

JAN 19 2024

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# A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREAS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 205A-22, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By amending the definition of "development" to read:  
4           ""Development":

5           (1) Means any of the uses, activities, or operations on  
6           land or in or under water within a special management  
7           area that are included below:

8           (A) Placement or erection of any solid material or  
9           any gaseous, liquid, solid, or thermal waste;

10           (B) Grading, removing, dredging, mining, or  
11           extraction of any materials;

12           (C) Change in the density or intensity of use of  
13           land, including but not limited to the division  
14           or subdivision of land;

15           (D) Change in the intensity of use of water, ecology  
16           related thereto, or of access thereto; and



- 1 (E) Construction, reconstruction, or alteration of  
2 the size of any structure; and
- 3 (2) Does not include the following:
- 4 (A) Construction or reconstruction of a single-family  
5 residence that is less than seven thousand five  
6 hundred square feet of floor area; is not  
7 situated on a shoreline parcel or a parcel that  
8 is impacted by waves, storm surges, high tide, or  
9 shoreline erosion; and is not part of a larger  
10 development;
- 11 (B) Repair or maintenance of roads and highways  
12 within existing rights-of-way;
- 13 (C) Routine maintenance dredging of existing streams,  
14 channels, and drainage ways;
- 15 (D) Repair and maintenance of underground utility  
16 lines, including but not limited to water, sewer,  
17 power, and telephone and minor appurtenant  
18 structures such as pad mounted transformers and  
19 sewer pump stations;
- 20 (E) Zoning variances, except for height, density,  
21 parking, and shoreline setback;



- 1 (F) Repair, maintenance, or interior alterations to
- 2 existing structures;
- 3 (G) Demolition or removal of structures, except those
- 4 structures located on any historic site as
- 5 designated in national or state registers;
- 6 (H) Use of any land for the purpose of cultivating,
- 7 planting, growing, and harvesting plants, crops,
- 8 trees, and other agricultural, horticultural, or
- 9 forestry products or animal husbandry, or
- 10 aquaculture or mariculture of plants or animals,
- 11 or other agricultural purposes, including all
- 12 traditional fishpond and traditional agricultural
- 13 practices;
- 14 (I) Transfer of title to land;
- 15 (J) Creation or termination of easements, covenants,
- 16 or other rights in structures or land;
- 17 (K) Subdivision of land into lots greater than twenty
- 18 acres in size;
- 19 (L) Subdivision of a parcel of land into four or
- 20 fewer parcels when no associated construction
- 21 activities are proposed; provided that any land



1 that is so subdivided shall not thereafter  
2 qualify for this exception with respect to any  
3 subsequent subdivision of any of the resulting  
4 parcels;

5 (M) Installation of underground utility lines and  
6 appurtenant aboveground fixtures less than four  
7 feet in height along existing corridors;

8 (N) Structural and nonstructural improvements to  
9 existing single-family residences, where  
10 otherwise permissible;

11 (O) Nonstructural improvements to existing commercial  
12 or noncommercial structures;

13 (P) Construction, installation, maintenance, repair,  
14 and replacement of emergency management warning  
15 or signal devices and sirens;

16 (Q) Installation, maintenance, repair, and  
17 replacement of public pedestrian and bicycle  
18 facilities, including sidewalks, paths, bikeways,  
19 crosswalks, stairs, ramps, traffic control  
20 barriers, signs, signals, and associated  
21 improvements;



1 (R) Trash removal or invasive vegetation removal or  
2 control, including incidental ground disturbance,  
3 excluding the use of herbicides;

4 (S) Installation of fencing, including associated  
5 improvements and incidental structures, for  
6 invasive species control or preservation of  
7 native habitats on conservation land;

8 (T) Installation, maintenance, repair, and  
9 replacement of lighting, fixtures, and equipment  
10 to establish compliance with current standards at  
11 existing public facilities;

12 (U) Installation, maintenance, repair, and  
13 replacement of security measures, including  
14 fencing, to existing public facilities; and

15 (V) Hawaiian traditional and customary practices,  
16 including work conducted by traditional means  
17 near, in, or related to loko i'a, traditional  
18 Hawaiian fishponds;

19 provided that whenever the [authority] county finds that any  
20 excluded use, activity, or operation may have a cumulative  
21 impact, or a significant environmental or ecological effect on a



1 special management area, that use, activity, or operation shall  
2 be defined as "development" for the purpose of this part."

3 2. By amending the definition of "special management area  
4 emergency permit" to read:

5 ""Special management area emergency permit" means an action  
6 by the [authority] county authorizing development in cases of  
7 emergency requiring immediate action to prevent substantial  
8 physical harm to persons or property or to allow the  
9 reconstruction of structures damaged by natural hazards to their  
10 original form; provided that those structures were previously  
11 found to be in compliance with requirements of the National  
12 Flood Insurance Program."

13 3. By amending the definition of "special management area  
14 minor permit" to read:

15 ""Special management area minor permit" means an action by  
16 the [authority] county authorizing development the valuation of  
17 which is not in excess of \$500,000 and which has no substantial  
18 adverse environmental or ecological effect, taking into account  
19 potential cumulative effects."

20 4. By amending the definition of "special management area  
21 use permit" to read:



1            "Special management area use permit" means an action by  
2 the [authority] county authorizing development the valuation of  
3 which exceeds \$500,000 or which may have a substantial adverse  
4 environmental or ecological effect, taking into account  
5 potential cumulative effects."

6            5. By amending the definition of "valuation" to read:

7            "Valuation" shall be determined by the [authority] county  
8 and means the estimated cost to replace the structure in kind  
9 based on current replacement costs, or in the cases of other  
10 development as defined above, the fair market value of the  
11 development."

12           SECTION 2. Section 205A-23, Hawaii Revised Statutes, is  
13 amended by amending subsection (c) to read as follows:

14           "(c) Nothing in this chapter shall preclude the  
15 [authority] county from amending its special management area  
16 boundary at any point in time; provided that the procedures and  
17 requirements outlined in subsection (b) shall be complied with  
18 and provided further that any future special management area  
19 boundary adjustments shall be restricted to the coastal zone  
20 management area."



1 SECTION 3. Section 205A-26, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§205A-26 Special management area guidelines. In  
4 implementing this part, [~~the authority~~] each county shall adopt  
5 the following guidelines for the review of developments proposed  
6 in the special management area:

7 (1) All development in the special management area shall  
8 be subject to reasonable terms and conditions set by  
9 the [~~authority~~] county in order to ensure:

10 (A) Adequate access, by dedication or other means, to  
11 publicly owned or used beaches, recreation areas,  
12 and natural reserves is provided to the extent  
13 consistent with sound conservation principles;

14 (B) Adequate and properly located public recreation  
15 areas and wildlife preserves are reserved;

16 (C) Provisions are made for solid and liquid waste  
17 treatment, disposition, and management that will  
18 minimize adverse effects upon special management  
19 area resources; and

20 (D) Alterations to existing land forms and  
21 vegetation, except crops, and construction of





1 structures shall cause minimum adverse effect to  
2 water resources, beaches, coastal dunes, and  
3 scenic and recreational amenities and minimize  
4 impacts from floods, wind damage, storm surge,  
5 landslides, erosion, sea level rise, siltation,  
6 or failure in the event of earthquake.

7 (2) No development shall be approved unless the  
8 [~~authority~~] county has first found:

9 (A) That the development will not have any  
10 significant adverse environmental or ecological  
11 effect, except as any adverse effect is minimized  
12 to the extent practicable and clearly outweighed  
13 by public health, safety, or compelling public  
14 interests. Those adverse effects shall include  
15 but not be limited to the potential cumulative  
16 impact of individual developments, each of which  
17 taken by itself might not have a significant  
18 adverse effect, and the elimination of planning  
19 options;

20 (B) That the development is consistent with the  
21 objectives, policies, and special management area



1 guidelines of this chapter and any guidelines  
2 enacted by the legislature; and

3 (C) That the development is consistent with the  
4 county general plan, community plan, and zoning;  
5 provided that a finding of consistency shall not  
6 preclude concurrent processing where a general  
7 plan, community plan, or zoning amendment may  
8 also be required.

9 (3) The [authority] county shall seek to minimize, where  
10 reasonable:

11 (A) Dredging, filling or otherwise altering any bay,  
12 estuary, salt marsh, river mouth, slough or  
13 lagoon;

14 (B) Any development that would reduce the size of any  
15 beach or other area usable for public recreation;

16 (C) Any development that would reduce or impose  
17 restrictions upon public access to tidal and  
18 submerged lands, beaches, portions of rivers and  
19 streams within the special management areas and  
20 the mean high tide line where there is no beach;



1 (D) Any development that would substantially  
2 interfere with or detract from the line of sight  
3 toward the sea from the state highway nearest the  
4 coast; and

5 (E) Any development that would adversely affect water  
6 quality, existing areas of open water free of  
7 visible structures, existing and potential  
8 fisheries and fishing grounds, wildlife habitats,  
9 or potential or existing agricultural uses of  
10 land."

11 SECTION 4. Section 205A-27, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§205A-27 Designation of special management area  
14 authority. [~~The authority~~] Each county is designated the  
15 special management area authority within the county's respective  
16 jurisdiction and is authorized to carry out the objectives,  
17 policies and procedures of this part."

18 SECTION 5. Section 205A-29, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§205A-29 Special management area use permit procedure.  
21 (a) [~~The authority in each county,~~] Each county, upon



1 consultation with the county's central coordinating agency,  
2 shall adopt rules under chapter 91 setting the special  
3 management area use permit application procedures, conditions  
4 under which hearings must be held, and the time periods within  
5 which the hearing and action for special management area use  
6 permits shall occur. The [~~authority~~] county shall provide [~~for~~]  
7 adequate notice to individuals whose property rights may be  
8 adversely affected and to persons who have requested in writing  
9 to be notified of special management area use permit hearings or  
10 applications. The [~~authority~~] county shall also provide public  
11 notice that is, at a minimum, circulated throughout the county  
12 at least twenty days in advance of the hearing. The [~~authority~~]  
13 county may require a reasonable filing fee which shall be used  
14 for the purposes set forth herein.

15 Any rule adopted by the [~~authority~~] county shall be  
16 consistent with the objectives, policies, and special management  
17 area guidelines provided in this chapter. Action on the special  
18 management permit shall be final unless otherwise mandated by  
19 court order.

20 (b) No agency authorized to issue permits pertaining to  
21 any development within the special management area shall



1 authorize any development unless approval is first received in  
2 accordance with the procedures adopted pursuant to this part.  
3 For the purposes of this subsection, the county general plan,  
4 state land use district boundary amendments, and zoning changes  
5 are not permits."

6 SECTION 6. Section 205A-30, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§205A-30 Emergency and minor permits. Each county  
9 [authority] shall provide specific procedures consistent with  
10 this part for the issuance of special management area emergency  
11 permits or special management area minor permits, pursuant to  
12 the procedural requirements within this part, and judicial  
13 review from the grant and denial thereof. The lead agency shall  
14 file notice of special management area minor permits in the next  
15 available issue of the periodic bulletin of the office of  
16 planning and sustainable development."

17 SECTION 7. Section 205A-30.5, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19 "(c) The [authority] county shall adopt rules under  
20 chapter 91 setting forth procedures for implementing this  
21 section."




1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 2869

**Report Title:**

Special Management Areas; Counties; Jurisdiction

**Description:**

Designates each county as the special management area authority within the county's respective jurisdiction. Makes conforming amendments.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

