



Hawaii CZM Program  
Coastal Zone Management

a Participant's Guide to the

# **SPECIAL MANAGEMENT AREA (SMA) Permit Process in the State of Hawaii**





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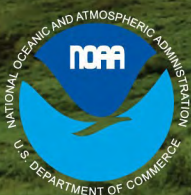
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Visit the CZM website at:

<http://hawaii.gov/dbedt/czm>



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# What is an SMA Permit?

## The Special Management Area (SMA) permit is part of a regulatory system that is the cornerstone of the Hawaii Coastal Zone Management (CZM) Program.

The SMA permit was established in 1975 with the enactment of Act 176, known as the Shoreline Protection Act. According to the legislature's findings, codified in Hawaii Revised Statutes (HRS) section 205A-21, "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 also found and declared "that it is the state policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii."

The SMA permit is a management tool to assure that developments in the SMA are designed and carried out in compliance with the CZM objectives, policies, and SMA guidelines. The SMA permitting system regulates development within county designated SMAs extending from the shoreline inland, as shown on page 2.

### What is the Hawaii CZM Program?

The U.S. Congress, recognizing the importance of meeting the challenges of continued growth in the coastal zone, passed the CZM Act in 1972. The National CZM Program is a major component of the CZM Act. The National CZM Program is a partnership between the National Oceanic and Atmospheric Administration and participating coastal and Great Lakes states, territories, and commonwealths. The partnership works to preserve, protect, develop and, where possible, restore and enhance the nation's coastal zone resources, which requires balancing the demands of coastal resource use, economic development, and conservation.

The Hawaii CZM Program was approved by the federal government in 1978 and the state in 1977 and is codified under HRS Chapter 205A. The legislature designed the CZM law to build upon existing function agencies, forming the Hawaii CZM network. The State Office of Planning is the lead agency of the CZM Program.

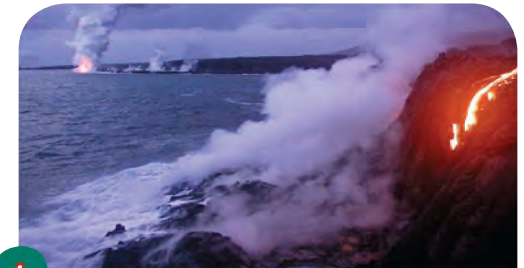
### What is the purpose of this Guide?

The purpose of this "Participant's Guide" is to provide an overview of the SMA permitting system, which is administered by each of the four respective county governments. The Guide highlights information that prospective participants, including permit applicants and stakeholders, should consider to participate more effectively. More detailed information on SMA permit processes for each county can be obtained through contacts listed on the back cover. This Guide does not have the force and effect of law, and does not supersede state or county laws and rules related to the CZM Program. This Guide does not cover other aspects of the CZM Program such as federal consistency requirements.

# Where is the SMA?



**3** Resort Areas  
(Kauai Resort)



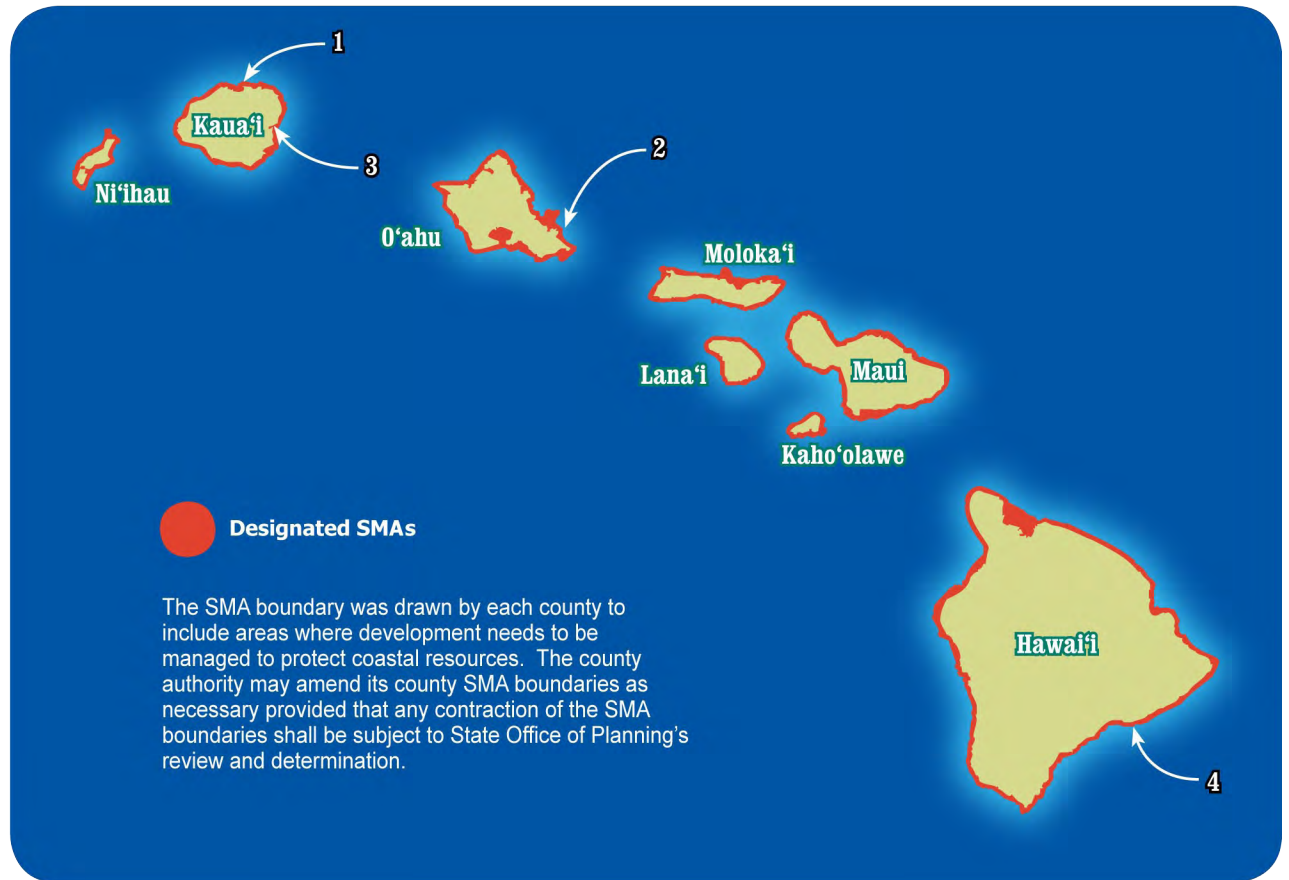
**4** Seismic Hazard Areas  
(Kilauea Volcano)



**2** Natural Preservation Areas  
(Kawainui Marsh)



**1** Coastal Roads



## Designated SMAs

The SMA boundary was drawn by each county to include areas where development needs to be managed to protect coastal resources. The county authority may amend its county SMA boundaries as necessary provided that any contraction of the SMA boundaries shall be subject to State Office of Planning's review and determination.



# What types of Development do SMA Permits regulate?

## Pursuant to HRS Section 205A-22:

“Development” means any of the uses, activities, or operations on land or in or under water within the SMA that are included below:

- 1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- 2) Grading, removing, dredging, mining, or extraction of any materials;
- 3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- 4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- 5) Construction, reconstruction, demolition, or alteration of the size of any structure.

The SMA permitting system regulates all types of land uses and activities under a broad definition of “development” within the SMA. Some specifically defined land uses and activities may be exempt if they do not otherwise have a significant impact in the SMA.

The following are examples of what is regulated or excluded from SMA permitting:

### What the SMA Permit regulates:



#### HOTELS



#### SUBDIVISIONS



#### COMMERCIAL AREAS

### What is excluded:



#### AGRICULTURE



#### INTERIOR ALTERATIONS OR NON-STRUCTURAL IMPROVEMENTS



#### SINGLE FAMILY HOMES



#### UNDERGROUND UTILITIES

# What is the difference between an SMA Minor & SMA Major Permit?

## SMA Minor

- ✓ **No more than \$500,000 Construction Valuation**
- ✓ **Abbreviated review process**
- ✓ **No public hearing required**

An SMA minor permit is an approval for developments within the SMA with a construction valuation of \$500,000 or less, if they do not otherwise have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects relative to the CZM objectives and policies.

The abbreviated review process does not require a public hearing and the permit is issued by the respective county planning director. Notice of the issuance of SMA minor permits are published in the Office of Environmental Quality Control (OEQC) Environmental Notice twice a month.

## SMA Major

- ✓ **More than \$500,000 Construction Valuation**
- ✓ **Substantial adverse environmental/ecological effect or cumulative effects**
- ✓ **Public hearing required**

An SMA major permit is an approval for a development in the geographic SMA that is determined to be consistent with the CZM objectives and policies in general and the SMA guidelines in particular. A proposed development with a construction value more than \$500,000, or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects relative to the CZM objectives and policies, must obtain an SMA major permit.

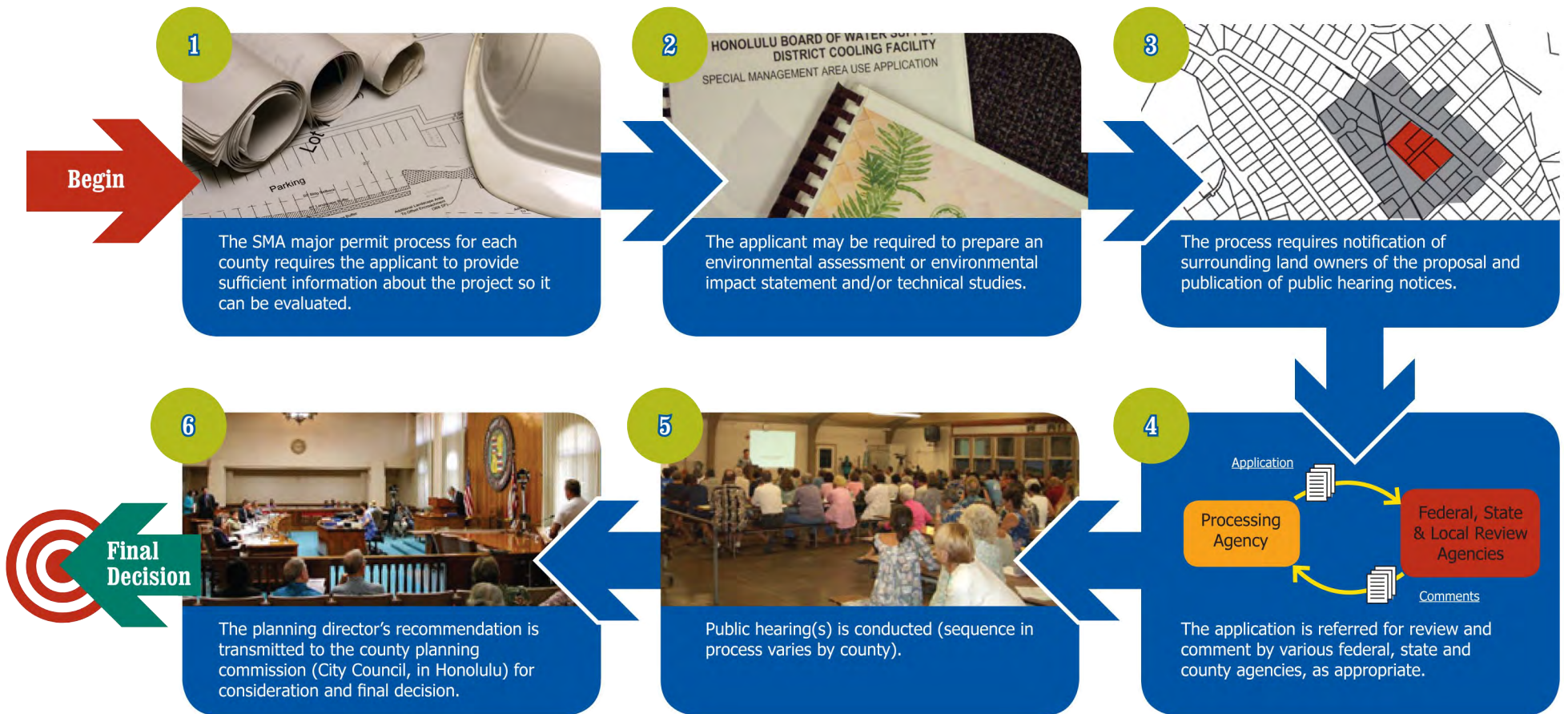
A summary of the SMA major permit process is provided on the following page.



# How is the SMA Major Permit processed?

The SMA permitting system is implemented by each of the four counties according to their own ordinances and rules, with oversight and support from the Hawaii CZM Program. Any action in an SMA that is not exempt or is not covered by an SMA minor permit, requires an SMA major permit administered by the respective county planning departments. The process can take four months or more, especially for large development proposals.

The State Office of Planning processes SMA approvals within state community development districts designated by the legislature.





# What does the SMA Permit regulate?

## CZM Objectives & Policies / SMA Guidelines

The overarching guidance provided by the statute to the counties for processing SMA permits are CZM objectives and policies for the following:

- **Recreational Resources**
- **Historic Resources**
- **Managing Development**
- **Coastal Ecosystems**
- **Public Participation**
- **Scenic & Open Space Resources**
- **Economic Uses**
- **Coastal Hazards**
- **Beach Protection**
- **Marine Resources**

Within the context of the CZM objectives and policies, the SMA guidelines apply specifically to the SMA permit process. Compliance with the SMA guidelines must be achieved before an SMA permit can be approved. In most cases mitigation measures to achieve consistency are required as conditions of SMA permit approval. Such conditions may include:

- **Provision of public shoreline access**
- **Preservation of important archaeological sites**
- **Building height restrictions**
- **Boundary setback requirements to preserve coastal views from public areas**
- **Drainage improvements to mitigate flooding or to control siltation in coastal waters**

## HRS Section 205A-26:

### SMA Guidelines

In implementing this part, the authority shall adopt the following guidelines for the review of developments proposed in the special management area:

- (1) All development in the special management area shall be subject to reasonable terms and conditions set by the authority in order to ensure:
  - (A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles;
  - (B) Adequate and properly located public recreation areas and wildlife preserves are reserved;
  - (C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon special management area resources; and
  - (D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.
- (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.
- (3) The authority shall seek to minimize, where reasonable:
  - (A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;
  - (B) Any development which would reduce the size of any beach or other area usable for public recreation;
  - (C) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management areas and the mean high tide line where there is no beach;
  - (D) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and
  - (E) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.



# What is NOT regulated by the SMA Permit?

A county planning department, planning commission or council, should analyze and approve or deny a permit application based on the specific enumerated criteria discussed on the previous page. An SMA assessment or approval does not generally consider impacts on public facilities such as roads, schools and infrastructure; public services such as police, fire and medical response; or, community impacts such as affordable housing, influx of new residents, and increased traffic.



**Adequacy of roads and infrastructure**



**Impact on public services: police, fire and medical response**



**Impact on schools**



**Community impacts: housing affordability, influx of new residents and increased traffic.**

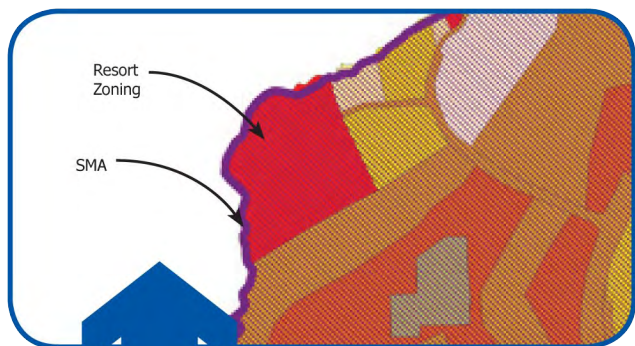


# Does the SMA Permit establish land use policy?

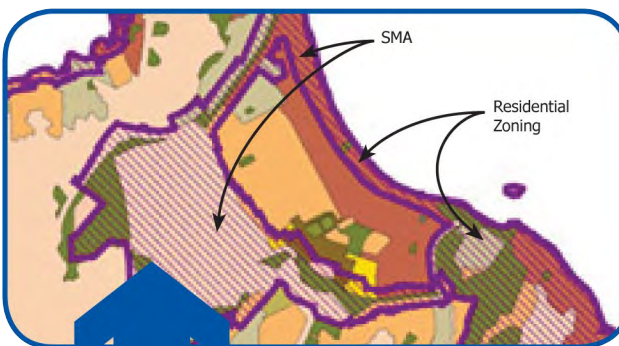
The SMA permit does not establish the types of land uses allowed in the SMA but regulates permissible land uses.

Each county has adopted land use plans and policies that regulate land uses. These land use plans and policies include each county's general plan, community/development plans and zoning codes. These land use plans and policies determine where various land uses are allowed.

The SMA permit reviews proposed development that is otherwise permissible by zoning designations in the SMA for consistency with the SMA guidelines. Since the SMA permit manages developments that are already allowed by land use plans and policies, denying such use can rarely be justified based on the SMA guidelines. Typically, consistency can be achieved by requiring mitigation measures as conditions of SMA permit approval. In rare instances, when mitigation measures cannot achieve consistency, the SMA permit would be denied and the proposed use would not be permitted.



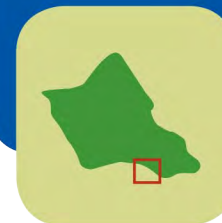
Resort Areas  
(Keauhou, Big Island)



Residential Areas  
(Kailua, Oahu)



Industrial Areas  
(Kaka'ako, Oahu)





# What is the role of public participation in the SMA Permit process?

## The role of public participation is significant in the SMA major permit process.

People familiar with the area in which a “development” is proposed can call attention to issues that may not be fully recognized by county staff evaluating the proposal, or by decision-makers. The public may be more familiar with particular aspects or issues such as public shoreline access, recreational resources, and coastal views. Specific input is important and can result in more effective mitigation measures. There are several opportunities for the public to provide input during the SMA major permit process, as shown below.

### Opportunities for Public Participation

- + Review and provide written comments to environmental assessments (EA) or environmental impact statements (EIS), which are required for some proposals (Required for all proposals in Honolulu). EA and EIS notices are published in the Office of Environmental Quality Control (OEQC) Environmental Notice.  
<http://hawaii.gov/health/environmental/oeqc/index.html>
- + Ask to review an SMA permit application and provide written comments. Applications are available for review at the respective county planning departments.
- + Attend the public hearing for SMA major permits to provide written and oral testimony and sign up to speak about a proposal’s impacts relative to the SMA guidelines. Public meeting notices are published in the public notice section of local newspapers.
- + Inquire with planning department staff about additional public participation opportunities unique to their respective county.

### Public Participation Beyond the SMA Permit

Within the broader land use planning and regulatory regime, the SMA major permit process is at the tail end, where public input is relevant to specific impacts addressed by the SMA guidelines. Other opportunities for public input in determining where development should or should not go are available during periodic updating of land use plans and policies such as county general plans and community development plans.

Opportunities for public participation are also available during development review processes considering individual proposals that can only be permitted through state land use district boundary amendments and rezoning. These development review processes precede the SMA permit and solicit public input on a broad range of land use, environmental, economic, and community issues, including the adequacy of public facilities such as roads, schools and infrastructure, as well as public services such as police, fire and medical response.



