public funds and the landowners have also contributed to the infrastructure of the Kakaako district to advance this goal. This investment in infrastructure has sparked increased private investment and development plans for the area. However, the Legislature believes that the development projects in recent years have eluded affordable housing and have focused primarily on luxury homes for high-income families and the inundation of retail and commercial developments. The Legislature believes that this bill is necessary to promote the development of affordable housing (for low and moderate income families) in the Kakaako district and to achieve the mixed-use community that was intended for the district.

SB 645. The purpose of this bill is to increase the Kakaako community development district’s reserved housing requirement for a planned development with a height of more than 45 feet or a floor area that equals or exceeds 1½ times the lot area for the development in the mauka area. Further, the purpose of this bill is to increase the requirement for reserved housing units within planned developments in the Kakaako community development district, mauka area from 20% of units to 25% of floor space. The increased requirements apply only to planned developments on lots three acres or more, or which are party of a master planned area. Planned developments on lots less than 3 acres would be required to comply with the existing 20% set aside requirements.

The proposed bill alters the development of housing in Kakaako by proposing a 5% initial increase in the reserved housing requirement for planned developments that occur on lots of three acres or more in the Kakaako Community Development District Mauka Area (from 20% to 25%) and larger increases (up to 35%) in 2018; and includes the following:

- The reserved housing requirement applies to every planned development with a height of more than forty-five feet (i.e. not more than four stories high) or a floor area that equals or exceeds 1 ½ times the lot area for development, even if the developer intends to construct only commercial, industrial, or resort uses on the lot;
- At least fifty percent (25%) of the floor area of the planned development is required to be constructed and made available as reserved housing units for low and moderate income families;
- The countable floor area of a planned development for establishing the percentage for reserved housing units means the total floor area of every building on the lot of a planned development including, but not limited to, basements, elevator shafts, corridors and stairways, but shall not include the floor area developed for community or special facility uses and other exceptions;
- To prevent a flurry of applications for planned developments before the adoption of the rules, this bill imposes a **moratorium**, which would prohibit HCDA from accepting development applications until the rules take effect;

- With respect to eligibility requirements of low-or moderate-income guidelines – they will remain the same, of not more than 140% of the median income.
- The bill prohibits developers of planned developments to make a cash payment to HCDA in-lieu of developing and making available the required reserved housing;
- A new requirement that the reserved units shall be built prior to, or concurrently with the planned development;
- Any project that provides more reserved housing units than required under the law may transfer excess housing credits to another project in Kakaako toward satisfaction of the reserved housing units requirement , if it satisfies certain criteria;
- Alternatively the developer of a planned development may sell a credit to another developer of a planned development in Kakaako at a price mutually agreed upon;
- The bill requires that the terms of the reserved housing credits transfer be approved by HCDA;
- In order to facilitate the adoption of the rules, prior to January 1, 2010, the HCDA is required to adopt rules to effectuate the purposes of this section, **without regard** to the notice and public hearing requirements or any of the requirements of Chapter 91, Hawaii Revised Statutes (“HRS”); and
- The bill makes technical changes to HRS Section 206E-4 regarding the powers of HCDA.

Problems with the proposed SB 645.

- The proposed bill, which determines the reserved housing requirement based on square footage of the project, is unconstitutional, as it lacks a rational nexus to the development of common areas (including elevator shafts, corridors and stairways), residential, commercial, industrial and resort uses.
- The bill is also unconstitutional, because there is no study, statistics or legal policy to justify the twenty-five percent (25%) or thirty-five percent (35%) reserved affordable housing proportional requirement on the common area, residential, commercial, industrial, or resort uses in Kakaako.
- The portions of the bill which allow HCDA to adopt rules without regard to the notice and public hearing requirements of Chapter 91, HRS are a violation of the State’s administrative laws, and also may violate procedural due process rights;
- The “moratorium” requirement in the bill, which prohibits HCDA from accepting applications for planned developments until the rules take effect, is fundamentally unfair and may also violate procedural due process rights, as well as constitute an unconstitutional taking;
- HCDA should maintain flexibility and allow the possibility of in-lieu fee payment, in the event that funding is needed for certain improvements;
- We also understand that the proposed bill may be inconsistent with HCDA’s plans, policies and processes for Kakaako-Mauka and the recent plans approved by HCDA. We understand that HCDA’s Kakaako-Mauka plans were developed through a comprehensive planning process involving many stakeholders and issues. This proposed bill alters those plans, policies and processes without the necessary input and participation of the Kakaako stakeholders;
- Instead of using a punitive “stick” of mandating requirements on every Kakaako developer to provide affordable housing, the State should use “carrots” or incentives to encourage, entice, incentivize developers to build more housing products for a wide range of needs.

Conclusion. LURF appreciates the opportunity to express our views on this matter and while we understand the intent of this bill, we respectfully urge this Committee **not to pass this measure in its current form**, because it unconstitutionally imposes affordable housing requirements without the required legal nexus, does not include adequate economic incentives, the proposed implementation procedures are fundamentally unfair, and it is inconsistent with the current visions, plans and processes of the HCDA. Instead of passing this bill, we would strongly recommend that the supporters of this bill work with HCDA, HHFDC, the major landowners and stakeholders in Kakaako and other government agencies to develop a consensus regarding incentives and the development of housing projects in Kakaako which include affordable housing units.

Thank you for the opportunity to express our views on this matter.