SB2335

Clarifies definition of "development" for purposes of special management area permitting by counties.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE
GOVERNOR
RICHARD C. LIM
DIRECTOR
MARY ALICE EVANS
DEPUTY DIRECTOR
JESSE K. SOUKI
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING
235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WATER, LAND, AND HOUSING
AND
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS
Tuesday, February 7, 2012
1:15 PM
State Capitol, Conference Room 225

in consideration of
SB 2335
RELATING TO SPECIAL MANAGEMENT AREAS.

Chairs Dela Cruz and Espero, Vice Chairs Solomon and Kidani, and Members of the Senate Committees on Water, Land, and Housing and Public Safety, Government Operations, and Military Affairs.

The Office of Planning (OP) administers Hawaii Revised Statutes (HRS) Chapter 205A, the Coastal Zone Management (CZM) law. The special management area (SMA) permitting system is part of the federal and state approved Hawaii CZM Program. SB 2335 amends the definition of "development" under HRS §205A-22 to exclude "[t]entative or preliminary subdivision approval." This new language would replace the current exclusion of "final subdivision approval" as passed by this legislature last year and subsequently enacted into law as Act 153, Session Laws of Hawaii (SLH) 2011. OP opposes this bill for the following reasons.

The SMA permit is the only permit that takes into account the environmental, economic, and socio-cultural impacts of development within the coastal zone. The SMA is a subset of the larger coastal zone which generally extends inland from the shoreline to the nearest highway. This is the most sensitive area of the coastal zone, within which the legislature determined that special controls on developments were needed to (1) avoid permanent losses of valuable resources and the foreclosure of management options, (2) ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided, and (3) preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii. See HRS §205A-21. Within this narrow band around the coast, proposed "development" is required to obtain an SMA permit from the respective county within which it is located.

The current law already exempts certain subdivision actions from the SMA permit process. In order to streamline the SMA permit process, certain types of uses, activities, or operations which do not have a cumulative impact, or a significant environmental or ecological effect on the SMA are not considered developments. A proposed "change in the density or intensity of use of land, including but not limited to the division or subdivision of land" is included in the definition of development. See HRS §205A-22. However, certain types of subdivision actions are excluded, as follows: "final subdivision approval," "subdivision of land into lots greater than twenty acres in size," and "subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels." See Id.

Unlike current subdivision action exemptions related to large lot subdivisions and subdivisions for purposes of estate planning, exempting preliminary subdivision approval

is inconsistent with HRS §205A-22, which requires an SMA for "change in the density or intensity of use of land, including but not limited to the division or subdivision of land."

The subdivision process is slightly different within each county, but the process generally includes a preliminary or tentative approval and then final approval. A preliminary or tentative approval is contingent upon specific, enumerated standards under county ordinances. The tentative approval requirements involve reservation of water and sewer capacity for the project, and agreement in principle on such things as design of drainage, roadways, traffic improvements, and recreation facilities. If a subdivision applicant complies with the tentative approval requirements and conditions, final subdivision approval must be granted – the agency has no discretion. If the SMA permit process is not started prior to subdivision application, there may be inconsistency with SMA conditions of approval related to sensitive coastal areas and site design requirements approved in the tentative subdivision approval.

Delaying the SMA permit process could lead to delays later in the permitting process. Pursuant to HRS §205A-29, no agency is authorized to issue permits pertaining to any development within the SMA until SMA use approval is first granted. Excluding preliminary or tentative subdivision approval from development defined in HRS §205A-22 will delay or lengthen the permitting process since final subdivision approval would be stalled until SMA assessment and determination are made. Act 153, SLH 2011, which excludes final subdivision approval rather than preliminary or tentative subdivision approval from development defined in HRS §205A-22, allows the counties to concurrently process the subdivision application and SMA permit. After careful consideration, the Committee on Conference, House of Representatives, Twenty-Sixth State Legislature, amended HB 117 HD2, SD2, CD1 by changing "Preliminary or tentative subdivision approval" into "Final subdivision approval."

Thank you for the opportunity to testify on this measure.

Dane Wicker

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 06, 2012 9:56 PM
To: WLH Testimony
Cc: darakawa@lurf.org
Subject: Testimony for SB2335 on 2/7/2012 1:15:00 PM

Testimony for WLH/PGM 2/7/2012 1:15:00 PM SB2335

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: David Arakawa
Organization: Land Use Research Foundation of Hawaii
E-mail: darakawa@lurf.org
Submitted on: 2/6/2012

Comments: