

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI‘I

MINUTES
OCTOBER 3, 2024

A video recording is made part of these minutes, which can be viewed on the YouTube County of Hawai‘i Planning Department channel at https://www.youtube.com/live/gwcv_-oZgyI?si=nziXiZJ2vys2RQ_a

Timestamps are provided for reference in accordance with the provisions of Chapter 92, Hawai‘i Revised Statutes. In the event the video recording becomes unavailable at the abovementioned URL address, the public can contact the Planning Department for assistance.

At 9:03 a.m. Chairman Dennis Lin called the meeting, followed by a recess to wait for the arrival of a late commissioner in approximately twenty minutes.

The Windward Planning Commission reconvened in regular session on Thursday, October 3, 2024, at 9:26 a.m., in the County of Hawai‘i, Council Chambers, 25 Aupuni Street, Hilo, Hawai‘i, with Chairman Dennis Lin presiding. This meeting was streamed live on YouTube.

COMMISSIONERS PRESENT: Louis Daniele III (Vice Chairman), Wayne De Luz, Lauren Balog (from 9:25 a.m.), and Dennis Lin (Chairman).

COMMISSIONER ABSENT AND EXCUSED: Chantel Perrin.

ALSO PRESENT: Suzanna Tiapula, Esq. (Counsel to the Commission), Jean Campbell, Esq. (Counsel to the Planning Department), Zendo Kern (Planning Director), and Planning Department staff.

Two members of the public were in the audience.

A quorum was present. Chairman Dennis Lin called the meeting to order and introduced the Commissioners. Staff introductions were made. It was announced that the Commission will hold two meetings today: the regular meeting at 9:00 a.m., and a continued meeting at 1:00 p.m. to discuss the Planning Director Initiated Bill on telecommunication facilities. *[SEE YOUTUBE TIMESTAMP 21.43]*

Chairman Dennis Lin at 9:27 a.m. allowed the Commissioners to review additional materials provided at the start of the meeting. *[SEE YOUTUBE TIMESTAMP 23:07]* Chairman Dennis Lin asked each Commissioner to confirm they had reviewed all materials, including written public testimony related to the applications being reviewed today. Each Commissioner verbally confirmed they had done so. *[SEE YOUTUBE TIMESTAMP 25:32]*

APPROVAL OF MINUTES

At 9:30 a.m. the Commission addressed the minutes of the September 5, 2024, Windward Planning Commission meeting. The approval of the minutes was postponed to the November 1, 2024, meeting. *[SEE YOUTUBE TIMESTAMP 26:01]*

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

At 9:31 a.m. the Commission took up this item with two public members present in the Council Chambers. Chairman Dennis Lin explained the procedure for testifying and referenced Planning Commission Rule 1-5 regarding decorum. Testifiers were given the option to speak at this time or later when the specific agenda item was called to order. *[SEE YOUTUBE TIMESTAMP 26:11]*

There were no in-person or Zoom testifiers on this agenda item.

ADMINISTRATIVE MATTERS *[SEE YOUTUBE TIMESTAMP 27:27]*

Coastal Zone Management (CZM) and Special Management Area (SMA) training by the State Office of Planning and Sustainable Development (OPSD) and Planning Department staff.

The Commission took up this item at 9:32 a.m. with no public members in the audience.

State Office of Planning and Sustainable Development (OPSD) staff Debra Mendes, Acting Program Manager *[SEE YOUTUBE TIMESTAMP 28:40]* and Shichao Li, Senior Planner *[SEE YOUTUBE TIMESTAMP 41:29]* gave a presentation. The floor was then opened to allow the Commission to ask questions of the OPSD staff. *[SEE YOUTUBE TIMESTAMP 1:22:13]* *[SEE EXHIBIT 1 – PowerPoint Presentation, EXHIBIT 2 – Cumulative Effects/Impacts Assessment Guidance in Special Management Area Permitting April 2022]*

Planning Department staff Alex Roy gave a presentation on Cumulative Impacts. *[SEE YOUTUBE TIMESTAMP 1:26:25]* *[SEE EXHIBIT 3 – Cumulative Impacts and the Special Management Area Planning Commission Rules 8, 9, and 11 (2024) Notes from the Planning Department]* The floor was then opened to allow the Commission to ask questions of the Planning Department staff.

This hearing item ended at 10:53 a.m.

Chairman Dennis Lin called a recess at 10:53 a.m. and the meeting was reconvened at 11:05 a.m. *[SEE YOUTUBE TIMESTAMP 1:49:00]*

NEW BUSINESS

1. **APPLICANT: KAIMU COVE, LLC (PL-SMA-2024-000063)**
Application for a Special Management Area Use Permit to create a 5-lot subdivision for future residential development and related improvements all within a 3.677-acre parcel in

the Special Management Area. The subject property is located on the makai side of Kalapana-Kapoho Road, approximately 2,450 feet from its intersection with Pāhoia-Kalapana Road, Kaimu-Makena Homesteads, Kaimu, Puna, Hawai‘i, TMK: (3) 1-2-018:001.

The Commission took up this item at 11:05 a.m., with approximately twenty-two public members in the audience. *[SEE YOUTUBE TIMESTAMP 2:00:56]*

Alex Roy gave the staff presentation. *[SEE YOUTUBE TIMESTAMP 2:02:05]* The floor was then opened to allow the Commission to ask questions of the Planning Department staff. *[SEE YOUTUBE TIMESTAMP 2:09:45]*

Applicant Representative Daryn Arai, Land Use Planning Consultant along with applicant Mark Wyatt of Kaimu Cove, LLC, gave a presentation and addressed concerns raised in testimonies received. *[SEE YOUTUBE TIMESTAMP 2:11:58]*

Seven individuals provided testimony in-person:

1. Leslie Rosehill *[SEE YOUTUBE TIMESTAMP 2:23:48]*
2. Mark Lindsey Franklin *[SEE YOUTUBE TIMESTAMP 2:25:44]*
3. Emily Naeole *[SEE YOUTUBE TIMESTAMP 2:30:29]*
4. R.J. Hampton *[SEE YOUTUBE TIMESTAMP 2:33:39]*
5. Sativa Sultan *[SEE YOUTUBE TIMESTAMP 2:37:45]*
6. Gina McGuire *[SEE YOUTUBE TIMESTAMP 2:40:40]*
7. Richard Valdez *[SEE YOUTUBE TIMESTAMP 2:45:18]*

Four individuals provided testimony on Zoom:

1. Keala Keliihoomalu *[SEE YOUTUBE TIMESTAMP 2:51:13]*
2. Leila Kealoha *[SEE YOUTUBE TIMESTAMP 2:55:03]*
3. Leialoha Ilae-Kaleimamahu *[SEE YOUTUBE TIMESTAMP 2:59:19]*
4. Makani Gregg *[SEE YOUTUBE TIMESTAMP 3:02:41]*

Daryn Arai, the applicant’s representative and applicant provided comments in response to the testimony given by the testifier. *[SEE YOUTUBE TIMESTAMP 3:05:26]* Daryn Arai offered to continue this meeting, providing an opportunity to meet with some of the testifiers in the hope of finding common ground or areas where there can be greater understanding and reasonableness. *[SEE YOUTUBE TIMESTAMP 3:08:22]*

Director Zendo Kern provided comments with an emotional tone, stating that in almost four years of sitting in this position, despite facing numerous controversies and challenges, he had never been moved to tears. He expressed that his heart hurts at this moment and offered an apology to one of the Zoom testifiers, Leala Kealoha, acknowledging that the Planning Department had failed to contact her as they should have, and he took full responsibility for that oversight. Director Zendo Kern shared his feelings and urged the applicant to engage with the community, consider their concerns, and work towards a compromise that may be acceptable to both sides. He also mentioned that, for the first time, despite the existing recommendation, he is inclined to change his stance, emphasizing that he had never felt this way before. *[SEE YOUTUBE TIMESTAMP 3:08:53]*

Action: Chairman Dennis Lin motioned to continue and asked the applicant's representative and the applicant for a proposed time frame for the continuance. Daryn Arai responded, asking if it would be possible for the request to be made at the call of the Chair, allowing flexibility to meet with as many community members as possible without feeling rushed to structure something with potential conditions to address concerns. *[SEE YOUTUBE TIMESTAMP 3:12:21]*

Chairman Dennis Lin restated the motion: to continue the hearing at the applicant's request, with the continuance based on the call of the Chair. The applicant will communicate with the Planning Department with updates, and once the Planning Department is ready to present its recommendation, the matter will be placed on an agenda. Commission Wayne De Luz seconded the motion. *[SEE YOUTUBE TIMESTAMP 3:14:11]* The floor was opened for discussion among the Commission. Vice Chairman Louis Daniele suggested that an Archaeological Inventory Survey (AIS) be conducted, given the testimonies received. *[SEE YOUTUBE TIMESTAMP 3:14:50]* In response, Director Zendo Kern proposed considering a Cultural Impact Analysis (CIA) and Vice Chairman Louis Daniele agreed. *[SEE YOUTUBE TIMESTAMP 3:15:07]*

Vice Chairman Louis Daniele made a motion to amend Chairman Dennis Lin's motion on the floor, adding that an AIS and/or CIA be completed for the parcel before proceeding and the motion was seconded by Commissioner Lauren Balog. *[SEE YOUTUBE TIMESTAMP 3:15:26]* A roll call vote was taken on the amended motion to include either an AIS or a CIA, and the motion carried with five ayes (Daniele, Balog, De Luz, and Lin), no noes, and one excused (Perrin) *[SEE YOUTUBE TIMESTAMP 3:16:33]*

Chairman Dennis Lin restated the action taken as a motion to continue the hearing until updates are provided to the Planning Department and requesting either an AIS or CIA be completed. *[SEE YOUTUBE TIMESTAMP 3:16:59]* A roll call vote was taken on the original motion to continue as amended, and the motion carried with five ayes (Lin, De Luz, Balog, and Daniele), no noes, and one excused (Perrin) *[SEE YOUTUBE TIMESTAMP 3:17:48]*

This hearing item ended at 12:22 p.m.

Chairman Dennis Lin called a lunch recess at 12:22 p.m. *[SEE YOUTUBE TIMESTAMP 3:18:44]* and the meeting was reconvened at 12:58 p.m. *[SEE YOUTUBE TIMESTAMP 3:54:20]*

2. APPLICANTS: MAUI VARIETIES INVESTMENT, INC. (FORMERLY JERRY SOUZA) (PL-REZ-2024-000059/AMEND REZ-13-000171)

Application for a 10-year time extension to Condition C (establishment of a commercial use) and an amendment to condition H (road improvements) to require completion prior to occupancy rather than within 5 years from the effective date of Change of Zone Ordinance No. 14 54, which rezoned approximately 1.0 acre of land from Agricultural-1 acre (A-1a) to Village Commercial-20,000 square feet (CV-20). The subject property is located at 15-1447 Kahakai Boulevard, at its intersection with Kea'au-Pāhoa Road, Keonepoko Homestead Lots, Puna, Hawai'i, TMK: (3) 1-5-007:061.

The Commission took up this item at 12:58 p.m., with approximately thirteen public members in the audience. *[SEE YOUTUBE TIMESTAMP 3:54:30]*

Jessica Andrews gave the staff presentation. *[SEE YOUTUBE TIMESTAMP 3:56:47]*

Applicant Representative Sidney Fuke, Planning Consultant with Applicant Wayne Kamitaki gave a presentation. *[SEE YOUTUBE TIMESTAMP 4:03:30]*

There were no in-person or Zoom testifiers for this agenda item.

Action: It was moved by Vice Chairman Louis Daniele and seconded by Commissioner Wayne De Luz that a favorable recommendation be forwarded to the County Council on Change of Zone Application No. PL-REZ-2024-000059 amending REZ 13-000171 based on the Planning Director's recommendation. *[SEE YOUTUBE TIMESTAMP 4:07:29]* A roll call vote was taken, and the motion carried with five ayes (Daniele, De Luz, Balog, and Lin), no noes and one excused (Perrin). *[SEE YOUTUBE TIMESTAMP 4:08:19]*

This hearing item ended at 1:12 p.m.

3. **APPLICANT: ANDREW MATSUURA (PL-REZ-2024-000063)**

Application for a Change of Zone from an Agricultural-3 acre (A-3a) zoning district to a Single Family Residential-15,000 square feet (RS-15) zoning district for 3.25 acres of land. The subject property is located at 1078 Ahe Street, approximately 100 feet east of its intersection with Lei Lehua Street, Waiākea Homesteads, Waiākea, South Hilo, Hawai'i, TMK: (3) 2-4-080:017.

The Commission took up this item at 1:13 p.m. with approximately thirteen public members in the audience. *[SEE YOUTUBE TIMESTAMP 4:08:45]*

Alukahe Kala gave the staff presentation. *[SEE YOUTUBE TIMESTAMP 4:09:53]*

Applicant Representative Sidney Fuke, Planning Consultant along with Applicant Andrew Matsuura gave a presentation. *[SEE YOUTUBE TIMESTAMP 4:16:09]* Chairman Dennis Lin opened the floor for the Commission to ask questions of the applicant's representative and the applicants. *[SEE YOUTUBE TIMESTAMP 4:27:53]*

There were no in-person or Zoom testifiers for this agenda item.

Action: Vice Chairman Louis Daniele moved that a favorable recommendation be forwarded to the County Council for Change of Zone Application No. PL-REZ-2024-000063, based on the Planning Director's recommendation, with amendments proposed by the applicant to Condition M and the addition of a new Condition C which relates to limiting the number of accessory dwelling units allowed on the lots. *[SEE YOUTUBE TIMESTAMP 4:33:59]* Commissioner Wayne De Luz had seconded the motion. *[SEE YOUTUBE TIMESTAMP 4:36:48]* A roll call vote was taken, and the motion carried with five ayes (Daniele, De Luz, Balog, and Lin), no noes and one excused (Perrin). *[SEE YOUTUBE TIMESTAMP 4:37:11]*

This hearing item ended at 1:41 p.m.

PLANNING DIRECTOR'S REPORT [SEE YOUTUBE TIMESTAMP 4:37:53]

Report on Special Management Area (SMA) determinations, minor permits action issued by the Planning Director.

At 1:42 p.m. Chairman Dennis Lin introduced this item and stated the Special Management Area (SMA) determination and minor permits issued by the Planning Director for the September 2024 report were emailed to the Commissioners. There were no questions about the report from Commissioners.

ANNOUNCEMENTS [SEE YOUTUBE TIMESTAMP 4:38:38]

Planning Program Manager Maija Jackson announced that two meetings are scheduled for November 1, 2024. The first will be a Special Meeting for the General Plan Review, starting at 9:00 a.m., followed by the regular meeting at 11:00 a.m., which is tentatively set to include eight agenda items. Planning Program Manager Maija Jackson also mentioned that the Planning Department is in the process of finalizing the General Plan Review agenda, which will outline the anticipated meeting dates from November through March. She noted that not all scheduled dates may be necessary, but they are set in advance to keep the Commission and the public informed about potential meeting times.

Chairman Dennis Lin announced that the Windward Planning Commission's next regular monthly meeting is scheduled for Friday, November 1, 2024.

ADJOURNMENT [SEE YOUTUBE TIMESTAMP 4:40:20]

There being no further business, it was moved by Vice Chairman Louis Daniele and seconded by Commissioner Lauren Balog that the meeting be adjourned. A voice vote was taken, and the motion carried unanimously. Chairman Dennis Lin adjourned the meeting at 1:45 p.m.

Respectfully submitted,

Melissa Dacayanan-Salvador
Melissa Dacayanan-Salvador (Nov 2, 2024 13:45 HST)

Melissa Dacayanan-Salvador
Secretary

ATTEST:



November 03, 2024 07:11 PM
Dennis Lin, Chairman
Windward Planning Commission

HAWAII COASTAL ZONE MANAGEMENT AND SPECIAL MANAGEMENT AREA PERMITTING



STATE OFFICE OF HAWAII COASTAL ZONE MANAGEMENT PROGRAM

DEBRA MENDES
ACTING PROGRAM MANAGER

SHICHAO LI
SENIOR PLANNER

BEFORE
COUNTY OF HAWAII WINDWARD PLANNING COMMISSION

OCTOBER 3, 2024



EXHIBIT 1

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 (i) **federal funding** towards a partnership with the states (ii) 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.



State

Federal

1969

STRATTON
COMMISSION
REPORT

"Our Nation and the Sea":
Called for state coastal zone
authorities

1972

NATIONAL
CZM ACT

1973

ACT 164

Mandated development of a
statewide CZM program

1977

ACT 188

Enacted a statewide CZM
program

1975

ACT 176

Environmental Shoreline
Protection Act



1978

PROGRAM
APPROVED

U.S. Department of Commerce
approves Hawai'i CZM
Program

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



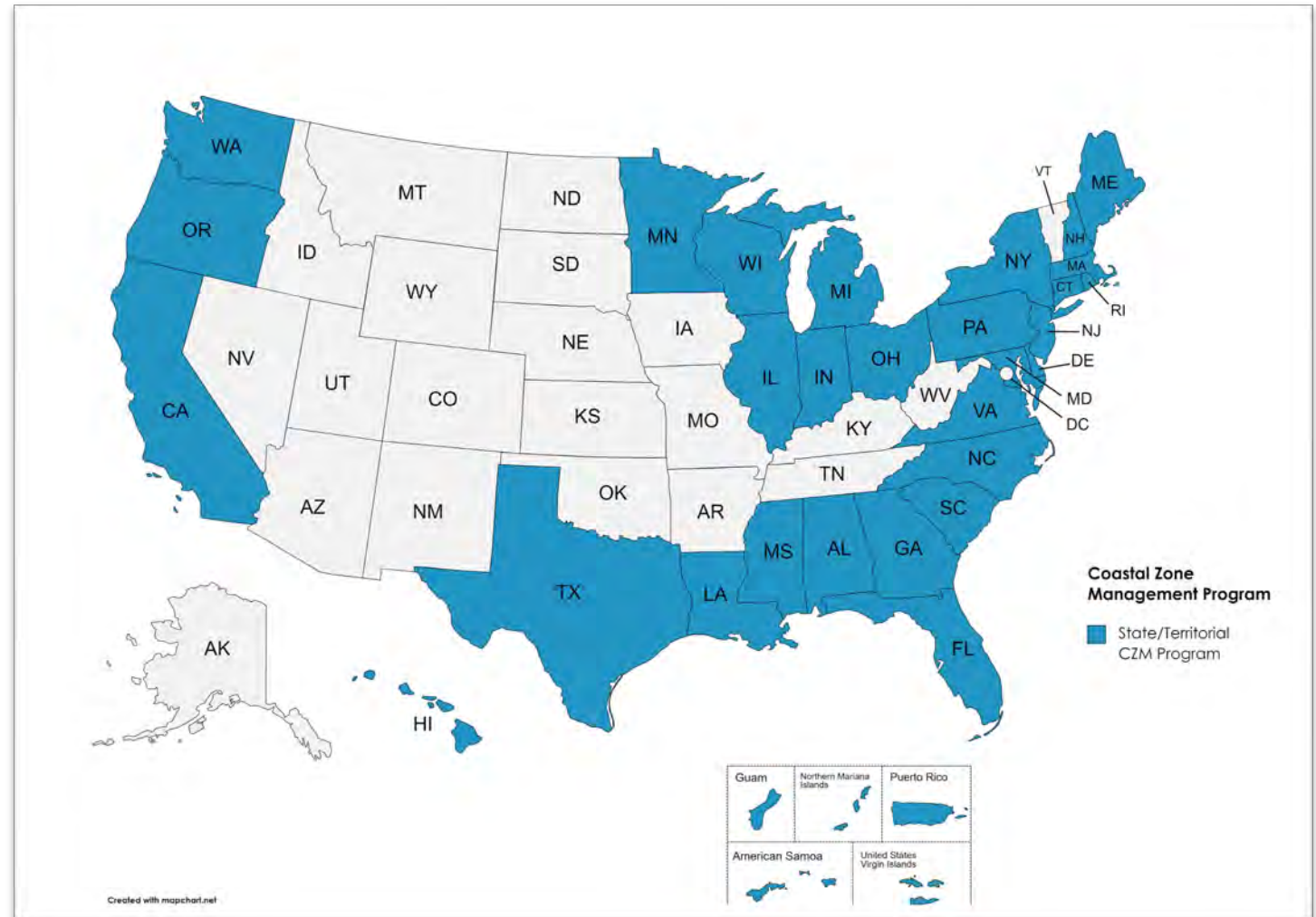
Coastal Zone Enhancement

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

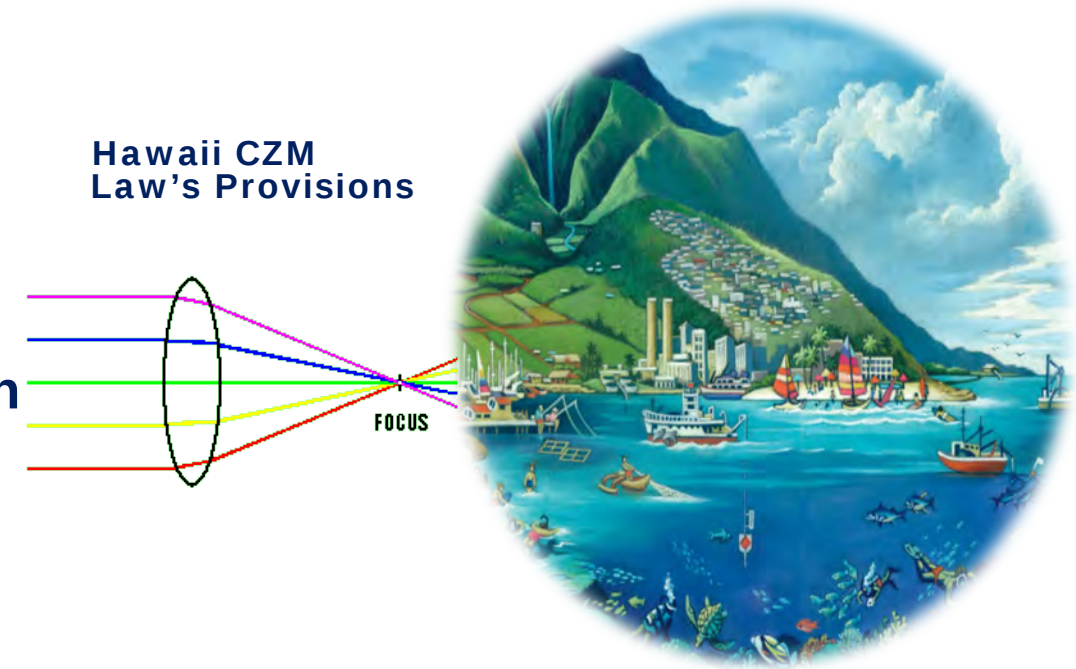
- 1) Federal agency activities
- 2) Federal permits, i.e. U.S. Army Corps of Engineers Permit
- 3) Federal financial assistance

Direct Federal Funds to the Hawaii CZM Program

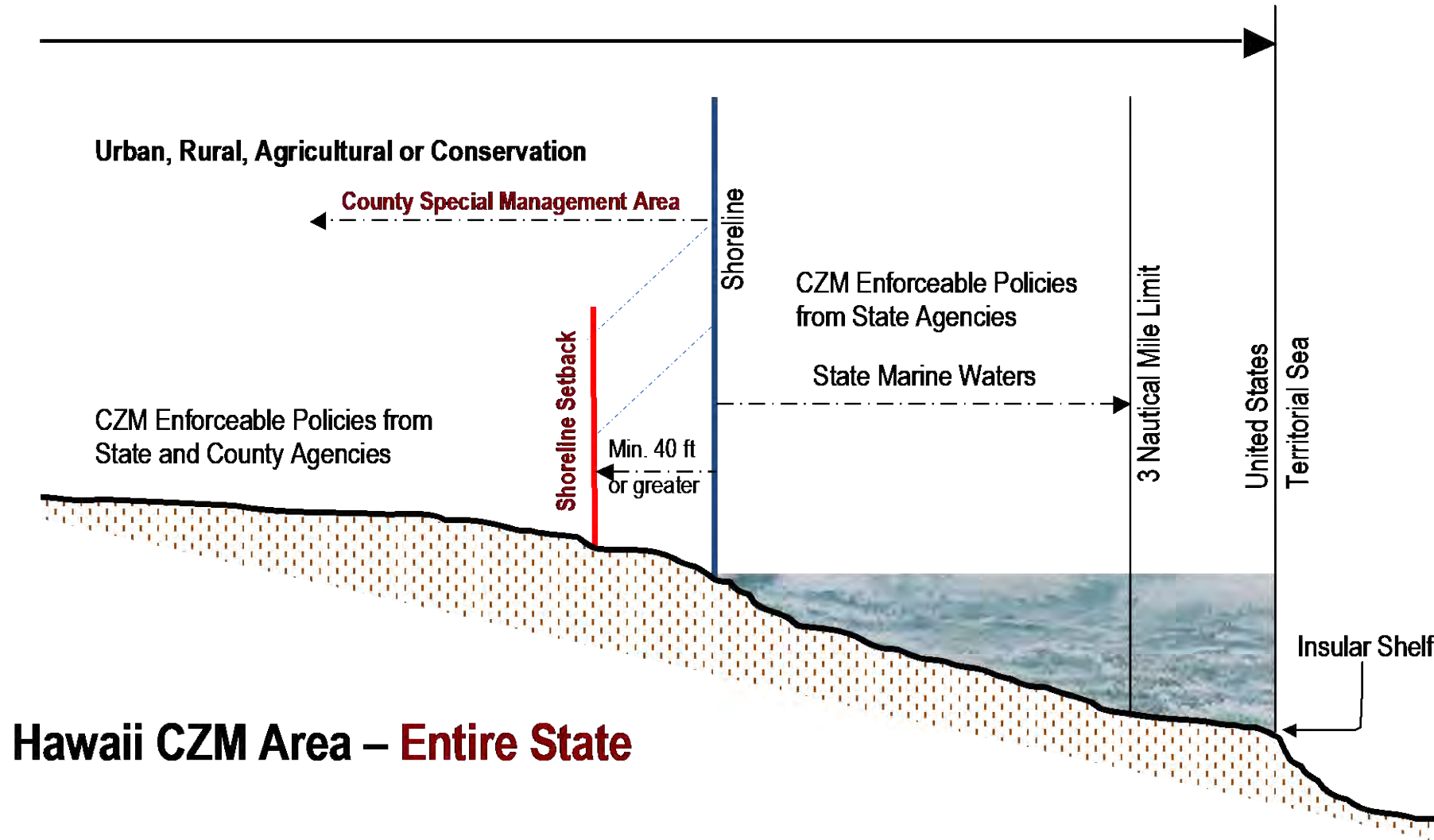
- **Receives \$2 million in federal funds annually**
- **Supports the Hawaii CZM Program**
- **Funds county administration of the SMA permit system**
 - **Federal funds support 4 to 6 positions in Each of Neighbor Island Planning Departments**

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

HAWAI'I 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:

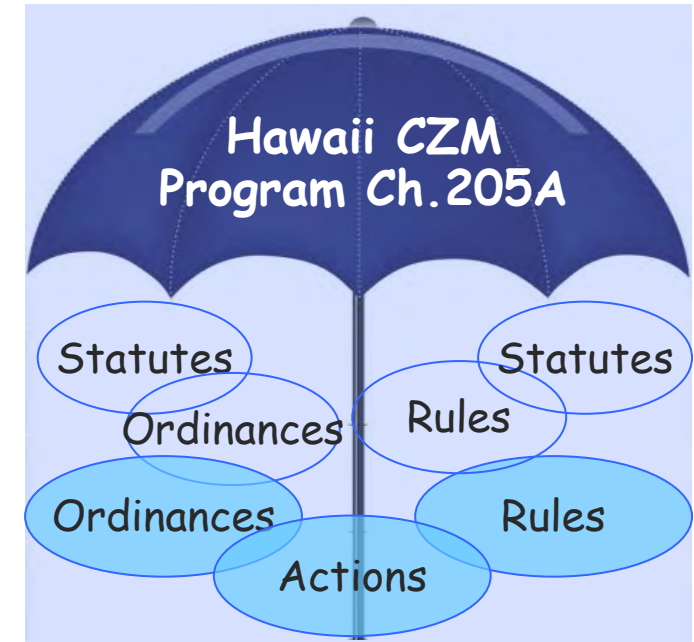
HRS CHAPTER 101: PUBLIC PROPERTY, PURCHASING, AND CONTRACTING

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

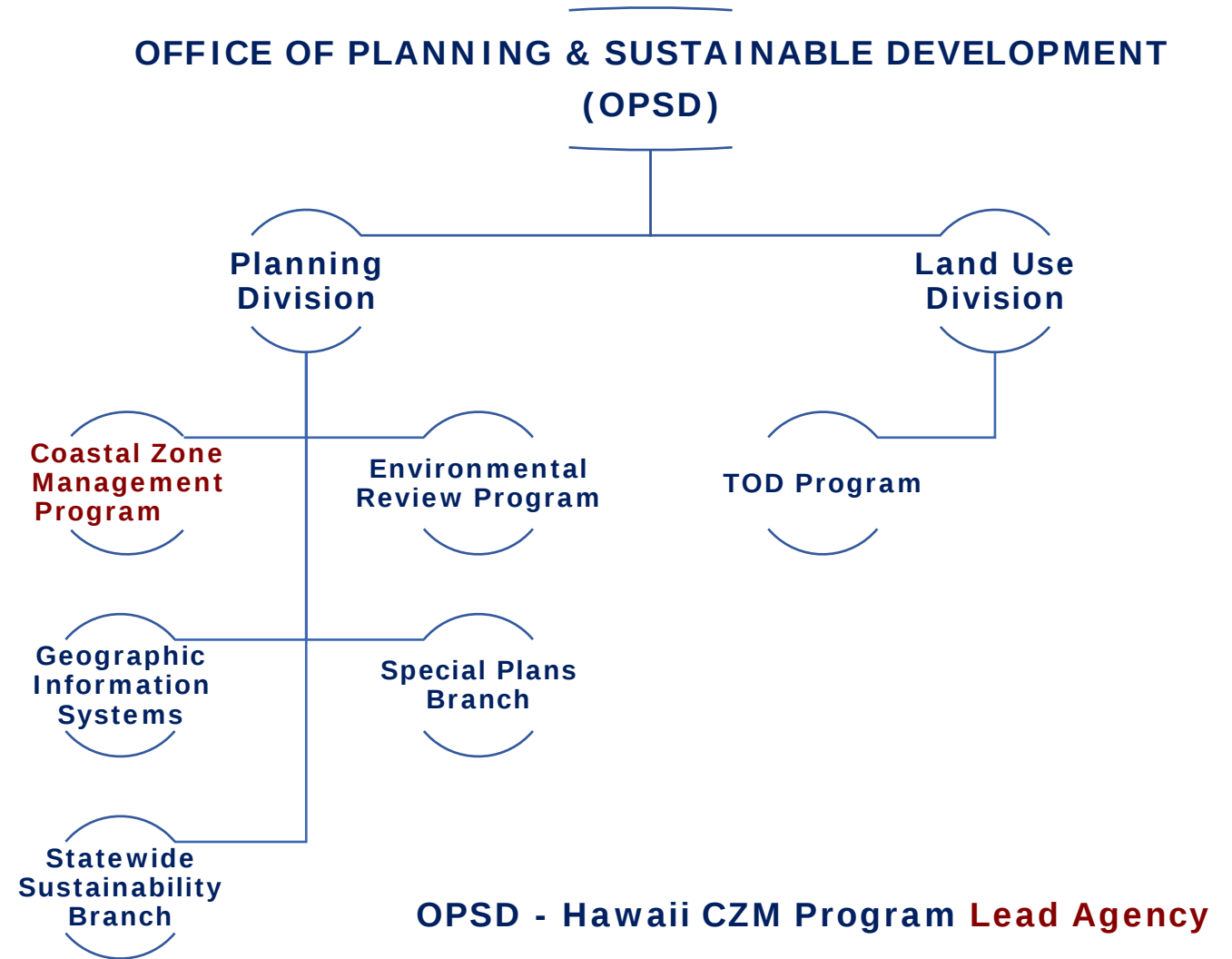
COUNTY AUTHORITIES:

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.



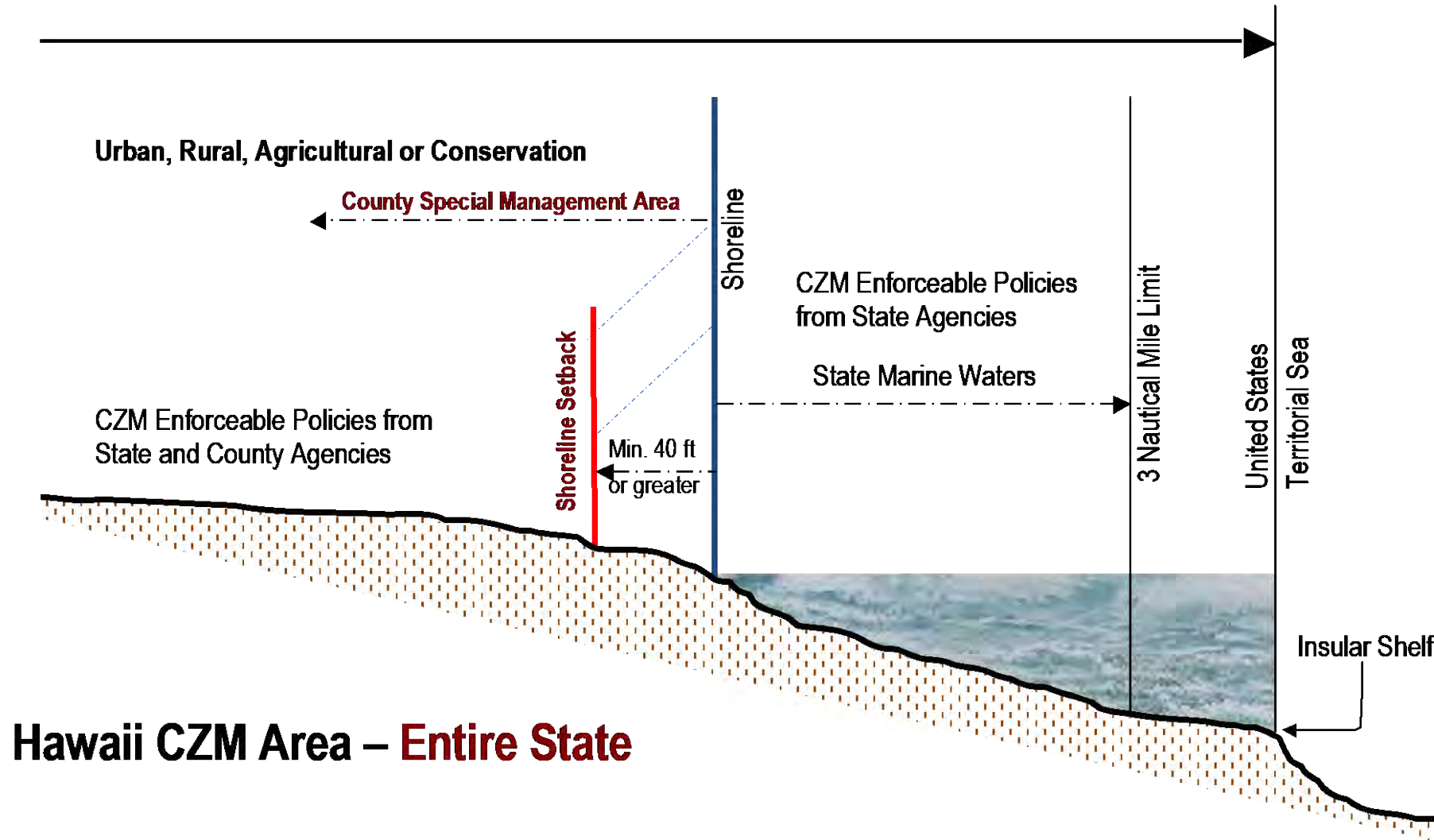
Dr. Cynthia Hunter (pictured, fourth from left), Marine Option Program Coordinator, accepted the award for each of the UH campuses where MOP is available (June, 2015).

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.

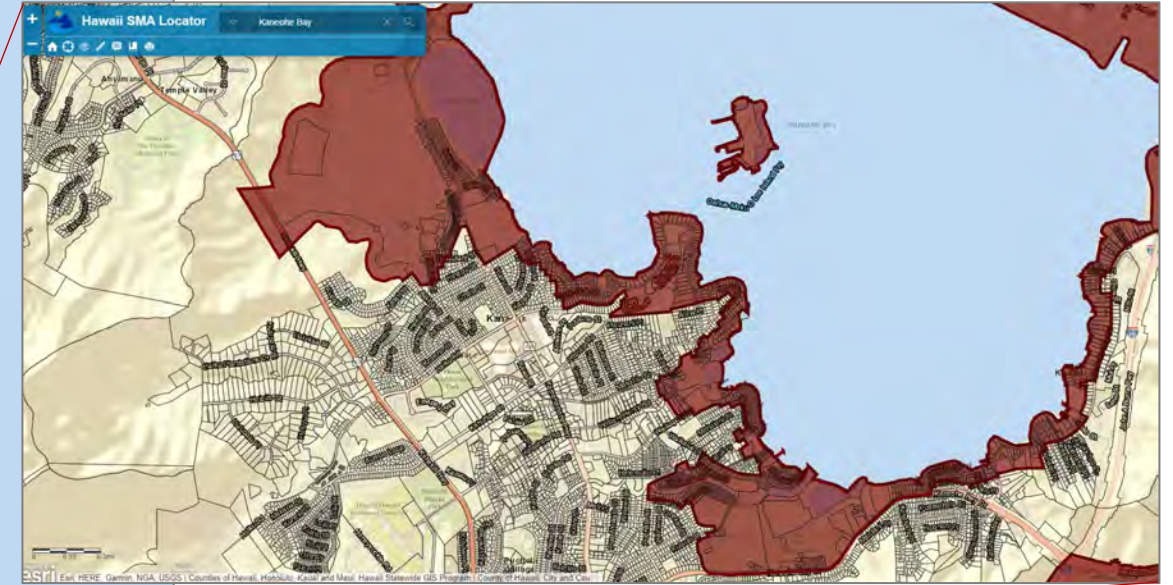
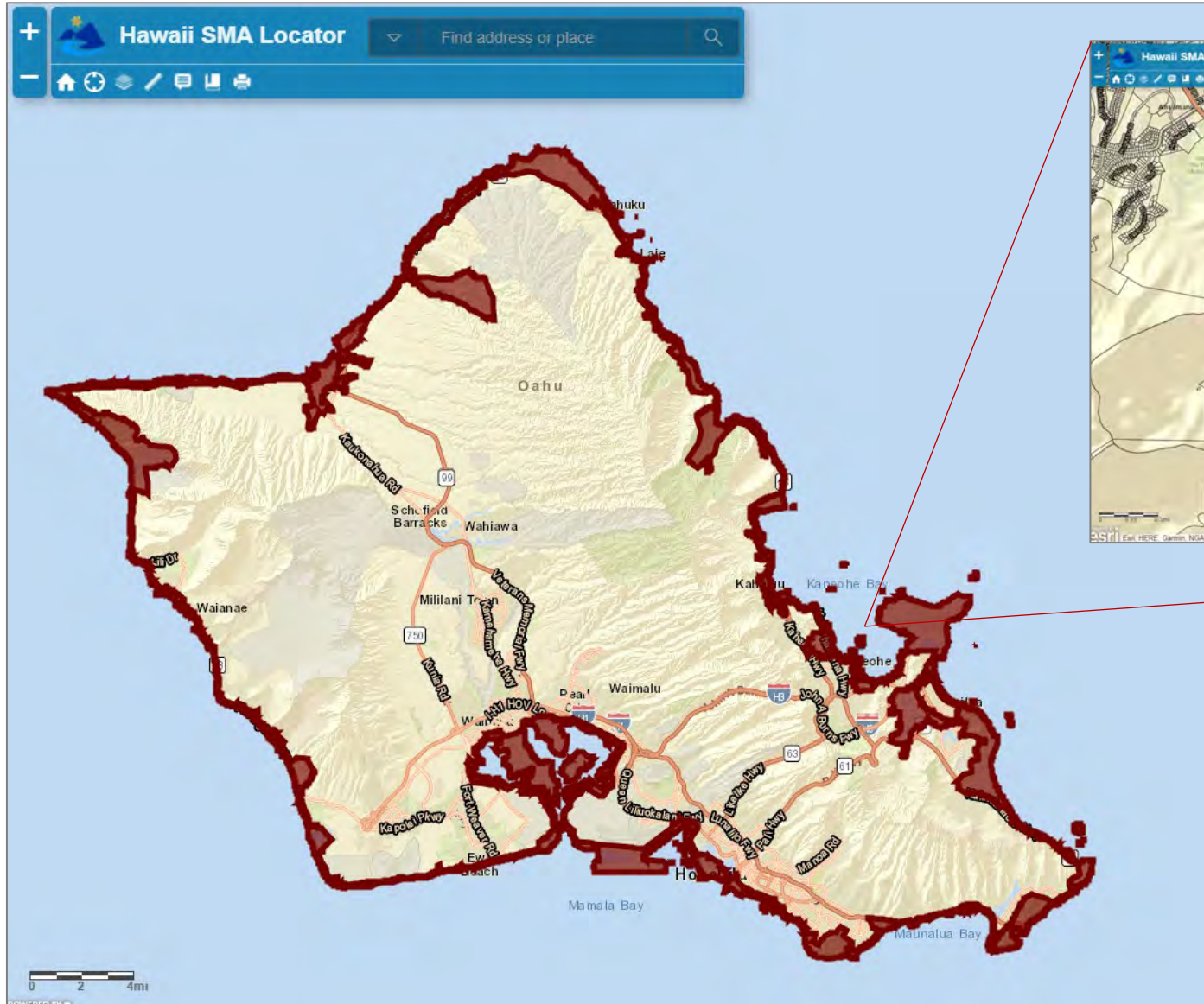
- East Hawai'i Island Representative
- West Hawai'i Island Representative

Hawaii CZM Program – Network



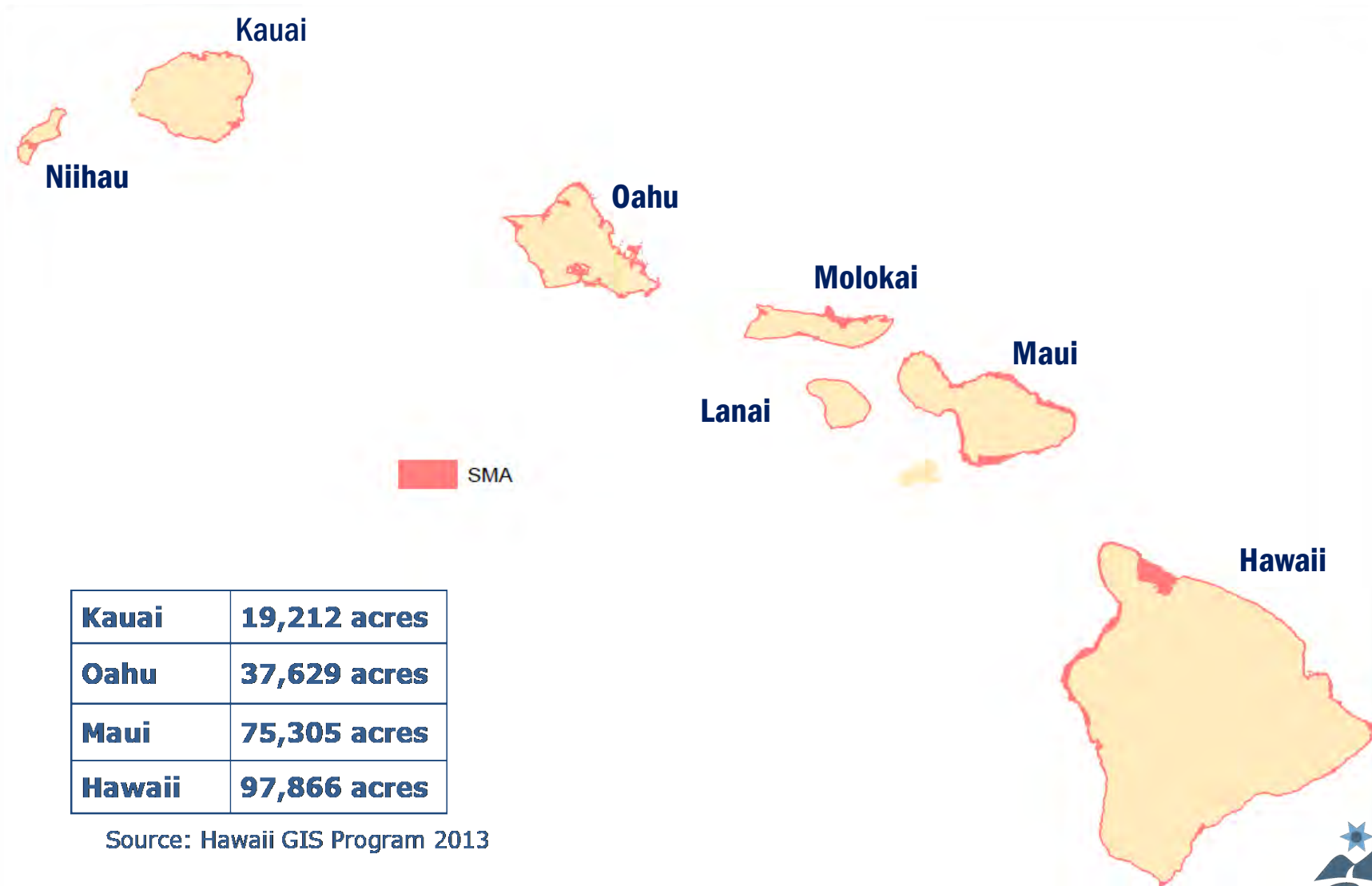
Hawaii CZM Area – Entire State

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)



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

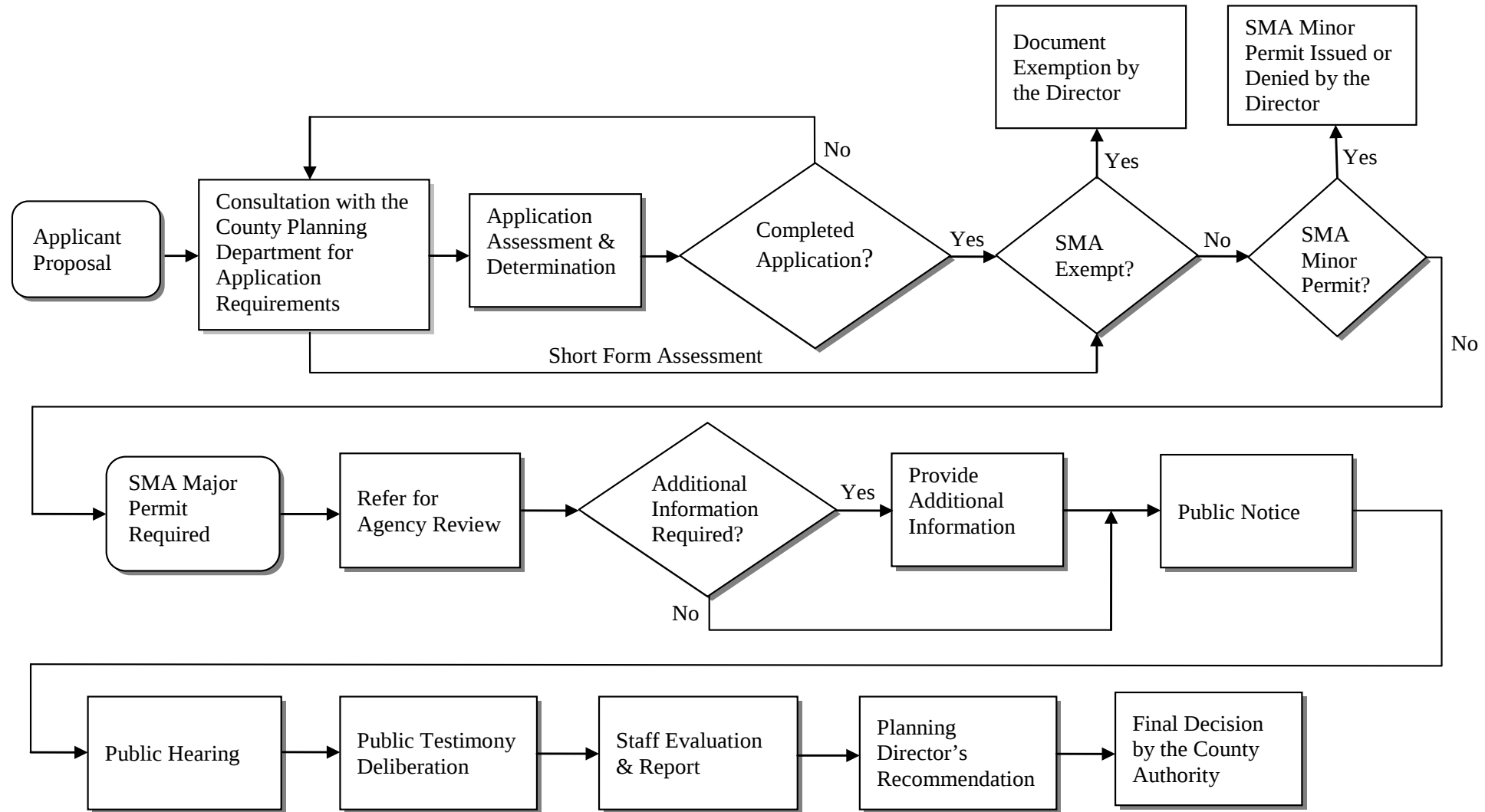
The First Permit for a Development within the SMA

- 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

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**

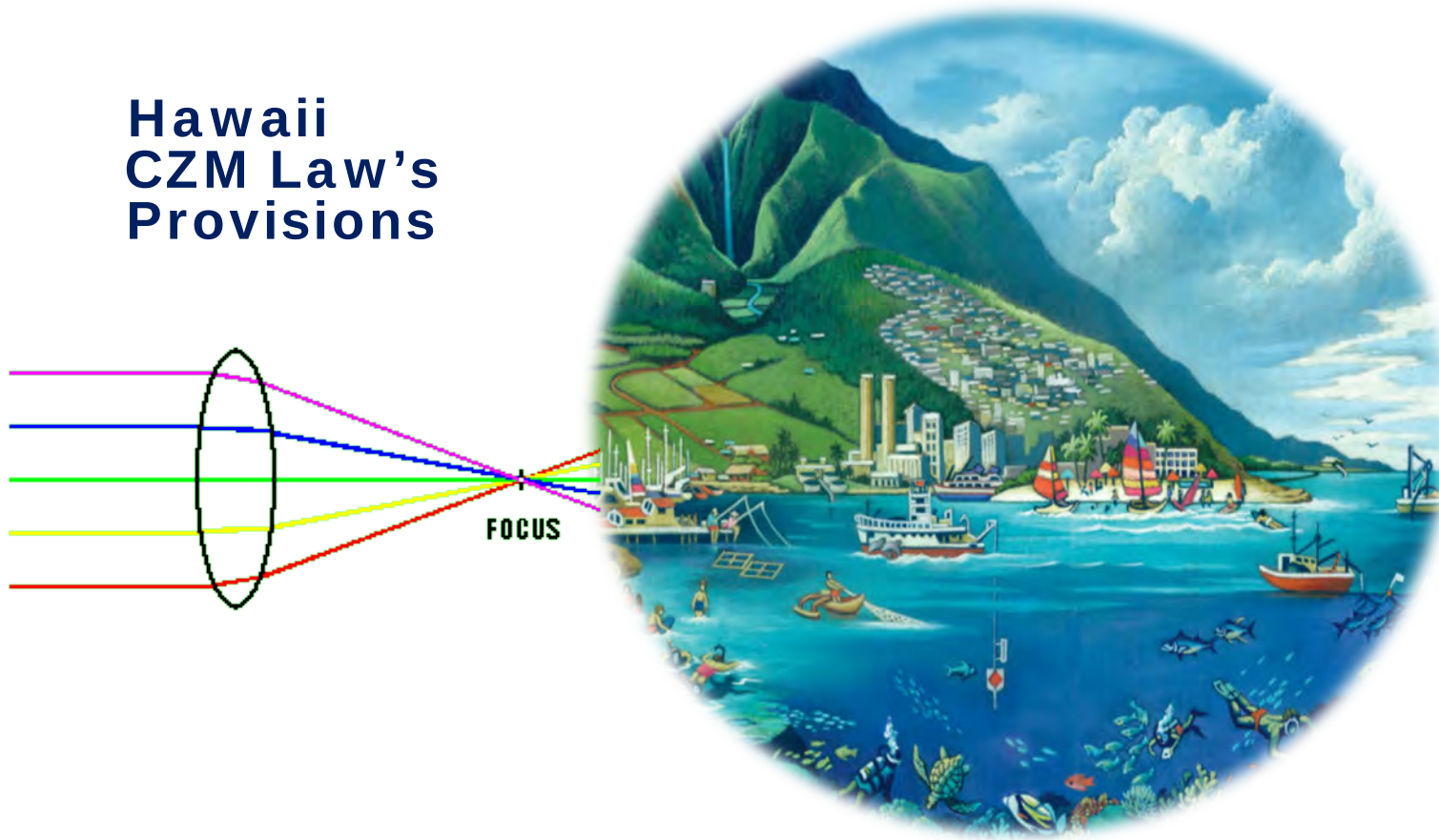
Cumulative Impacts in SMA Assessment

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



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



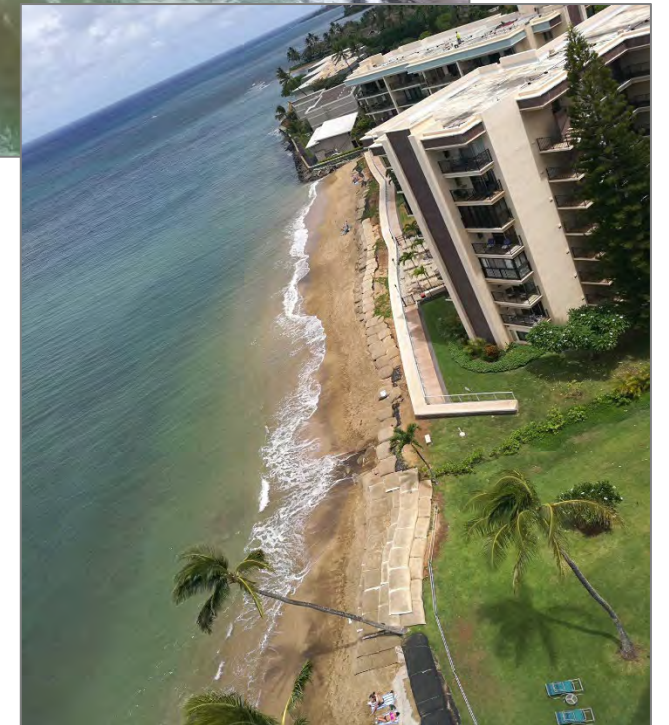
HRS Ch. 205A

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



- **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

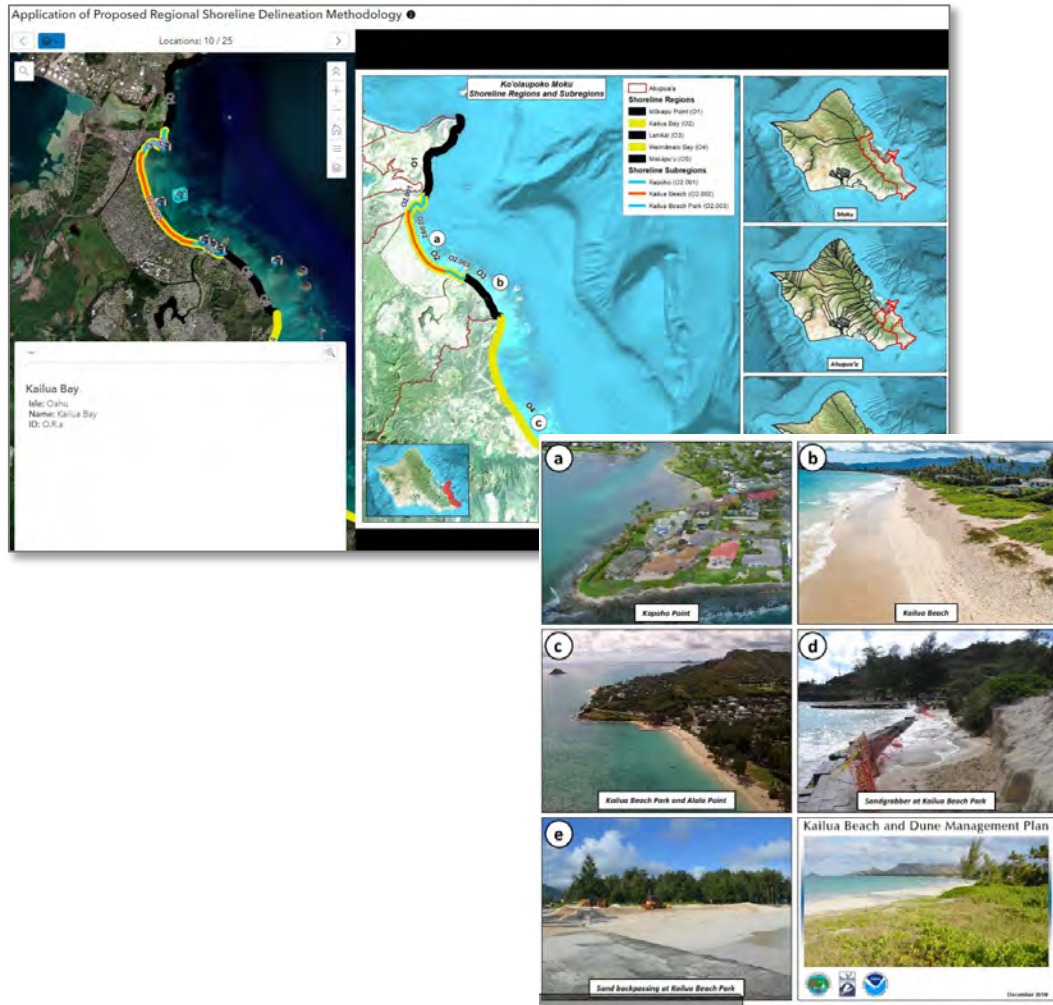
Focus Area #2 Reduction of land-based pollution

- 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>

State of Hawaii Office of Planning

P.O. Box 2359

Honolulu, Hawaii 96804

(808) 587-2846

CUMULATIVE EFFECTS/IMPACTS ASSESSMENT GUIDANCE IN SPECIAL MANAGEMENT AREA PERMITTING

Hawaii Coastal Zone Management Program
State of Hawaii Office of Planning and Sustainable Development
(808) 587-2846



April 2022

EXHIBIT 2

Cumulative Effects/Impacts Assessment Guidance in Special Management Area Permitting

1. Purpose/Background

Special Management Area (SMA) permit is a discretionary permit, which requires a decision-making body to exercise judgment prior to its approval. Considering potential cumulative effects in SMA permitting is required by the Hawaii Coastal Zone Management (CZM) Law, Hawaii Revised Statutes (HRS) Chapter 205A. Pursuant to HRS §205A-22, the determination of whether an action may have a substantial adverse environmental or ecological effect and therefore require a SMA Use Permit, must take into account potential cumulative effects as one of the key elements. Further, whenever the county authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a SMA, that use, activity, or operation shall be defined as a “development” for the purpose of SMA permitting. For example, as the result of cumulative effects/impacts, repeated improvements to an existing single-family residence on a shoreline parcel could be defined as a “development” and trigger a SMA permit.

The National Oceanic and Atmospheric Administration’s (NOAA) Office for Coastal Management (OCM) periodically conducts Section 312 evaluations on the performance of federally approved coastal zone management programs of the states and territories. According to the NOAA OCM *Evaluation Findings – Hawaii Coastal Zone Management Program August 2008 to August 2018*, both stakeholders and county partners in the State of Hawaii expressed that “[I]t has been extremely hard to determine cumulative impacts in the special management area permitting process, and community members are frustrated, and that refined guidance would be helpful in making decisions.”

In response to OCM’s evaluation findings and recommendations, the State of Hawaii Office of Planning and Sustainable Development¹ (OPSD), the lead agency for the Hawaii CZM Program, has worked with the County Planning Departments to study cumulative impact assessments for better decisions in SMA permitting. The OPSD has applied the following approaches and procedures to conduct this study:

- Review the requirements of cumulative impact assessments and available guidance from the National Environmental Policy Act (NEPA) and Hawaii Environmental Policy Act (HEPA)
- Request for guidance references for cumulative impact assessments from other coastal management programs via the Coastal States Organization

¹ The name of the Office of Planning was changed to the Office of Planning and Sustainable Development, enacted by Act 153, Session Laws of Hawaii (SLH) 2021.

- o Research the Final Environmental Assessments (EAs) and Final Environmental Impact Statements (EISs) under the HEPA to review cumulative impact assessments in environmental documents
- o Discuss cumulative impact assessments in SMA permitting with the county planning departments for their input
- o Recommend the parameters and criteria of cumulative impact assessments for SMA permitting

Based on the subject study, the OPSD is issuing this cumulative effects/impacts assessment guidance for use by the County Planning Departments, which includes:

- o Cumulative effects/impacts²
- o Principles of cumulative effects/impacts assessment and analysis
- o Spatial and temporal parameters of cumulative effects/impacts assessment in SMA permitting
- o **SMA criteria in cumulative effects/impacts assessment** (emphasis added)
- o Determining significance of cumulative effects/impacts, and the checklist

The purpose of this guidance is to provide policy and implementation support to assist the counties to better assess and determine cumulative effects/impacts in their SMA permitting. Following this guidance is not mandatory, and this guidance does not have the force and effect of law and shall not supersede state or county laws and rules relating to the CZM. The counties are responsible for defending their consideration of cumulative effects/impacts in SMA permitting.

2. Cumulative effects/impacts

The Council on Environmental Quality's (CEQ) regulations for implementing the NEPA defined cumulative impact as "the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions." (40 CFR §1508.7). On July 16, 2020, CEQ issued its new rule updating the regulations for federal agencies to implement the NEPA in the first comprehensive update since 1978. "Cumulative impact" defined in 40 CFR §1508.7 was repealed³, and an agency's analysis of effects shall be consistent with CFR §1508.1 paragraph (g) as follows:

(g) *Effects or impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may

² "Effects" or "impacts" used in this guidance are synonymous, as stated in Hawaii Administrative Rules Chapter 11-200.1.

³ Cumulative effects analysis is no longer required as part of a NEPA review under CEQ's final rule, issued July 16, 2020. However, as posted by Federal Register on October 7, 2021, CEQ proposes to revise §1508.1(g)(3) by restoring, with minor modifications, the definition of "cumulative impacts" from the 1978 NEPA Regulations and striking the current provision that repealed that definition.

include effects that are later in time or farther removed in distance from the proposed action or alternatives. (40 CFR §1508.1)

Hawaii Administrative Rules (HAR) Chapter 11-200.1 under the HEPA, HRS Chapter 343, continues the requirement of cumulative effects/impacts assessment, and defines Cumulative impact as “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes other actions.” All EAs/EISs are supposed to provide cumulative impact assessments for their proposed actions.

According to the CEQ handbook on *Considering Cumulative Effects under the National Environmental Policy Act* (CEQ, 1997), the primary purpose of cumulative effects/impacts analysis is to determine the magnitude and significance of the environmental consequences of a proposed action in the context of cumulative effects of other past, present, and future actions. Significance of cumulative effects/impacts depends on how they compare with the environmental baseline and relevant resource threshold such as regulatory standards. Cumulative effects are usually categorized into eight scenarios for assessment as follows (CEQ, 1997):

- 1) time crowding – effects of frequent and repetitive actions on the environment;
- 2) time lags – delayed effects of a proposed action;
- 3) space crowding – effects of spatial density on the environment;
- 4) cross-boundary – effects occurring away from the source;
- 5) fragmentation – effects or changes in landscape pattern;
- 6) compounding effects – effects arising from multiple pathways;
- 7) indirect effects – secondary effects; and
- 8) triggers or thresholds – effects defined by agency laws, policies or regulations.

3. Principles of cumulative effects/impacts assessment

Analyzing cumulative effects/impacts is challenging, primarily because of the difficulty of defining the geographic (spatial) and time (temporal) boundaries. No single formula is available for determining an appropriate scope and extent of a cumulative impact analysis. However, *Guidance for Preparers of Cumulative Impact Analysis – Approach and Guidance* (Caltrans, 2005) states that the following principles have gained a general acceptance:

- 1) Cumulative effects are caused by the aggregate of past, present, and reasonably foreseeable future actions.
- 2) Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who has taken the actions.
- 3) Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.
- 4) It is not practical to analyze the cumulative effects of an action on the universe, and the list of environmental effects must focus on those that are truly meaningful.

- 5) Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use the actual sociocultural boundaries to ensure including all effects.
- 6) Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.
- 7) Cumulative effects may last for many years beyond the life of the action that caused the effects.
- 8) Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

As required by HAR §11-200.1-10, a group of actions proposed by an agency or an applicant shall be treated as a single action when:

- 1) The component actions are phases or increments of a larger total program;
- 2) An individual action is a necessary precedent to a larger action;
- 3) An individual action represents a commitment to a larger action; or
- 4) The actions in question are essentially identical and a single EA or EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.

The *Hawaii Environmental Policy Act Citizen's Guide* (2014) recommends that when considering the significance of potential environmental effects, the proposing or approving agency should consider the sum of the effects on the quality of the environment. A proposed action must be described in its entirety, and shall not be broken up into component parts, which if each is taken separately, may have minimal impact on the environment. An action shall be determined to have a significant effect on the environment if it may be individually limited but cumulatively have substantial adverse effect upon the environment or involves a commitment for larger actions. For example, pools or septic tanks or other ancillary or accessory structures/uses to a residence structure should be included in a larger development as a single action.

According to *Stormwater Impact Assessments: connecting primary, secondary and cumulative impacts to Hawaii's Environmental Review process, May 2013*, the methodology of cumulative impact assessments should address the following issues:

- 1) Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, or human community being affected.
- 2) Cumulative effects on natural systems must use natural ecological boundaries.
- 3) Cumulative effects are caused by the aggregate of past, present, and reasonably foreseeable future actions.
- 4) Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

4. Spatial and temporal parameters to scope past, present and future actions in SMA permitting

In accordance with the definition of “cumulative impact” previously defined in CEQ’s rule *or* in HAR Chapter 11-200.1, and the research on the Final EAs/EISs available from Office of Environmental Quality Control⁴ (OEQC) online library, spatial and temporal boundaries are two critical parameters to scope past, present, and reasonably foreseeable future actions that need to be taken into account in cumulative impact assessments. *Principally*, spatial and temporal scopes for assessments depend on the scale of a proposed action, and on target resources and/or environment. Each affected resource, ecosystem, and human community should be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters. *Ideally*, spatial and temporal scopes for cumulative effect/impact assessments should be expanded to the point at which a specific coastal resource is no longer significantly affected, or the impacts are no longer of interest to affected parties. However, categorizing and determining the geographic and temporal scope of cumulative effects/impacts in the SMA permitting process can significantly divert the county planning departments from focusing their time and resources on the most significant effects. Given that existing cumulative effects/impacts analysis guidance from CEQ and HEPA is not provided in the context of the SMA, there remains ambiguity in its application and implementation. This SMA-oriented guidance seeks to narrow down the spatial and temporal scopes of the cumulative effect/impact assessments.

With respect to spatial scope, setting the consideration at an existing defined boundary such as the SMA boundary within the county jurisdiction would reduce uncertainty in assessing an appropriate scope. The SMAs designated by the counties generally begin at the shoreline and extend to the nearest highway or several miles inland. Other factors, such as salinity and tidal influences on bodies of surface water, also affect a SMA boundary. Pursuant to HRS §205A-23, as amended, the SMA in each county shall be as shown on such maps filed with the county authority as of June 8, 1977. To narrow down the scoping to a meaningful assessment and include what counts for cumulative effect/impact assessments in SMA permitting, it would be appropriate and feasible to apply the SMA boundary as a spatial parameter if no critical issues on coastal resources or environment are raised beyond the SMA. The OPSD recommends a geographic radius up to the SMA inland boundary from the shoreline as the minimum spatial scope to assess the incremental impacts of a proposed action on the SMA when added to other past, present, and reasonably foreseeable future actions.

Besides geographic scope, temporal scale is another crucial parameter to scope past and future actions to assess cumulative effects/impacts resulting from a proposed action. “Reasonably foreseeable” actions are those that are likely to occur, rather than those that are merely possible or subject to speculation. Reasonably foreseeable future actions are those that have the potential to overlap spatially or temporally with a proposed project. It is recognized that a SMA Use Permit is usually granted to complete a proposed

⁴ The Office of Environmental Quality Control has been renamed as “Environmental Review Program” within the OPSD, enacted by Act 152, SLH 2021.

development within 5 years from the issued date with potential time extension. In addition to including the effects/impacts that occur at the same time and place as the proposed action, the OPSD suggests that a minimum of 5 years or more as practicable before the application of a proposed action serve as a basic temporal parameter to scope past actions within a SMA for the purpose of cumulative effects/impacts assessment in SMA permitting.

The timeframe of a long-range plan such as the county general plan and/or community plan, or the expected lifespan of a proposed project, whichever is longer, could be utilized as a maximum temporal scale to scope foreseeable future actions. To assess cumulative effects/impacts in a feasible way, the OPSD recommends a range as the temporal scale to scope foreseeable future actions in the SMA permitting process. The range would be from 5 years or more as practicable from the application of a proposed project as the minimum, and up to the lifespan of a structure or the operational life of a proposed project as the maximum.

5. SMA criteria in cumulative effects/impacts assessment

With spatial and temporal scopes, cumulative effect/impact assessments in the SMA permitting process must be conducted under the provisions of the Hawaii CZM Law. The objectives and policies in the CZM law provide overarching guidance to the counties in their administration of the SMA permit system. These CZM objectives and policies cover:

- | | |
|-----------------------------------|---|
| — Recreational resources | — Coastal hazards |
| — Historic resources | — Managing development |
| — Scenic and open space resources | — Public participation |
| — Coastal ecosystems | — Beach and coastal dune protection |
| — Economic uses | — Marine and Coastal resources ⁵ |

Under the CZM objectives and policies, the SMA guidelines, articulated in HRS §205A-26, apply specifically to the SMA permitting process. The SMA guidelines must all be factored into the assessment of any development proposed within the SMA. Compliance with the SMA guidelines must be achieved before an SMA permit can be approved.

Therefore, the OPSD recommends that the counties apply temporal and spatial parameters with SMA criteria, as presented in **Table 1**⁶, to account for cumulative effects/impacts of a proposed action on a SMA as follows:

- o Minimum 5 years or more as practicable before the application to scope past actions

⁵ *Coastal resource* means any coastal wetland, beach, dune, (shoreline), barrier island, reef, estuary, or fish and wildlife habitat, pursuant to the National CZM Act of 1972, as amended.

⁶ Each county may further develop its own cumulative effects/impacts assessment template.

- o Minimum 5 years or more as practicable from the application, and up to the lifespan of a proposed project to scope foreseeable future actions
- o Extension to SMA inland boundary as a geographic radius to scope other actions
- o Extension beyond the SMA boundary for a specific coastal resource, if necessary
- o Effects on coastal resources/SMA under the CZM objectives and SMA guidelines

Using the minimum spatial and temporal scales recommended by this document as guidance, the counties may identify and/or apply their own temporal and spatial scales for a specific project, based on available geographic information system (GIS) data layers, site visits, and a history of site. Please keep in mind that a cumulative impact, or a significant environmental or ecological effect on *a special management area* (emphasis added) is required for a SMA assessment pursuant to HRS §205A-22.

This cumulative effect/impact assessment guidance is limited to SMA permitting within the county jurisdiction under the CZM provisions and SMA guidelines. Effects/impacts should not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain.

Table 1. Criteria of Cumulative Effects/Impacts Assessment in SMA Permitting

CZM Criteria ¹		Spatial Scope - minimum radius to SMA inland boundary	Temporal Scope ²			Effects/ Impacts from the Proposed Action
			Past actions - minimum 5 years past or more as practicable from the application	Present actions	Future actions - minimum 5 years or more as practicable from the application, and up to the lifespan of the project	
1	Coastal recreational resources					
2	Historic resources					
3	Scenic and open space					
4	Coastal ecosystems					
5	Economic uses					
6	Exposure to coastal hazards					
7	Beach/dune protection					
8	Marine resources					
9	Bay, estuary, salt marsh, river mouth, slough or lagoon					
10	Fishing ground, wildlife habitats, or agricultural uses of land					

¹Criteria from the CZM objectives HRS Chapter §205A-2 and SMA guidelines HRS §205A-26, as amended.

²a) Identify past, present, or foreseeable future actions in the vicinity of a proposed project from the EAs/EISs OEQC's online library by searching for the keyword "island" and "year"; b) Search for available information for past, present and planned actions within the SMA in the vicinity of a proposed project from the respective county planning department, with available GIS data layers; and c) Scope foreseeable future actions from community plans, capital improvement projects, and land use designations as applicable.

6. Determining “Significant effect” and “Cumulative impact”

Although not defined under HRS Chapter 205A, “Significant effect” and “Cumulative impact” are defined under the Hawaii Environmental Impact Statement law, HRS Chapter 343, and HAR Chapter 11-200.1, Environmental Impact Statement Rules, as follows:

“Significant effect” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State’s environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State (HRS §343-2).

“Cumulative impact” means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (HAR §11-200.1-2).

Furthermore, HAR §11-200.1-13 has established significance criteria, including qualitative and quantitative thresholds, for determining whether an action may have a significant effect on the environment. The significance criteria include:

- Irrevocably commit a natural, cultural, or historic resource;
- Curtail the range of beneficial uses of the environment;
- Conflict with the state’s environmental policies or long-term environmental goals;
- Have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community and state;
- Have a substantial adverse effect on public health;
- Involve adverse secondary impacts, such as population changes or effects on public facilities;
- Involve a substantial degradation of environmental quality;
- Be individually limited but cumulatively have substantial adverse effect upon the environment or involves a commitment for larger actions;
- Have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat;
- Have a substantial adverse effect on air or water quality or ambient noise levels;
- Have a substantial adverse effect on or be likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
- Have a substantial adverse effect on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or
- Require substantial energy consumption or emit substantial greenhouse gases.

The definitions and criteria for determining “significant effect” and “cumulative impact” set forth above are applicable in SMA permitting. The county authorities and county

planning departments may apply these definitions and criteria to assess potential effects/impacts resulting from any uses, activities, or operations within a SMA in making determinations relative to SMA use permits, minor permits, and SMA permit exemptions. However, for the purpose of SMA permit decision-making, application of the significance criteria should be constrained to the CZM objectives and policies and SMA guidelines.

Eligible actions for SMA exemption, or developments that are eligible for the SMA minor permit, based on a valuation of less than \$500,000, should be subject to some form of assessment to show that the proposed action has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects on a SMA. County-specific review and assessment protocols are encouraged to support a standardized assessment and reporting process.

If significant cumulative effects/impacts on a SMA resulting from a proposed development are reasonably foreseeable, site-specific mitigation measures in the planning phase, design phase, construction phase, and/or operational phase should be proposed and implemented to mitigate potential incremental impacts added by the proposed development in response to the CZM criteria illustrated in **Table 1**. For example, site-specific mitigation measures in SMA permitting to achieve consistency with the CZM objectives and policies and SMA guidelines may include:

- Provision and maintenance of public shoreline access
- Preservation/protection of archaeological sites, wetlands, and other sensitive areas
- Protection of life and property from coastal hazards as defined in HRS Chapter 205A
- Protection of beach and coastal dunes
- Boundary setbacks and building height restrictions to preserve coastal views
- Drainage improvements to control siltation in coastal waters
- Prohibition of artificial lighting from directly illuminating the shoreline and ocean waters
- Restriction, including frequency and intensity, on the improvements to an existing structure such as a single-family residence, on a shoreline parcel.

Cumulative effects/impacts assessment has been required by the NEPA and HEPA for several decades. In accordance with CEQ's new rule issued in 2020 and OPSD's research on EAs/EISs, however, it is noted that both NEPA and HEPA have faced difficulty in providing guidance as to how to conduct cumulative effect/impact assessments to meet the requirement. The lack of feasible spatial and temporal parameters has made assessing cumulative effects/impacts extremely challenging not only in SMA permitting, but also in evaluating EAs and EISs. In response to OCM's evaluation, the OPSD has conducted research on all Final EAs/EISs (1,103 total) from August 2008 to April 2020 via the online EAs/EISs library at <https://planning.hawaii.gov/erp/>. In very few cases, these Final EAs and EISs specifically discussed or applied spatial and temporal parameters to scope the past, present and foreseeable future actions in cumulative effect/impact assessments. Approximately 96% of Final EAs and EISs simply referred to the definition of cumulative

impact, and then made a statement of no adverse cumulative effects/impacts for their proposed projects.

EA/EIS review crosses jurisdictional bounds, and studies all environmental effects/impacts associated with the action. If an EA or EIS serves as a supporting document for a SMA use permit application, the OPSD suggests that the subject EA or EIS specifically include cumulative effects/impacts assessment on the coastal resources/environment under HRS Chapter 205A, and discuss site-specific mitigation measures in design, construction, and operation to mitigate any adverse cumulative effects/impacts from a proposed development.

7. Recommendation

This guidance is for the counties to consider potential cumulative effects/impacts from a proposed action which may or may not be “development” as defined in HRS §205A-22. To ensure and/or defend a consideration of cumulative effects/impacts in SMA permitting, the OPSD recommends that a SMA use assessment provide:

1. A checklist about the incremental impacts on coastal resources/environment resulting from a proposed action under the SMA criteria as illustrated in **Table 1** provided by this guidance. Counties are encouraged to develop their own implementation policies and tools to further standardize cumulative effects/impacts assessment in SMA permitting.
2. A location map of past, present, and reasonably foreseeable future actions that have been identified under appropriate and feasible spatial and temporal parameters for the purpose of cumulative effects/impacts assessment. Within a spatial and temporal scopes, the location map should also include all repeated repairs and component actions that are phases or increments of a larger action.

References

Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act. Council on Environmental Quality. Final rule. Federal Register / Vol. 85, No. 137 / Thursday, July 16, 2020 / Rules and Regulations, available at <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf>

Considering Cumulative Effects under the National Environmental Policy Act, Council on Environmental Quality, January 1997

Guidance for Preparers of Cumulative Impact Analysis – Approach and Guidance, Environmental Management Office, California Department of Transportation (Caltrans), June 30, 2005

Stormwater Impact Assessments: connecting primary, secondary and cumulative impacts to Hawaii’s Environmental Review process, Hawaii Coastal Zone Management Program, May 2013

Hawaii Environmental Policy Act Citizen’s Guide, State of Hawaii Office of Environmental Quality Control, October 2014

Cumulative Impacts and the Special Management Area County of Hawaii Planning Department (2024)

PC Rule 9:

9-4(e)(4):

*Whenever the Director finds that any excluded use, activity, or operation may have a **cumulative impact**, or a **significant adverse environmental or ecological effect** of the Special Management Area, that use, activity, or operation shall be defined as “development” for the purpose of this rule.*

9-4(q):

*Special Management Area Minor Permit means an action by the Director authorizing development, the valuation of which is not in excess of \$500,000 and **which has no cumulative impact, or a substantial adverse environmental or ecological effect** on the Special Management Area.*

9-4(r):

*Special Management Area Use Permit means an action by the Commission authorizing development, the valuation of which exceeds \$500,000 **or which may have a cumulative impact, or a substantial adverse environmental or ecological effect** on the Special Management Area.*

9-10(a):

*The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the **applicant determines** that the proposed use, activity or operation will: a) exceed \$500,000 in valuation; or b) **have a cumulative impact, or a significant adverse environmental or ecological effect** on the Special Management Area. In this case, the assessment procedures may be waived, and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.*

9-10(e):

*Where it is found that the proposed use, activity or operation is **not in excess of \$500,000** in valuation; and **will not have a cumulative impact, or a substantial adverse effect** on the Special Management Area, and after review by the Public Works Director for compliance with Chapter 27, Flood Control – the Director shall issue a SMA Minor Permit.*

9-10(f):

*The Director shall declare that a Special Management Area Use Permit is required if it is found that **the proposed use, activity or operation has a valuation in excess of \$500,000 or may have a substantial adverse effect** on the Special Management Area.*

9-10(g):

*The **Director shall declare** the proposed use, activity or operation **exempt** from the definition of development if it is found that the **proposal** falls in any category under Section 9-4(e)(2), and **does not have a cumulative impact, or a substantial adverse environmental or ecological effect** on the Special Management Area. The Director may impose certain conditions with the exemption determination to*

assure that the proposed use, activity, or operation does not have a substantial adverse effect on the Special Management Area.

9-10(h):

Criteria of Substantial Adverse Effect

*In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and **shall evaluate the overall and cumulative effects of the action.***

*A ‘substantial adverse effect’ is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the **cumulative as well as the short or long-term effect of the proposal.** The Director should bear in mind that in most instances, the following factors of a proposal, although not limited to same, **may constitute a substantial adverse effect on the environment** when the proposed use, activity or operation:*

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;*
- (2) curtails the range of beneficial uses of the environment;*
- (3) **conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;***
- (4) substantially affects the economic or social welfare and activities of the community, County or State;*
- (5) involves substantial secondary impacts, such as population changes and effects on public facilities;*
- (6) in itself has no substantial adverse effect but **cumulatively has considerable adverse effect upon the environment** or involves a commitment for larger actions;*
- (7) substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;*
- (8) detrimentally affects air or water quality or ambient noise levels;*
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, **erosion-prone area**, geologically hazardous land, estuary, fresh water or coastal water; or*
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.*

PC RULE 8

8-3(d)

*"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, which has been certified by the Board of Land and Natural Resources in accordance with its rules.**

**[OCCL, 13-5; ".... or as otherwise defined in section 205A-1, HRS"]*

8-11(c) "No variance shall be granted unless appropriate conditions are imposed as applicable:"

(3) To minimize risk of **adverse impacts** on beach processes;

(5) To minimize **adverse impacts** on public views to, from, and along the shoreline.

Evaluate potential cumulative impacts of variance on environment?

Amend variance based on observed substantial adverse impacts?

PD RULE 11

11-3(i) "Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the vegetation growth, *or the upper limit of debris left by the wash of the waves*, which has been certified by the Board of Land and Natural Resources in accordance with its rules.

11-4(c) The Planning Department may waive the certification requirement in cases where there may be special or unusual physical circumstances or conditions of the land or where a structure or activity is proposed at a considerable distance inland. **Setback lines shall be conservatively, but reasonably established.** The Planning Department may require a survey map of the subject area depicting physical and geographical conditions to assist in making a determination.

11-6(a) The mining or taking of sand, dead coral or coral rubble, rocks, soil or other beach or marine deposits from the shoreline setback area, in excess of one gallon per person per day;

11-8(a) A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline. *[and will not cause cumulative impacts or have a substantial adverse impact on shoreline resources]*

Cumulative Impact Definitions:

US EPA:

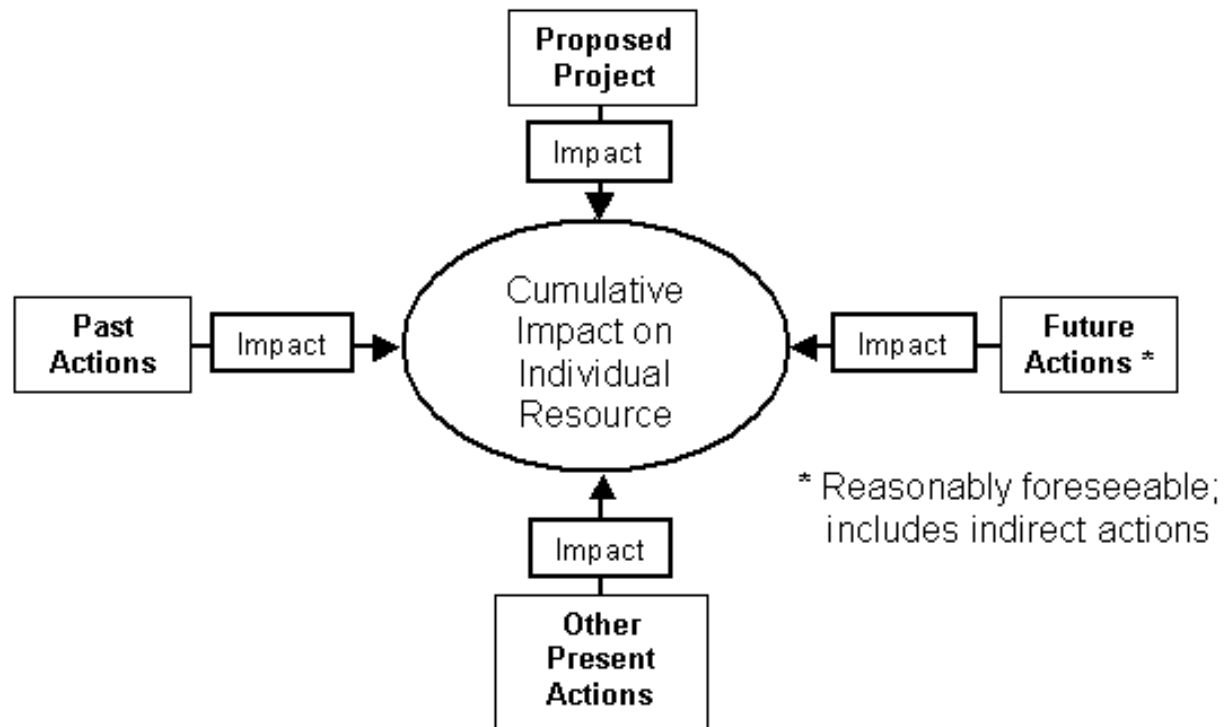
- (1) whether the resource is especially vulnerable to incremental effects;
- (2) whether the proposed action is one of several similar actions in the same geographic area;
- (3) whether other activities in the area have similar effects on the resource;
- (4) whether these effects have been historically significant for this resource; and
- (5) whether other analyses in the area have identified a cumulative effects concern.

§ 1508.7 Cumulative impact

*Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. **Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.***

Type of Effect	Direct	Indirect	Cumulative
Nature of Effect	Typical/ Inevitable/ Predictable	Reasonably Foreseeable/ Probable	Reasonably Foreseeable/ Probable
Cause of Effect	Project	Project's Direct and Indirect Effects	Project's Direct and Indirect Effects and Effects of Other Activities
Timing of Effect	Project Construction and Implementation	At Some Future Time than Direct Effect	At Time of Project Construction or in the Future
Location of Effect	At the Project Location	Within Boundaries of Systems Affected by the Project	Within Boundaries of Systems Affected by the Project

Can the County institute a requirement for coastal development to include a "Cumulative Impact Analysis" if the County can define and/or set parameters on how to determine if "Cumulative Impacts" will effect the environment?



1. Proposed Project Impacts – Describe
2. Previous Impacts to resource, or within geographic area – Describe
3. Other current impacts to resources, or within geographic area
4. Potential future actions and their impacts to the resource or within geographic area.

Define:

Geographic area

Cumulative Impact Analysis