

HAWAII COASTAL ZONE MANAGEMENT AND SPECIAL MANAGEMENT AREA PERMITTING



STATE OFFICE OF HAWAII COASTAL ZONE MANAGEMENT PROGRAM

**DEBRA MENDES
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SENIOR PLANNER**

**BEFORE
COUNTY OF HAWAII LEEWARD PLANNING COMMISSION**

OCTOBER 17, 2024



Coastal Zone Management (CZM) Act: Federal and State Timeline

Enacted by U.S. Congress to **preserve, protect, develop, and where possible, to restore or enhance** the resources of the coastal zone; to achieve **wise use of the land and water resources of the coastal zone**.

CZM Act is not an Environmental Law: balance between beneficial use of coasts and enhancement of coastal environments and resources.

Two major incentives 1) **federal funding** towards a partnership with the states; 2) administration of the **federal consistency** review program.

The CZM Program is a voluntary federal-state partnership program, and the state is in the best position to manage the coastal zone.

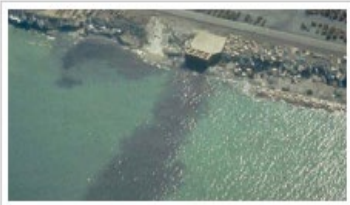


CZM Program Participation – Voluntary Federal-State Partnership



Federal Consistency

Gives states a strong voice in federal decisions that they otherwise would not have



Nonpoint Pollution Control

Ensures that participating states have the necessary tools to prevent and control polluted runoff



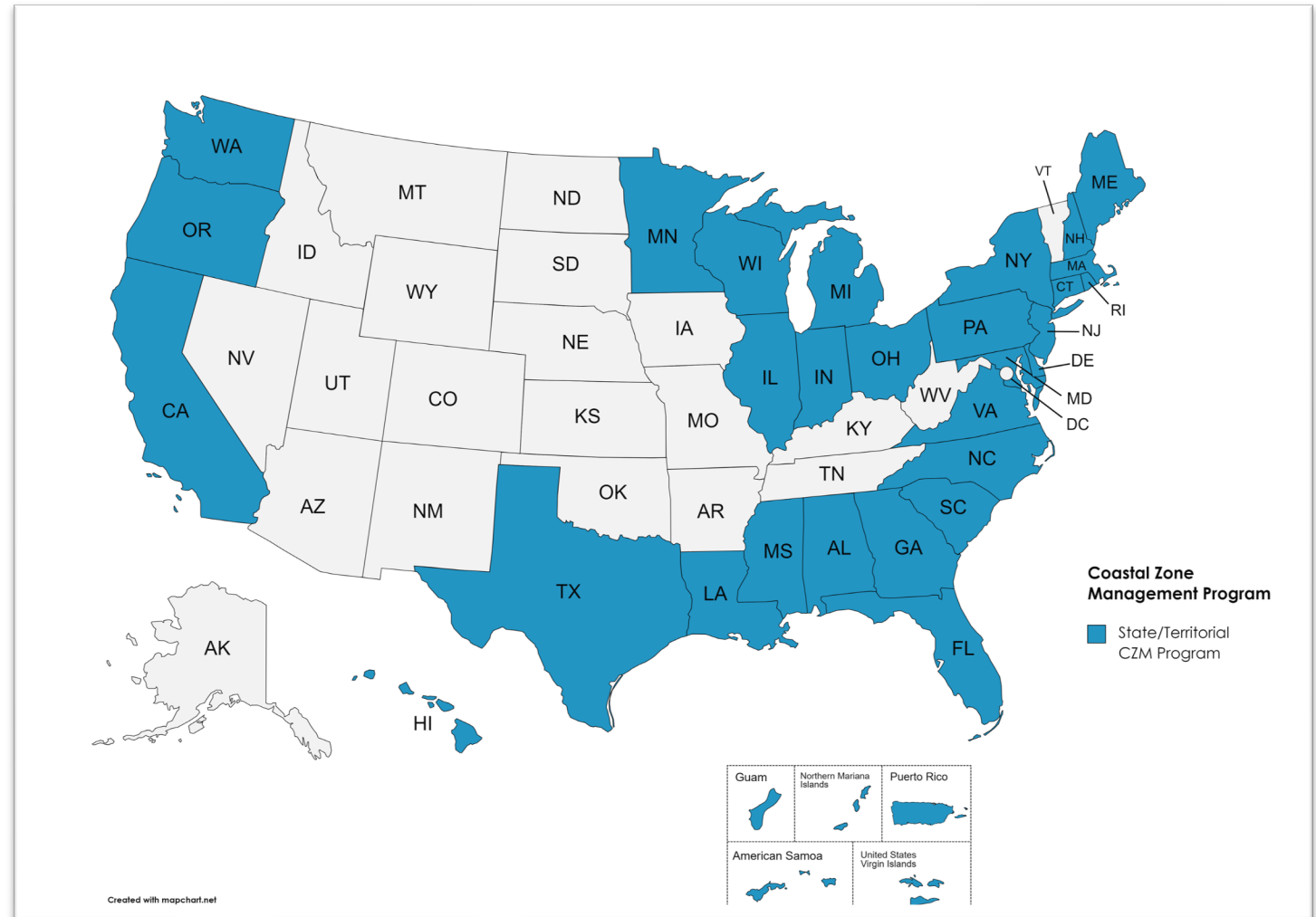
Coastal Zone Enhancement

Provides incentives to states and territories to enhance their coastal management programs within nine areas of national significance



Coastal and Estuarine Land Conservation

Purchases threatened lands for conservation purposes



All 35 coastal and Great lakes States, and territories, with the exception of Alaska, participate in the National CZM Program.

Hawaii CZM Program



What is Hawaii CZM?

To “provide for the effective management, beneficial use, protection, and development of the coastal zone.” See L. 1977, c 188, § 1.

CZM Law - Hawaii Revised Statutes Chapter 205A

Part I - Coastal Zone Management

- Objectives & Policies
- Federal Consistency
- Marine and Coastal Zone Advocacy Council

Part II - Special Management Areas

Part III - Shoreline Setbacks

Part IV - Marine and Coastal Affairs

Part V - Other Provisions

Hawaii CZM Program Components

Regulatory Responsibilities	Federal Consistency
	Special Management Area (SMA) Permitting
	Shoreline Setbacks
Program Initiatives	Hawaii Ocean Resources Management Plan
	Coastal Hazards
	Coastal Non-Point Pollution Control Program
	Marine and Coastal Zone Advocacy Council

Federal Consistency

Federal actions that have reasonably foreseeable effects on coastal use or resource must be consistent with the enforceable policies of the Hawaii CZM Program

Federal Consistency Review Required for

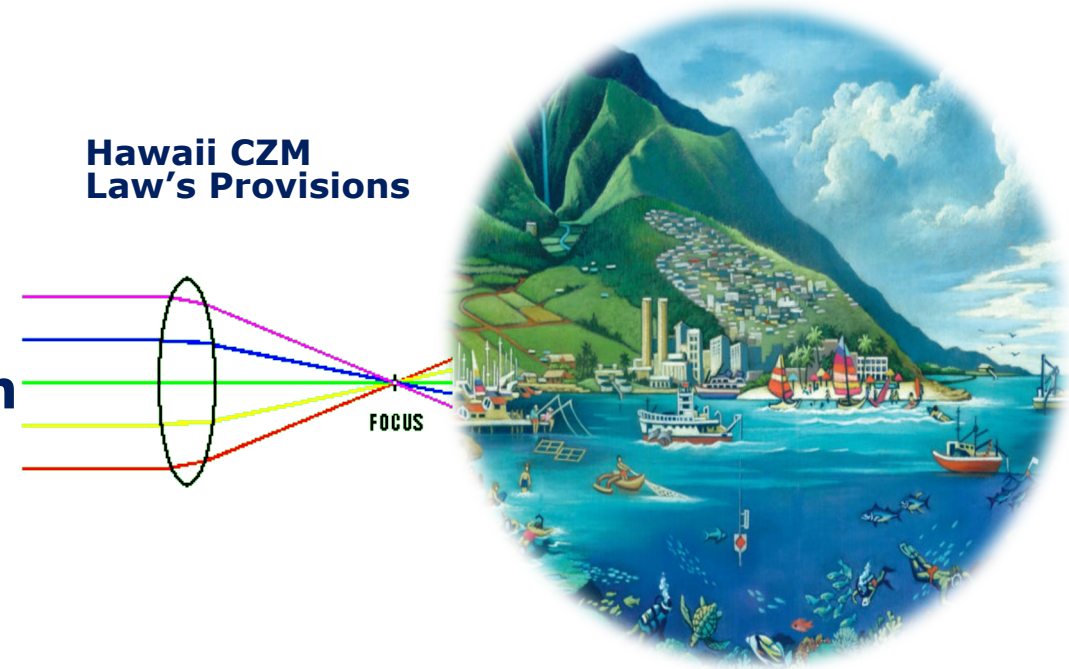
- 1) Federal agency activities
- 2) Federal permits, i.e. U.S. Army Corps of Engineers Permit
- 3) Federal financial assistance

Direct Federal Funds to the Hawaii CZM Program

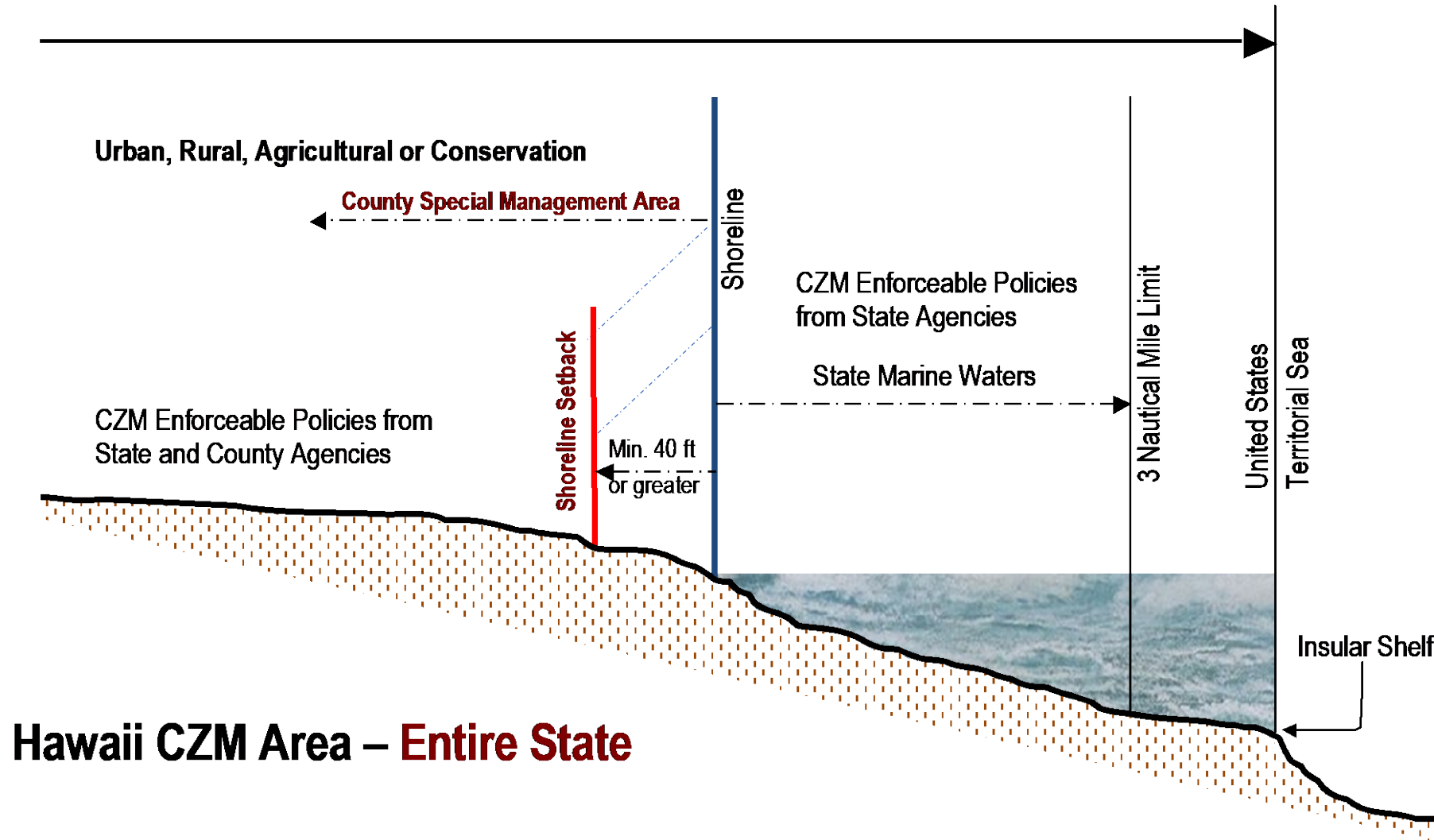
- **Receives \$2 million in federal funds annually**
- **Supports the Hawaii CZM Program**
- **Funds county administration of the SMA permit system**
 - **Federal funds support 4 to 6 positions in Each of Neighbor Island Planning Departments**

Part I - CZM Program Objectives and Policies (HRS § 205A-2)

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



Hawaii CZM Program – Network



Hawaii CZM Area – Entire State

CZM Program Network – Regulatory Authorities

Authorities Matrix

HAWAII CZM OBJECTIVES AND POLICIES, HRS CHAPTER § 205A-2

STATE & COUNTY AUTHORITIES AND ENFORCEABLE POLICIES

Coastal Hazards HRS §§ 205A-2(b)(6) and 205A-2(c)(6)

Objective 6:

Reduce hazard to life and property from coastal hazards.

DLNR:

HRS CHAPTER 179: FLOOD CONTROL AND FLOOD WATER CONSERVATION
HRS CHAPTER 179D: DAMS AND RESERVOIRS
HRS CHAPTER 180: SOIL AND WATER CONSERVATION DISTRICTS
HAR CHAPTER 13-190.1: DAMS AND RESERVOIRS
HAR CHAPTER 13-222: SHORELINE CERTIFICATIONS

DOH:

HRS CHAPTER 180C: SOIL EROSION AND SEDIMENT CONTROL

DOT:

HRS CHAPTER 266: HARBORS

DAGS:

HAWAII STATE BUILDING CODE

OPSD:

HRS CHAPTER 205A, PART II: SPECIAL MANAGEMENT AREAS
HRS CHAPTER 205A, PART III: SHORELINE SETBACKS

ALL AGENCIES:

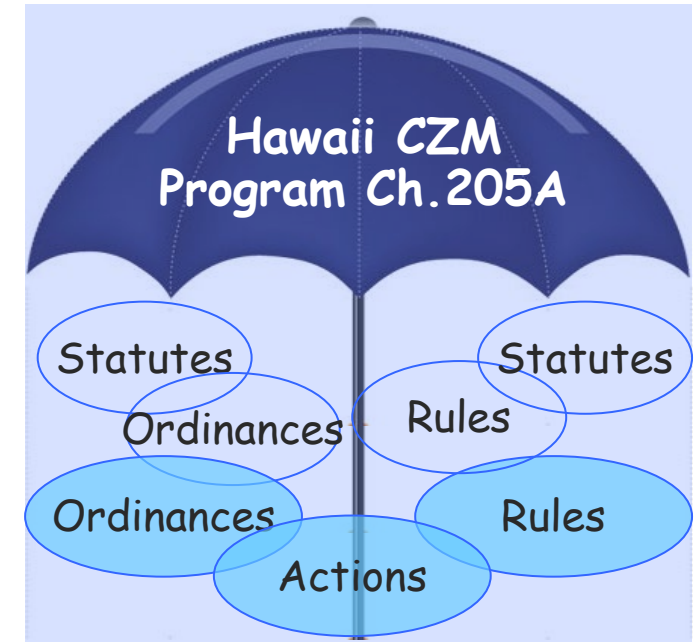
HRS CHAPTER 101: PUBLIC PROPERTY, PURCHASING, AND CONTRACTING

COUNTY APPLICABLE STATE AUTHORITIES:

HRS CHAPTER 262: AIRPORT ZONING ACT
HRS CHAPTER 180C: SOIL EROSION AND SEDIMENT CONTROL
HRS CHAPTER 205: LAND USE COMMISSION
HRS CHAPTER 205A, PART II: SPECIAL MANAGEMENT AREAS
HRS CHAPTER 205A, PART III: SHORELINE SETBACKS

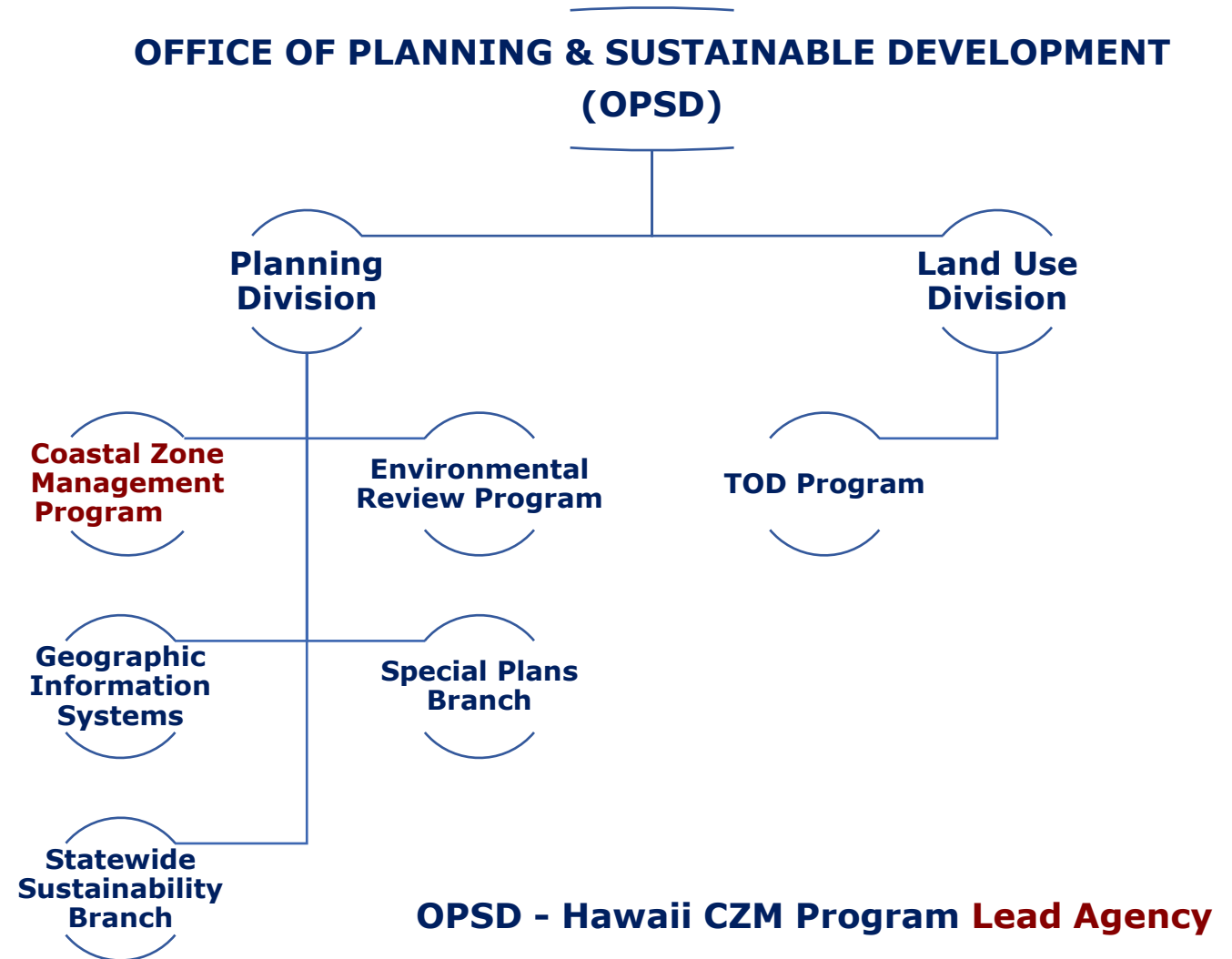
COUNTY AUTHORITIES:

CITY AND COUNTY OF HONOLULU SMA AND SHORELINE SETBACK ORDINANCES
COUNTY OF HAWAII SMA AND SHORELINE RULES
COUNTY OF KAUAI SMA RULES AND SHORELINE ORDINANCES
COUNTY OF MAUI SMA AND SHORELINE RULES



- Implementation of the CZM objectives and policies (HRS §§205A-4 and 205A-5)
- Enforceable policies applied to federal consistency review

OPSD as the CZM Lead Agency



OPSD - Lead Agency of the Hawaii CZM Program

§205A-3 Lead agency, including the following roles:

- ☐ Receive, disburse, use, expend, and account for **all funds** that are made available by the United States and the State for the coastal zone management program;
- ☐ **Provide support and assistance in the administration of the coastal zone management program;**
- ☐ **Review federal programs, federal permits, federal licenses, and federal development proposals for consistency with the coastal zone management program;**
- ☐ Conduct a continuing review of the administration of the coastal zone management program and of the compliance of state and county agencies with the objectives and policies of this chapter;
- ☐ Advocate agency compliance with chapter 205A;
- ☐ Monitor the coastal zone management-related enforcement activities of the state and county agencies responsible for the administration of the objectives and policies of this chapter;
- ☐ **Coordinate the implementation of the ocean resources management plan.**

Marine and Coastal Zone Advocacy Council (MACZAC)

MACZAC Working Groups

Education and Outreach

The Education and Outreach Working Group advocates for the CZM Program to the public.



Legislative

The Legislative Working Group advocates to the executive and legislative branches of government to offer support for the CZM Program and other related legislation.



Ocean Resources

The Ocean Resources Working Group advocates for cooperative use of shared ocean and coastal resources in a sustainable manner.



Shoreline Access

The Shoreline Access Working Group advocates for increased public shoreline access.



MACZAC Activities

Meetings

MACZAC holds quarterly meetings, open to the public. See website for details.

Advocacy

MACZAC welcomes public input and provides support to tackle various coastal zone issues.

Site Visits

In order to learn more about current issues in Hawaii, MACZAC holds one meeting each year on a neighbor island and includes in the meeting agenda a site visit to an area of interest.



MACZAC members visiting Mo'omomi CBSFA on Molokai (September, 2014)

Community Awards

The **Douglas Tom Thumbs-Up Award** recognizes Hawaii organizations that further the goals of MACZAC, advance the CZM Program, and actively engage the community.

MACZAC members presented the 2015 Thumbs-Up Award to the University of Hawaii Marine Option Program, a certificate program providing educational opportunities for students from any field of study who are interested in the ocean.



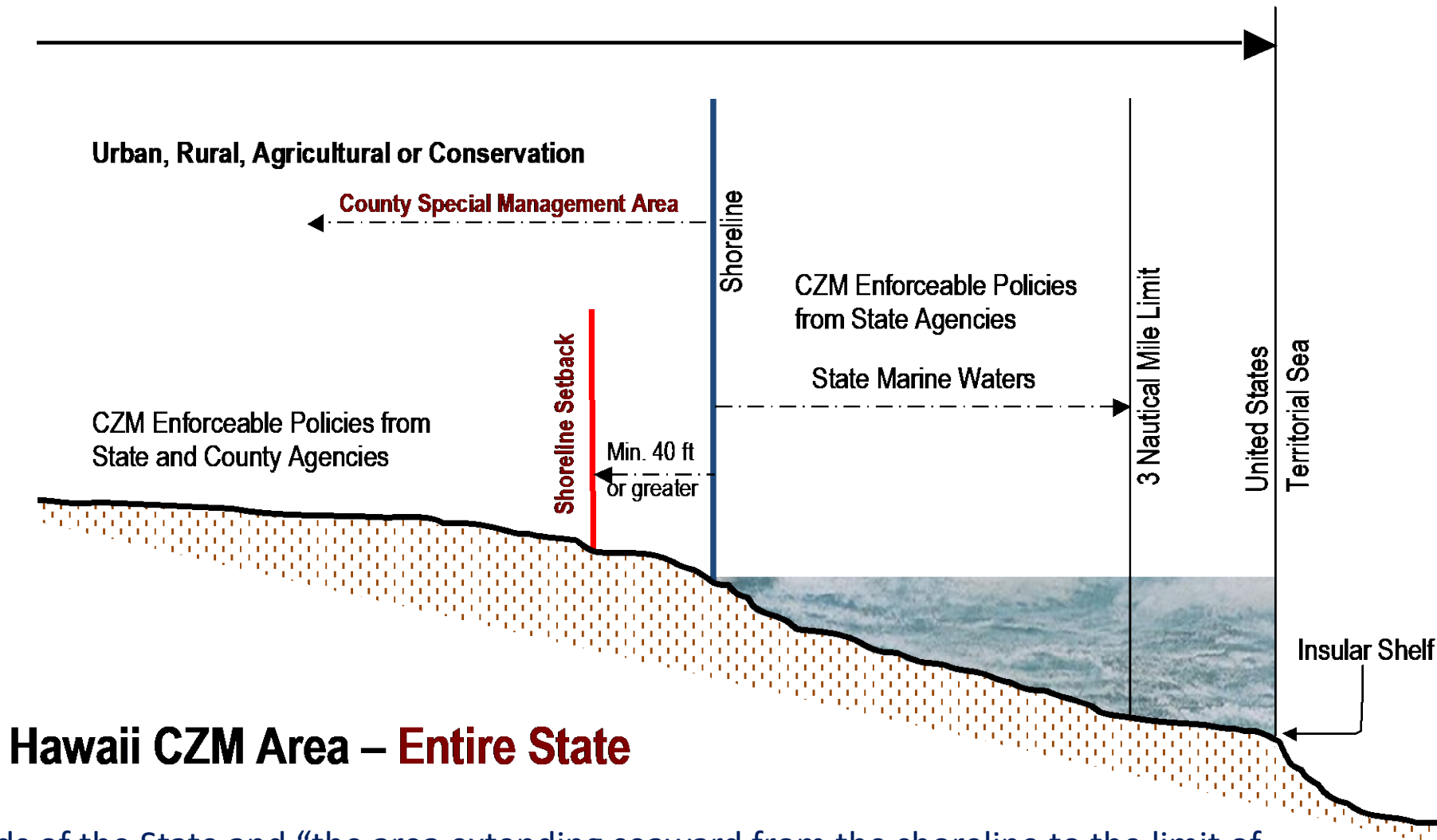
Dr. Cynthia Hunter (pictured, fourth from left), Marine Option Program Coordinator, accepted the award for each of the UH campuses where MOP is available (June, 2015).

HRS § 205A-3.5 a public advisory body to assist the lead agency in working toward the implementation of an integrated and comprehensive management system for marine and coastal zone resources, consistent with the Hawaii CZM objectives and policies.

MACZAC, founded in 2001, is comprised of 12 advisory members recruited from the islands of Kaua'i, O'ahu, Maui, Moloka'i, Lāna'i, and Hawai'i.

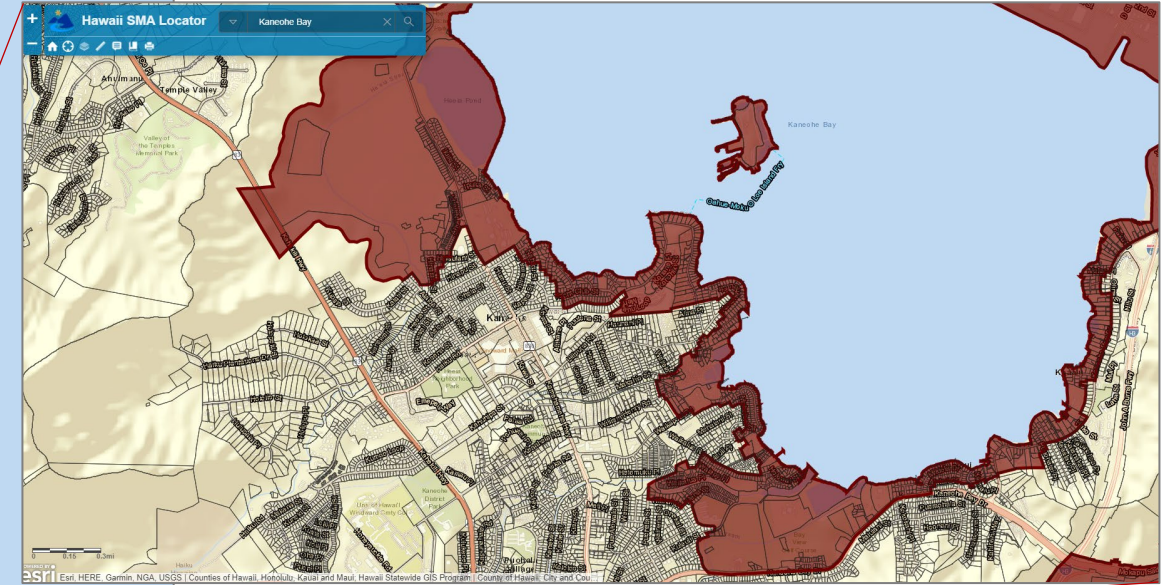
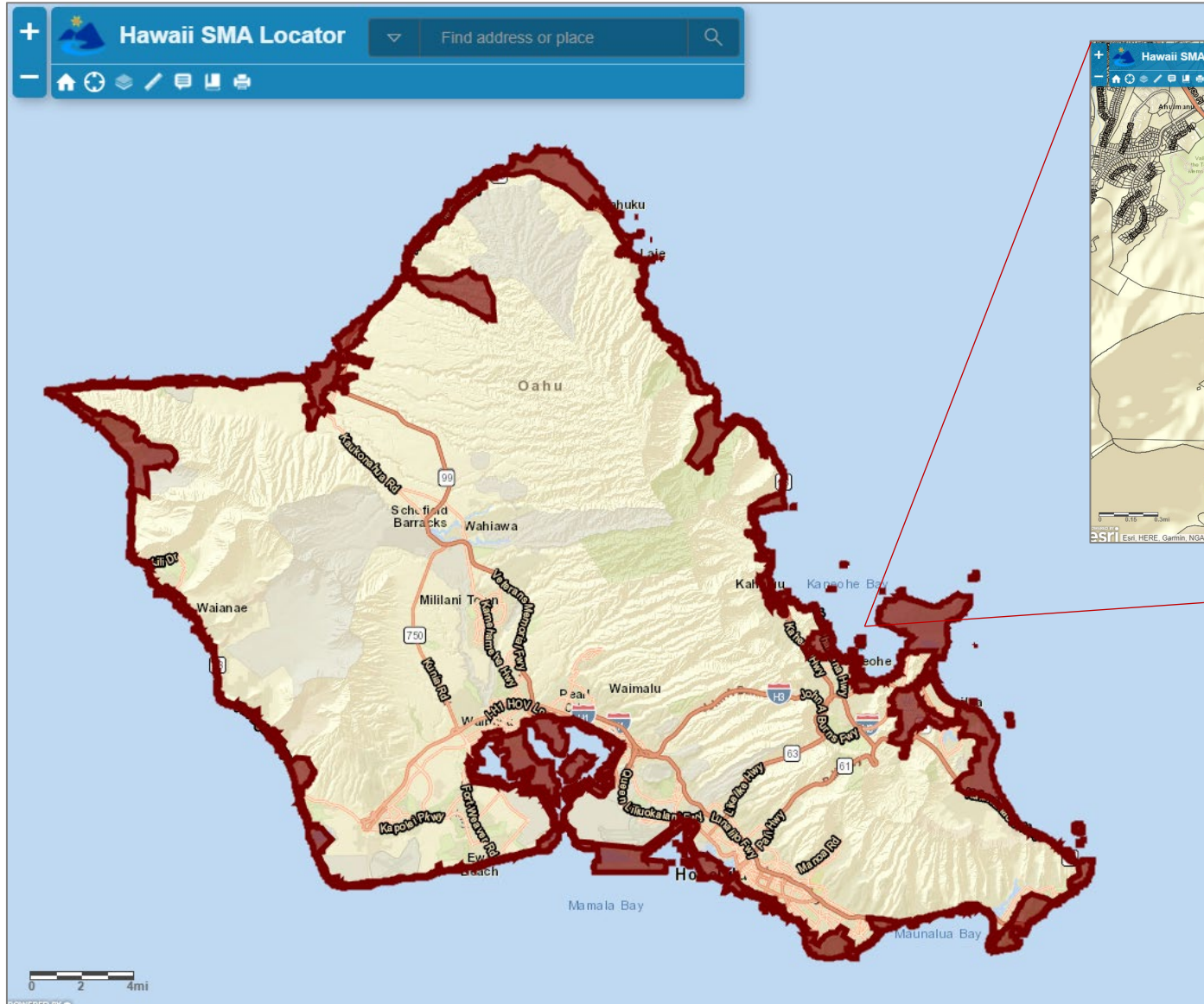
- East Hawai'i Island Representative
- West Hawai'i Island Representative

Hawaii CZM Program – Network



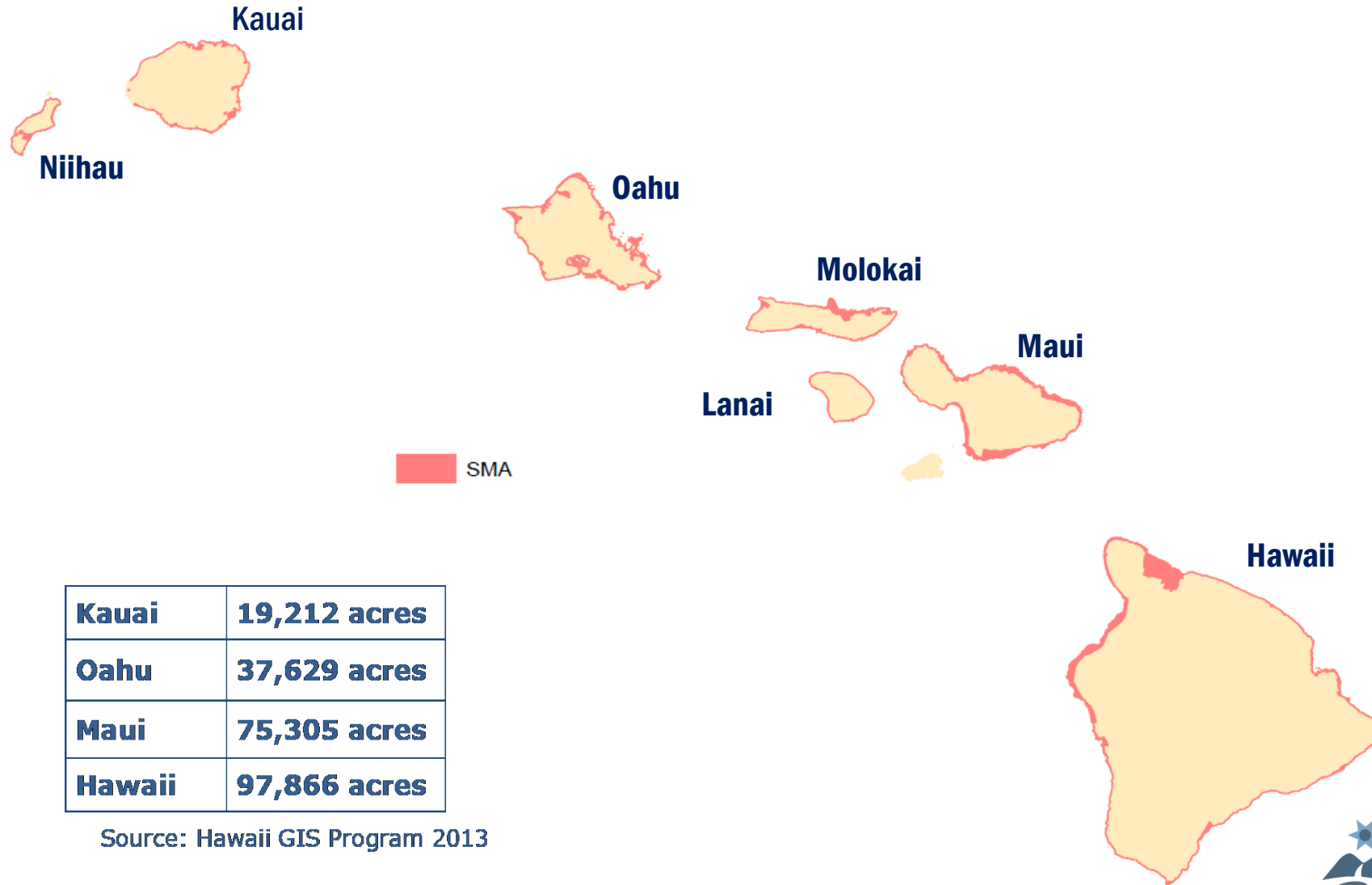
CZM Area - All lands of the State and “the area extending seaward from the shoreline to the limit of the State’s police power and management authority” – **State Marine Waters** (Act 126, SLH 1990)

Part II. Special Management Areas (SMA)



SMA – land extending inland from the shoreline or any area subject to salinity intrusion or tidal influence

Designated Special Management Areas (SMA)



Source: Hawaii GIS Program 2013

Environmental Shoreline Protection Act – SMA Permit

Purpose of SMA Permitting

- The SMA permit was established with the enactment of Act 176, SLH 1975, which was called the **Environmental Shoreline Protection Act**
- It is necessary to have special controls on developments within an area **along the shoreline** to
 - avoid permanent losses of valuable resources and the **foreclosure of management options**; and
 - ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves, is provided.



SMA Permit – First Permit for Development

The First Permit for a Development within the SMA

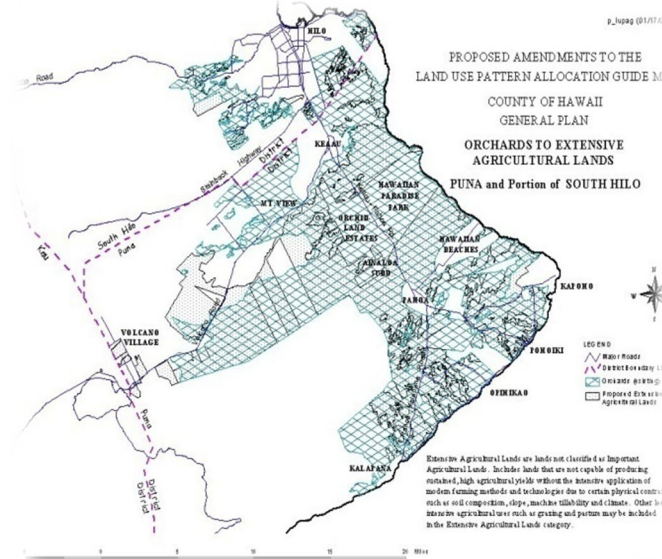
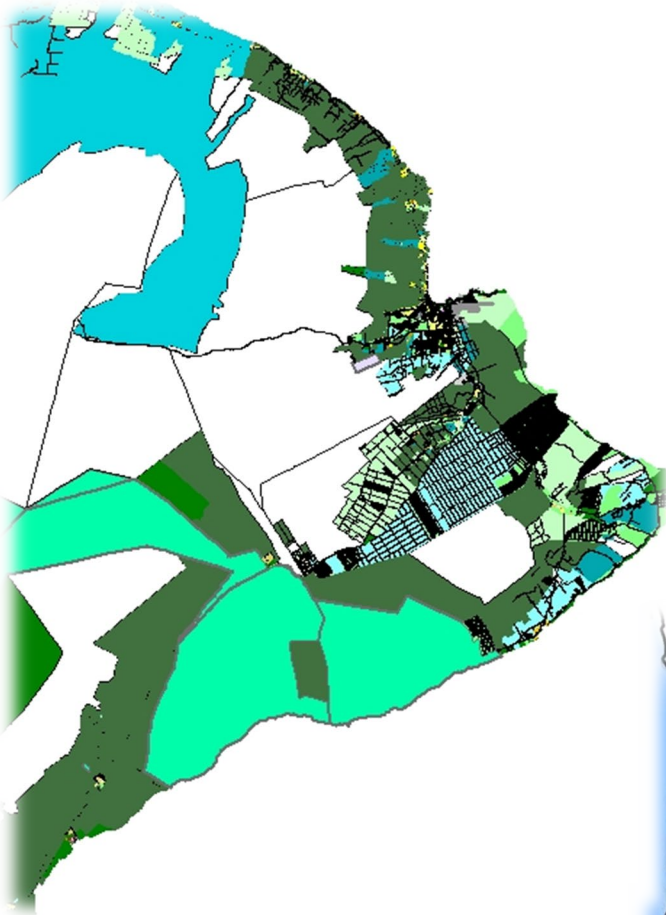
- Does not establish land use policies for developments
- Regulates **permissible land uses** that are already allowed by state and county land use policies
- No **development** shall be allowed within the SMA without obtaining a SMA permit (§ 205A-28)
- No agency is authorized to issue other permits pertaining to any development within the SMA unless a SMA permit is first issued (§ 205A-29)

Authorities for SMA permitting

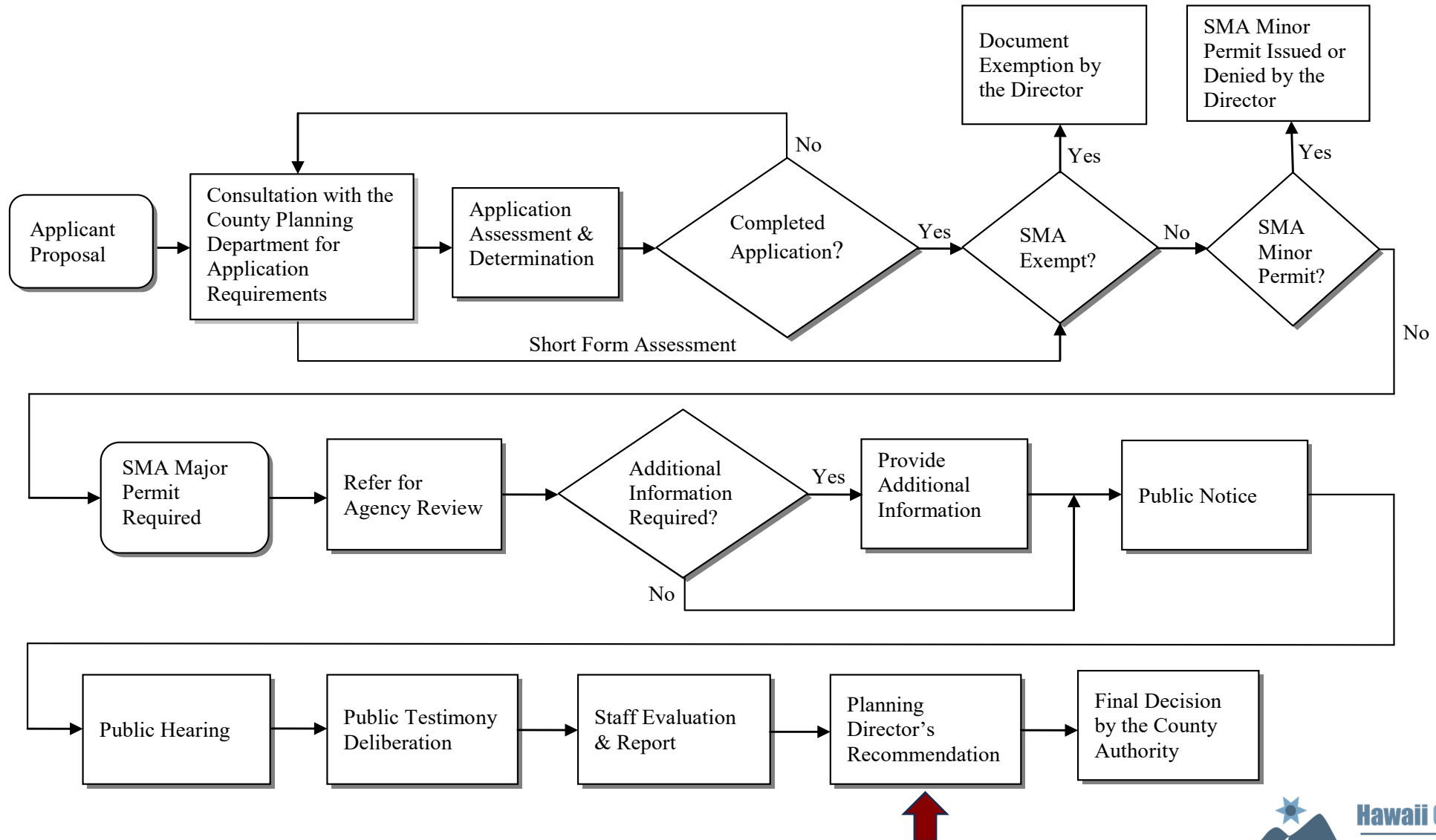
- **County of Hawaii:** Windward, Leeward Planning Commissions
- **County of Kauai:** Kauai Planning Commission
- **County of Maui:** Maui, Molokai, Lanai Planning Commissions
- **City & County of Honolulu:** City Council

State and County Land Use Policies

State Land Use Districts; Conservation Subzones; County General Plans and Development Plans, County Zoning



SMA Permitting Procedure



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

Development vs. Not Development (HRS § 205A-22)



Single-Family Residence
(upon its location and size)



Roof Repairs

SMA Use Permit vs. SMA Minor Permit



- **Key Factor -- adverse environmental or ecological effect, taking into account cumulative impacts**
- **Cost threshold -- \$500,000**

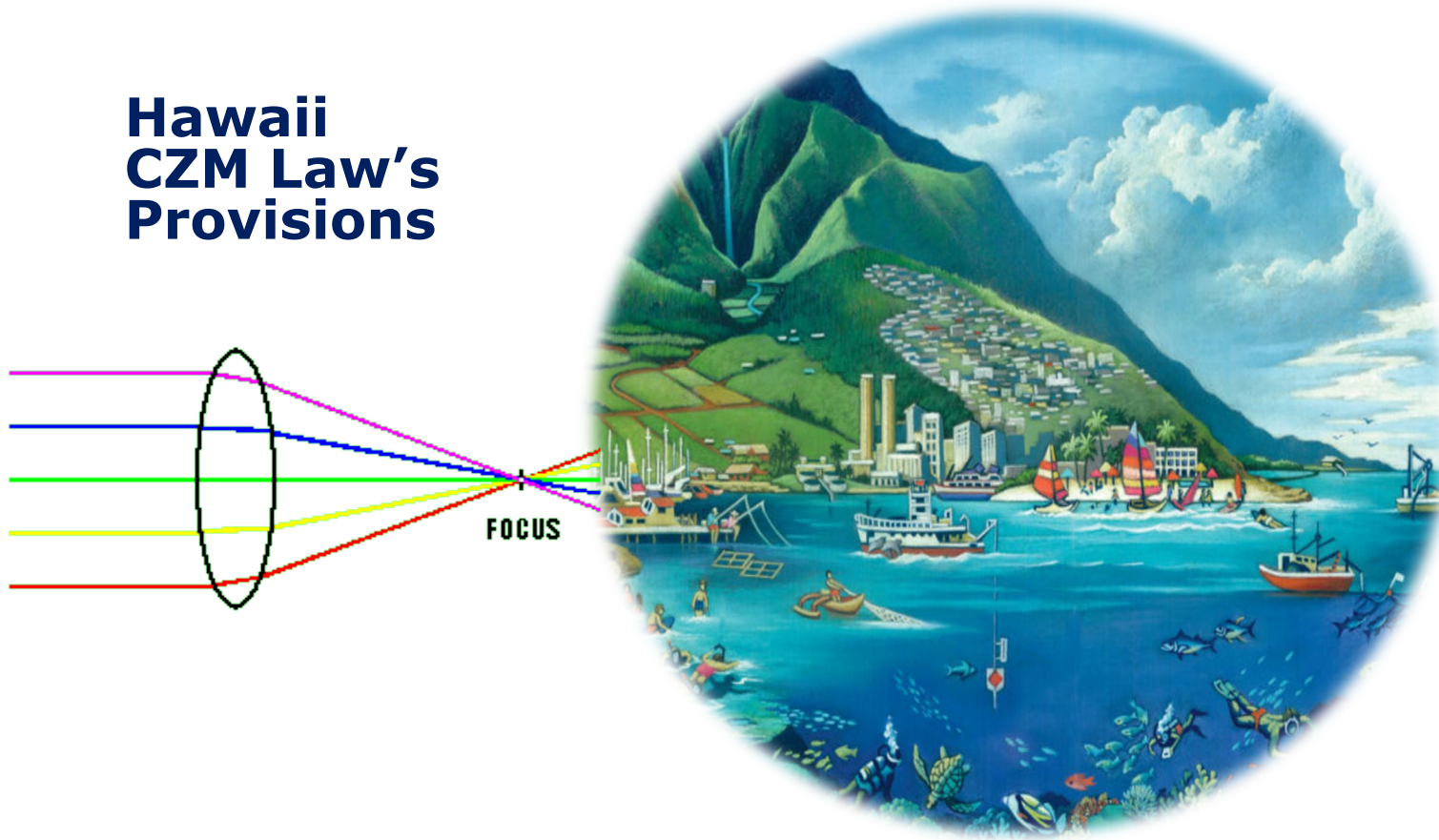
Cumulative Impacts in SMA Assessment

Cumulative Impact – Incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes other actions (HAR Ch.11-200.1)

CZM Criteria		Spatial Scope - up to SMA inland boundary	Temporal Scope			Incremental Impacts - added by the proposed action
			Past Actions - minimum 5 years past	Present Actions	Future Actions – minimum 5 years forward or up to operational life of the proposed project	
1	Coastal recreational resources					
2	Historic resources					
3	Scenic and open space					
4	Coastal ecosystems					
5	Economic uses					
6	Coastal hazards					
7	Beach and dune protection					
8	Marine resources					
9	Bay/estuary/salt marsh/river mouth, slough or lagoon					
10	Fishing grounds, wildlife habitats, or agricultural uses of land					

HRS § 205A-26 SMA Guidelines

Hawaii CZM Law's Provisions



Questionable SMA Permit Conditions

Example 1

In accordance with Section XYZ of the County Plan, the proposed activity shall incorporate **crime prevention** elements in the design and building of structures, landscaping and lighting.

Example 2

According to Section XYZ of the Zoning Code, the proposed activity shall incorporate acceptable **energy conservation** measures in the design, construction and management of the development.

Example 3

Appropriate measures shall be taken to mitigate the impacts of the project relative to **traffic disruptions**.

SMA Permit Conditions May Include

- **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**
- **Prohibition of artificial lighting on the shoreline and ocean waters**

Enforcement of SMA Permit and Shoreline Setbacks



Up to \$100,000

Up to \$10,000 each day

**EXPIRATION
DATE: / /**



Hawaii CZM Program
Coastal Zone Management
HAWAII STATE OFFICE OF PLANNING

Part III. Shoreline Setbacks – Land Use Law to CZM Law

HRS Ch. 205

Land Use Commission

Act 136, SLH 1970



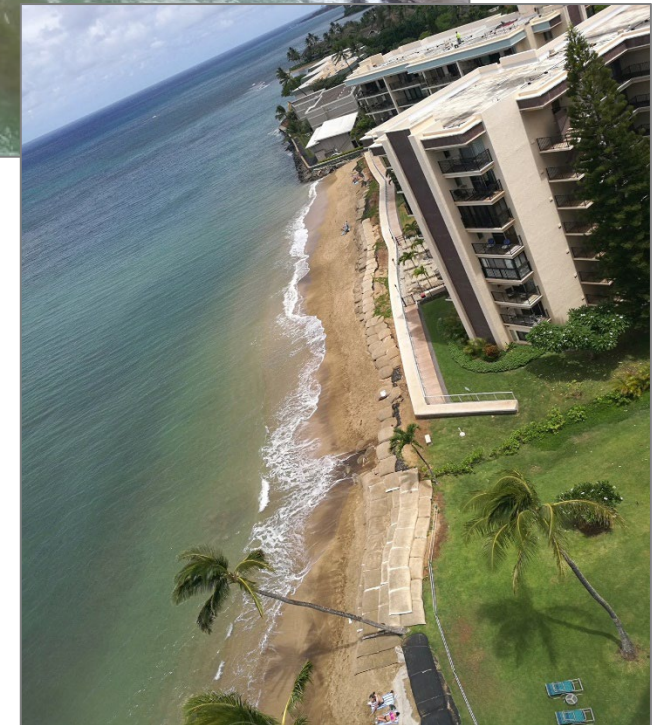
HRS Ch. 205A

Coastal Zone Management

Act 258, SLH 1986

To be in a more effective manner consistent with its intent and purposes, the provision of shoreline setbacks, which was originally set forth by Act 136, SLH 1970 under State Land Use Law HRS Chapter 205, was transferred to Part III of HRS Ch205A by Act 258, SLH 1986.

Shoreline Setbacks – Land Use Law to CZM Law



New Structures

- **Shoreline Setback**

Existing Structures

- **Accommodation**
- **Protection**
- **Retreat**

Amendments to HRS Chapter 205A

Act 16, SLH 2020 Relating to CZM

- Amends the list of “development” and “not development”, specifically for **single-family residence**
- Increases the minimum shoreline setback from 20 feet to **40 feet**
- Adds **sea level rise** to the definition of coastal hazards, and a **definition of beach** to enhance beach protection
- Restricts public or prohibits private **shoreline hardening structures** at sites with sand beaches

Effective September 15, 2020



No More Shoreline Hardening in front of Beach Areas

Pursuant to Act 16, SLH 2020, **shoreline hardening structures** in areas with **sand beaches** are **prohibited** from the private property owners, unless it is clearly in the interest of the general public.

The interest of the general public

- public safety and/or public health;
- protection of public infrastructure in response to risk of coastal hazards; or
- beach protection/sand retention for public use and recreation or coastal ecosystems.



Amendments to HRS Chapter 205A

Act 229, SLH 2023 Relating to SMAs

Expands exclusions from “Development” to exempt SMA permits for the following activities:

- a) public pedestrian and bicycle facilities
- b) trash or invasive vegetation removal
- c) fencing for native habitats on conservation land
- d) fencing to existing public facilities
- e) replacement of lighting for existing public facilities
- f) Hawaiian traditional and customary practices

Effective July 6, 2023



Part IV Marine and Coastal Affairs – Lead Agency



Three perspectives

- **Connecting Land and Sea**
- **Preserving our Ocean Heritage**
- **Promoting Collaboration and Stewardship**

Hawaii Ocean Resources Management Plan (ORMP) 2020

Hawai'i's Coastal Zone Management Area:

Connecting Land and Sea

There is no one point on land in Hawai'i that is more than 30-miles from the ocean. The interconnectedness of terrestrial and marine habitats and ecosystems make **Hawai'i unique from any other state in that the coastal zone is defined as the entire state**, from mauka to makai out to the territorial sea.



Mauka to Makai: Preserving Our Ocean Heritage

When ensuring the health of Hawai'i's coastal zone, understanding the relationship between land and sea is fundamental to the Hawaiian ahupua'a system that underlies **the mauka (mountain ridge) to makai (sea) approach of traditional and conventional natural resource management that is appropriate for our island State**.

He'eia National Estuarine Research Reserve is one of many mauka-to-makai management examples that support the ecological and cultural restoration of the Ko'olaupoko moku (land district) through traditional resource management, research, education and training that promotes healthy and resilient ecosystems, economies, and communities in the area.

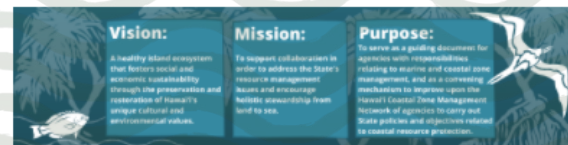


What is the ORMP?

The ORMP (Plan) is a statewide plan whose implementation is coordinated by the Hawai'i Coastal Zone Management Program (The Program or OPSD-CZM) housed in the State Office of Planning & Sustainable Development. The Program is described as a network program whereby state agencies and local governments administer enforceable coastal zone law, regulations, and policies.

The Plan was developed through extensive input from a diverse group of stakeholders, experts, and partners to guide collaborative efforts to improve policies for ocean resources in Hawai'i. It was one of the first state plans to recognize the traditional Hawaiian ahupua'a concept and is grounded with the premise that collaboration among agencies, acknowledgment and respect for traditional ecological knowledge are crucial for the management of human impacts to the natural environment.

The Plan is grounded in the premise that collaboration among, not only State agencies, but county planning departments and federal partners result in regular multi-agency and cross-disciplinary discussions that further implement the ORMP.



Focus Area 1: Development & Coastal Hazards



Focus Area 2: Land-Based Pollution



Focus Area 3: Marine Ecosystems

ORMP Initiatives/Projects & County Partners



Putting Planning to Work: Coastal Zone Management Implementation

Focus Area#1 Coastal Hazards and Development

- Adaptation Strategies Menu, completed July 2023
- Managed Retreat Legal & Policy with funding and financing mechanisms, completed by 12/31/2024
- Strengthening resilience for DHHL properties through incorporation of CZM, ongoing
- Regional Shoreline Management Initiative, Phase I completed 2/2023; Phase II Agency outreach and consultation, completed by 12/31/2024
- Act 178, SLH 2021 – Sea Level Rise Adaptation for State facilities, Ongoing

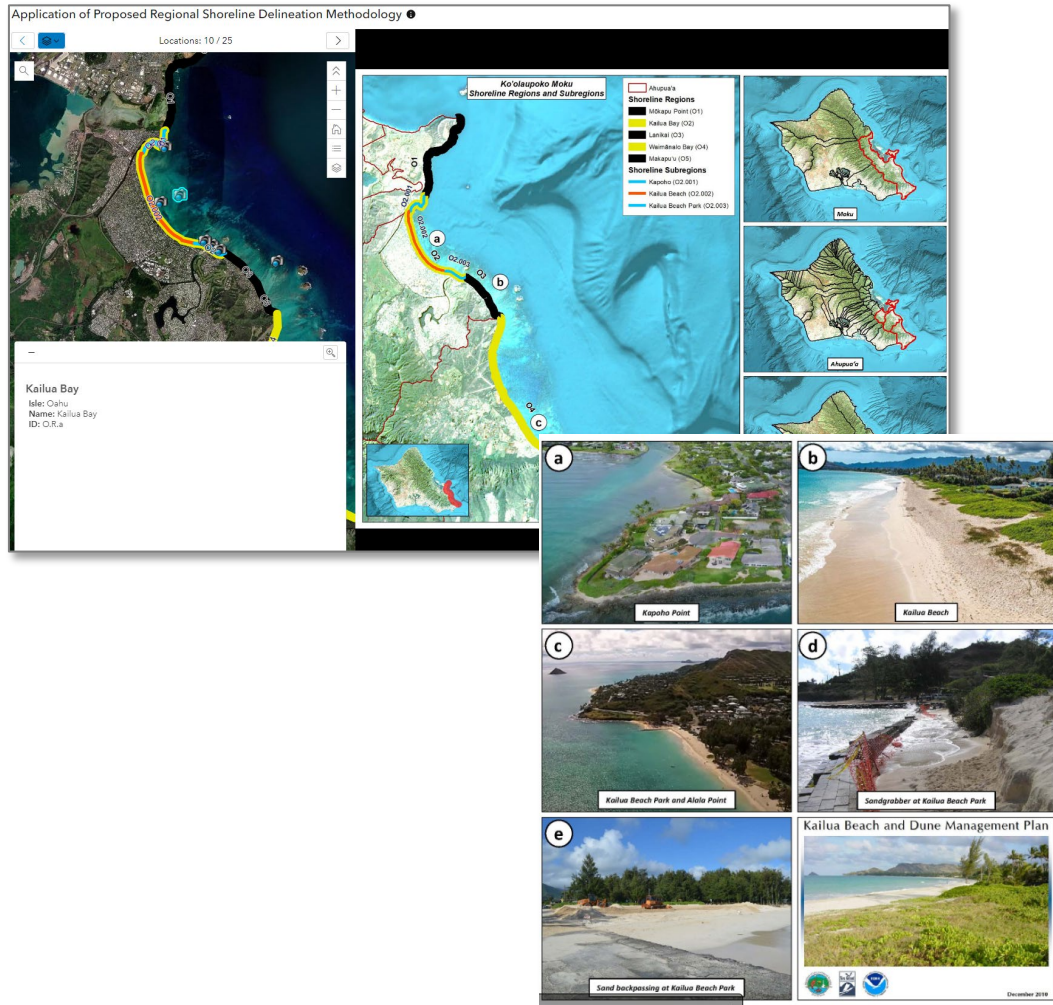
Focus Area#2 Reduction of land-based pollution

- LID Guidance 2006 – Update in progress, completed May 2024
- Cesspool Prioritization Tool to include Molokai, ongoing
- Leveraging resources w/DOH to increase community capacity & implement identified needs

Focus Area#3 Marine Ecosystems

- Hawaiian Estuaries Viewer
- Developing community monitoring protocol partnerships with DLNR-DAR

Integrated Shoreline Management Strategy



- Inventory and analyze critical infrastructure assets along the shoreline threatened by chronic and episodic coastal hazards and future sea level rise projections. Conduct vulnerability assessments and assess options for protection, accommodation, and retreat of public infrastructure as sea levels rise.
- Identify suitable geographic scale for shoreline adaptation planning based on coastal processes.
- Determine barriers to proactive shoreline adaptation and actionable policy strategies to surmount them.
- Examine barriers to beach nourishment, including impacts to coastal habitats (offshore sand sources, sandy beach ecosystems), cost, and regulatory requirements (i.e. dewatering of sand).
- Study the feasibility of utilizing 'nature-based solutions' on Hawai'i's high-energy shorelines to manage and mitigate erosion.
- Study the impacts of sea level rise projections on cultural and archeological resources, such as gathering sites, loko i'a, fishponds or fish traps, heiau, place of worship, shrine, and ki'i pohaku, petroglyphs.
- Incorporate a managed retreat or strategic relocation analysis in all action team projects/studies to help develop criteria for this adaptation strategy as identified in *Assessing the Feasibility and Implications of Managed Retreat Strategies for Vulnerable Coastal Areas in Hawai'i* (OP-CZM 2019a).

Questions?

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

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