

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committees on
WATER & LAND
and
HOUSING**

**Tuesday, March 20, 2018
11:20 A.M.**

State Capitol, Conference Room 423

**In consideration of
SENATE BILL 2969, SENATE DRAFT 2
RELATING TO SPECIAL MANAGEMENT AREAS**

Senate Bill 2969, Senate Draft 2 proposes to reduce the size threshold for a single-family residence that is not part of a larger development to be deemed a "development" for purposes of the Special Management Areas (SMA) Law. **The Department of Land and Natural Resources (Department) supports this measure and offers the following comments.**

In December 2017, the Hawaii Climate Change Mitigation and Adaptation Commission accepted the Hawaii Sea Level Rise Vulnerability and Adaptation Report (SLR Report). Recommendation 2.7 "Requires the design and siting of planned development and capital improvement projects to include an in-depth analysis of sea level rise impacts based on elevation, tolerance for risk, and the lifetime of the structure;" and recommendation 2.10, "Integrate sea level rise vulnerability considerations into the Hawaii Coastal Zone Management (CZM) act." The SLR Report further recommends:

"Consider language that results in more restrictive conditions on variances and SMA permits or modifying laws and rules to make variances and permits more difficult to obtain within the Sea Level Rise Vulnerability Area (which coincides with the SMA boundaries in many cases)."

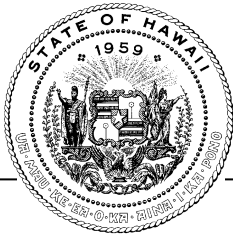
The SMA permit was established by way of Act 176, Session Laws of Hawaii 1975, known as the Shoreline Protection Act. The Legislature in enacting PART II of Chapter 205A, Hawaii Revised Statutes (HRS), found that:

. . . special controls on developments within an area along the shoreline are necessary to avoid permanent losses 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 Legislature further found and declared that it is state policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. pursuant to Section 205A-5, HRS, all state and county agencies shall enforce the CZM objectives and policies defined in Section 205A-2, HRS.

Senate Bill 2969, Senate Draft 2 would require large home development within the SMA to undergo a more rigorous evaluation in regards to existing CZM objectives and policies. This is a step in the right direction. However, current CZM objectives and policies do not require an analysis of sea level rise vulnerability. One of the Department's main concerns over large slab on grade development within the SMA and SLR Exposure Area is that it contributes to, rather than ameliorates, community vulnerability.

Thank you for the opportunity to comment on this measure.



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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
**HOUSE COMMITTEES ON WATER AND LAND AND
HOUSING**

Tuesday, March 20, 2018
11:20 AM

State Capitol, Conference Room 423

in consideration of

**SB 2969, SD2
RELATING TO SPECIAL MANAGEMENT AREAS.**

Chairs Yamane and Brower, Vice Chairs Todd and Nakamura, and Members of the House Committees on Water and Land and Housing.

SB 2969, SD2 proposes to reduce the size threshold from 7,500 square feet to 2,000 square feet, and authorizes the county authority to further reduce the threshold, for a single-family residence that is not part of a larger development to be excluded from the definition of “development” for purposes of the special management area (SMA) law under Hawaii Revised Statutes (HRS) Chapter 205A. SB 2969, SD2 also requires the county authorities to consider sea level rise when reviewing and approving all developments.

The Office of Planning (OP) is the lead agency of the Hawaii Coastal Zone Management (CZM) Program pursuant to HRS Chapter 205A. OP supports the intent of SB 2969, SD2, and respectfully offers the following comments and amendment:

1. The SMA permit regulates permissible land uses that are allowed by land use policies including zoning designations, county general plans and community development plans, to provide special controls on developments within an area along the shoreline. The SMA permit does not prohibit a development, including those single-family residences that exceed the floor area threshold proposed by SB 2969, SD2. It would be more effective for the counties to establish and apply their respective land use policies (e.g., zoning regulations) to directly regulate or restrict the size of single-family residences, including those that are under an increasing risk of shoreline erosion and other coastal hazards.
2. The SMA permitting process is based on a discretionary assessment. There is no justification for a specific floor area threshold for a single-family residence to be included

or excluded from SMA permitting. OP recommends deletion of the floor area threshold for a single-family residence to be included or excluded from the SMA exemption list, **except that the county authority may establish a maximum floor area square footage requirement for a single-family residence.**

3. Given an increasing risk of coastal erosion and sea level rise, OP recommends construction of a single-family residence situated on a parcel that abuts the shoreline or a publicly owned beach parcel be excluded from the SMA exemption list, regardless of the dwelling size.

Therefore, for a single-family residence to be on the SMA exemption list under HRS § 205A-22, the following amendments will better meet the purpose of SMA permitting and this proposed measure:

- (1) Construction or reconstruction of a single-family residence that [~~is less than seven thousand five hundred square feet of floor area and~~] is not part of a larger development and is not situated on a parcel that abuts the shoreline or a publicly owned beach parcel; **provided that the authority may apply a maximum of two thousand square feet or less of floor area for construction or reconstruction of a single-family residence within a special management area to be excluded from “development” as defined for the purpose of this part;**
4. SB 2969, SD2, page 8, lines 16 to 20, requires the applicant to consider the risk of sea level rise on the area of the development. No development shall be approved unless the authority has first found “[T]hat the effect of sea level rise on the development during its normal useful life will be minimal.”

There presently are no sea level rise assessment guidelines set forth in the Hawaii Statutory Laws, including HRS Chapter 343 Environmental Impact Statements. OP notes that the Hawaii Sea Level Rise Vulnerability and Adaptation Report 2017 prepared by the Hawaii Climate Change Mitigation and Adaptation Commission, at page ii, specifically states that the report “should be used strictly as a planning reference tool and **not for permitting**, or other legal purposes.”

It would be premature to mandate the county agencies and applicants to integrate findings from the Hawaii Sea Level Rise Vulnerability and Adaptation Report into a SMA permitting assessment, and ensure that the effect of sea level rise on the development during its normal useful life will be minimal.

Thank you for the opportunity to comment this measure.

Bernard P. Carvalho Jr.
Mayor



Michael A. Dahilig
Director of Planning

Wallace G. Rezentes Jr.
Managing Director

Ka'āina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i

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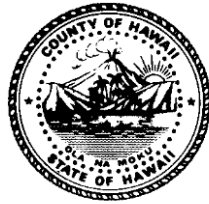
Testimony Relating to Special Management Areas
SB2969 SD2
By Michael A. Dahilig
Director of Planning, County of Kauai

The Kauai County Planning Department **SUPPORTS** SB 2969 which proposed to reduce the size threshold for a single-family residence that is not a part of a larger development to be deemed a "development" for purposes of the Special Management Areas (SMA) Law.

We would suggest language be added to the bill to allow each county, by rule, provide an even lesser square footage trigger threshold beyond that proposed in the measure.

Thank you for the opportunity to comment.

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

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March 19, 2018

Testimony by
MICHAEL YEE
Director, County of Hawai'i Planning Department
before the
COMMITTEE ON WATER & LAND
and the
COMMITTEE ON HOUSING
Tuesday, March 20, 2018, 11:20 A.M.
State Capitol, Conference Room 423
in consideration of
SB 2969 SD2
Relating to Special Management Areas

The County of Hawai'i Planning Department would like to express its **SUPPORT** of the intent of SB 2969 SD2, and further **SUPPORTS** the comments and the proposed amendment to the bill submitted by the Office of Planning.

Thank you for considering our comments.

LATE

SB-2969-SD-2

Submitted on: 3/19/2018 4:48:09 PM

Testimony for WAL on 3/20/2018 11:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Planning	County of Maui-Dept. of Planning	Comments	No

Comments:

Chairs Yamane and Brower and Committee Members:

Thank you for the opportunity to comment on SB2969, SD2, which would reduce the size threshold from 7,500 square feet to 2,000 square feet for a single-family residence to be excluded from the definition of "development" for purposes of the Special Management Area law, if the residence is not part of a larger development. The bill would also authorize the county authority to further reduce the threshold.

We **strongly oppose** the proposed standard of 2,000 square feet for the following reasons:

1. There is no predictable or inevitable environmental impact based solely on a specific size of house. The impacts will be different in every situation, depending on a particular location, topography, distance from the shoreline, nature of the construction, climate considerations, view planes, archaeological resources, etc.
2. The bill is anti-affordable housing. As you can see on the online [maps](#), Maui County's SMA boundaries are very wide, over a mile in some places, and the SMA encompasses a large portion of our land zoned for residential uses. Requiring that a moderately sized home, possibly a mile from the shoreline, go through a public hearing process unnecessarily adds \$40,000-\$80,000 to the cost of construction for what might be an otherwise affordable home.
3. This proposal would also add significant burden to the Planning Department and our planning commissions because it would require many more public hearings than it does now.
4. There is no need for such a requirement as we already have a mechanism in place in to require permits of homes of any size that may have an impact. See Section 205A-22, Hawaii Revised Statutes:

". . . 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."

As a compromise, we endorse the State Office of Planning's recommendation to edit the first "development" exclusion to read:

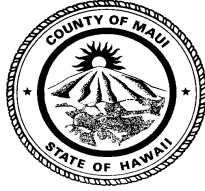
"(1) Construction or reconstruction of a single-family residence that [is less than seven thousand five hundred square feet of floor area and] is not part of a larger development and is not situated on a parcel that abuts the shoreline or a publicly owned beach parcel . . ."

In a related comment, we believe the statute should specify what is included as part of a "single-family residence." Many homes have swimming pools, garages, ADUs, or other accessory structures. It is not clear if all of these accessory uses are allowed under the exclusion. We suggest the following language: ". . . single-family residence, including those accessory dwelling units and accessory uses that are customarily incidental and subordinate to the residence, . . ."

Thank you for the opportunity to comment this measure.

Sincerely,

WILLIAM R. SPENCE
Planning Director, County of Maui



ALAN M.
ARAKAWA
MAYOR

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OFFICE OF THE MAYOR
Ke`ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui



March 19, 2018

TESTIMONY OF ALAN M ARAKAWA
MAYOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON WATER & LAND and
THE HOUSE COMMITTEE ON HOUSING

Tuesday, March 20, 2018, 11:20 a.m.
Conference Room 423

SB2969 SD2 RELATING TO SPECIAL MANAGEMENT AREAS.

Honorable Ryan I. Yamane, Chair
Honorable Chris Todd, Vice Chair
Honorable Members of the House Committee on Water & Land

Honorable Tom Brower, Chair
Honorable Nadine K. Nakamura, Vice Chair
Honorable Members of the House Committee on Housing

Thank you for this opportunity to submit comments on SB2969 SD2.

The purpose of this bill is to would reduce the size threshold from 7,500 square feet to 2,000 square feet for a single-family residence to be excluded from the definition of "development" for purposes of the Special Management Area law, if the residence is not part of a larger development. The bill would also authorize the county authority to further reduce the threshold.

We strongly oppose the proposed standard of 2,000 square feet for the following reasons:

1. The bill is anti-affordable housing. Maui County's SMA boundaries are very wide, over a mile in some places, and they encompass a large portion of our land zoned for residential uses. Requiring that such a moderately sized home, possibly a mile from the shoreline, go through a public hearing process unnecessarily adds \$40-80,000 to the cost of construction for what might be an otherwise affordable home.
2. There is no need for such a requirement as we already have a mechanism in place in to require permits of homes of any size that may have an impact. See Section 205A-22, Hawaii Revised Statutes:

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.

TESTIMONY OF ALAN M ARAKAWA
MAYOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON WATER & LAND and
THE HOUSE COMMITTEE ON HOUSING

Page 2

As a compromise, we endorse the State Office of Planning's recommendation to edit the first exclusion to read:

(1) *Construction or reconstruction of a single-family residence that ~~[is less than seven thousand five hundred square feet of floor area and]~~ is not part of a larger development and is not situated on a parcel that abuts the shoreline or a publicly owned beach parcel.*

In addition, we believe the statute should be clarified to specify what is included as part of a "single-family residence." Many homes have swimming pools, garages, ADUs, or other accessory structures. It is not clear if all of these accessory uses are allowed under the exclusion. We suggest the following language:

"...single family residence, including those accessory uses that are customarily incidental and subordinate to the residence..."

Thus, when combining our two suggested amendments, Page 3 Lines 6-13 would read:

(1) *Construction or reconstruction of a single-family residence, including those accessory uses that are customarily incidental and subordinate to the residence, that ~~[is less than seven thousand five hundred square feet of floor area and]~~ is not part of a larger development and is not situated on a parcel that abuts the shoreline or a publicly owned beach parcel.*

Mahalo for the opportunity to comment on SB2969 SD2.

Sincerely,

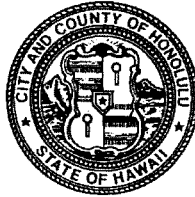
Alan M. Arakawa
Mayor, County of Maui

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CITY AND COUNTY OF HONOLULU

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KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

March 20, 2018

The Honorable Ryan I. Yamane, Chair
and Members of the Committee on Water and Land
The Honorable Tom Brower, Chair
and Members of the Committee on Housing
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Yamane and Brower, and Committee Members:

Subject: Senate Bill No. 2969, SD 2
Relating to Special Management Areas

The Department of Planning and Permitting (DPP) **supports the intent** of Senate Bill No. 2969, SD 2, which reduces the threshold for a single-family residence that is not part of a larger development to be excluded from the definition of "development" for the purposes of the Special Management Area (SMA) law.

We agree that the current 7,500-square-foot threshold for SMA permits is too large. However, no justification for a lower floor area was presented. The proposed 2,000-square-foot threshold is too small; even small homes well away from the shoreline would be affected.

However, houses may intrude on public shoreline views and other coastal zone policies, similar to other types of buildings. Therefore, we support the alternate language suggested by the Office of Planning that only homes on shoreline lots, and lots abutting publicly accessible beach parks be excluded from the SMA exemption list, regardless of the dwelling size.

While changing the threshold may deter some shoreline property owners, given the property values of beachfront lots, we do not expect many to be deterred. Those who can afford beachfront property will also be able to afford the consultants needed to prepare SMA applications. Thus, the DPP expects that changing the threshold to only shoreline lots will still increase the number of permit applications that will need to be processed, placing a challenge on department resources.

The Honorable Ryan I. Yamane, Chair
and Members of the Committee on Water and Land
The Honorable Tom Brower, Chair
and Members of the Committee on Housing
Hawaii House of Representatives
March 20, 2018
Senate Bill No. 2969, SD 2
Page 2

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, reading "Kathy K. Sokugawa". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Kathy K. Sokugawa
Acting Director



Testimony to the House Committees on Water & Land; and Housing
Tuesday, March 20, 2018
11:20 am
State Capitol, Room 423

LATE

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RE: S.B. 2969, SD 2, – Relating to Special Management Areas

Chairs Yamane and Brower, Vice-Chairs Todd and Nakamura, & members of the Committees:

My name is Gladys Quinto-Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is **opposed** to S.B 2969, SD 2, which proposes to reduce the size threshold, and authorizes the county planning authority to further reduce the threshold, for a single-family residence that is not part of a larger development to be excluded from the definition of "development" for purposes of the special management areas law. Requires the county authorities to consider sea level rise when reviewing and approving all developments.

The Special Management Area on each island in the State of Hawaii usually consists of shoreline properties which vary in distance from the shoreline based on topography or natural resources in the area. (See attached SMA Boundary Map of Oahu).

In 1975, the legislature in enacting Part II of HRS Chapter 205A found that:

“. . . special controls on developments within an area along the shoreline are necessary to avoid permanent losses 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.”

While we fully support the original intent of establishing the Special Management Areas on each island, we are opposed to the proposed amendments. As drafted, the proposed amendment would reduce the size of a single family residence from 7,500 square feet to 2,000 square feet. Currently, homes of 7,500 square feet or less are not consider developments in the SMA and do not require a major or minor SMA permit.

As proposed, any single family residence larger than 2,000 square feet would require a SMA Permit. If the proposed residence construction cost is less than \$500,000.00 it would require a SMA Minor permit. If the construction cost is greater than \$500,000.00, it would require a SMA Major permit which would include the preparation of an Environmental Assessment (EA).

An EA could easily add \$100,000.00 of additional cost to the project and six (6) to twelve (12) months of additional processing time for the EA.



Given the high cost of shorefront property in Hawaii, we would assume that most single family residences constructed near the shoreline will be large and exceed the \$500,000.00 threshold.

The bill is unclear as to the rationale for the reduction in the size of the single family residence. The size of the dwelling is usually dictated by the size of the lot and thus it is even more puzzling as to the basis for the reduction in size being placed in the statute.

If the concern is to address sea level rise which is part of the proposed amendments, perhaps the amendments should focus specifically on addressing sea level rise by setting criteria or establishing guidelines for the Counties to consider when assessing developments in the SMA.

Without a sound basis for justifying the reduction in the size of a single family residence in the SMA, we believe the proposed bill will unnecessarily penalize shorefront property owners and discourage additional housing in many areas mauka of the shoreline.

BIA Hawaii stands in firm **opposition** to S.B. 2969, SD 2, and appreciates the opportunity to comment on this matter.