THE SENATE TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII

S.B. NO. 682

JAN 2 1 2011

A BILL FOR AN ACT

RELATING TO KAKAAKO.

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

1 SECTION 1. The legislature finds that there is an 2 increasing concentration of density in the downtown and Kakaako 3 center on the island of Oahu. In Act 153, Session Laws of Hawaii 1976, the legislature created the Hawaii community 4 5 development authority as the authority in charge of the planning and development of Kakaako, one of the main centers of urban 6 living in Honolulu. This was due to its central location and 7 8 largely unplanned and underutilized condition at the time.

9 The State realizes the importance of Kakaako due to its location and has invested millions of dollars in clean-up and 10 11 the building of infrastructure. The legislature finds that the 12 State needs to partner with the landowners in the area to 13 develop this community in accordance with the development 14 quidance policies. Moreover, the scarcity of landowners in 15 Kakaako makes it imperative that planning incentives continue. 16 Their continuance is essential to developing Kakaako in 17 accordance with the development guidance policies pursuant to 18 section 206E-33, Hawaii Revised Statutes.

The purpose of this Act is to encourage the development of 1 affordable residential housing units while preserving current 2 uses through the use of various incentives. 3 4 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is 5 amended by adding a new section to part II to be appropriately designated and to read as follows: 6 7 Reserved housing requirement for Kakaako mauka "\$206E-8 **area**. (a) The countable floor area of a development on a development lot within the Kakaako mauka area shall be developed 9 and made available for reserved housing units according to the 10 11 following table:

> Residential Commercial Land Development Development Area (%) (%) (square feet) Ó 0 - 19,9990 10 20,000-20 79,999 80,000 30 20 or more

12

13 provided that if a developer receives and elects to take a

14 transit-oriented development density bonus, then for residential

15 developments, ten per cent of the reserved housing requirement

16 shall be added to the reserved housing requirement to be

17 developed; provided further that after five years from the



3

1	effective date of this Act, each residential and commercial
2	development percentage requirement shall be increased by five
3	per cent unless the legislature determines there is adequate
4	reserved housing in Kakaako at that time. A project that has a
5	building permit and obtains its certificate of occupancy prior
6	to seven years after the effective date of this Act shall use
7	the percentage as of the effective date of this Act.
8	The developer of the development shall divide the floor
9	area required for reserved housing into and construct the
10	number, types, and sizes of reserved housing units set by the
11	authority. The authority shall establish sale prices or rents
12	to be charged that are affordable to qualified individuals or
13	families intended to be served by the reserved housing units.
14	The authority shall also set the number of parking stalls to be
15	assigned to the reserved housing units.
16	(b) For development lots that are eighty thousand square
17	feet or more in size, the following flexibility options shall be
18	applicable to allow a developer to offset the reserved housing
19	requirements under subsection (a):
20	(1) Notwithstanding any law to the contrary, up to thirty
21	per cent of the reserved housing units required may be
22	developed outside of the district provided that:



1		(A)	One-half of one reserved housing units required
2			under this section shall be offset for each
3			eligible unit of an equivalent square footage
4			constructed outside of the district; provided
5			that up to an additional one-half of one reserved
6			housing units required under this section may be
7			offset for each eligible unit of a greater square
8			footage constructed outside of the district, as
9			determined by rule;
10		(B)	Three-fourths of one reserved housing units
11			required under this section shall be offset for
12			each eligible unit constructed outside of the
13	t.		district if the developer is a recipient of a
14			transit-oriented development density bonus;
15	(2)	<u>An a</u>	dditional reserved housing requirement credit
16		offs	et of one-half of one reserved housing requirement
17		cred	it shall apply if a unit remains an affordable
18		renta	al for twenty years; and
19	(3)	If a	developer transfers land to the authority, then
20		<u>in 1</u> :	ieu of satisfying all or a portion of the reserved
21		hous	ing unit requirements under this section, the
22		deve	loper shall receive one-half of one reserved
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1	housing requirement credit for each reserved housing
2	unit developed by the authority.
3	(c) Notwithstanding any law to the contrary, the for-sale
4	reserved housing units shall remain reserved housing units for a
5	period of ten years from the date of the original sale of the
6	reserved housing unit. The authority shall set the types and
7	sizes of the reserved housing units and establish sale prices or
8	rents to be charged that are affordable to qualified individuals
9	or families intended to be served by the reserved housing units.
10	The authority also shall set the number of parking stalls to be
11	assigned to the reserved housing units. The authority shall not
12	allow a developer to make a cash payment to the authority in
13	lieu of developing and making available the reserved housing
14	floor area or units required under this section; provided that
15	the authority may adopt rules providing for a contribution, in
16	lieu of the provision of reserved housing units, of a fee simple
17	assignment of real property within the Kakaako mauka area.
18	(d) Subject to the rules of the authority, reserved
19	housing units shall be built and made available for occupancy
20	prior to or concurrently with the development of the development
21	lot that required the provision of the reserved housings units.
22	The authority shall prohibit the issuance of any certificate of
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I	occupancy	for any of the other uses before the issuance of the
2	certifica	te of occupancy for all the required reserved housing
3	floor area	a or units.
.4	<u>(e)</u>	Any project that provides more reserved housing units
5	than requ	ired under this section may transfer excess reserved
6	housing c	redits to another project in the Kakaako community
7	developme	nt district toward satisfaction of the reserved housing
8	units req	uirement of that project as follows:
9	(1)	\$60,000 for a studio with one bathroom of at least
10		four hundred square feet;
11	(2)	\$75,000 for a one bedroom with one bathroom of at
12		least five hundred square feet;
13	(3)	\$105,000 for a two bedroom with one bathroom of at
14		least seven hundred square feet;
15	(4)	\$112,500 for a two bedroom with one and a half
16		bathroom of at least seven hundred fifty square feet;
17	(5)	\$120,000 for a two bedroom with two bathrooms of at
18		least eight hundred square feet;
19	(6)	\$135,000 for a three bedroom with two bathrooms of at
20		least nine hundred square feet; and
21	(7)	\$150,000 for a four bedroom with two bathrooms of at
22		least one thousand square feet.
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1	The	authority shall annually review the amount and price
2	for the t	ransfer of the excess reserved housing credits and is
3	authorize	d to increase the amount as deemed necessary; provided
4	that the	authority shall consider adjustments in construction
5	costs and	changes based on government subsidies received. The
6	terms of	the reserved housing credits transfer shall be approved
7	by the au	thority.
8	(f)	For the purposes of this section:
9	<u>"Bas</u>	e zone" means the use, lot area, building area, height,
10	density,	bulk, yard, setback, open space, on-site parking and
11	loading,	and other zoning standards or other restrictions
12	imposed u	pon a development on a particular lot.
13	"Com	munity service use" means any of the following uses:
14	(1)	Nursing or convalescent home, nursing facility,
15	•	assisted living administration, or ancillary assisted
16		living amenities for the elderly or persons with
17	•	disabilities;
18	(2)	Child care, day care, or senior citizen center;
19	(3)	Nursery school or kindergarten;
20	(4)	Church;
21	(5)	Charitable institution or nonprofit organization;
22	(6)	Public use;



1	(7) Public utility; or
2	(8) Consulate.
3	"Countable floor area" of a development means the total
4	floor area of every building on the development lot of a
5	development, except the floor area developed for the following:
6	(1) Industrial use;
7	(2) Community service use; or
8	(3) Special facility use;
9	provided that the term "industrial use" shall be defined by
10	rules adopted by the Hawaii community development authority
11	applicable to the Kakaako community development district as of
12	the effective date of this Act.
13	"Development" means the construction of a new building or
14	other structure on a development lot, the relocation of an
15	existing building on another development lot, the use of a tract
16	of land for a new use, or the enlargement of an existing
17	building or use.
18	"Development lot" means any lot or a combination of lots
19	developed as a development.
20	"Floor area":
21	(1) Means the total area of the several floors of a
22	building, including basement but not unroofed areas,



1		measured from the exterior faces of the exterior walls
2		or from the center line of party walls separating
3		portions of a building. The floor area of a building
4	·	or portion thereof not provided with surrounding
5		exterior walls shall be the usable area under the
6		horizontal projection of the roof or floor above,
7		excluding elevator shafts, corridors, and stairways;
8		and
9	(2)	Shall not include the area for parking facilities and
10		loading spaces, driveways, access ways, lanai or
11		balconies of dwelling or lodging units that do not
12		exceed fifteen per cent of the total floor area of the
13		units to which they are appurtenant, attic areas with
14		head room less than seven feet, covered rooftop areas,
15		and rooftop machinery equipment and elevator housings
16		on the top of buildings.
17	"Kak	aako mauka area" means that portion of the Kakaako
18	community	development district, established by section 206E-32,
19	that is b	ound by King street, Piikoi street from its
20	intersect	ion with King street to Ala Moana boulevard, Ala Moana
21	boulevard	, exclusive, from Piikoi street to its intersection



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1	with Punchbowl street, and Punchbowl street to its intersection						
2	with King street.						
3	"Lot" means a duly recorded parcel of land that can be						
4	used, developed, or built upon as a unit.						
5	"Median income" means the median annual income, adjusted						
6	for family size, for households in the city and county of						
7	Honolulu as most recently established by the United States						
8	Department of Housing and Urban Development for the section 8						
9	housing assistance payment program.						
10	"Reserved housing requirement credit" means a credit to be						
11	applied to a development's reserved housing requirement that may						
12	be transferred to another development as provided in this						
13	section, as expressed in a monetary figure. The formula that						
14	converts the dollar value of a reserved housing requirement						
15	credit into a corresponding reserved housing unit for purposes						
16	of meeting the reserved housing requirements under this section						
17	shall be pursuant to rule adopted by the authority.						
18	"Reserved housing unit":						
19	(1) Means a multi-family dwelling unit that is developed						
20	for:						
21	(A) Purchase by a family that:						

Purchase by a family that: (A)



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1			<u>(i)</u>	Has an income of not more than one hundred
2	• ·			forty per cent of the median income; and
3			<u>(ii)</u>	Complies with other eligibility requirements
4				established by statute or rule; or
5	_((B)	Rent	to a family that:
6			<u>(i)</u>	Has an income of not more than one hundred
7				per cent of the median income; and
8			<u>(ii)</u>	Complies with other eligibility requirements
9				established by statute or rule; and
10	<u>(2)</u> S	Shal	l be d	one of the following types of dwelling units:
11	<u>(</u>	(A)	Studi	o with one bathroom;
12	_(B)	<u>One</u> k	pedroom with one bathroom;
13	_(C)	Two k	pedrooms with one bathroom;
14	<u>(</u>	D)	Two k	pedrooms with one and one-half bathrooms;
15	(E)	Two k	pedrooms with two bathrooms;
16	<u>(</u>	F)	Three	bedrooms with one and one-half bathrooms;
17	<u>(</u>	G)	Three	e bedrooms with two bathrooms; and
18	(H)	Four	bedrooms with two bathrooms.
19	"Speci	al	facili	ty use" means a use in a "special facility"
20	as defined	und	er sec	tion 206E-181."
21	SECTIO	N 3	. Sec	tion 206E-4, Hawaii Revised Statutes, is
22	amended to	rea	d as f	ollows:

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1	"§20€	5E-4 Powers; generally. Except as otherwise limited
2	by this ch	napter, the authority may:
3	(1)	Sue and be sued;
4	(2)	Have a seal and alter the same at pleasure;
5	(3)	Make and execute contracts and all other instruments
6		necessary or convenient for the exercise of its powers
7		and functions under this chapter;
8	(4)	Make and alter bylaws for its organization and
9		internal management;
10	(5)	Make rules with respect to its projects, operations,
11		properties, and facilities, which rules shall be in
12		conformance with chapter 91;
13	(6)	Through its executive director appoint officers,
14		agents, and employees, prescribe their duties and
15		qualifications, and fix their salaries, without regard
16		to chapter 76;
17	(7)	Prepare or cause to be prepared a community
18		development plan for all designated community
19		development districts;
20	(8)	Acquire, reacquire, or contract to acquire or
21		reacquire by grant or purchase real, personal, or
22		mixed property or any interest therein; to own, hold,
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clear, improve, and rehabilitate, and to sell, assign, 1 exchange, transfer, convey, lease, or otherwise 2 dispose of or encumber the same; 3 Acquire or reacquire by condemnation real, personal, 4 (9) or mixed property or any interest therein for public 5 6 facilities, including [but not limited to] streets, 7 sidewalks, parks, schools, and other public 8 improvements; By itself, or in partnership with qualified persons, 9 (10)acquire, reacquire, construct, reconstruct, 10 11 rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, 12 alteration, or repair of any project; own, hold, sell, 13 assign, transfer, convey, exchange, lease, or 14 15 otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase 16 money mortgage in connection therewith; and repurchase 17 or otherwise acquire any project [which] that the 18 authority has [theretofore] sold or otherwise 19 20 conveyed, transferred, or disposed of; 21 Arrange or contract for the planning, replanning, (11)22 opening, grading, or closing of streets, roads,



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



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1	(15)	Procure insurance against any loss in connection with
2		its property and other assets and operations in [such]
3		amounts and from [such] insurers as it deems
4		desirable;
5	(16)	Contract for and accept gifts or grants in any form
6		from any public agency or from any other source;
7	(17)	Do any and all things necessary to carry out its
8		purposes and exercise the powers given and granted in
9		this chapter; and
10	(18)	Allow satisfaction of any affordable housing
11		requirements imposed by <u>law or</u> the authority upon any
12	r	proposed development project through the construction
13		of reserved housing $[\tau]$ units, as defined in section
14		[206E-101,] <u>206E- ,</u> by a person on land located
15		outside the [geographic boundaries of the authority's
16		jurisdiction; provided that the authority shall not
17		permit any person to make cash payments in lieu of
18		providing reserved housing, except to account for any
19		fractional unit that results after calculating the
20		percentage requirement against residential floor space
21		or total number of units developed. The substituted
22		housing shall be located on the same island as the



- 1	development project and shall be substantially equal
2	in value to the required reserved housing units that
3	were to be developed on site. The authority shall
4 -	establish the following priority in the development of
5	reserved housing:
6	(A) Within the] development lot of the proposed
7	development project, but within the same
8	community development district;
9	[(B) Within areas immediately surrounding the
10	community development district;
11	(C) Areas within the central urban core;
12	(D) In outlying areas within the same island as the
13	development project.] provided that the
14	prohibitions of section 206E-31.5(2) shall apply.
15	The Hawaii community development authority shall
16	adopt rules relating to the approval of reserved
17	housing [that are] <u>units to be</u> developed outside [of a
18	community development district. The rules shall
19	include, but are not limited to, the establishment of
20	guidelines to ensure compliance with the above
21	priorities.] the development lot of a proposed
22	development project, but within the same community

1	development district, in accordance with this
2	paragraph."
3	SECTION 4. Section 206E-15, Hawaii Revised Statutes, is
4	amended to read as follows:
5	"§206E-15 Residential projects; cooperative agreements.
6	[(a)] If the authority deems it desirable to develop a
7	residential project, it may enter into an agreement with
8	qualified persons to construct, maintain, operate, or otherwise
9	dispose of the residential project. Sale, lease, or rental of
10	dwelling units in the project shall be as provided by the rules
11	established by the authority. The authority may enter into
12	cooperative agreements with the Hawaii housing finance and
13	development corporation for the financing, development,
14	construction, sale, lease, or rental of dwelling units and
15	projects.
16	[(b) The authority may transfer the housing fees collected
17	from private residential developments for the provision of
18	housing for residents of low or moderate income to the Hawaii
19	housing finance and development corporation for the financing,
20	development, construction, sale, lease, or rental of such
21	housing within or without the community development districts.
22	The fees shall be used only for projects owned by the State or
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1	owned or developed by a qualified nonprofit organization. For
2	the purposes of this section, "nonprofit organization" means a
3	corporation, association, or other duly chartered organization
4	registered with the State, which organization has received
5	charitable status under the Internal Revenue Code of 1986, as
6	amended.]"
7	SECTION 5. Section 206E-33, Hawaii Revised Statutes, is
8	amended to read as follows:
9	"§206E-33 Kakaako community development district;
10	development guidance policies. The following shall be the
11	development guidance policies generally governing the
12	authority's action in the Kakaako community development
13	district:
14	(1) Development shall result in a community [which] that
15	permits an appropriate land mixture of residential,
16	commercial, industrial, and other uses. In view of
17	the innovative nature of the mixed use approach, urban
18	design policies should be established to provide
19	guidelines for the public and private sectors in the
20	proper development of this district; while the
21	authority's development responsibilities apply only to
22	the area within the district, the authority may engage



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1 in any studies or coordinative activities permitted in 2 this chapter [which] that affect areas lying outside 3 the district, where the authority in its discretion 4 decides that those activities are necessary to 5 implement the intent of this chapter. The studies or 6 coordinative activities shall be limited to facility 7 systems, resident and industrial relocation, and other 8 activities with the counties and appropriate state 9 agencies. The authority may engage in construction 10 activities outside of the district; provided that 11 [such] the construction relates to infrastructure 12 development or residential or business relocation 13 activities; provided further, notwithstanding section 14 206E-7, that [such] the construction shall comply with 15 the general plan, development plan, ordinances, and 16 rules of the county in which the district is located; 17 (2) Existing and future industrial uses shall be permitted 18 and encouraged in appropriate locations within the 19 district. No plan or implementation strategy shall 20 prevent continued activity or redevelopment of 21 industrial and commercial uses [which] that meet 22 reasonable performance standards;

1		(3)	Activities shall be located [so as] to provide primary
2			reliance on public transportation and pedestrian
3			facilities for internal circulation within the
4			district or designated subareas;
5.		(4)	Major view planes, view corridors, and other
6			environmental elements, such as natural light and
7			prevailing winds, shall be preserved through necessary
8			regulation and design review;
9		(5)	Redevelopment of the district shall be compatible with
10			plans and special districts established for the Hawaii
11			Capital District, and other areas surrounding the
12			Kakaako district;
13		(6)	Historic sites and culturally significant facilities,
14			settings, or locations shall be preserved;
15		(7)	Land use activities within the district, where
16			compatible, shall to the greatest possible extent be
17			mixed horizontally, that is, within blocks or other
18			land areas, and vertically, as integral units of
19			multi-purpose structures;
20	,	(8)	Residential development may require a mixture of
21			densities, building types, and configurations in
			accordance with appropriate urban design guidelines [+]



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1		and the integration, both vertically and horizontally,
2		of residents of varying incomes, ages, and family
3		groups; [and an increased supply of housing for
4		residents of low- or moderate-income may be required
5		as a condition of redevelopment in residential use.]
6		provided that the reserved housing requirements of
7		section 206E- shall be imposed upon a development
8		when applicable. Residential development shall
9		provide necessary community facilities, such as open
10		space, parks, community meeting places, child care
11		centers, parking stalls consistent with county
12		requirements, and other services, within and adjacent
13		to residential development; and
14	(9)	Public facilities within the district shall be
15		planned, located, and developed [so as] to support the
16		redevelopment policies for the district established by
17		this chapter and plans and rules adopted pursuant to
18		it."
19	SECT	ION 6. Section 206E-101, Hawaii Revised Statutes, is
20	amended b	y amending the definition of "reserved housing" to read
21	as follow	S:



1 ""Reserved housing" means [housing designated for residents 2 in the low or moderate income ranges who meet such] a reserved housing unit, as defined under section 206E- , developed and 3 made available for purchase by a family that has a household 4 income of not more than one hundred forty per cent of the area 5 6 median income and that meets other eligibility requirements as 7 the authority may adopt by rule." 8 SECTION 7. The Hawaii community development authority 9 shall adopt new or amend existing rules to implement this Act 10 without regard to the public notice and public hearing 11 requirements of section 91-3, Hawaii Revised Statutes, or the 12 small business impact review requirements of chapter 201M, 13 Hawaii Revised Statutes. The authority shall adopt the rules 14 before January 1, 2012. Any subsequent amendment of the rules 15 adopted pursuant to this section shall be subject to all 16 applicable provisions of chapters 91 and 201M, Hawaii Revised 17 Statutes.

18 SECTION 8. (a) From the effective date of this Act until 19 the effective date of the new or amended rules adopted pursuant 20 to section 7 of this Act, the Hawaii community development 21 authority shall not accept any planned development permit or 22 base zone development permit application for a development on a

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1 development lot that is twenty thousand square feet or greater
2 in area.

3 (b) From the effective date of this Act, the Hawaii
4 community development authority may accept any planned
5 development permit or base zone development permit application
6 for a development on a development lot that is less than twenty
7 thousand square feet in area. The application for the
8 development shall be subject to the law and rules in effect on
9 the date of the permit application.

10 SECTION 9. Any planned development permit or base zone 11 permit application for any development that is pending on the 12 effective date of this Act shall not be subject to this Act or 13 rules adopted pursuant to section 7 of this Act. The 14 development shall be subject to the laws and rules in effect on 15 the date of the permit application.

16 SECTION 10. From the effective date of this Act until the 17 effective date of the new or amended rules adopted pursuant to 18 section 7, the Hawaii community development authority shall 19 prohibit the developer of a lot greater than twenty thousand 20 square feet in area in the Kakaako mauka area from submitting: 21 (1) A building permit application for the development to 22 the city and county of Honolulu; or



1	(2)	A subdivision application to subdivide or consolidate
2		and subdivide any lot or lots that are twenty thousand
3		square feet or greater in area.
4	SECT	ION 11. (a) Twenty days prior to the convening of the
5	regular s	ession of 2016, the Hawaii community development
6	authority	shall submit a report to the legislature, including
7	any propo	sed legislation, on the status of its reserved housing
8	program i	n the Kakaako community development district.
9	(b)	The report shall set forth:
10	(1)	The total number of reserved housing units contained
11		in the Kakaako community development district at the
12	7	time of the report, broken down with regard to:
13	1.	(A) Size and type of unit;
14		(B) Age group of occupants of the units; and
15		(C) Whether the units were sold or rented;
16	(2)	The number of reserved housing units that were
17		provided or are under construction at the time of the
18		report as a result of the requirements of this Act;
19	(3)	A recommendation whether the reserved housing
20		requirements contained in this Act should be reduced,
21		remain unchanged, or increased; and

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1	(4) Any other information that it deems relevant to its
2	reserved housing program in the Kakaako community
3	development district.
4	SECTION 12. This Act shall apply to the unbuilt portion of
5	a major development within the area of approval of an approved
6	master plan that was pending on the effective date of this Act;
7	provided that the developer shall have five years from the
8	effective date of this Act to obtain all necessary permits,
9	complete any required grading and infrastructure improvements
10	for the major development, and commence construction of the
11	unbuilt portion of the major development before this Act shall
12	apply.
13	SECTION 13. Statutory material to be repealed is bracketed
14	and stricken. New statutory material is underscored.
15	SECTION 14. This Act shall take effect upon its approval.
16	

INTRODUCED BY:



Report Title:

Kakaako Community Development District, Mauka Area; Housing

Description:

Increases the reserved housing requirement for a development in the Kakaako community development district, mauka area.

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