

# HB117 HD2

**Replaces the value of a development to determine whether a minor permit or use permit is required in a coastal special management area with a criteria based on the size of development. Effective July 1, 3000. (HB117 HD2)**



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
DIRECTOR  
JESSE K. SOUKI  
INTERIM DIRECTOR  
OFFICE OF PLANNING

**OFFICE OF PLANNING**

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Statement of  
**JESSE K. SOUKI**  
Interim Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WATER, LAND AND HOUSING  
AND  
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**  
Thursday, April 7, 2011  
2:30 PM  
State Capitol, Conference Room 225

in consideration of  
**HB 117, HD2**  
**RELATING TO SPECIAL MANAGEMENT AREAS.**

Chairs Dela Cruz and Gabbard, Vice Chairs Solomon and English, and Members of the Senate Committees on Water, Land and Housing, and Energy and Environment.

HB 117, HD2 repeals the valuation threshold of \$125,000 for the review of developments within special management areas (SMA). The Office of Planning (OP) proposed and supports repealing the valuation threshold between SMA Minor Permit and SMA Use Permit. However, while some counties support and prefer to repeal the valuation threshold for SMA permitting, other counties are concerned that a permitting process based solely on discretionary considerations without cost thresholds may require far greater effort and expense in evaluating SMA permit applications. To address this concern, if this bill is enacted, OP will work with the counties to ensure that it is implemented consistently and help them develop uniform guidelines and criteria to aid efficient processing. Consequently, OP recommends that July 1, 2013 be the effective

date for this bill, so that OP and the counties have sufficient time for implementation. In lieu of repealing the valuation threshold for SMA permits, OP would support an increase in the valuation threshold. OP submitted an Administration bill in previous years to increase the valuation threshold to \$250,000.

Separate and apart from the above discussion, HD2 also amends Section 205A-22, Hawaii Revised Statutes (HRS), by specifying that development within SMAs does not include construction of a single-family residence that does not exceed ten thousand square feet of floor area. OP does not support this amendment. Section 205A-22 provides that any excluded use, activity, or operation shall be defined as “development” whenever the county authorities find that the excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on an SMA. This provision has allowed the counties to develop specific policies to regulate construction of single-family residences within SMAs. OP recommends that the decision on whether construction of specific size single-family residences is exempted from the requirements of SMA permit remain with the county authorities.

Thank you for the opportunity to offer these **comments**.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR

DAVID K. TANOUE  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

(JP)

April 7, 2011

The Honorable Donovan Dela Cruz, Chair  
and Members of the Committee on Water,  
Land, and Housing

The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy  
and Environment

State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Dela Cruz, Gabbard, and Members:

**Subject: House Bill No. 117, HD2  
Relating to Special Management Areas**

The Department of Planning and Permitting **strongly supports** House Bill 117, HD2, which eliminates the monetary ("project valuation") threshold for development which may be processed under a Special Management Area (SMA) Minor Permit.

The current monetary threshold of \$125,000, established in 1991, is woefully outdated, unnecessarily burdensome, and fundamentally meaningless. We have often seen small business owners and operators either forego or defer beneficial improvements because they would otherwise be subject to the more rigorous and costly SMA (Major) Use Permit process. More importantly, however, a threshold based primarily on the current market value of development costs is not meaningful from a regulatory perspective. The likelihood of significant adverse effects on coastal resources is the only meaningful determinate, and should be the only reason to impose an SMA Use Permit on development.

Those developments, which may actually be beneficial to the coastal environment and/or pose no risk to coastal resources, should not have to undergo the unnecessary cost and scrutiny of the lengthy regulatory process associated with an SMA Use Permit. Public works projects involving government land and/or money, and development involving shoreline areas will still have to go through the environmental disclosure process imposed by Chapter 343, Hawaii Revised Statutes. All development regardless of specific circumstances will still be evaluated under the SMA minor permit process for the very purpose of determining whether there is any likelihood of adverse effects. Whenever such impacts are identified, the SMA Use Permit will

The Honorable Donovan Dela Cruz, Chair  
and Members of the Committee on Water,  
Land, and Housing  
The Honorable Mike Gabbard, Chair  
and Members of the Committee on Energy  
and Environment  
State Senate  
Re: House Bill No. 117, HD1  
April 7, 2011  
Page 2

appropriately be imposed; the sole purpose of which is to fully understand the impacts and impose adequate mitigative measures. There is no meaningful reason to retain a purely artificial monetary threshold.

We further support the amendment to subject single-family dwellings of over 10,000 square feet in size to the SMA review process. Many of our shoreline lots are residentially zoned and developed, with many of these areas involving some of our most valued coastlines. Since its inception, however, the SMA statute has excluded the development of single-family dwellings (which are not part of a larger development) from the SMA review process. Yet, ironically, the development of large single-family dwellings, especially on shoreline lots, can sometimes involve the greatest impacts on coastal access and views, etc. Therefore, it seems appropriate to now include large single-family dwellings in the SMA review process in order to determine which individual developments will adversely impact shoreline resources; and, when found to do so, to impose appropriate mitigative measures.

We urge you to pass this bill, but with one further amendment to make the effective date July 1, 2011.

Thank you for this opportunity to comment on and offer our strong support of this important matter.

Very truly yours,



David K. Tanoue, Director  
Department of Planning and Permitting

DKT: jmf  
Hb117hd2-SMA-jp.doc

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

Senator Donovan M. Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair  
Committee on Water, Land, and Housing

Senator Mike Gabbard, Chair  
Senator J. Kalani English, Vice Chair  
Committee on Energy and Environment

April 7, 2011  
2:30 PM  
Conference Room 225

Statement of William Spence  
Maui County Planning Director

The Maui County Planning Department **SUPPORTS HB 117, HD2**. The proposed bill would eliminate the dollar threshold for the review of projects located within the Special Management Area (SMA) and would limit the SMA exemption for single-family residences.

The current \$125,000 value has not been modified in approximately 20 years. This has resulted in many permit applicants purposefully underestimating the value of their projects, or projects which would have no impact to the SMA having to go through the major SMA permit process. Eliminating the valuation threshold altogether would make SMA review impact-based, rather than financially-based, which is in keeping with the intent of state and federal coastal zone management law. For example, a million-dollar home could have no impact on the coastal zone, yet a \$50,000 retaining wall could have tremendous impacts. The proposed bill would allow both of these to be appropriately reviewed and permitted.

Limiting the square footage of single-family residences that would fall under the development exemption is also a logical step. Typically, larger residences have greater potential impacts than smaller ones. This section retains the safety net language that would allow the approving authority (in our case, the Planning Director or one of our three planning commissions) to require SMA review for any of the statutory exemptions if the proposed action may have a cumulative or significant impacts.

In conclusion, the existing valuation adds unnecessary costs and delays to property owners, both large and small, and burdens County, State and Federal government agencies responsible for processing these permit applications. The elimination of the valuation threshold will greatly aid in the improved processing of SMA permits without having a detrimental impact on coastal resources. The limitation on the single-family residence exemption is a common-sense step that will also facilitate SMA permit processing.

Please vote YES on HB 117, HD2. Thank you for your consideration.

**Bernard P. Carvalho, Jr.**  
Mayor



**Michael A. Dahilig**  
Director of Planning

**Gary K. Heu**  
Managing Director

**Dee M. Crowell**  
Deputy Director of Planning

**PLANNING DEPARTMENT**  
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**Testimony before the Senate Committees on  
Water, Land and Housing and  
Energy and Environment  
IN SUPPORT of House **Bill 117**, HD 2 Relating to Special Management Areas**

April 7, 2011  
2:30 p.m.  
Conference Room 225

By Michael A. Dahilig  
Director of Planning, County of Kauai

Honorable Members of the Committee:

On behalf of the County of Kaua'i Planning Department, I offer testimony **IN SUPPORT** of the intent enumerated in **House Bill 117**, HD2.

Overtime, the \$125,000.00 threshold set forth in Chapter 205A for minor permits has become antiquated as the cost of construction has gradually climbed with growth and inflation. The Department has encountered many projects that should be considered minor in nature, especially in light of past approvals years ago for similar types of actions, but must now undergo the more intense Use Permit process due to its valuation.

The increase in Use Permit process approvals is placing more and more of a strain on personnel resources for matters that were be subject to minor administrative approval not too far in the distant past. Although we will refrain from specifically addressing any amount set forth in the bill, we believe it is time for an adjustment, as in past actions by the Legislature to accommodate for the decades-long rise in the cost of construction.

Furthermore, as HD2 outlines, we support the additional changes that provide for administrative flexibility and county discretion in determining minor versus major activities in lieu of a fixed amount. When given a preference between a fixed cap versus county discretion, our choice would lie with those changes that provide enhanced flexibility.

Mahalo for your consideration.

April 3, 2011

The Honorable Senator Donovan M. Dela Cruz, Chair  
and Members of the Committee on Water, Land, and Housing  
Hawaii State Capitol, Room 202  
State Capitol  
Honolulu, Hawaii, 96813  
[sendelacruz@capitol.hawaii.gov](mailto:sendelacruz@capitol.hawaii.gov)

**Re: House Bill 117 HD2 relating to Special Management Areas, Hearing on 04-07-11 2:30 PM  
in Conference Room 225**

Dear Chair Dela Cruz and Members of the Committee:

I am writing in strong support of the intent of HB 117 HD2, but propose amended language for your consideration. I have attached suggested language and why I believe it will help streamline the Special Management Area (SMA) process while improving environmental, coastal, archaeological, shoreline and beach protection.

Although I am writing in my personal capacity and not representing my current or past associations, I have served the islands of Maui, Molokai and Lanai over five years as Maui County's Coastal Resources and Shoreline Planner. I have also managed coastal permitting activities in outlying islands (CNMI, Guam) and mainland coastal states. As a result, I have an intimate understanding of SMA and Shoreline Setback Rules and the Hawaii Coastal Zone Management Act, HRS 205A. Furthermore, the ideas herein have been vetted, in their individual capacities, with fellow coastal managers, planners and former decision makers who are generally supportive.

Four changes to HRS 205A are suggested for your consideration:

1. Revise HRS 205A-22 Definitions for "Not-Development" to **exclude the exemption for new oceanfront single-family residential construction**;
2. Revise HRS 205A-22 Definitions for "Special management area use permit" to "Special management area **major** permit";
3. Increase the SMA minor permit threshold **from \$125,000 to \$250,000** to adequately reflect increased construction and material costs, in HRS 205A-22 Definitions for "Special management area minor permit"; and
4. Adopt **Signage Requirements** for SMA Major Permit applicants similar to those existing in Hawaii County's by augmenting HRS 205A-26 by adding sub-section (2)(D).

**1. Exclude oceanfront single-family residences from "Not-Development"**

§205A-22 Definitions.

"Development" does not include the following:

- (1) Construction of a single-family residence, excluding those on a parcel subject to a shoreline setback, and those that are ~~is not~~ part of a larger development;



Such residences have a disproportionately adverse impact on coastal resources, public shoreline access and historic and cultural resources. Furthermore, such residences are far more likely to be subject to coastal hazards during the buildings lifespan than those located on mauka lands. As such, new oceanfront residential construction should be transparent and undergo public review, discussion, and approval by the applicable authority, such as the Island's Planning Commission. In addition, the individual counties would not have to revise their rules and applicability would be consistent throughout Hawaii.

Furthermore, the applicant would be aware of the inherent site specific risks associated with the proposed action, as described in the Planning Department's staff report that is submitted to the Planning Commission and copied to the applicant. Most importantly, the approval could have conditions attached to ensure that present, and future, landowners avoid, minimize and mitigate adverse impacts to coastal resources. Given that a mechanism already exists to ensure compliance with permit conditions; interruptions to access along the shoreline, hardening of shorelines on eroding beaches, and impacts to cultural and historic resources are likely to be significantly reduced. However, since the law exempts all residential construction, the individual county's cannot regulate construction of new oceanfront residences. To correct this and realize the aforementioned benefits, the definition of Single Family Residence must be revised to account for new oceanfront residential construction.

## **2. "Special management area major permit"**

§205A-22 Definitions.

"Special management area major use permit" means an action by the authority authorizing development the valuation of which exceeds \$125,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

The counties already differentiate between major and minor permits in their computer databases based on a required valuation in their SMA rules (e.g., 12-202-12(c)(2)(H)) of the Special Management Area Rules for the Maui Planning Commission). Note that Lanai and Molokai, as well as Kauai have similar valuation criteria and requirements in their rules.

## **3. Increase the minor permit threshold from \$125,000 to \$250,000**

§205A-22 Definitions.

"Special management area minor permit" means an action by the authority authorizing development the valuation of which is not in excess of ~~\$125,000~~ \$150,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

This increase would reflect increased construction and material costs. The SMA minor permit has enforceable conditions to avoid, minimize and mitigate negative impacts to coastal and historic resources. For example, having an archaeologist onsite during ground altering helps avoid negative impacts to historic remnants or burials and is a normal condition on SMA minor permits, to which compliance must be shown.

**4. Adopt Hawaii County SMA Practice to Require Signs for SMA Major Permits**

§205A-26 Special management area guidelines. In implementing this part, the authority shall adopt the following guidelines for the review of developments proposed in the special management area:

(2) No development shall be approved unless the authority has first found:

(A) That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options;

(B) That the development is consistent with the objectives, policies, and special management area guidelines of this chapter and any guidelines enacted by the legislature; and

(C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required; and

(D) That adequate notice of the proposed action has been provided to the public, which at a minimum, shall include signage at the proposed development's location.

The Hawai'i County Planning Commission requires that a sign be posted when applying for an SMA Major permit. The Rules of Practice and Procedure, 9-11 (c) require that the applicant post a large sign throughout the application process (<http://co.hawaii.hi.us/planning/rules/PCRules.pdf>). This is an inexpensive, efficient means to inform the public, provide transparency, and gain input from stakeholders most familiar with the area. This measure is a simple means to achieve HRS 205A-2 (b)(8) objectives to: "stimulate public awareness, education, and participation in coastal management".

**SMA Background**

All proposed actions within the SMA must undergo an assessment. The assessment evaluates the proposed actions potential to have an adverse impact on ten (10) coastal resources regulated under HRS 205A. Potential adverse impacts to archaeological and historic resources, as well as negative impacts on public shoreline access and beaches are also evaluated. The outcome of the assessment is that a proposed action is either exempt or requires a permit (Figure 1, at end of testimony).

In an exemption action, the applicant may represent that no adverse impacts will occur on any of the ten regulated resource areas. For example, an applicant may promise to not block access along the

shoreline however, such representations are often limited to being enforced during the building permit inspection. Moreover, the representations do not extend to future landowners.

In contrast, an SMA permit may have conditions attached to the approval to assure the public and decision makers that negative impacts to coastal resources will be avoided, minimized or mitigated (Figure 1). Inspections and/or reports are normally required describing how compliance with the permit's conditions was achieved. Conditions of approval may be recorded on the deed as a unilateral agreement which ensures that future landowners comply with the intent of the approval and the permit's conditions. Permit holders may return to the Commission/Director to request amendments or removal of a condition for good cause.

For actions under \$125,000, approval may be granted by the Director of Planning as a discretionary permit. An SMA Minor permit approval is reported to the delegating authority (i.e., the Commission) and is published in the bi-monthly Office of Environmental Control *Environmental Notice* to inform the public.

For actions more than \$125,000 approval is granted by the respective Island's Planning Commission. Public notification is required so that stakeholders may testify and parties with a clear interest may request intervention on the proposed action if their rights are negatively affected.

The present \$125,000 threshold for minor versus major permits is arbitrary and has no relation to ecological or environmental gradients based on previous studies (Abbott & Lee, 2007). Construction costs have clearly escalated since 1991 when the last monetary threshold was established. In my experience as a professional planner, projects that range from \$125,000 to \$250,000 that are "Development" are usually public infrastructure or utility upgrades, subdivisions, or structural improvements to existing commercial structures. Their approval includes conditions to avoid, minimize or mitigate adverse impacts on coastal and environmental resources and a mechanism to verify compliance. Thus, increasing the threshold is unlikely to result in unforeseen negative impacts.

Figure 2 (last page of this testimony) illustrates a decade of permitting activities in Maui (Maui County, 2010). SMA assessments (SMX) and the resulting approval as an exemption (SM5) or Minor permit (SM2) have decreased substantially since 2004. Yet staffing levels have increased from approximately 35 to 65 authorized positions in the Planning Department.

The Department has also added specialized positions such as the Small-Town Planner, Molokai Planner, and West Maui Planner. My personal experience over five years is that the primary reason for approvals being slow is that the SMA applications are incomplete, inadequate, and often infused with misinformation relative to the process.

### Conclusion

Mindful of the current rules and law, as well as staff and capacity limitations and the need to streamline the process, I respectfully submit the above language as a solution.

I believe the enclosed amendments would streamline the permitting process for projects that are unlikely to have adverse negative impacts on coastal resources. The amendments also enhance

protection of beaches, shoreline access, and historic artifacts by regulating those activities that are most likely to have negative impacts, such as the construction of oceanfront homes, that are presently exempt from SMA permitting, conditions, and compliance mechanisms.

I urge the Committee to consider this language. I would be glad to meet with you if additional information would assist in your decision making and review of HB117, HD2 or other coastal issues. Please contact me if I can be of further assistance at either by phone at (808) 344-1595 or by email at [Thorneabbott@yahoo.com](mailto:Thorneabbott@yahoo.com).

Thank you for your time and consideration.

Thorne Abbott  
Hawaii Resident

Environmental Planner and Analyst  
Email: [thorneabbott@yahoo.com](mailto:thorneabbott@yahoo.com)

*References*

Abbott and Lee, 2007. Special management area boundary study for the Molokai Planning Commission. An unpublished report consisting of a presentation of the study's results and recommendations to the Commission for SMA boundary changes.

Maui County, 2010. 12012010\_pd\_app\_extract posted on the Maui County website, accessed February, 2010 at [www.mauicounty.gov](http://www.mauicounty.gov).

Figure 1: Special Management Area Approval Process

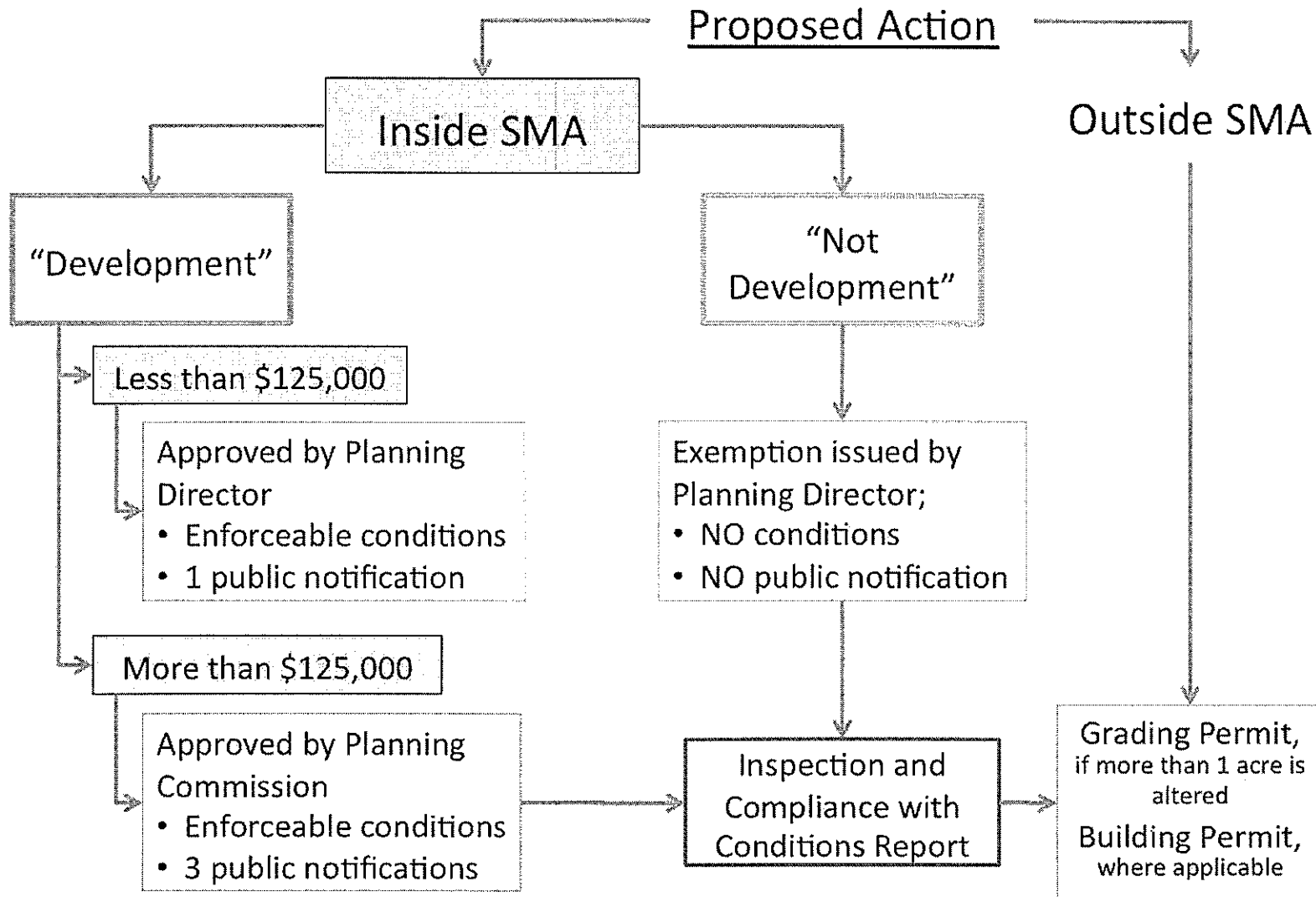
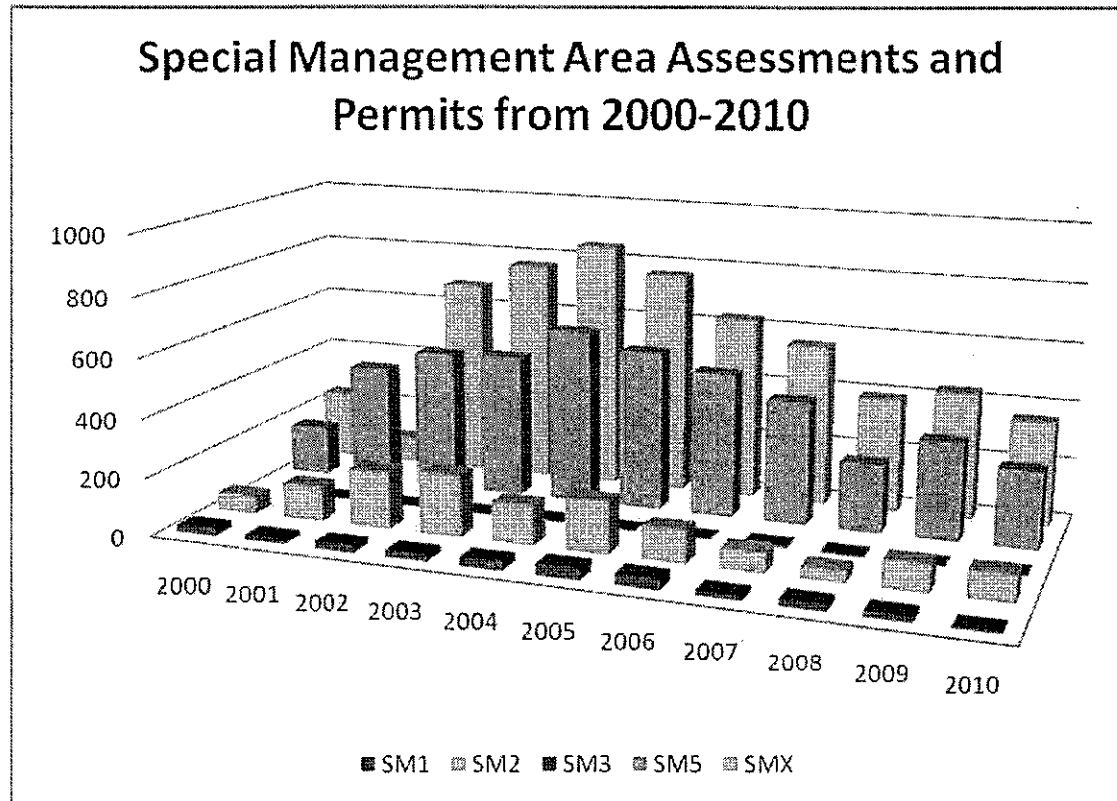


Figure 2: One Decade of SMA Authorizations in Maui County



- SMX: The SMA assessment determines if an action is exempt or requires a permit
- SM1: SMA Major permit approvals over \$125,000 which have conditions
- SM2: SMA Minor permit approvals under \$125,000 which may have conditions
- SM3: SMA Emergency Permit approvals regardless of valuation
- SM5: SMA Exemptions authorized regardless of project valuation and which have no conditions to mandate compliance.

**From:** [gabbard1 - Carlton](mailto:gabbard1@carlton.com)  
**To:** [Dane Wicker](mailto:Dane.Wicker@carlton.com)  
**Subject:** From Carlton: forwarding from Sierra Club  
**Date:** Monday, April 04, 2011 3:34:57 PM

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**From:** Robert D. Harris [mailto:robertharris@mac.com]  
**Sent:** Thursday, March 17, 2011 5:17 PM  
**To:** gabbard1 - Carlton  
**Subject:** HB117, HD2 Amendment

Carlton,

Here is a proposed amendment to HB117, HD2. First, it addresses one of the glaring exemptions to the SMA -- oceanfront homes built along the shoreline. It allows counties to consider cumulative environmental impacts of housing along the shoreline.

As a compromise for this change, I've suggested a specific (higher) dollar amount for projects subject to minor or major permits. This would reduce some of the uncertainty about projects subject to the major permits that the current draft creates, but it also increases the amount from current legal limits.

I believe Rep. McKelvey would support the changes proposed.

Aloha,  
Robert

Begin forwarded message:

#### HRS 205A-22 Definitions

"Development" does not include the following:

(1) Construction of a single-family residence that is not part of a larger development, excluding a single-family residence on a parcel subject to shoreline certification or shoreline setback regulations.

"Special management area minor permit" means an action by the authority authorizing development the valuation of which is not in excess of ~~\$125,000~~ \$250,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

"Special management area major use permit" means an action by the authority authorizing development the valuation of which exceeds ~~\$125,000~~ \$250,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [merway@hawaii.rr.com](mailto:merway@hawaii.rr.com)  
**Subject:** Testimony for HB117 on 4/7/2011 2:30:00 PM  
**Date:** Monday, April 04, 2011 10:32:28 PM

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Testimony for WLH/ENE 4/7/2011 2:30:00 PM HB117

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Marjorie Erway  
Organization: Individual  
Address:  
Phone:  
E-mail: [merway@hawaii.rr.com](mailto:merway@hawaii.rr.com)  
Submitted on: 4/4/2011

**Comments:**

Please keep the \$125,000 threshold. Without a threshold dollar amount for permits (even minor ones), agencies will be under terrible pressure to distinguish between minor and major permits under the "no substantial adverse impact" as the sole determining factor. This could increase litigation as residents fight to protect coastal areas.

I urge you to oppose this bill completely. Mahalo for your consideration.



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [carolphilips1@gmail.com](mailto:carolphilips1@gmail.com)  
**Subject:** Testimony for HB117 on 4/7/2011 2:30:00 PM  
**Date:** Tuesday, April 05, 2011 7:26:34 AM

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Testimony for WLH/ENE 4/7/2011 2:30:00 PM **HB117**

Conference room: 225  
Testifier position: **oppose**  
Testifier will be present: No  
Submitted by: Carol Philips  
Organization: Individual  
Address:  
Phone:  
E-mail: [carolphilips1@gmail.com](mailto:carolphilips1@gmail.com)  
Submitted on: 4/5/2011

Comments:  
Aloha Honorable Senators;

An undeveloped shore line is one of our greatest assets. Please keep the \$125,000 threshold do not allow an exemption for oceanfront houses, regardless of size.

Respectfully,  
Carol Philips

COMMITTEE ON WATER, LAND, AND HOUSING

Senator Donovan M. Dela Cruz, Chair

Senator Malama Solomon, Vice Chair

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair

Senator J. Kalani English, Vice Chair

HEARING: Thursday, April 07, 2011, 2:30 P.M., Room 225

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Re: **HB117, HD2**

As a former member and Chair of the Lana`i Planning Commission, I strongly **OPPOSE** the above measure for the following reasons:

- In many areas of the state the only “home rule” available lies in the review of development and proposals submitted in the special management areas of each island.
- To rely on an unidentified and non-quantified assertion that “costs of purchasing and importing construction materials” have “increased” to support the reduction in local control over review of development of local lands is contrary to principles of good government in the State of Hawai`i.
- To raise the monetary amount to \$250,000 for “minor” permit review further restricts the process of review by local communities and transfers it to administrative review, which is often conducted by those who do not live in or near the area effected, not to mention even on the same island.
- Since SMA boundaries can range from several hundred yards to several miles from the shoreline, depending on the potential adverse impact development might have on coastal resources, exempting ANY single-family residential construction, regardless of size, is counter-productive to sound planning.
- **The amendments suggested will have state-wide implications, but fail to take into account the impacts on each island and each SMA.**

For the above reasons, I strongly **OPPOSE** HB117.

Thank you for this opportunity to testify to your Committees.

Sally Kaye  
P.O. Box 631313  
511 Ilima Avenue  
Lanai City, HI 96763  
808-565-6276

**From:** [Duane](#)  
**To:** [WLH Testimony](#)  
**Subject:** HB 117, HD2 testimony  
**Date:** Tuesday, April 05, 2011 10:01:16 AM

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Re: HB 117, HD2

RELATING TO SPECIAL MANAGEMENT AREAS.

HEARING

DATE: Thursday, April 07, 2011

TIME: 2:30 P.M.

PLACE: Conference Room 225

Aloha, Senators!!!

Please keep the \$125,000 threshold. Without a threshold dollar amount for minor permits, agencies will be under considerable pressure to distinguish between minor and major permits under the "no substantial adverse impact" as the sole determining factor.

In addition, do not allow an exemption for oceanfront houses, regardless of size.

Duane D. Erway  
P.O. Box 2807  
Kailua-Kona, HI 96745  
(808) 324-4625

Testimony Submitted to the Committee on Water Land and Housing, and the  
Committee on Energy and Environment  
in **Strong Opposition to HB 117 HD2**  
Relating to Special Management Areas

Hearing: Thursday, April 7, 2011, 2:30 pm, Conference Room 225

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April 5, 2011

Aloha Committee Chairs Dela Cruz and Gabbard, Committee Vice-Chairs  
English and Solomon, and Committee Members,

I strongly urge you to **reject HB 117 HD2.**

1. The proposed changes to the definition of "Development" would allow virtually all multiple-house developments - developments that are currently subject to the SMA permitting regulations - to evade the regulations that are so important to protecting the Special Management Areas.

Under the proposed changes, only "mega-residences" (i.e., houses exceeding 10,000 square feet in floor area) in multiple-house development projects would remain subject to the SMA rules. All other multiple-house projects would be exempt.

It makes no sense to create this new exemption for multi-house projects (whether for 2, 20 or 200 new houses), as such projects would in many cases clearly increase the intensity of use of the SMA. The existing law is fine as-is; multi-house projects should not be exempted from the rules that protect our Special Management Areas.

2. The proposed removal of the \$125,000 upper limit for SMA "Minor" permits is equally ill-advised. Eliminating this "bright line" standard would remove transparency from the process and instead encourage abuse of the SMA rules by substituting subjective judgment, favoritism and cronyism in the place of today's clear and reasonable standard.

For the above reasons, I respectfully request that you reject HB 117 HD2 in its entirety.

Thank you for considering this testimony.



Carl Imperato  
PO Box 1102  
Hanalei, HI 96714  
808-826-1856, carl.imparato@juno.com

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [chriscramer75@hotmail.com](mailto:chriscramer75@hotmail.com)  
**Subject:** Testimony for HB117 on 4/7/2011 2:30:00 PM  
**Date:** Tuesday, April 05, 2011 11:45:40 PM

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Testimony for WLH/ENE 4/7/2011 2:30:00 PM HB117

Conference room: 225  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: chris cramer  
Organization: Individual  
Address:  
Phone:  
E-mail: chriscramer75@hotmail.com  
Submitted on: 4/5/2011

Comments:



The REALTOR® Building  
1136 12<sup>th</sup> Avenue, Suite 220  
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April 7, 2011

**The Honorable Donovan M. Dela Cruz, Chair**  
Senate Committee on Water, Land, and Housing

**The Honorable Mike Gabbard, Chair**  
Senate Committee on Energy and Environment  
State Capitol, Room 225  
Honolulu, Hawaii 96813

**RE: H.B. 117, H.D. 2, Relating to Special Management Areas**

**HEARING: Thursday, April 7, 2011, at 2:30 p.m.**

Aloha Chair Dela Cruz, Chair Gabbard, and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate and its 8,500 members. HAR **supports H.B. 117, H.D. 2**, which replaces the value of a development to determine whether a minor permit or use permit is required in a coastal special management area with a criteria based on the size of development.

Since the Special Management Area ("SMA") threshold amount was last adjusted in 1991, the cost of materials and labor has increased significantly over the years. This adversely affects small construction projects that may no longer qualify for the SMA minor permit solely on the basis of cost, rather than any environmental impact. H.B. 117, H.D. 2 addresses this by removing the valuation threshold, but continues to allow the county planning and permitting process to protect SMAs through zoning, shoreline setback regulation, and building permit review.

As such, HAR believes that allowing a department to determine that a project may have a substantial adverse impact, rather than providing an actual amount, provides an appropriate balance to the current practice.

Mahalo for the opportunity to testify.



**From:** [Jonathan Starr](#)  
**To:** [WLH Testimony](#)  
**Cc:** [ENETestimony](#)  
**Subject:** HB 117, HD2  
**Date:** Wednesday, April 06, 2011 1:34:21 PM

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April 6, 2011

From the desk of Jonathan Starr

Senate Committee on Water, Land, and Housing  
Hawaii State Capitol, Conference Room 225  
State Capitol  
Honolulu, Hawaii, 96813

Senate Committee on Energy and Environment  
Hawaii State Capitol, Conference Room 225  
State Capitol  
Honolulu, Hawaii, 96813

**Re: House Bill 117 HD2 relating to Special Management Areas,  
Hearing on 04-07-11 2:30 PM in Conference Room 225; Testimony  
from Jonathan Starr**

Honorable Senators,

I am writing to express my **grave concerns** over the proposed revisions to HRS 205A.

I have served for 5 years, up until March 31<sup>st</sup>, on the Maui Planning Commission, including two years as Elected Chairman and one year as Vice Chairman. In this capacity I have presided over and participated in numerous SMA decision making hearings and contested cases. By County Charter, the Maui Planning Commission is the final authority on Shoreline issues and the hearing and decision-making agency on Maui for SMAs's. This is a role that Commission Members and the Maui Community at large take very seriously, and we strive to be equitable and efficient in our process. Our tourist economy and island lifestyle revolve around the viability, health and accessibility of our beaches and other coastal and nearshore environments. Some of the proposed revisions could result in irreversible harm to these resources through weakening of the criteria for exemption.

Increasing the threshold for the SMA Minor permit from \$125,000 to \$150,000 or even \$250,000 would likely not result in severe resource degradation. Changing the criteria to a size-based approach would cause many projects harmful to coastal processes and resources to be statutorily approved without any opportunity for public process or consideration of conditions to reduce or mitigate impacts. Please do not allow this to happen. It is better to leave it in the hands of Commission Members, who are expert through training and experience, and represent the

## Community's interest in important Shoreline matters

New single-family residential development should not have a blanket exemption, as it does presently, if the project is located directly on the shoreline. It is essential that our Planning Commissions be given the ability to weigh impacts of all construction directly on the shoreline, to make certain that the nearshore waters are not degraded unnecessarily by harmful unfiltered runoff; that shoreline access and viewplanes be preserved; and that the beach processes are not encumbered by changes in sea level, coastal sand transport and other factors.

The proposed Stice development in Hana, on a parcel next to the major surfing beach in East Maui that has been heavily used by the community for hundreds of years as a gathering place for shoreline access, with a graveyard and a heiau on it, fishponds in front, and a location below sea level with a history of tsunami inundation, recently made for a very divisive contested case when the Planning Director felt it should be subject to an SMA Major. All of our few remaining undeveloped shoreline areas are sensitive, and should be subject to the public scrutiny of the SMA Major process, as should infrastructure projects with potential impacts, such as injection wells (Kahului & Ka'anapali), shoreline hardening (Ukumehame) or reduction of access or shoreline parking (a recent case remanded by the court after an exemption was statutorily issued at Kawakapu, Wailea).

For the most part, I support many of the comments and recommended wording as submitted to you by Mr Thorne Abbott, who served admirably for many years as Maui's Shoreline Planner.

With Aloha,

Jonathan Starr

Kalepa, Kaupo, Maui

[kalepa@maui.net](mailto:kalepa@maui.net)

(808) 289-0032



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WLH Testimony](#)  
**Cc:** [nanimcp7684@gmail.com](mailto:nanimcp7684@gmail.com)  
**Subject:** Testimony for HB117 on 4/7/2011 2:30:00 PM  
**Date:** Wednesday, April 06, 2011 2:27:45 PM

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Testimony for WLH/ENE 4/7/2011 2:30:00 PM HB117

Conference room: 225  
Testifier position: support  
Testifier will be present: No  
Submitted by: Nancy McPherson  
Organization: Individual  
Address:  
Phone:  
E-mail: [nanimcp7684@gmail.com](mailto:nanimcp7684@gmail.com)  
Submitted on: 4/6/2011

Comments:

Please regulate oceanfront single family homes by excluding them from the definition of "Not Development" in HRS 205A-22. Speaking on my own behalf, I have processed many oceanfront exemptions, including one for 22,000 square feet in area on a pristine shoreline in the Ag district, as a "farm dwelling", that had no conditions of approval attached. Mahalo nui loa for your consideration of my request as an individual.



## Hawaii's Thousand Friends

25 Malama Ave. Suite 102, PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

April 7, 2011

### COMMITTEE ON WATER, LAND, AND HOUSING

Senator Donovan M. Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair

### COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair  
Senator J. Kalani English, Vice Chair

HB 117 HD2

### RELATING TO SPECIAL MANAGEMENT AREAS

Committee Chairs and members:

Hawaii's Thousand Friends, a statewide non-profit land and water use organization, opposes HB117 HD2 that removes the valuation threshold for the review of projects within the special management areas and places an arbitrary 10,000 square foot floor area limit on single-family residences that will be exempt from Coastal Zone Management oversight.

Eliminating the \$125,000 threshold removes the public's opportunity to review proposed activities within the coastal zone and grants sole oversight, in cases where an EA is not required, to administrative review.

Currently an application with a value greater than \$125,000 requires a Special Management Area major permit which includes a public hearing allowing for public involvement and greater review of any significant adverse or cumulative impacts.

The need for a SMA permit is required for an action such as grading, removing materials or a structure, dredging, construction, demolition, or altering a structure within the special management area. Eliminating the dollar threshold assures that many projects that could have single or cumulative impacts on the coastal environment will be allowed without public review.

Placing a 10,000 square foot floor area limit on single-family residences, exempt from special management area oversight, is arbitrary and capricious. If 10,000 sq. ft. single-family homes along the shoreline do not require review for impacts to coastal areas then why not single-family homes up to 20,000 sq. ft.?

Instead of using an arbitrary floor area requirement we recommend the following wording, underlined, be added to §205A-22 Definitions

(1) Construction of a single-family residence, excluding those on a parcel subject to a shoreline setback, and those that are is not part of a larger development;

In establishing HRS 205A Coastal Zone Management the legislature found that "...special controls on developments within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided."

The Special Management Area (SMA) permit is part of the regulatory system that is the cornerstone of Hawaii's Coastal Zone Management Program. The SMA permit system provides overarching guidance and is a management tool.

A key objective of the Coastal Zone Management Program is to "Promote public involvement in coastal zone management processes." (§205A-2 (8)). (Emphasis added)

To ensure continued citizen involvement and eliminate arbitrary language in §205A Hawaii's Thousand Friends recommends that the existing \$125,000 threshold be retained and the 10,000 sq. ft. floor area be replaced with our suggested change.

# Testimony before the Senate Committees on Water, Land, and Housing and Energy and Environment

By Rouen Liu  
Permit Engineer, Engineering Department  
Hawaiian Electric Company, Inc.

April 7, 2011

**House Bill 117 HD2**  
Relating to Special Management Areas

Chairs Dela Cruz and Gabbard, Vice Chairs Solomon and English and Members of the Committees:

My name is Rouen Liu and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

**Position:**

We are opposed to HB117 HD2 which removes the valuation threshold for special management area minor permits for projects with no substantial adverse environmental or ecological effect and places a size of development criteria on a single-family residence.

**Comments:**

- There is uncertainty in the law amendment for our operations. Any proposed development as defined in HRS 205A-22 would be subject to the opinion of the reviewing agency. An example is the addition of a modular office trailer to increase office space for employees at one of our power plants. Our opinion is the office trailer would have no substantial adverse environmental or ecological effect within the SMA. It would be placed within the existing power plant property which is zoned for that use. However, it may be the opinion of the reviewing agency that there is adverse environmental or ecological effect – thus requiring a major SMA. This kind of uncertainty makes it difficult to plan maintenance

operations at the power plants because a minor SMA would be 3 months processing duration compared to 9 months for a “major” SMA. Consistency in the agency’s determinations would be very important to the Utility as an applicant.

- May we suggest that a valuation threshold of \$500,000 be placed back into the language for HB 117.

Thank you for the opportunity to testify on this matter.