

Special Management Area Permit

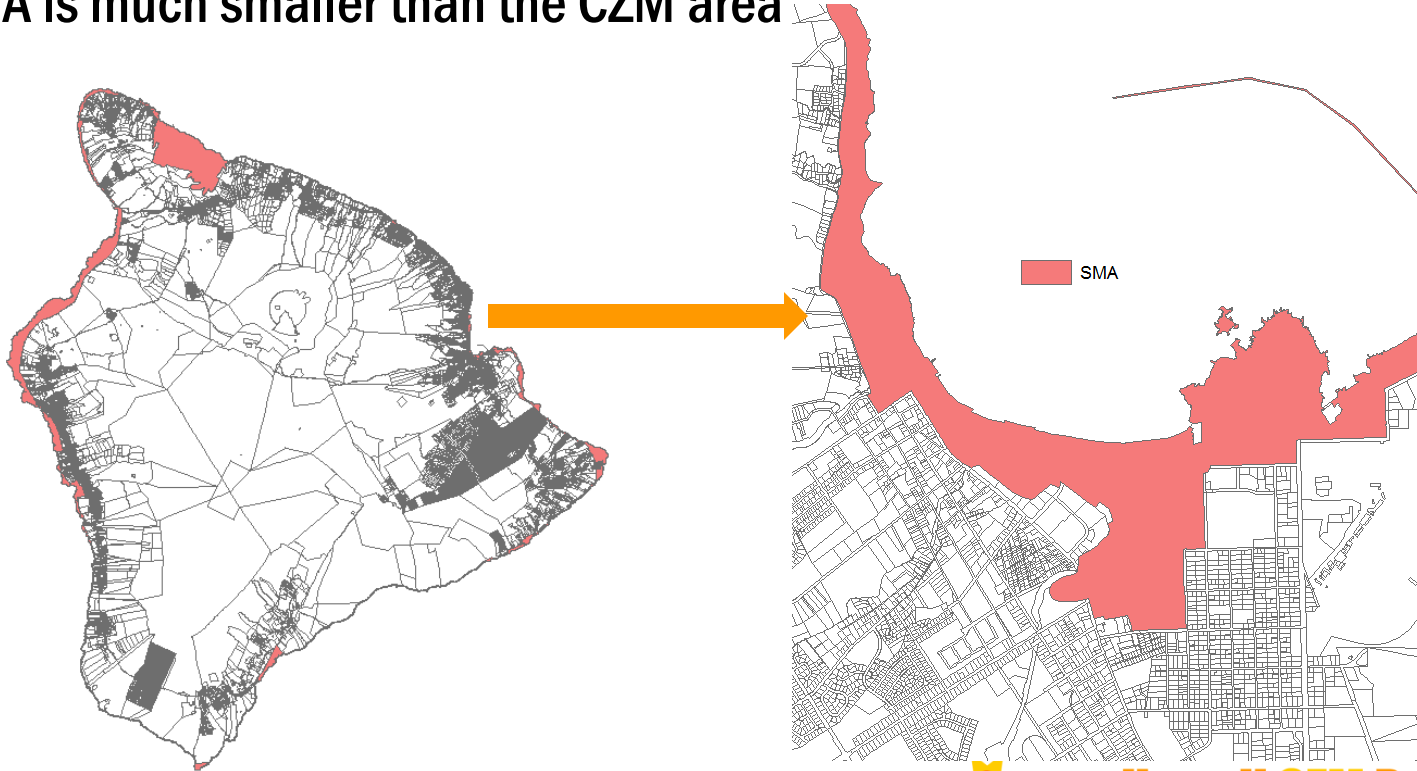


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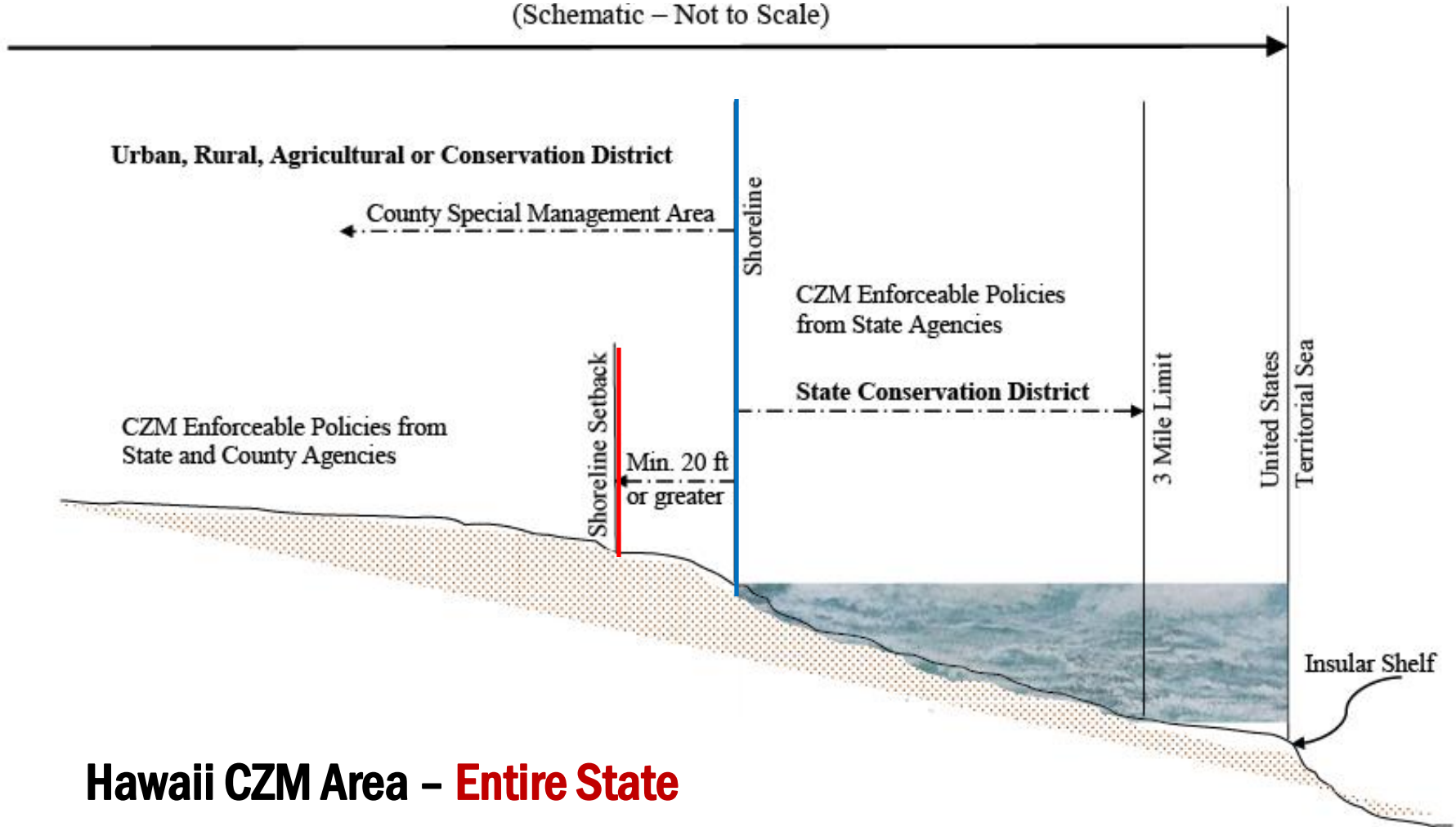
The Special Management Area (SMA)

- Begins at the shoreline and generally extends inland to the nearest highway
- The SMA is the most sensitive area of the coastal zone
- The SMA is much smaller than the CZM area



Hawaii CZM Network – A Spatial Perspective

(Schematic – Not to Scale)



Hawaii CZM Area – Entire State



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Shoreline Setbacks



Prohibit within the shoreline area structures or activities which may adversely affect beach processes, public access to and along the shoreline, or shoreline open space, and minimize the risk of coastal hazards.

Shoreline Setback Variance – **Exception**



Permit to Precede other Permits (§§ 205A-28 & 29)

- No development shall be allowed in any county within the SMA without obtaining an SMA permit
- No agency authorized to issue permits pertaining to any development within the SMA shall authorize any development unless approval of the SMA permit is first received
- The SMA permit as the first permit does not preclude concurrent processing of other permits



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Permissible Land Uses

- The SMA permitting system does not establish land use policies and does not determine land uses
- The SMA permit regulates **permissible land uses** that are already allowed by land use policies including zoning designations, development plans and county general plans
- When there is lack of mitigation measures or mitigation measures cannot achieve consistency with CZM objectives and policies, and the SMA guidelines, the SMA permit would be denied



Land Use Policies

By statutes and county charters, land use policy making is reserved for three entities as follows:

1. State Land Use Commission establishes policies by placing all lands of the state into land use districts – urban, rural, conservation, and agricultural .
2. Board of Land and Natural Resources designates conservation subzones, each of which has allowable uses commensurate with its designation.
3. County Councils establish the specific or detailed land use policies in the County General Plans and County Development Plans.



“Development” vs. “Not Development”

- A proposed action within an SMA shall be subject to assessment and determination made by the respective County Planning Department
- Specifically defined uses and activities within the SMA are not included as “development”, and may be exempt from the SMA permit
- Any excluded use, activity, or operation which may have a cumulative impact, or a significant environmental or ecological effect, should be defined as “development” set forth in HRS § 205A-22



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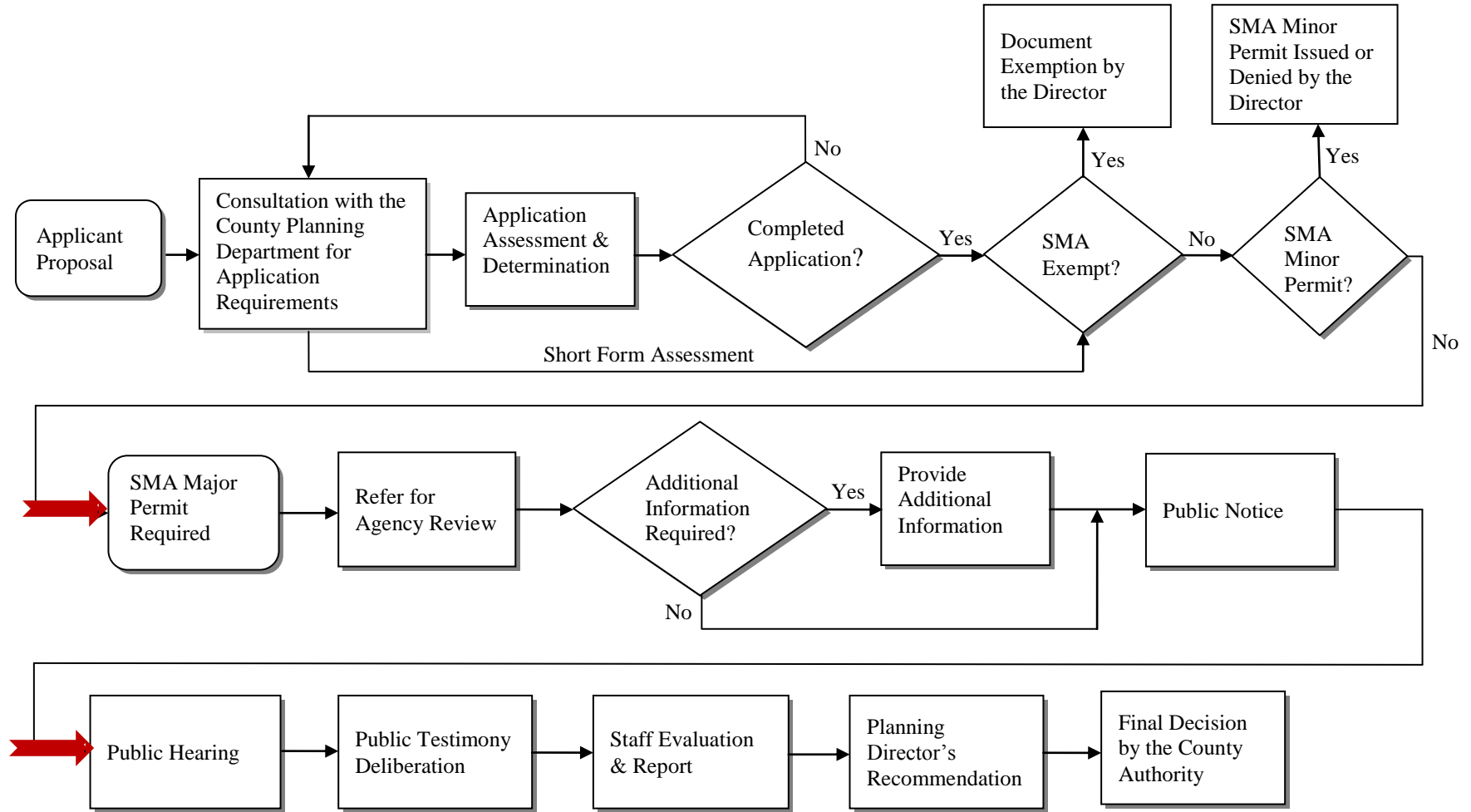
SMA Major Permit *vs.* SMA Minor Permit



- Key Factor -- potential substantial adverse environmental or ecological effect, taking into account cumulative effects
- Valuation of Development -- to reflect the level of potential impacts



SMA PERMITTING PROCESS OVERVIEW



Source: *Special Management Area (SMA) Permit System Project - Final Assessment Report, 2005*



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The SMA Guidelines

CZM objectives and the supporting policies provide overarching guidance to the counties in their administration of the SMA permit system:

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

SMA guidelines, articulated in HRS § 205A-26, apply specifically to the SMA permit process.



Adequate access to publicly owned beaches, recreation areas and natural reserves



Alterations to existing land forms shall mitigate the adverse effects to water resources, and scenic & recreational amenities



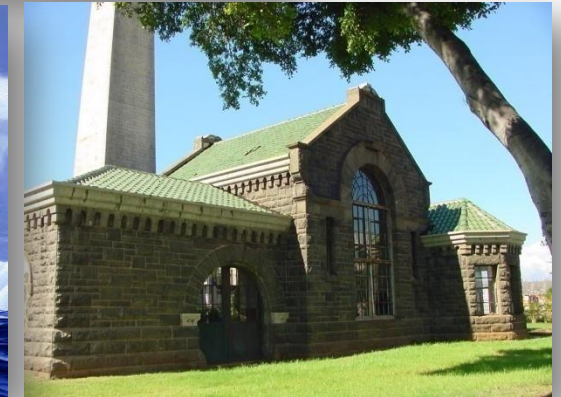
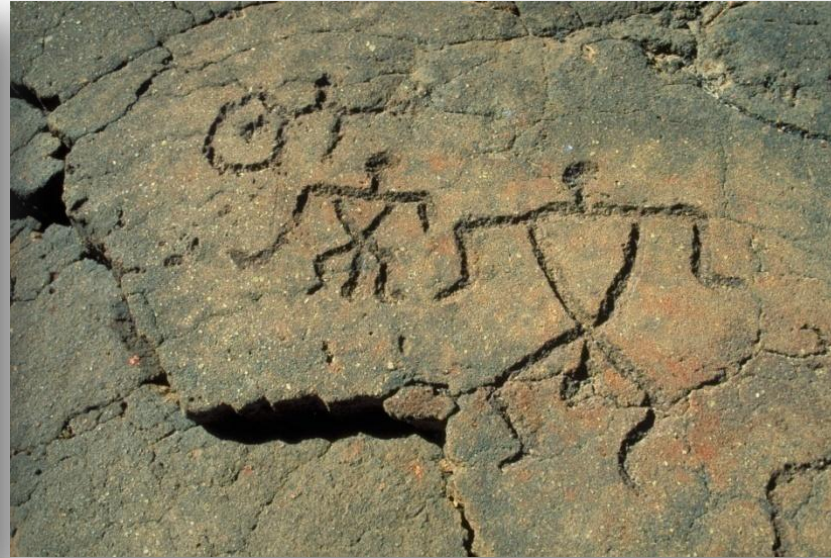
Minimizing danger of coastal hazards



Honolulu Star-Advertiser, January 23, 2014



Preservation of **historic and archaeological resources**



SMA Permit Assessment and Conditions

- Pursuant to HRS § 205A-26, all development in the SMA shall be subject to reasonable terms and conditions
- Assure an **essential nexus** and **rough proportionality** between SMA permit conditions and the CZM law's provisions



Use of Public Trust Resources

The Hawaii Intermediate Court of Appeals' (ICA) decision *in Kauai Springs v. Planning Commission of the County of Kauai*, dated April 30, 2013, requires decision-makers to specifically consider the applicant's use of public trust resources pursuant to Article XI, Section 1 of the Hawaii Constitution.

Where public trust resources are used for economic gain, the ICA

- requires the county authorities to give the application for SMA use and shoreline setback variance a higher level of scrutiny; and
- places a higher burden on the applicant to justify the use of the public trust resources.



Applicable SMA Permit Conditions

- Provision and maintenance of public beach access
- Preservation of archaeological sites
- Protection of life and property from coastal hazards
- Boundary setbacks and building height restrictions to preserve coastal views
- Drainage improvements to control siltation in coastal waters
- Mitigation of artificial lighting on the shoreline and ocean waters



Enforcement of SMA Permit Conditions

- Periodic status reports from applicants as an ongoing condition
- Time limits to the granted SMA permit, with additional approval required for time extensions
- Additional review and approval for modifications to the original proposal or plans
- Cross-review of other permit or approval applications under the county planning departments
- Responses to complaints by the public or by affected parties
- Site visit and inspections
- Civil fines and/or revocation of SMA permit for failure of complying with the SMA use requirements



A civil fine for SMA use and shoreline setback violation can be up to \$100,000, and a civil fine up to \$10,000 for each day in which such violation persists, HRS § 205A-32



Notice of Violation

- Civil fine
- Timeline for compliance



Thank You!

<http://planning.hawaii.gov/czm/special-management-area-permits/>

(808) 587-2846



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