

Resolution

No. 22-251

APPROVING FOR INCLUSION IN THE 2023
HAWAI'I STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE A STATE BILL TO
ELIMINATE THE NEED FOR SPECIAL
MANAGEMENT AREA USE PERMITS FOR
CERTAIN ENVIRONMENTALLY DESIRABLE
ACTIVITIES

WHEREAS, under the Coastal Zone Management Act and associated regulations, “development” in the Special Management Area requires a Special Management Area Use Permit, which is a process that in most cases serves laudable environmental purposes; and

WHEREAS, however, the broad definition of “development” coupled with rising labor and materials costs can result in unnecessarily costly and time-consuming bureaucratic review of Special Management Area Use Permit applications for improvements, facilities, and incidental structures that are environmentally desirable; and

WHEREAS, however, targeted amendments to the definition of “development” will promote, not undercut, the environmental controls and quality that Special Management Area regulations are intended to protect; and

WHEREAS, exclusions from the Special Management Area definition of “development” are environmentally desirable for:

- installation, maintenance, repair, and replacement of public pedestrian and bicycle facilities to reduce reliance on vehicles;
- trash removal, invasive vegetation removal or control, and fencing for invasive species control or preservation of native habitats to improve the quality of the environment;
- installation, maintenance, repair, and replacement of lighting, fixtures, and equipment to comply with standards at public facilities, including health and safety standards, to protect native seabird populations and reduce light pollution; and

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- installation, maintenance, repair, and replacement of security measures for existing public facilities; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit “A,” to expand exclusions to the definition of “development” in Chapter 205A, Hawai‘i Revised Statutes, and eliminate the need for Special Management Area Use Permits for certain environmentally desirable activities, is approved for inclusion in the 2023 Hawai‘i State Association of Counties Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawai‘i State Association of Counties Executive Committee.

INTRODUCED BY:

Kelly T. King

KELLY TAKAYA KING

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREAS.

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

1 SECTION 1. The legislature finds that targeted amendments
2 to the definition of "development" as it relates to special
3 management areas will promote, not undercut, the environmental
4 controls and quality that special management area regulations
5 are intended to protect. Currently, the broad definition of
6 "development" coupled with rising labor and materials costs can
7 result in a special management area use permit review being
8 required for improvements, facilities, and incidental structures
9 that may not warrant such intense scrutiny and the associated
10 costs and delays that go along with it.

11 The legislature further finds that exclusions from the
12 special management area definition of "development" are
13 desirable for the following activities:

14 (1) Installation, maintenance, repair, and replacement of
15 public pedestrian and bicycle facilities to reduce
16 reliance on vehicles;

17 (2) Trash removal, invasive vegetation removal or control,
18 and fencing for invasive species control or

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1 preservation of native habitats to improve the quality
2 of the environment;

3 (3) Installation, maintenance, repair, and replacement of
4 lighting, fixtures, and equipment to comply with
5 standards at public facilities, including health and
6 safety standards, to protect native seabird
7 populations and reduce light pollution; and

8 (4) Installation, maintenance, repair, and replacement of
9 security measures for existing public facilities.

10 The purpose of this Act is to expand exclusions to the
11 definition of "development" in chapter 205A, Hawaii Revised
12 Statutes, to reduce the need for special management area permits
13 for certain activities.

14 SECTION 2. Section 205A-22, Hawaii Revised Statutes, is
15 amended by amending the definition of "development" to read as
16 follows:

17 "Development" [~~means~~]:

18 (1) Means any of the uses, activities, or operations on
19 land or in or under water within a special management
20 area that are included below:

21 ~~[(1)]~~ (A) Placement or erection of any solid material
22 or any gaseous, liquid, solid, or thermal waste;

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[+2+] (B) Grading, removing, dredging, mining, or
extraction of any materials;

[+3+] (C) Change in the density or intensity of use of
land, including but not limited to the division or
subdivision of land;

[+4+] (D) Change in the intensity of use of water,
ecology related thereto, or of access thereto; and

[+5+] (E) Construction, reconstruction, or alteration
of the size of any structure.

~~["Development" does]~~ (2) Does not include the following:

[+1+] (A) Construction or reconstruction of a single-
family residence that is less than seven thousand
five hundred square feet of floor area [7]; is not
situated on a shoreline parcel or a parcel that is
impacted by waves, storm surges, high tide, or
shoreline erosion[7]; and is not part of a larger
development;

[+2+] (B) Repair or maintenance of roads and highways
within existing rights-of-way;

[+3+] (C) Routine maintenance dredging of existing
streams, channels, and drainage ways;

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1 ~~(4)~~ (D) Repair and maintenance of underground
2 utility lines, including but not limited to water,
3 sewer, power, and telephone and minor appurtenant
4 structures such as pad mounted transformers and
5 sewer pump stations;

6 ~~(5)~~ (E) Zoning variances, except for height,
7 density, parking, and shoreline setback;

8 ~~(6)~~ (F) Repair, maintenance, or interior alterations
9 to existing structures;

10 ~~(7)~~ (G) Demolition or removal of structures, except
11 those structures located on any historic site as
12 designated in national or state registers;

13 ~~(8)~~ (H) Use of any land for the purpose of
14 cultivating, planting, growing, and harvesting
15 plants, crops, trees, and other agricultural,
16 horticultural, or forestry products or animal
17 husbandry, or aquaculture or mariculture of plants
18 or animals, or other agricultural purposes~~(7)~~;
19 including all traditional fishpond and traditional
20 agricultural practices;

21 ~~(9)~~ (I) Transfer of title to land;

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1 ~~[(+10)]~~ (J) Creation or termination of easements,
2 covenants, or other rights in structures or land;
3 ~~[(+11)]~~ (K) Subdivision of land into lots greater than
4 twenty acres in size;
5 ~~[(+12)]~~ (L) Subdivision of a parcel of land into four
6 or fewer parcels when no associated construction
7 activities are proposed; provided that any land that
8 is so subdivided shall not thereafter qualify for
9 this exception with respect to any subsequent
10 subdivision of any of the resulting parcels;
11 ~~[(+13)]~~ (M) Installation of underground utility lines
12 and appurtenant aboveground fixtures less than four
13 feet in height along existing corridors;
14 ~~[(+14)]~~ (N) Structural and nonstructural improvements
15 to existing single-family residences, where
16 otherwise permissible;
17 ~~[(+15)]~~ (O) Nonstructural improvements to existing
18 commercial or noncommercial structures; ~~[and]~~
19 ~~[(+16)]~~ (P) Construction, installation, maintenance,
20 repair, and replacement of emergency management
21 warning or signal devices and sirens;

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1 (Q) Installation, maintenance, repair, and replacement
2 of public pedestrian and bicycle facilities,
3 including sidewalks, paths, bikeways, crosswalks,
4 stairs, ramps, traffic control barriers, signs,
5 signals, and associated improvements;

6 (R) Invasive vegetation removal or control, excluding
7 the use of herbicides, if it will not exacerbate
8 coastal erosion or if the invasive vegetation will
9 be replaced with native species, and trash removal;

10 (S) Installation of fencing, including associated
11 improvements and incidental structures, for invasive
12 species control or preservation of native habitats
13 on conservation land;

14 (T) Installation, maintenance, repair, and replacement
15 of lighting, fixtures, and equipment to establish
16 compliance with current standards at existing public
17 facilities;

18 (U) Installation, maintenance, repair, and replacement
19 of security measures, including fencing, to existing
20 public facilities; and

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(V) Traditional and customary practices, including
work conducted by traditional means near, in, or
related to loko i'a, traditional Hawaiian fishponds;

provided that whenever the authority finds that any excluded
use, activity, or operation may have a cumulative impact, or a
significant environmental or ecological effect on a special
management area, that use, activity, or operation shall be
defined as "development" for the purpose of this part."

SECTION 3. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

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