Hawaii CZM Program
Coastal Zone Management

a Participant's Guide to the

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

2006

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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 Hawaii's Coastal Zone Management (CZM) Program.

Established by the Hawaii CZM Law enacted in 1977 (Chapter 205A, Hawaii Revised Statutes), the SMA permit system is unique because it provides overarching guidance through State law for managing coastal development. The SMA permit is a management tool to assure that permitted uses and activities that are defined as developments in the SMA are designed and carried out in compliance with the CZM objective and policies and SMA guidelines. It is independently implemented by each of the four Counties according to their own ordinances and rules. The SMA Permit system in each County regulates development within a geographically defined SMA extending from the shoreline inland as shown on page 2. Within each county, SMA boundaries may range from about 100 yards to several miles inland from the shoreline.

What is the Hawaii CZM Program?

Chapter 205A, Hawaii Revised Statutes (HRS) in 1977. The Hawaii CZM Program is a broad management framework incorporating regulatory authorities of state and county agencies to provide greater coordination of existing laws. County governments play a crucial role in implementing the Hawaii CZM Program by regulating development in geographically designated Special Management Areas (SMA). Through their respective SMA permit systems, the Counties assess and regulate development proposals in the SMA for compliance with the CZM objectives and policies and SMA guidelines set forth in Chapter 205A, HRS. Since 1990, the State Office of Planning has also been designated the SMA authority regulating development in limited areas under the jurisdiction of the Hawaii Community Development Authority.

What is the purpose of this Guide?

The purpose of this "Participant's Guide" is to provide an overview of the SMA permit system, which is administered by each of the four respective County governments. Highlighted is information that prospective participants need to participate more effectively. Since each County's SMA permit system is unique, however, more detailed information on their respective processes can be obtained through contacts listed on the back cover.

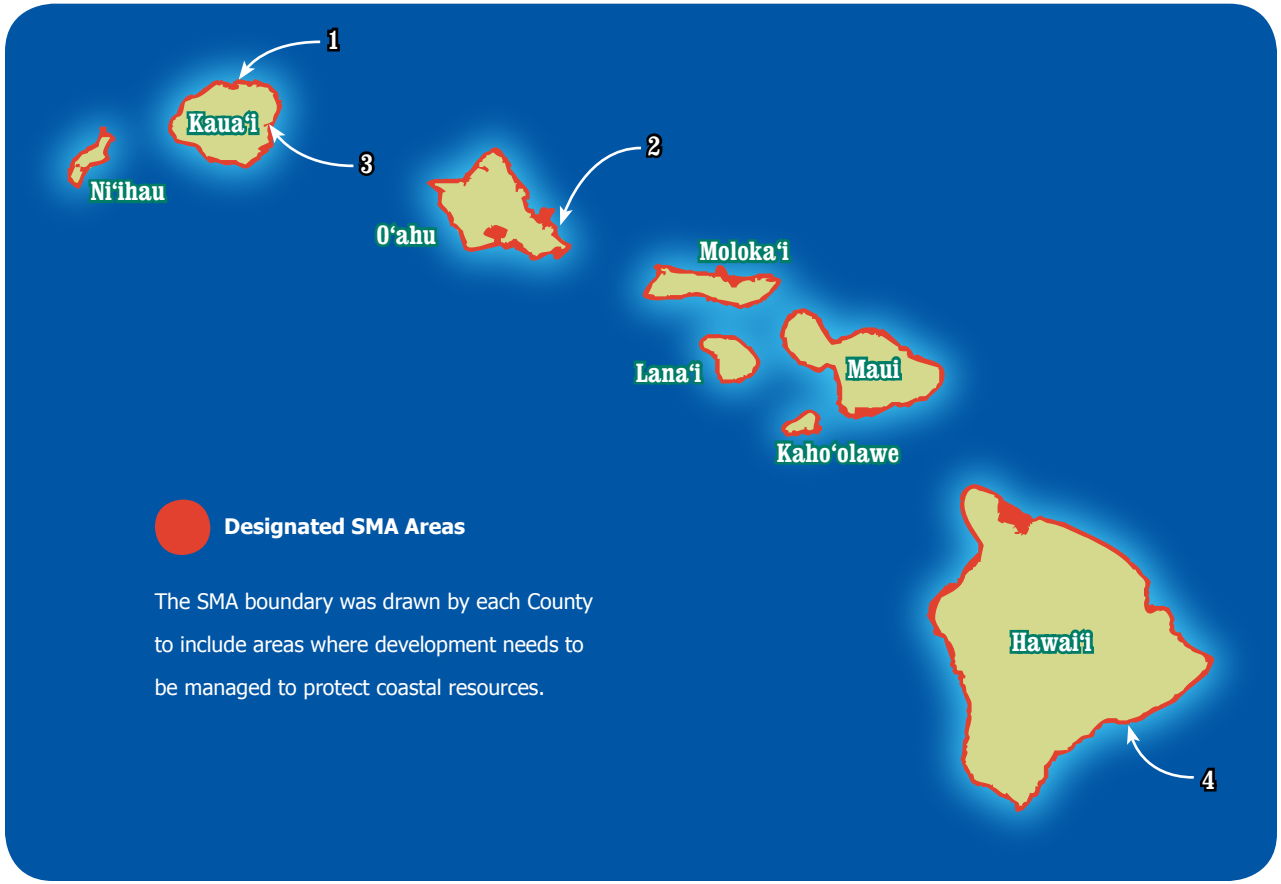
Where is the SMA?

3 **Resort Areas**
(Kauai Resort)

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

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

1 **Coastal Roads**



What types of Development do SMA Permits regulate?

The SMA Permit 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.

Pursuant to Hawaii Revised Statutes (HRS), Chapter 205A-22:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area 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.

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 $125,000 Construction Valuation**
- ✓ **Abbreviated review process**
- ✓ **No public hearing required**

An SMA minor permit is an approval for development proposals within the SMA with a construction valuation of $125,000 or less, if they do not otherwise have a significant adverse and/or cumulative impacts 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. Notices of SMA minor permits are published in the Office of Environmental Control (OEQC) Environmental Notice twice a month.

SMA Major

- ✓ **More than $125,000 Construction Valuation**
- ✓ **Significant or cumulative CZM impacts**
- ✓ **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 $125,000, or which may have significant adverse and/or cumulative impacts relative to the CZM objectives and policies, must obtain an SMA major permit.

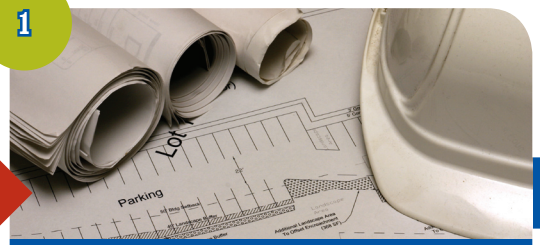
A summary of the SMA major permit process is provided on the following page.

How is the SMA Major Permit processed?

Any development 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 six months or more, especially for larger development proposals. The State Office of Planning processes SMA approvals in Community Development Districts.

Begin

1



The SMA major permit process for each County requires the applicant to provide sufficient information about the project so it can be evaluated.

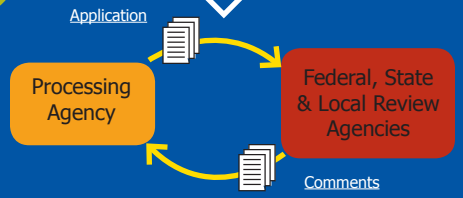
2

The applicant may be required to prepare an environmental assessment or environmental impact statement and/or technical studies.

3

The process requires notification of surrounding land owners of the proposal and publication of public hearing notices.

4



The application is referred for review and comment by various federal, state and County agencies, as appropriate.

5

Public hearing(s) is conducted (sequence in process varies by County).

6

The Planning director's recommendation is transmitted to the County Planning Commission (City Council, in Honolulu) for consideration in rendering a final decision.

Final Decision

What does the SMA Permit regulate?

CZM Objectives & Policies / SMA Guidelines

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

- **Recreational Resources**
- **Historical 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**

SMA Guidelines

Hawaii Revised Statutes (HRS), Chapter 205A-26:

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?

Unless otherwise related to achieving compliance with the SMA guidelines, not considered are impacts on public facilities such as roads, schools, parks 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.

Adequecy of roads, parks and infrastructure

Impact on public services: police, fire and medical response

Impact on schools

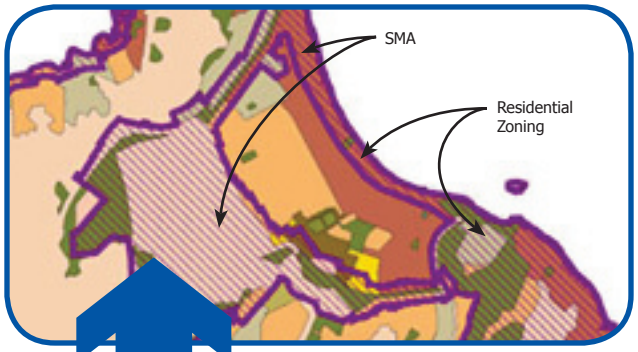
Community impacts: housing affordability, influx of new residents and increased traffic.

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 permitted land uses.

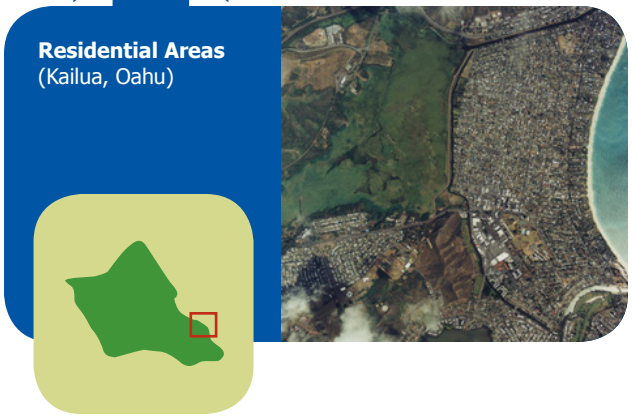
Each County has adopted land use plans and policies that regulate land uses within their jurisdiction, including their SMA. These land use plans and policies include each County's General Plan, perhaps some type of Community Development Plans and zoning codes. These land use plans and policies determine where various land uses are permitted in the County, including their SMA.

The SMA permit reviews proposed development that is otherwise permitted by zoning designations in the SMA for consistency with the SMA guidelines. Since the SMA permit manages developments that are already permitted by other 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.

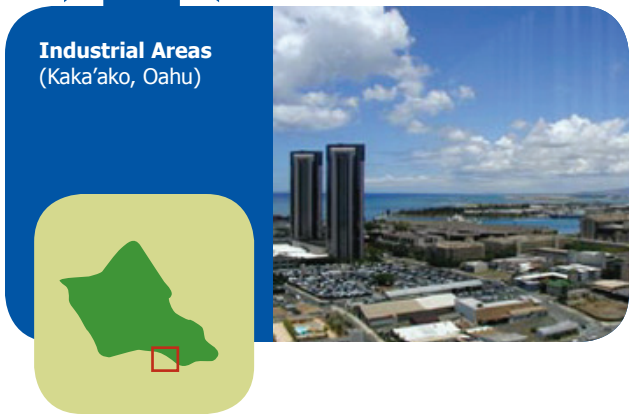


Resort Areas
(Keauhou, Big Island)

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 understood or appreciated by County staff evaluating the proposal, or by decision-makers. Oftentimes, the public may be more familiar with particular aspects of issues such as public shoreline access, recreational resources, and coastal views than reviewing staff and agencies. Such specific input is key 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. **www.state.hi.us/health/oeqc**
- 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 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 participation 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 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 supporting public facilities such as roads, water and wastewater systems, schools and parks, as well as public services such police and fire protection.

CZM Contacts

County of Hawaii
Planning Department
SMA Permits (808) 961-8288

County of Maui
Planning Department
SMA Permits (808) 270-7735

County of Kauai
Planning Department (808) 241-6677

C&C of Honolulu
Department of Planning & Permitting
SMA Permits (808) 523-4299

State of Hawaii
Office of Planning - CZM Program (808) 587-2846

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