

2-16-2023 SB735 Hearing (Transcript of State-posted video pertaining to HB736)

Committee on Water and Land Sen. Lorraine R. Inouye, Chair, Sen. Brandon J.C. Elefante Vice Chair
Committee on Hawaiian Affairs Sen. Maile S. L. Shimabukuro, Chair, Sen. Kurt Fevella, Vice Chair

Chair (represented by Senator Inouye)

Good afternoon and Aloha to all of you as well here today. We are on our scheduled agenda items for today. Thursday, February 16th, 2023 and we are in Room 224 of scheduled agendas at 1:00PM.

And just some housekeeping rules today, this issue with the first agenda item as well is a continuation of the hearing held last Wednesday, February 8th and at that time we also stated that there will be no testimonies to be received for today's hearing. And we all welcome our committee members, and members of all you public out there, but on Zoom we won't be having any members or testifiers for this meeting. Again, for those on ZOOM but for other bills, aside from the first one SB736, you'll be testifying on bills and your audio is muted and video disabled until shortly before it is your turn to testify. Now this is with bills aside from Bill736. And for those on the next abutting bills, if you do not have additional testimony that is different from your written testimony, we ask that you stand on your written testimony, and those are limited to one minute as well. Time permitting, we'll go into decision-making on all bills on today's agenda after we hear from all testifiers, those following 736 as well.

And today, we call it our D-day because if we don't pass any of our bills today, then the bill dies because today's hearing, actually I think we are one of the few committees hearing bills today. There is a deadline but we did defer measures, but we also want to hear the other agenda items that we have posted. And I must say, the committee, that's all of those, in particularly the following Hakuone bill as well. There were many of you and we just appreciate that you all were able to come today, and make sure that I hear your bill as well. And so, for 736.

Senator Ihara

Chair? Did we complete the testimony from 736?

Chair

Except for one. I'll answer it right now. And so, for 736, the first item relating to housekeeping, since we got through the testifier list last week, and no testimony, as I did mention, has been expected for this bill, and I apologize except for one testifier, and her name is Dawn Morrissey. We weren't able to get her, and I really apologize, because we did conclude the meeting. And I really apologize.

And so, after Dawn's testimony, we will continue to proceed with final questions for only those agencies OHA, and I am sure my members, and of course HCDA, if members have any comments or questions they have, then we will go into decision making. So, we want to make sure that all the bills today are moving forward. So, we'll proceed then.

Good afternoon. Is Dawn Morrissey here? OK, Aloha and come forward. State your name. You have one minute. And again, we apologize for missing you.

Dawn Morrissey

My name is Dawn Morrissey. They say history is written by the winners. In Kaka'ako Makai history is written by the wealthy. The opposition says people should remember recent history of Kaka'ako makai, but yet their idea of history is very recent. So, let's fill some of the gaps. When HCDA was created in 1976, its mission was to create communities that sense the highest needs and aspirations of Hawaii's people. That's what Director Nakamoto's testimony says. But everything hinges on what is meant by "community" and what is meant by "Hawaii's people." In this recent book "Detours a Decolonial Guide to Hawaii," which I strongly recommend, Tina Grandinatli tells us how HCDA defined the community. She says "While the existing community in Kaka'ako was a mixed plate of Japanese Chinese, Hawaiian, and Filipinos, the two new condo towers housed predominantly Haole, Caucasian residents and a large number of Japanese residents. Effective development would be defined by profit, even though they knew this would bring drastic changes to the neighborhood." HCDA's own EIS says, "New Kaka'ako residents are expected to be predominantly

Caucasian and Japanese. Part Hawaiian, Filipinos and mostly other ethnic groups are not expected to be represented in proportion to their share of Oahu's population because they tend to be lower incomes."

Kaka'ako's planners effectively deemed Kanaka Maoli and working-class families as undesirable. The requirements exclude those who most desperately need housing, and that 75% of housing demand comes from the working class from low-income households, but they are not served by HCDA's mission. Many of those excluded are OHA beneficiaries. OHA is saying, "Let Hawaiians build on Hawaiian land." That's what this bill is about.

As a settler, I feel must stand in solidarity with them. Please, please, move the bill forward.

Mahalo. Thank you.

Chair

Can we have you case, please? Ok, thank you.

(Dawn is handing out her written testimony to the chair, Senators).

Thank you very much. I need to also, I understand Robert Peters came and he wanted to testify, but as I did say earlier, the testimonies from outside the agencies have been closed. He did submit, and I would say, I have his testimony. And Mr. Peters, we will add this to our testimony list of last week. Mahalo.

At this time, we would like to call OHA as well, Chair Hulu Lindsey to wrap up in case you have anything else to add, and members, if you have any questions or comments.

Aloha, and we understand you made a special trip because you've already had a previous agenda on your schedule to be out of State, but we appreciate your presence here as well.

OHA Chair Lindsey

Thank you Chair, and thank you Chair Maile for allowing me to address you again.

Good afternoon, Senators. My name is "Hulu". Lindsey, and I am the Chair of the Office of Hawaiian Affairs. I returned from a meeting in Florida a day earlier as planned so that I could be here for this hearing.

I see a flood of misinformation about Hakuone that is designed to confuse and mislead. This Sunday's last weekend Star Advertiser had too many examples of that. This is especially disappointing when it comes from people who had been fully briefed and who had looked at OHA's plan so that we must again set the record straight.

These are the facts: OHA has said loud and clear that it wants to build residential on just three parcels inland, not shoreline. The proposed legislation encompasses all for simplicity and clarity.

This is the fact: Many of the officials and the governor have decided that housing will be the State's #1 priority and act like it is.

It pains us greatly and should embarrass the State how many Hawaiians are among the homeless. The more residential units OHA is allowed to build, the more workforce housing can be built. Like all landowners OHA will be required to set aside a percentage of its residential units for lower income households. While OHA intends to go above and beyond this requirement, higher density and greater height allowance will maximize this important community benefit.

The fact is that the opposition portrait OHA as wanting to gouge taxpayers for repairs. No.

What we are asking is for the State to address decades of neglect to the shorelines as a result of undisclosed, deferred maintenance. OHA believes that the State is responsible to fund at least part a portion of the critical repairs that it failed to perform over many years.

This is the fact: We have learned that the actual value of the land conveyed to OHA in 2012 is for less than 200 million dollars. If OHA had received a 200-million-dollar cash payment and conservatively invested, it had a present value of 400 million dollars. I am simply asking for what the law provides. Very simply OHA was short-changed and needs to be made whole.

The fact is the 2012 OHA appraisal quotes the House report which expressively states that the value of 300 million dollars was based on the assumed height limit of 400 feet. We did not dream this up.

The fact is access to the ocean in Hakuone is central to OHA's vision. In fact, when OHA presented its plan to Friends of Kaka'ako, they marveled at the numerous public access points. Far more than present needs provided.

The Native Hawaiian cultural practices are a cornerstone of Hakuone and of why Hawaii has a public shoreline access today. So, it is deeply offensive to be lectured about the need to protect the shoreline of this aina.

This is the fact. OHA has developed a comprehensive masterplan that reflects what the community wants. It features a planned Native Hawaiian Cultural Center and many amenities that the community welcomes like kupuna and daycare, healing centers, opportunities for businesses and more. The suggestions from the opposition are made as if they are unaware of all that is already in OHA's plan.

To our great dismay one Senator has allowed her opinions based on misleading information to be published on a web site for public viewing. Her views are irresponsible. She accuses OHA of asking legislators to pass a bill without first doing serious studies of the impact and cost of our building.

The fact is OHA is indeed inheriting badly abused land from the state. But OHA will do what is right and what is required by studies and laws and addresses their findings prior to any construction. OHA is committed to the clean-up of the parcels at Kaka'ako Makai finally and fully transforming them into safe and productive land into a place where Hawaiians can once again feel welcome.

It is funny that the opposition wants to educate Hawaiians on environmental stewardship. It is in our DNA.

It is a fact that the Hakuone Master Plan includes a broad welcoming shoreline promenade for everyone to enjoy as well as nearly a dozen public access points for fishing, surfing and cultural practices.

OHA has already committed its waterfront parcels to be part of the City's planned layout of parks, stretching from Waikiki to Perl Harbor.

The fact is Native Hawaiians are not a monolithic community, which means we often hold different opinions.

We caution the opposition against engaging in casual cultural appropriation, invoking Native Hawaiian words and values to justify their opposition.

OHA is one of the largest Native Hawaiian entities created by the Hawaii State Constitution to serve Hawaii's indigenous population. Patronizing us by trying to school Hawaiians on environmental stewardship adds insult to injury.

The fact is our culture demands the utmost respect and care for our aina. Doing right by Native Hawaiians and all of Hawaii is our kuleana.

We take our stewardship of Hakuone seriously and we understand what it represents for future generations, like the man who testified last week in the hopes that he can live one day in Kaka'ako.

The fact is that OHA owns nine parcels in Kaka'ako Makai representing only 14% of all the land in the area. Of its total of 30 acres, OHA has committed ten acres to parks and open space. As a result, Hakuone will actually increase the amount of open space in Kaka'ako.

The fact is OHA aggressively cleaned house. In 2022 you may have seen the coverage with new leadership in OHA, stricter policies and controls, and a commitment to transparency.

We know we will be judged by our actions. We expect our beneficiaries and the rest of Hawaii to hold us accountable as we strive to fulfill our sacred mission. Getting these restrictions on residential development lifted will clearly be the way we want for us to better address the needs of our beneficiaries who have waited long enough.

Mahalo

Chair

Chair will open for discussion to OHA

I have a question. So, out of nine parcels what is considered for the residential part and how many buildings? And members, we have their maps and products here. And their maps and their products are pretty well done, and I ask that others there look at the plans because I have seen that this is a great plan, open space, a lot areas for of promenade and walking. So, out of that, I think the question has been How many of these parcels are going to be considered for the residential site and how many buildings?

OHA (represented by Chair "Hulu" Lindsey).

Just three parcels. We have not designed these buildings as yet, but obviously, two of the lots on Ala Moana Blvd. will be one building each.

Chair

Ok. Ok. Any questions or comments you like to ask the Chair. Senator Ihara.

Senator Ihara

We got an unsigned. You know that information piece that was sent out and that had links to it, I think 11 reports on hazardous waste and so forth. I assume it came from HCDA. It did not have an author on it. This is it, it's called, and I just got it yesterday, let's see. Yeah, it lists many of the hazardous waste and note. Who is it from?

Chair

This it from HCDA, Senator.

Senator Ihara

It's up to the Chair if

Chair

Do you want to ask questions from HCDA

Senator Ihara

Yeah

Chair

Chair will call HCDA

Senator Ihara

Okay. Thank you Chair.

Chair

And one second. Members we have, Excuse members. We have distributed HCDA's comments pretty much earlier. That's what Senator Ihara is referring to.

Senator Ihara

I did not have time to read it all.

Chair

Proceed Senator Ihara

Senator Ihara

It was quite a lot, but I did some quick reading. There's a whole bunch of hazardous waste reports and so forth, and they had three parameters.

One, and I am focused more on the three sites, not all the others so much.

One, it said no residential development.

Second. Future development plans need to consider the existing environmental hazards.

And third. Permanent remedial measures would depend on the development.

So, I guess, my question is, let's say for the three parcels you have 400 feet (each), I don't know how, I am not a construction guy. So, I guess you have to dump it down (go below the surface). To what extent do the reports address what could happen for the three parcels?

HCDA (represented by Craig Nakamoto)

Thank you, Senator Ihara, for the question, and thank you, members of the Committees, for inviting me back again.

And thank you, Chair Lindsey for your comments.

So just a bit of context, if I can, Senator, and share with your indulgence.

Let me give a bit of context to this cause. I know it was a lot of reports. But a lot of it was in response to your questions, Senator. Some of Senator Favella's questions, and Senator McKelvey's questions as well. So that was what this was trying to respond to.

So, these reports kind of started with the Edward Noto reports of 1997/78. This was a Brownfield study that was done through the Environmental Protection Agency. That was the Edward Noda study.

Chair

You know, Craig, just one minute, Senator. I think in all fairness, Chair (Lindsey), your planners that did the plans, I would allow them to come and sit with you to go over the comments from HCDA if you know who you need.

Yeah, OK, if you can bring your chair and just sit here. If you, this has to do, I think, more with the comments on the EAs and the EISs, so you can kind of (Can you share this with him? Comment by Senator Elefante).

Proceed then. Sorry about that.

HCDA

No problem, and Chair, also my director of planning and development is also outside to, so I may call him in if I need to.

Senator Ihara

Can I ask, for fairness, OHA, did you know about this?

OHA

No

Senator Ihara

OK. I am sorry. Yeah. OK.

HCDA

Yeah, sorry. We distributed to the committee members, as you know, these were responses to committee members, but happy to share.

So, the Edward Noto report was the one that started, so that was the Brownfield study. And then after that, there were a series of reports that were actually requested of us by the Department of Health. And that was the so-called Limtiaco reports that everybody is familiar with.

So, the Brownfield reports by Edward Noto, the Limtiaco reports that were in 2009, they are, and I am trying to make a clear distinction because I did not do a good reporting at the last hearing to make this clear. But these were environmental site assessments, not EISs or EASs under Chapter 343. So, these were environmental site assessments, Phase 2, that were done to look at the contamination on the site. I will not say hazardous materials. As a result of these Limtiaco reports, there were actually three. Started kind of June, those are June 2009, are then, I think, it was September 2009, and ending with what is known sort of these remedial alternatives.

And the Limtiaco reports sort of assumed that no residential development was allowed in Kaka'ako at the time. Which was true because the 2006 law had already been passed. They had at the future long-term plans. They had looked and development for Kaka'ako was still a bit of far away, so they also assumed that. And they kind of assumed, I think, industrial, commercial uses. So, their remedial alternatives, there were six of them that they went through, right? And they kind of went through 1,2,3,4,5,6, and they kind of said, as the base of practicality, what can be done, what cannot be done. They looked at capping. The asphalt capping and that was done at the Piano lot. And we capped the lot working with DOH.

And then they looked at other alternatives like excavating contaminated soil, and safely and completely disposing of it, and then bring in new, clean soil especially if there was going to be excavation work. And that is something that at the time, Senator, I think they dismissed as being not practical. They also looked at soil washing as another alternative. And they also viewed it as not practical.

I think, the reason why at that time industrial, commercial or kind of slab-on-grade construction was being considered and they said "OK, you can put that all on an asphalt slab".

I believe if something more extensive, intensive that slab-on-grade construction that requires a footing, and I am not an engineer, but it's gonna require some kind of digging, it's gonna require maybe soil that has to be moved and

remediated. So, these are the kind of things, I think, that are gonna have to be taken into account. Quite frankly by any developer.

Chair

And no different than you allowed and worked on the previous developments pre-OHA 2012. Well, because what you are explaining is no different than the process that you used for all the new developments that are occurring now. Am I correct.

HCDA

Well, I think the difference, Senator, might be if you are looking at Kaka`ako mauka, for example, that's one thing. But in all the reports that I have seen, and this is the ironic part, in Makai, I mean, what we are talking about is land that was really created by incinerator operations. It was a landfill. So, I think it is a little bit different and hard to compare to Mauka. But this area (Makai) was landfill. So, the reports found elements of metal, chromium, lead in lots of these places, consistent with what you would find with these incinerator types of operation.

Chair

So, to make it short, you're saying that the difference between an EA and an EIS. Now, the question that I have for OHA is You are planning on not doing an EIS but an EA, and if there is an EA trigger, if I understand what an assessment does, if it triggers something more, I guess, the areas that need to be remediation, you will have to do an EIS. Am I correct?

OHA

We will do an EIS

Chair

OK, all right.

HCDA

Senators, I don't want to be unclear as I was the last time, so let me be really clear. So, an EIS is a Chapter 343, right?

Chair

Yes

HCDA

Chapter 343 is triggered upon the presence of certain things like a State action, or use of State lands, or use of state monies, and so forth. And I believe, yes, that OHA at some point, probably the triggers for an EIS are gonna be the metric and they are gonna have to do it.

Senator, on our side, the HCDA side if we propose some kind of action like a rule amendment or something that's gonna have some significant difference from what from what we have now. That might also be a trigger for an EIS.

Chair

After they complete their development EIS process, because you are not in the picture yet. You are in the picture only after the completion of their EISS report, right?

HCDA

Yes, Senator, if I can finish. Sorry, I don't have a lot of time on this, but let me finish. So, I heard the testimony of Chair Lindsey and I have no doubt that they're gonna do the EIS at some point. The completion of their Makai plan is probably something that's gonna trigger that. I think what my sort of my point in bringing all these materials to the committees was, an EIS is a disclosure document, basically at the very core. It discloses certain impacts as a result of certain actions. And what I would say is that what this committee is trying to do to make the decision on whether residential, an increase in height of 400 feet and density. And this is increasing, allowing residential on all nine parcels and increasing height and density on some of these parcels.

What this committee is trying to do is to make a decision on that without understanding and having the facts of what are the impacts on the environment, what are the impacts on traffic, what are the impacts on sewer, water, groundwater, aquifers, sea level rise? I am not just talking about sea level rise and building adaptability and siting. I am

really talking about what is the impact of digging a foundation on sea level rise and how is that gonna disturb contaminants that are there?

So, I guess, what I am saying is that before the committee makes this kind of decision, shouldn't it have all the facts in front of them and the benefits of that and of studies so that it can make an informed decision about residential height and density?

Chair

We really don't know at this point because we have a plan. So, what we are looking at, I mean, we're considering what the EIS, which is more important to all of us, because they are going to have to share the EIS with all of us as well. And at that point, I think, which we also offer because the State is not going to do the EIS, and the State made a decision that the lands go to OHA.

And so no different than any of other developments that occurred. Now we also talk about Makai. Now, if you go down to Ala Moana, Makai can be Ala Moana Park, and then a road, and then you already have somehow many-stories condos already built.

So, the makai, it's really interesting because when we talk about Makai, we're talking about Ala Moana Makai. But what about those lands that were right next to the roadway? To me, the roadway probably shouldn't have been there. We are not sure what is under the highway as well.

But the issue for us, I think to make a decision, what's before us in this bill is not for us to dictate what's gonna happen because we haven't seen and we're not presented with an EIS plan. So, the direction that we have to make is what's before us, and what is the request from OHA on this measure. And I appreciate because this document that you have given us will be in our presence while OHA proceeds with their plans. So, they will come up with their environmental whatever, but now you're saying that all of these things maybe should go into the plan.

HCDA

So, Senator, I (cut off by the Chair)

Chair

And no, it's no different than any other counties looking at how they develop their plans in the future because nobody can predict what happened.

I have a question for you? I have a question for you, OK? Because I was involved with a similar situation where the Fisherman's Wharf is, where Nico's and all that. OK, during the Cayetano administration, we found that the auction house also had to be remediated. And you would never know if the State would allow the development of that Fisherman's Wharf, in auction houses. So, we went through these plans until such time that you do an EIS, because you never know what is under there. But for us to predict without the actual facts, to know what's under our roadways. And we all know what the lands were, as you mentioned, it was pretty much an industrial area.

Senator Ihara

Can I ask not so much EIS. What triggers an environmental site assessment?

HCDA

Well, environmental site assessments, like a Phase I or 2, a lot of these assessments are done by landowners, potential landowners. If I want to buy a property, I might do a Phase 1 which is...

Senator Ihara

Would we anticipate OHA to do the environmental site assessment?

HCDA

You might. You might expect it. They may have done it already, done already an environmental site assessment. But on these kinds of properties, because there is so much work done on some of these parcels, it might not even be necessary to do a Phase 1. You would just go to a Phase 2, right? Because you know that there's gonna be issues with a lot of these projects. But...

Senator Ihara

So, I've learned that Ala Moana Blvd. was the shoreline. Correct? And I still don't know how many feet we go down to hit the sea but I think in one of these it said 12 feet.

HCDA

It might be less than that Senator to hit the groundwater. And I just want to clarify this. An EIS could be done both by the State, HCDA, or could be done by OHA. I think what I am trying to emphasize here is that the legislature, and I'm not taking sides in any of this, the legislature created, established HCDA to plan for Kaka'ako and Kaka'ako Mauka and Makai. Some of those, and a plan for either residential, higher density, lower density, whatever. And I think it's more of a planning issue whether density should be increased to 6.0 or height should be increased to 400 feet, and even residential for that matter. The community has spoken about residential. So, what are the cumulative impacts of that gonna be on the traffic, sewer, water, aquifer?

Senator Ihara

I think I agree with you. I may be a minority view but I understand what you are saying and you're making a good case and you are doing well for HCDA. My concern would we basically have to eliminate all the remediation alternatives because you are basically capped. And so, if you're gonna go 400 feet, you're not gonna do a cap, I suppose. You have to go down, right?

HCDA

Yes.

Senator Ihara

And so, I don't know if any of the environmental site assessments that, I don't know how far, there were some borings. I don't know how deep it went. That could indicate.

HCDA

I don't know for construction of 400 feet, maybe even 200 feet there, I don't know. You might have to drive piles. So, it's going to eliminate one of the options which was to put a membrane there and even it's gonna eliminate the capping option. So, these remedial alternatives, like removing soil and doing it and it's gonna be looked at, I think in the context of residential development. And what does all that mean now since 2005? And final point.

Senator Ihara

They can talk to OHA (now OHA wants to say something).

OHA rep

Just quick question Chair Inouye, if I may?

Chair

Yes, proceed.

OHA rep

The planning...

Chair

Introduce yourself.

OHA

Sorry, I am Casey Brown. I am the Chief Operation Officer for the Office of Hawaiian Affairs. Just a quick comment on Craig's comments. OHA plans fully to be involved in the planning process, and part of that planning is to look at traffic studies, to look at the infrastructure, to look at the plumbing line, all of that. All of that is what OHA's prepared to do as proper project planning.

Chair

And members, just look in the bill, in your section two, it already says what OHA is to report to. Particularly in the residential development, they must hold public hearings once they do their plans, height limit, etc., everything, and

they need to come out to a public hearing and do what is responsible for the project to move along. So, it's not like this is going to be the end of the approval process.

Senator Elefante

Yes, a few questions for OHA and HCDA. So, Chair Lindsey, thank you for coming back early to present additional information to the committees. So, you did mention that OHA's intent was to develop residential on three of the nine parcels. Is that correct?

OHA

Yes.

Senator Elefante

In this handout that I have that's tabbed, can you explain which particular parcels that OHA are interested in developing for residential?

OHA

Yes, the two parcels on Ala Moana and the Piano lot.

Senator Elefante

Ok, just those two. So that would be, I am looking at this. I don't know what page number this is, that would be E and FG?

OHA

Correct

Senator Elefante

These two on Ala Moana and I?

Chair

Is that map, is it the one that was given to us members by HCDA. It's the last page.

HCDA

Casey, That's the AAFS building, right? That's the former AAFES building.

Senator Elefante

I may not remember that because of my age, but please don't hold this against me (laughter).

HCDA

Thanks, Senator. I appreciate that one.

Senator Elefante

But as a follow-up to HCDA, and thank you for clarifying that. So, it is your understanding Director Nakamoto, that OHA would have to come to HCDA for approvals if there were to be residential development on these said parcels.

HCDA

Yes, the settlement agreement makes OHA agree to be subject to our zoning rules, and so they would have to come back for development permit approval.

Senator Elefante

And then finally, it is your understanding that OHA would have to lease that, or could they sell these parcels? Yes, go ahead, Mr. Brown.

OHA (Casey Brown)

Thank you, Senator. Yeah, that would be the landowner's choice on how we structure the ownership interests and what not.

Senator Elefante

As a brief, quick follow-up to that. If it were to be your choice, what would be the intent?

OHA (Chair "Hulu" Lindsey)

Well, at this point we plan not to sell any of these lots.

Senator Elefante

OK, thank you. Thank you Madam Chair

HCDA

Sorry, can I do one follow-up Senator? With respect to, since you mentioned the public hearings, I think what I'd prefer, if the committee prefers to move this bill out, I want to keep our current contested case hearing in place. Contested case hearing mechanism in place.

I do not prefer to exempt off from the public facilities dedication. I think there are ways to work with OHA on the public facilities dedication, the form of it. I prefer not to exempt anyone, any landowner from that except for the (indistinct). I prefer those things not be, they wouldn't be taken out.

Senator Ihara (to OHA)

Can I ask about that? Chair, did I hear you right that you were OK with taking out the exemption from the reserved housing or did I mishear you? At the beginning when you spoke, you said that you would, OHA would be providing the requirements, but I might have misheard you.

OHA

No, I don't think I said (that).

Senator Ihara

OK

OHA

I said, if anything we may increase it.

Senator Ihara

Ok. OK.

HCDA

Senator, the bill does not exempt OHA from our reserved housing requirements, so they would have to follow our reserve housing requirements.

Chair to HCDA

OK, can I just add, you haven't heard our recommendations yet, so let me add. And the Chairs, in one of my recommendations when we do decision-making, we will be adopting your recommendation amendments. And so, if you have someone here who can remember what I'm reading, first was we are gonna delete the "Provided further on language" on page 23 of the bill lines 19-21. And we will, OK, you get it Craig?

HCDA

OK

Chair

Sorry, OK, that's page 23 and my recommendation is to delete lines 19-21, OK?

HCD

OK

Chair

We are also going to delete on page 24, the next page, lines 1-20, and on page 25 we are gonna delete, our plans are to delete lines 1-7. So that would be our Chair's recommendation. So, if that kind of addresses some of your concerns.

HCDA

Except for me, Senator, if I can add? On page 26, line 12 through 21.

Chair

That's the section on dedication, page 26 line what?

HCDA

Line 12

Chair

That's section 3.

HCDA

Yeah.

Chair

To what line, what?

HCDA

To line 21 on page 26 and then lines 1 through 3 on page 27.

Chair

That's the dedication of the public facilities?

HCDA

I think we would take that out because there's not gonna, I think Casey Brown is nodding yes, so I am gonna take this as a yes. So, on page 26 lines 12 through 21.

Chair

OK.

HCDA

And then take out on page 27 lines 1 through 3.

Chair

So "Rules adopted by the authority pursuant to subsection A shall not apply to residential development approved by the ..."

Chair to staff: Casey you got that. I am not sure if that's going to be part (indistinct chatter among commission members). So, then Casey, it seems like it's deleting the entire section three? OK, all right. We'll give you time. All right.

Chair to HCDA: So, we will take your comments and we will look at it.

HCDA

Yeah, and I think there was one more comment I made on page 20, sorry page 27 lines 7 and 8. It seems like that line, that additional language was unnecessary.

Chair

In section 4

HCDA

Correct

Chair

You are talking about the prohibitions?

HCDA

Correct, yes. I don't know if that language was necessary.

Chair

We will have our attorneys as well as staff look at it as well (cannot hear additional talk over mumbles). Yeah, yeah, yeah, it could

HCDA

Anyway, that's the question I have.

Chair

OK, we will take your comments seriously as well.

HCDA

Thank you

Chair

We will work with and check with our staff. Any further comments with regards to OHA and HCDA? Anything else OHA and the comments?

Chair to OHA: You got their sheets as well. OK? I mean their comment letter.

All tight and any further discussions? And (committee) members you did get the plans. Any reaction to it as well? OK? It's a sad situation because when you look at the appraisal and the recent comments by – OHA has been short-changed until this time. OK. One second. I like to go into decision-making. So, you got your quorum. You need our people. We need Favello on both sides. All right (indistinct shatter).

Yeah, yeh, yeah, you want to. Ok, excuse me Chair (addressing OHA).

What we can do today is we're gonna make decisions today.

You guys, why don't you look at, because you didn't have time. So, the Chairs will allow you, we can do decision-making because we have our surfer bill and two others, then we come back and do DM. So that would be, I would say about a couple of hours, two hours.

Committee members, we can make it four at three o'clock. Yeah, yeah, why don't we give you guys time.

HCDA

And we'll get back to you (indistinct).

Chair to Committee

Ok, we'll give you time and we're gonna make our recommendations later when you folks, yeah. Ok, thank you. And what's good about allowing you to do that as well, though we could just pass what we have here, but we certainly would like to clean up as much as we can as the bill moves to the next committee. And I think it goes to WEM, yeah? WEM and Judiciary. And normally during that hearing they just do decision making on bills that we heard in committee but we want to make a nice kind of clean bill. And since we are holding the hearings, we will give you time.

HCDA

Thank you.

Chair

Ok, we are going to continue. And to those that are sitting here, those with, let's see, the OHA's measure, if you don't mind get out of your seats because we have three other hearings that we are going to complete, then you can return later.

SB376 Text

Chair requested to remove

Page 23 Lines 19-21

provided further that approval may be granted only after the applicant seeking approval conducts a public hearing held in accordance with subsection (b).

Page 24 Lines 1-20

(b) An applicant seeking approval of a plan or proposal of a residential development pursuant to this section shall, prior to the submittal of the plan or proposal to the authority, hold a public hearing that shall be exempt from chapter 91; provided that the applicant shall publish a notice of the hearing in

accordance with section I—28.5 no later than thirty days prior to the day of the hearing; provided further that any interested person shall be allowed to submit testimony on the residential development plan or proposal, orally or in writing, at the hearing. The notice of hearing shall include:

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

(c) An applicant seeking approval of a plan or proposal of a residential development pursuant to this section shall, prior to the submittal of the plan or proposal to the authority, fully address all issues or questions raised in oral or written testimonies submitted at the hearing pursuant to subsection (b).

Page 25 Lines 1-7

(d) The authority shall, prior to approving any plan or proposal for residential development pursuant to this section:

- (1) Hold a public hearing in accordance with chapter 91; and
- (2) Fully consider all written and oral testimony received at the public hearings held by the applicant and the authority.

HCDCA requested to also remove

Page 26 Lines 12-21

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

“§206E-12 Dedication for public facilities as condition to development. (a) The authority shall establish rules requiring dedication for public facilities of land or facilities, or cash payments in lieu thereof, by developers as a condition of developing real property pursuant to the community development plan. Where state and county public facilities dedication laws, ordinances, or rules differ, the provision for greater dedication shall prevail.

Page 27 Lines 1-3

(b) Rules adopted by the authority pursuant to subsection (a) shall not apply to residential developments approved by the authority pursuant to section 206E— .”

Page 27 Lines 6-8

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