

SB737



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Linda L. Smith
Senior Policy Advisor to the Governor
Chairperson, Affordable Housing Regulatory Barriers Task Force

Before the
SENATE COMMITTEE ON EDUCATION AND HOUSING
Monday, February 9, 2009, 1:15 p.m.
Room 225, State Capitol

S.B. 737 RELATING TO HOUSING

Chair Sakamoto, Vice Chair Kidani, and members of the Committee, thank you for the opportunity to provide testimony in **support of S.B. 737 with amendments.**

Currently, mixed-use projects with an affordable housing component do not have an expedited review process. Senate Bill 737 will create this process by authorizing mixed-use projects to be eligible for the expedited review track that is currently offered to qualifying housing projects in chapter 201H, Hawaii Revised Statutes.

Please note that Senate Bill 737 coincides with recommendations from the Affordable Housing Regulatory Barriers Task Force. The Task Force believes that this bill will facilitate affordable housing development.

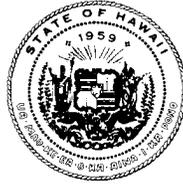
The Administration recommends amending the definition of "mixed-use housing" on page 3, lines 1-9. The definition references section 201H-202(e)(2) as the threshold that determines affordable income eligibility, however, this reference is too narrow and only applies to a portion of affordable housing projects developed pursuant to chapter 201H. The definition of "mixed-use housing" should be amended to read as follows:

"Mixed-use housing" means the combination of different types of structures in a housing project including commercial, public facilities, industrial, and residential uses, which may include single-family, multi-family, for sale, lease, rental, low, moderate, workforce, affordable, and market housing, or combinations of all of the above; provided that at least twenty per cent of the housing units shall be for [individuals and families] households [that meet the affordable income threshold under section 201H-2020(e)(2)] with incomes at or below one hundred forty per

cent of the median family income or as may be determined by the United States Department of Housing and Urban Development."

Thank you for the opportunity to testify in support of this bill.

Linda Lingle
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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IN REPLY REFER TO

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

**SENATE COMMITTEE ON EDUCATION AND HOUSING
SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL
AND INTERGOVERNMENTAL AFFAIRS**

February 9, 2009 1:15 p.m.
Room 225, State Capitol

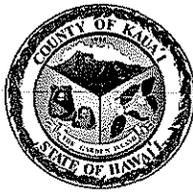
In consideration of
S.B. 737
RELATING TO HOUSING.

The Hawaii Housing Finance and Development Corporation (HHFDC) **supports the intent of S.B. 737.** This bill extends expedited processing and exemptions from planning, zoning, subdivision, and building codes to mixed use housing and infrastructure.

Thank you for the opportunity to testify.

Bryan J. Baptiste
Mayor

Gary K. Heu
Administrative Assistant



Housing Director

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February 6, 2009

Senators Sakamoto and Kidani, Chair and Vice Chair
and Committee Members
Committee on Education and Housing
Senators English and Gabbard, Chair and Vice Chair
and Committee Members
Committee on Transportation, International and Intergovernmental Affairs
The Senate, State of Hawai'i
The Twenty-Fifth Legislature
Regular Session of 2009

SUBJECT: Testimony **Opposing Senate Bill 737, Relating to Housing
Committees: EDH/TIA
Hearing: February 9, 2009 1:15 PM Conference Room 225**

The proposed bill is substantially similar to Senate bill 901. The bill would amend HRS Section 201H-1 to include definitions for "Infrastructure" and "Mixed-Use Housing", and Section 201H-38 to include mixed use housing projects or infrastructure associated with a housing or mixed use housing infrastructure project. This would allow all exemptions and expedited processing available under HRS 201H for mixed use housing projects, or infrastructure projects associated with housing projects or mixed use housing projects, for mixed-use commercial, industrial and public facilities, and related infrastructure projects, that contain a residential component, of which a minimum of 20% would be required to be affordable to persons earning up to 140% of the Median Housing Income.

The Kaua'i County Housing Agency (KCHA) opposes Senate Bill 901 for the following reasons:

1. No minimum amount of housing is required within a mixed-use project for consideration under 201H. We recommend that a minimum of 50% of the square footage of the project be required to be for housing to qualify for 201H exemptions and process.
2. The proposed affordable housing requirements are substantially less stringent than Ordinance No. 860, the Housing Policy Ordinance for the County of Kaua'i, which requires a minimum of 51% workforce housing to meet affordable criteria of the County for processing of 201H projects. We recommend that a majority of housing units be required to meet affordable criteria to qualify for 201H exemptions and process.



Senators Sakamoto and Kidani, Chair and Vice Chair
and Committee Members EDH

Senators English and Gabbard, Chair and Vice Chair
and Committee Members TIA

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3. The proposed definition of “infrastructure” refers to installation or improvement “by the government”. More frequently on Kaua‘i, infrastructure for projects is installed by the developer. We recommend that the definition be clarified to include or exclude infrastructure constructed by non-profit or private developers, as intended by your Committee.
4. The Comprehensive Zoning Ordinance for the County of Kaua‘i currently requires Use Permits for Housing units in General Commercial and Industrial Districts. We are concerned that health and safety considerations for residential uses in such districts not be waived or overlooked.

As proposed, Senate Bill 901 could be abused to require the County to expend funds and considerable time to process an application for a very small amount of affordable housing. We do not support the proposed bill in its current configuration. Thank you for the opportunity to provide testimony.

Sincerely,



EUGENE K. JIMENEZ
Housing Director



Sierra Club Hawai'i Chapter

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SENATE COMMITTEE ON EDUCATION AND HOUSING SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

February 9, 2009, 1:15 P.M.

(Testimony is 3 page long)

TESTIMONY IN **OPPOSITION TO SB 737**

Chair Cabanilla and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, vigorously opposes SB 737, which attempts to expedite project review for affordable housing. While the Sierra Club strongly supports increasing the availability of affordable housing, we are concerned that the misapplied concept of "automatic approval" undermines this bill's goals.

First, it should be noted that the simplest way to increase affordable housing in Hawai'i is to follow the lead of the County of Maui, which recently required fifty percent of all proposed housing projects to meet affordability requirements. *See, e.g., SB 758.* This solution, assuming it was enforced, would directly solve the needs of Hawai'i's homelessness without engaging in poor community planning.

Second, the "automatic approval" of any permit is simply poor policy. Permits should be granted on their merits, not by mistake or governmental inefficiency. *No community should suffer because government failed to perform.*

Automatic approvals are completely antithetical to smart, sustainable planning. Consider:

1. What happens when additional information is required by the department or agency and the deadline passes?

2. What happens when there are complex environmental assessments and impact statements that need to be completed pursuant to chapter 343, HRS, and the deadline passes?
3. What happens when a contested case hearing is requested pursuant to chapter 91, HRS, and for any other period for administrative appeals and review and the deadline passes?
4. What happens when health, welfare, or safety concerns (such as compliance with building codes) are not properly addressed in due course? Do we believe the underprivileged should be forced to live in unsafe facilities?
5. Is it ever appropriate to automatically approve a permit that will irreparably damage the environment or native Hawaiian rights? Doesn't that violate protections provided by the state constitution?

What happens with a tie vote? A tie vote on a board or committee usually signals that the measure or proposal didn't garner enough supporting votes. Under the current law, a tie vote means inaction and therefore automatic approval if the deadline passes.

What happens when there is a lack of a majority? Under current law, if a commission has a quorum to take a valid vote but there is not the required majority vote to approve or deny, the permit is approved by default if a deadline passes. For example, if a 6-member board votes 3-2 AGAINST a project, but a majority (4) is required to ratify any action, the project may be automatically approved.

The above situations turn logic on its head. An applicant could be approved by:

1. an affirmative majority vote (the appropriate route);
2. a tie vote with time lapsing; or
3. a less than majority vote with time lapsing.

Logically, if an applicant can't get a majority of commission or board members to support the application, the application should not be approved.

Third, we note the definition of "Mixed-use housing" is so broad, it could include a commercial facility the size of Ala Moana Shopping Center, so long as "twenty per cent of the housing units . . . meet the affordable income threshold under section 201H-202(e)(2)." In other words, *any* project that includes at least one affordable house, regardless of size or impacts on the environment, would fit this definition. Plainly this is not the intent?

To this end, it should also be noted that most counties now require proposed housing developments to include an affordable housing component as a condition of approval.

SB 737 would, therefore, have the effect of making *all* housing development projects in these counties eligible for automatic approval. Such a bold step should not be imposed on the counties or agencies without some further analysis?

Again, we understand and appreciate the intent of SB 737. If the legislature prefers not to require an affordable housing component in all construction projects, perhaps other incentives besides “automatic approval” could be considered. For example, the State could create an ombudsman program that assists in expediting projects that offer affordable housing and serve a particular community. Or the State could consider an annual report from all agencies on the status of the review process (with a focus on affordable housing) and make informed decisions on how to make government more efficient.

Thank you for the opportunity to testify.