

ACT 229

H.B. NO. 365

A Bill for an Act Relating to Special Management Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that targeted amendments to the definition of “development” as it relates to special management areas will promote, not undercut, the environmental controls and quality that special management area regulations are intended to protect. Under existing law, the broad definition of “development” coupled with rising labor and materials costs can trigger a mandatory special management area use permit review for improvements, facilities, and incidental structures that may not warrant such intense scrutiny and the associated costs and delays that go along with it.

The legislature further finds that exclusions from the special management area definition of “development” are desirable for activities such as the following:

- (1) Installation, maintenance, repair, and replacement of public pedestrian and bicycle facilities to reduce reliance on vehicles;
- (2) 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;
- (3) 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

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

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

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

““Development” [means]:

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

- [(+)] (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- [(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[-]; and

[“Development” does] (2) Does not include the following:

- [(+)] (A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area[-]; is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion[-]; 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;
- [(4)] (D) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- [(5)] (E) Zoning variances, except for height, density, parking, and shoreline setback;
- [(6)] (F) Repair, maintenance, or interior alterations to existing structures;
- [(7)] (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- [(8)] (H) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes[-], including all traditional fishpond and traditional agricultural practices;
- [(+)] (I) Transfer of title to land;
- [(+0)] (J) Creation or termination of easements, covenants, or other rights in structures or land;

- [~~(41)~~] (~~K~~) Subdivision of land into lots greater than twenty acres in size;
 - [~~(42)~~] (~~L~~) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
 - [~~(43)~~] (~~M~~) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - [~~(44)~~] (~~N~~) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
 - [~~(45)~~] (~~O~~) Nonstructural improvements to existing commercial or noncommercial structures; [~~and~~]
 - [~~(46)~~] (~~P~~) Construction, installation, maintenance, repair, and replacement of emergency management warning or signal devices and sirens;
 - (Q) Installation, maintenance, repair, and replacement of public pedestrian and bicycle facilities, including sidewalks, paths, bikeways, crosswalks, stairs, ramps, traffic control barriers, signs, signals, and associated improvements;
 - (R) Trash removal or invasive vegetation removal or control, including incidental ground disturbance, excluding the use of herbicides;
 - (S) Installation of fencing, including associated improvements and incidental structures, for invasive species control or preservation of native habitats on conservation land;
 - (T) Installation, maintenance, repair, and replacement of lighting, fixtures, and equipment to establish compliance with current standards at existing public facilities;
 - (U) Installation, maintenance, repair, and replacement of security measures, including fencing, to existing public facilities; and
 - (V) Hawaiian 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.

(Approved July 6, 2023.)